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# Judges, Prosecutors, Jurors, and Organized Labor: Four Perspectives of Corporate Citizenship

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fact, my colleague, Dolores Tucker, did exactly that as a shareholder at Time Warner. She went to meetings and tried to organize other shareholders to take action. So yes, I think that's a very good use of corporate citizenship. Thank you very much.

JUDGES, PROSECUTORS, JURORS AND ORGANIZED LABOR: FOUR  
PERSPECTIVES OF CORPORATE CITIZENSHIP

**Noel Beasley**

**Professor Janine P. Geske**

**Dr. Valerie P. Hans**

**E. Michael McCann**

**Frank Daily**

**Frank J. Daily:** Our lead speaker today is Janine Geske who is a former teacher, former judge, former justice of the Wisconsin Supreme Court, and has come full circle and is now back to teaching, and it will be a delight for me to be able to ask Janine some questions because I've always been on the other end of that set-up.

Dr. Valerie Hans is going to be here from the University of Delaware and give a perspective more from the standpoint of somebody that looks in at the profession, looks in at the corporate sector and thinks about topics about what kind of standards do we hold corporations to.

E. Michael McCann needs no introduction. He has been the district attorney here since I think the earth was still cooling, but he has had a long and distinguished career. He has a national reputation. I have the privilege of trying lawsuits in different parts of the country, and when judges and other lawyers even in the deep South or the far West find out that I am from Milwaukee they inevitably say oh yeah, that's where Mike McCann is the D.A. I don't how many of them have had any criminal experience, but Mike is well-known.

Noel Beasley is going to present the perspective of the labor union. Obviously, corporations are comprised of individuals, of people. That's how they operate, and so you have people that are in management, you have people that are in labor, and there are definite views that each of those groups brings to the whole issue of what is expected of corporations and what is expected of employees in situations where they may disagree with a corporate employer. What about the corporation's responsibilities to its employees, and responsibilities of employees

working back toward the people that employ them?

Janine, since I said I'd ask you some questions, I guess maybe I'll start with you, but you're certainly familiar with the litigation process, and that's where I spend most of my time especially in a day and age when we have Firestone and Ford and we have many other issues that relate to civil litigation and the role of the corporation. From your perspective—both from the perspective of somebody who has sat on the bench and considered many of these questions from that perspective, as well as through the role of a mediator and through your own observations—what's your thoughts about how corporations act in the civil justice system?

**Professor Janine P. Geske:** Well, we most commonly see corporations in civil cases either on product-related cases or on employment-related cases, and even during the time that I have been on the bench the public view of corporate responsibility has become a large issue. I think there is lots of concern in the public arena about how corporations treat both consumers and employees, and I think that's reflected internally within the courts partly because judges are in part an animal of the political process. They are members of the community, and the issue of corporate responsibility in particular in the arena of discovery problems. We've all heard and seen allegations of abuse by corporations not producing documents, hiding documents, even potentially destroying documents. Now, I'm here to tell you that it's my perspective that it is a rare occasion when that happens, but it does happen and it happens more and more around the country. I think that when I first became a judge we didn't see the kind of motions and objections to corporate behavior or corporate counsel's behavior that we are now seeing in the court system.

We could spend a lot of time arguing whether it deals with the way lawyers practice law or whether it's the way that corporations work, but I have seen a trend and I think most of you probably have, of courts concluding that corporations are in fact engaged in an abuse of process or discovery. Imposing sanctions—when I was preparing for my remarks this afternoon, I was looking through some cases, and there was a case out of Georgia in which a court imposed \$13 million in sanctions for discovery abuses against a corporation. We've seen large sanctions even in this community by judges who believe that discovery abuses are occurring, and so I think that there's a growing awareness and concern about that kind of behavior. Of course, things like Firestone and Ford where we all watch on the nightly news that there were reports out there that weren't turned over or discussions that may not have occurred,

cause concerns among the judiciary that maybe when these allegations are raised the court has to take a more activist role in insuring that documents are produced and that consumers are able to have those kinds of documents to be able to prosecute their cases. One of the articles I read dealt with whether the problem is really arising because of lawyers representing corporations on the outside—outside counsel—or whether, in fact, inside counsel in corporations who are more subject to sort of the corporate atmosphere are contributing to the problem of documents either not appearing or disappearing.

Of course there's a lot of finger-pointing both ways, but I think that there is a need for attorneys to start spending time with corporate clients to talk about the ethical and sometimes moral issues involving litigation and corporate behavior. Fortunately, what's become apparent is that courts are having to impose some economic sanctions to be an added incentive in order to make sure that we don't have documents disappearing when a consumer is trying to bring a claim. What's happening, I think, is judges are starting to be concerned about that, and that is reason for corporations to be concerned because I think in the past there's been this presumption that everything is being done in good faith, if there's that doubt that maybe it may not be, the judge is much more likely to expand discovery, much more likely to open up issues. I think it will impact in what ultimately is presented to a jury because a judge has a lot of control obviously in what kinds of evidence goes to a jury, whether punitive damages will be submitted to a jury, whether there's going to be a reduction in an award or an award of punitive damages.

There's a lot of discretion and within that discretion comes a judge's perspective on the world. Judges want to do what is right, but what is right I think is in the atmosphere of what's happening in terms of corporate culture. If there's a perception that corporate culture generally is eroding in terms of providing the kind of evidence or caring about the consumer, caring about the employer, I think that will have an impact. I think the role of counsel in all of this is to be a counselor to your corporate clients to address some of these issues so that you're not litigating them in court but in fact handling them outside of the courtroom.

But secondly, to think about what your behavior and your client's behavior in the corporate litigation arena is potentially doing to corporations' reputation in the court room and also to consumers generally. The last thing I wanted to mention, and it doesn't really relate to my view as a judge but it relates to some of the other work I'm

doing, and I wanted to mention it in light of Dr. Bennett's remarks. I've been doing a fair amount of work, and some of you know that, about spirituality in the workplace and people's yearning for some connection with the holy, with God, with their higher power, or just values and morals. I think there's been a disconnect that's occurred and why that's happened is the subject of many books. But, if you look in a bookstore all the books there are about soul in the workplace, spirituality in the workplace, people are looking to reconnect with their values and their ethics and their faith in terms of decision-making. I think that is just as true in the small business as it is in corporate America. I think, as Dr. Bennett was pointing out, that we need more than laws to do this. People need to find a place to be able to reconnect, and I think as counselors and lawyers you have an opportunity to help clients do that, and I would encourage you to do that because I think that we all find more meaning in our work when we think that we are working for the moral good in the box in the context of either litigation or counseling corporate clients.

**Frank Daily:** Let me just ask a follow-up question. As you know, in civil litigation, particularly for those of us who represent companies involved in big stakes products liability litigation, for example, there is a constant tension between the principles that you point out and our sworn oath as lawyers to defend and represent our clients to the best of our ability and to the fullest extent of the law which presents a basic tension. So, the issue in this day and age, in an era when people are accused of, for example, destroying documents, is there a line that we can draw from an ethics point of view as to where it is that the person steps over the line? Does a lawyer, in other words, have to make judgments that are moral judgments that may interfere with his or her ability to represent a client?

**Professor Geske:** Well, I think that's a good question. I think that most counsel would agree that destruction of documents is a line that you don't cross. That's a clear one. In one of the articles I read—there was a very good law review article on this topic—and the problem is when all the grays before that and lawyers and others exercising situational judgments. You know, it's sort of like situational ethics kinds of things. I think that you have an obligation to obviously zealously represent your client, but you also have a legal and ethical obligation to not lie to the court, to not misrepresent to the court in the context of legal proceedings. You have to have serious discussions with your client about those ethical responsibilities. You may not be able to control what your client does within the corporate setting, but you do have

control and input when you are providing documents. I like to think if you are doing the right thing, it will be easy to explain it or to try to explain within a court setting. I used to tell the police officers when I talked to them after a case was over, I'd say the best witness is somebody who is up there telling the truth and admitting what they did wrong and explaining why it happened. Juries understand that. What they don't like is somebody just lying to make sure they get the end result that they want. So, an officer who says, "I screwed up here, but this is the why . . .", I have a lot of faith in that happening and I think that's true for corporations too. If there is damaging stuff, but there's a good reason why it's there, let them explain it rather than bury it because when they bury it, everybody will assume that they are guilty or liable for it. So, I think you've got to have those kinds of discussions with your client.

**Frank Daily:** Never easy, but always important to do. I think the corporations and the people who work for them have a much different impression of our civil justice, and they see the person being hung out to dry because of a document retention policy that means that when a product was made fifteen years ago and the original drawings are not still around, there's something wrong. But, it's one I think we as lawyers have to confront and it's the lawyers who take that responsibility seriously that I think are going to end up also being the lawyers who can help their clients the most. I would much rather defend a client's explanation as to why a certain memo was written as opposed to trying to defend the absence of the memo. Looking at this issue as it comes up in the trial of a law suit obviously involves the jury system, and the jury system necessarily implicates the moral of the community. It brings to bear on a trial the viewpoints and opinions, and perhaps the impressions or misimpressions that people carry with them when they come in to sit in a jury box and hear about a case in which one of the parties happens to be a corporation. Since that's the position that I am frequently in, I always insist on getting the instruction that says essentially that all people are to be treated equally in the court of law—that's why the scales of justice has a blindfold, or it does in most courts. I noticed trying a case in Waukesha a few weeks ago that the lady of justice is not blindfolded in Waukesha so it's not apparently true every place. It came as a shock to the judge as well. That's why we ask for that instruction, to get the idea across that just because a party to the litigation, be it plaintiff or defendant, is a corporation, the corporation is still entitled to the same benefits, to the same fair treatment that anyone else would have. Yet, every time that instruction is given, particularly in a case

involving a serious injury to an individual and a large company on the other side, I can see the jury struggling with that concept. You've done a lot of work in that area, and can you share with us what the jury's perspective is in all of this?

**Dr. Valerie P. Hans:** I find it very interesting that our moderator began by talking about that instruction which many people representing corporations argue should be given. By the end of my presentation, you'll see that the norm of equality articulated in the instruction resonates with many jurors who decide cases involving businesses and corporations.

The first issue I want to talk about today is to ask what we are doing talking about juries when we're talking about corporate responsibility. At one level, juries aren't very important in corporate cases. Juries hear only a very small number of civil trials. Some people argue that the civil jury is in decline. They argue that it's not really so important to be focusing on jurors and jurors' views about corporate responsibility as it might have been in prior times.

I want to raise some arguments in favor of the continuing importance of the civil jury. First of all, the cases that juries try may be very important cases in terms of the company and in terms of the role of the company vis-à-vis government regulation. Jurors are symbolic representatives of the public in the courtroom. Finding out what juries do when they look at the facts of the case, a missing memo, or a corporate executive explaining a memo, can give the parties an idea about what laypeople generally think about corporate action. Most important, the fact that we have a jury in some cases makes a difference in all the rest of the cases in the civil docket that settle rather than go to trial. Civil jury trial verdicts send signals to lawyers, judges, and companies about how the public perceives corporate behavior. So, in my view, it's important to take a look at how juries think about issues of corporate responsibility in part to get a sense of public understanding of it and in part to understand how a jury might decide a specific case.

There are a lot of beliefs about the jury in business cases, particularly the kind that I've been studying, in which individual plaintiffs sue a business or a corporation. From one perspective, the civil jury is seen as a modern-day Robin Hood. The civil jury is thought to be extraordinarily pro-plaintiff and quite anti-business. It is said to operate with a deep pockets approach. That is, regardless of the actual liability of a business or a corporation, if a product produced by a company or some other corporate action or inaction injures someone, then deep pockets will prevail, and that injured person will get

compensation.

I put some of these beliefs about the jury to the test and have just published a book called *Business on Trial*, summarizing findings from research I've done over the past decade.<sup>37</sup> I interviewed 269 civil jurors who decided cases that included at least one corporate or business party. I also did mock jury experiments in which I varied the identity of the defendant. All the facts in the case were the same, except that some people heard that the defendant was an individual, whereas other people heard that the defendant was a corporation. Finally, I undertook public opinion polling to gain a sense of the attitudes people have about corporate responsibility and corporate ethics.

In a nutshell, I found that the widespread beliefs about the civil jury in business cases are nearly as mythic as Robin Hood. There may well have been somebody named Robin Hood, but he was much overrated, and he's much better as a story than as an indication of reality. In contrast to prevailing beliefs, the jurors I interviewed surprised me by being rather tough on plaintiffs who bring cases against businesses and corporations. Certainly, some of the more seriously injured plaintiffs evoked sympathy on the part of jurors. But even then jurors continually questioned issues relating to the personal responsibility of the plaintiff. They focused on the responsibility of the plaintiff for generating, producing, or adding to the likelihood of his or her own injury. In addition, they often showed a lot of hostility about people who bring lawsuits. Second, and this was also something of a surprise, I didn't find a lot of anti-business prejudice. It was rare for jurors to speak about their hatred for the company, their dislike of companies generally, or their dismay over poor corporate ethics. There were a few cases where the facts against the corporate defendants were pretty bad. Corporate defendants engaged in behavior that certainly violated business norms. Jurors let them have it in those kinds of cases, but one got the sense that their severe treatment derived from the case facts rather than jurors' pre-existing animus against corporate entities or business. In fact, public opinion polling shows that people are very supportive of the free enterprise system. Laypeople echo some of the comments made by previous panelists that what's good for business is good for the rest of us, and a booming economy benefits many of us. These generally favorable attitudes toward business coexist with other ideas about what corporations should be doing to make sure that their employees, their

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37. VALERIE P. HANS, *BUSINESS ON TRIAL: THE CIVIL JURY AND CORPORATE RESPONSIBILITY* (2000).



customers, and others, are not harmed.

I did not find much evidence of the "deep pockets" approach even though I tried in a number of different ways to look for it. Other researchers have replicated that result.<sup>38</sup> If we vary how wealthy a corporation is, for example, so that some corporations are described as wealthy and others are described as poor, there is no difference in the likelihood of a plaintiff recovering against that corporation.

Jurors treat corporations differently, but it doesn't seem to be because they are so sympathetic to the plaintiffs, or because they are hostile to big corporations, or because they want to plumb the pockets of corporations. Instead, they hold corporations to a distinctive standard of responsibility, a greater degree of responsibility than expected of an ordinary human being. Certain cases in particular evoke this idea that corporations should adhere to a higher level of responsibility—cases in which workers are injured and in contracts cases.

I asked participants in all of my studies a question about the appropriate standard for corporate responsibility: Should corporations be held to a higher standard of responsibility compared to individuals? A majority of participants from the public opinion polls and mock jury studies endorsed this idea. They believed that corporations should be held to a higher standard of responsibility, that we should expect more of a corporation. In contrast, jurors were very divided on this. A plurality of the jurors I interviewed thought corporations should be held to the same level of responsibility as individuals. I found that really fascinating.

Even more fascinating was asking jurors why they believed in either a higher standard or the same standard for corporate and individual defendants. The results will, I think, make our moderator very happy. The jurors gave plenty of reasons for treating corporations the same. One reason was the norm of equality, that equal treatment of corporations and individuals was fair. The jurors' endorsement of this norm could well have been the result of legal instructions to treat corporations the same as any individual party. To me, however, it also seemed to stem from a basic sense on the part of the individual jurors

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38. NEIL VIDMAR, *MEDICAL MALPRACTICE AND THE AMERICAN JURY 203-20* (1995); Stephan Landsman et al., *Be Careful What You Wish For: The Paradoxical Effects of Bifurcating Claims For Punitive Damages*, 1998 WIS L. REV. 297 (1998); Robert J. MacCoun, *Differential Treatment of Corporate Defendants by Juries: An Examination of the "Deep-Pockets" Hypothesis*, 30 LAW & SOC'Y REV. 121 (1996).

that it was important to treat everyone equally, and to avoid bias and prejudice against corporations. So, even though corporations differ from individuals in many ways, there was a strong tendency among jurors who decided cases that they should struggle to treat corporations the same as individuals.

A number of jurors also argued that it doesn't make sense to expect a higher degree of responsibility from corporations than individuals because individual behavior is the basis for corporate action. Corporations are legal fictional persons, who act only through real individual ones, and so the appropriate standard for corporate behavior is reducible to this individual level.

There were other study participants and jurors who believed that we should treat corporations differently. Furthermore, no one said corporations should be held to a lower level of responsibility. There were four general ideas that jurors expressed in arguing for a higher standard for corporate behavior. The first was the size of the corporate entity, and related to that, the potential impact of corporate actions. The Firestone/Bridgestone tire cases are an obvious example. The tire failures have had not only national, but global, impact. Jurors I interviewed would probably argue that because of their great size and potential impact, the corporations should be evaluated using a very high standard of responsibility.

Another reason jurors gave as support for a higher level of corporate responsibility is related to a corporation's organizational resources. I want to distinguish this from financial resources and the "deep pockets" idea. What I mean by organizational resources is the fact that corporations include many experts, different departments, plenty of resources to assist in identifying and correcting problems. With these resources to draw upon, corporate actors should be able to anticipate and eliminate potential harm they may cause through their actions. Consider professional individuals such as doctors and engineers. Professionals are skilled in a particular craft, and have greater knowledge about their area of expertise. That greater knowledge means that they should be held to a higher standard of responsibility.

A final reason jurors gave is similar to Larry Mitchell's point raised earlier today.<sup>39</sup> That is the issue of role responsibility. It's a corporation's job to be doing a particular thing like making tires, and therefore they should do a good job, they have full responsibility.

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39. Lawrence E. Mitchell, *Cooperation and Constraint in the Modern Corporation: An Inquiry into the Causes of Corporate Immorality*, 73 TEXAS L. REV. 477, 513 (1995).

That's a high level of responsibility because it's so centrally located to its mission. To sum up, then, I found that a number of people believed in similar treatment for individuals and corporations, with a substantial number also believing that corporations should be held to a higher standard.

I examined the judgment of corporate responsibility using another methodology, scenario experiments in which I gave the same scenario to groups of people, varying only the identity of the defendant. These experiments showed that there is a great deal of overlap in responses to identical scenarios with corporate versus individual defendants. However, when people distinguish between them, they tend to hold the corporation to a higher level of responsibility.

The overlap is considerable. Jurors are probably right, many of them do try to treat corporations the same as individuals. They look at similar aspects of the scenario, imputing knowledge or lack of knowledge and responding accordingly. But others who believe in a higher standard attribute more responsibility and legal liability to a corporation. I used two different scenarios, a slip-and-fall accident in either a private home or in a store, and a worker-injury case. Even in the slip-and-fall, which wasn't really related to the central mission of the corporation, there was a higher standard for the corporation.

To sum up, jurors do treat corporations differently, but not for the reasons commonly believed. Jurors don't treat corporations differently because they are overly sympathetic to plaintiffs, or because they have some sort of pre-existing animus against the corporate form or business in society. Rather, it appears that a corporation's size, potential impact, organizational resources, or role responsibility encourage jurors to impose a higher level of responsibility. Thank you.

**Frank Daily:** Thank you, Valerie. That's some heartening information that I'm not always likely to think about when I'm sitting there with a jury. I tell juries that corporations are a collection of people just like them. Plaintiffs or injured people have responsibilities to use products safely and to follow directions, and corporations have a duty to make safe products and to properly instruct upon their use. It's very difficult to keep that balance, and certainly when it comes down to some of the people that accidentally or coincidentally end up being witnesses for corporations, some of them do not do a very good job. They are not trained in litigation, and it's a more difficult selling point than it would be if you represented an individual who I think juries are more likely to take sympathy on. I've had some cases where I decided to use the old Irish platitude that an empty house is better than a bad

tenant, and I've not had a lot of corporate people trouncing onto the witness stand because of that very idea because I think a jury does end up holding them to a higher standard. But, there is an overlap, too, in these cases as we've seen from a number of examples whether it would be Valu-jet, Ford Pinto or other types of dramatic instances where companies have made a product which is deemed to have been dangerous and to injure people. Just as it would be in the situation of an assault where somebody was injured in some type of an attack, there are implications that take place in the tort system, but they also have implications in the criminal justice system. With respect to corporations, they too have those considerations of criminal liability, and we have with us someone who's used to dealing with the whole issue of criminal responsibility. Mike McCann has a reputation for fairness and compassion and tempering justice with mercy, but also looking at the conduct not just of people, but of companies. So, Mike, in the context of the criminal justice system, how do you handle it?

**E. Michael McCann:** Thanks very much. It's really interesting to be here. I was able to attend during part of the morning and to wrestle with these concepts of responsibility for a corporation. We're the bottom end in the sense that one would hope civilly corporations could be controlled. Those that get out of hand hopefully could be dealt with adequately through civil litigation. I've really been persuaded starting in the late 1980s that there needs to be more done. Early on, corporations were subject to criminal prosecution in Wisconsin. One of the earlier cases, a 1928 case, was interesting because it involved the Volcan Last Corporation in Crandon, Wisconsin. The corporation wanted a water works built in Crandon apparently because it would reduce their insurance policy costs to assist in supplying coverage against fire. One of the employees of the Volcan Last Company was on the village board of Crandon. The company let it be known to all its workers, including the individual on the village board, that they wished them to vote in favor of the water works. Well, wouldn't you know it, the employee that was on the board of the village voted against the water works, and a gentleman named Prowsey who was the straw boss summoned all the workers together. This will warm the cockles of the union man's heart. They summoned all the workers together when they reported to work the next day, hectoring out the board member who had voted against the company, and told him in front of all the others that he was fired and discharged him. Well, there was a state law in the state of Wisconsin that said an individual, a person, or a company could not use pressure, the threat of reduction of wages or loss of job to influence

people to vote one way or another on an issue or for a particular person for public office. Prosecution was brought against the Vulcan Last Company by a gutsy DA, I'm sure, and after they worked through the facts of the case, the final defense was the court said the only question that remains for consideration is whether the Vulcan Last Company basically as a corporation, was properly convicted of a violation of the statute, and they quoted the old law that said a corporation cannot commit treason or felony or other crime in its corporate capacity, relying on Blackstone. This is 1928, and that was the defense argument. The court responded, however, and said that since a corporation acts by its officers and agents, their purposes, motives, and intent are just as much those of the corporation as are other things done. If, for example, "the invisible, intangible, essence of air which we term a corporation can level mountains, fill up valleys, lay down iron tracks, and run railroad cars on them, it can intend to do it and can therein act as well viciously as virtuously." They went on to sustain the verdict of the trial court, that the corporation had indeed violated the statute. In the late 1980s, a case moved through the courts of Illinois called the *Film Recovery System* case, technically it was *People v. O'Neil*,<sup>40</sup> and a rather gutsy, again state's assistant district attorney, in Cook County named Jay Magnuson had initiated a prosecution against the Film Recovery Corporation. Basically the facts were these: At that time silver had become very valuable, and the operator of the firm had determined that you could recover silver from processing substantial amounts of old film. He secured that film and put it through a process whereby the chemicals involved liberates cyanide gas and there are safe ways to protect against that danger by hoods over the machinery and so on. Well, an individual died during that process. Investigation ensued, first as simply a minor forfeiture for an environmental law violation, and the assistant District Attorney Magnuson, the more he studied it became convinced that there was a great deal more at stake than an inadvertent violation of the environmental code and brought a homicide prosecution which resulted in the conviction. It was noted by our office and the labor people in Milwaukee County came to me and asked if we would start looking at cases where people were killed on the job site. I learned that nationally somewhere between 7,500 and 10,000 employees die at the work site from accidental injuries, and in Wisconsin about 100. We started going out to every site at which a person died in Milwaukee County. We brought a number of prosecutions. I'll speak to just one of them and

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40. 550 N.E.2d 1090 (Ill. App. Ct. 1990).

then another unusual type of service liability.

First the S.A. Healy Company. It's a large international company, a subsidiary of Fiat and it does multimillion dollar construction jobs, particularly tunneling. In our community we had a billion-plus project under way to improve water deposit into Lake Michigan controlling the streams of water. Well, as they did some tunnels on the south side of Milwaukee deep down they discovered that there was methane gas in the tunnels, and this is a cause of great concern because it can explode with great lethal ramifications for those who may be working in the area. The Sewage Commission, which was in charge of the entire enterprise, summoned all the contractors repeatedly before them, warned about the danger of methane gas, required them to equip their equipment with devices that would immediately cut off the equipment if they detected methane gas in the tunnel. In this particular case, they were laying the tunnel itself which involves large rib-type materials in installation of the tunnel. As they cut through it, they actually put in the concrete, and the sealer that's used is a concrete-type of sealer. I worked construction five summers in the late 1950s and I worked on a construction gang, and when you're on a construction gang you're always worried the equipment, as you're processing and pumping cement, you never let that equipment alone very long because the concrete will set up in the equipment and the machine is gone. Part of this job laying this tunnel was using a machine that you loaded up with the concrete and it pumped it into the blocks that became the walls for the tunnel.

Well, one day they detected methane gas, the machines cut off, the men walked out—some twenty or thirty men walked out—and waited for awhile, slowly came back up the tunnel, which was the rule as required by the Sewage Commission. When they tested for gas they found no gas and resumed their work. Three days later, the machine cut off again registering the presence of methane gas, and the men filed out. Now, having worked construction, I know the cost of having twenty or thirty men stand idle. The Sewage Commission required that they wait one hour before they re-entered the tunnel, and the companies were ordered to post that notice about so that everyone on the premises would know. The straw boss, after the men marched out, I'm sure he probably looked around and saw twenty or thirty men with the cost involved, waiting around an hour, summoned the safety man and the guy that ran the pump that pumped the concrete and they went right back up the tunnel without waiting the hour. Moments later, there was an explosion and all three men were killed. Because I worked

construction, I knew what happened and it was re-created very finely in a professionally technical way through the Mine Safety Administration of the United States government.

I know what that man did because I worked construction. I know the guy that worked the pump was thinking, oh my goodness, if that sets up we'll ruin the pump machine and as soon as he got up there you could see where he hooked up. He moved the hose; he was going to water the concrete and dump it out, and he turned on the machine and there was a flash. All the workers said, "Whenever you turned on that machine you could see it spark." The spark of course mixed with the methane gas and the three men were killed.

We brought a criminal prosecution of the S.A. Healey Company for two counts of reckless homicide. We didn't charge the third count because it was the straw boss himself that died, and the jury came back with two counts of reckless homicide. Represented by Michael Best, a very fine firm, who very aggressively resisted the prosecution, but it was successful.

The second case, a very unusual case, was a company called Chem-Bio Corporation had a contract to examine and test pap smears for an HMO called the Family Health Plan. It involved the testing and studying of thousands of pap smears. The company, Bio-Chem, set up arrangements which violated the standards in the industry for how this was to be done. They weren't to pay the pap smear readers by piece rate, but they did. The industry had long suggested that certain limits—that only a certain amount of readings be permitted per month or per year. There was a substantial excess of that. Well, two women died. Their pap smears had been misread. There was civil litigation brought resulting in a satisfaction payment of \$4.5 million. One woman, I think it was after she had died. The other woman, the result was \$6.5 million. I think they were both Marquette lawyers that got those judgments, but the second lady had been an accountant. She was an executive and was brought by her attorney, Pat Dunphy, into my office while she was still alive. She was dying of the cancer that the pap smear would've caught and missed. She asked me—it's the only time it's ever happened to me in thirty-two years—if I would initiate the homicide prosecution for her death. Now that's never happened to me before nor since, and I promised her that we would investigate it. I didn't know what the facts would be.

With the assistance of the two lawyers that handled the civil litigation, we initiated a prosecution of Chem-Bio Corporation for recklessly handling the reading of the pap smears in the two cases. In

one of the cases, one of the experts that we consulted told me that it was the worst misread of a pap smear that she had ever seen in her multi-year career of reading these pap smears. We went through an inquest, the jury recommended charges, we got up to a few days before trial, and the corporation pled no contest on both counts of reckless homicide.

Let's shift over to what's happening in the nation right now, and that is the Firestone/Ford issue over the tires put on the Ford Explorers. What's going on here? Are there moral obligations? Frankly, a brief reference to the Pinto case when Ford designed an automobile with the gas tank situated in such a fashion that after a rear-end collision under certain circumstances, a fire would ensue with the attendant danger for the persons inside that car who were in danger of burns or death.

In Elkhart, Indiana, there was a rear-end collision with a Pinto, an explosion, and three women died. A very gutsy district attorney, two or three-man office, in that county brought a criminal prosecution against the Ford automobile company. Talk about David against Goliath. Ford brought in James Neil, one of the finest trial lawyers in the United States of America, out of Nashville, Tennessee. They hired Hans Zeisel, the jury expert from the University of Chicago, and paid him \$1000 a day to assist in the selection of the jury.

Well, the district attorney didn't win, but the case went to trial. One damning memo that was kept out, but I think it got into the civil litigation over the Pinto, was a memo that came within Ford where someone through some type of a check-out, indicated that if they didn't do the recall there would be so many accidents with so many burns and so many deaths, and compared what the cost of those settlements would be with the cost of what it would be to recall the Pinto and re-position the fuel tanks. Can you imagine the blood-curdling memo if you were the parents of one of those girls who died in that automobile accident? That memo, as I understand, did not get in front of the criminal jury, but apparently got before the civil jurors.

What's the situation with Ford and Firestone? We really don't know at this time. There have been eighty-eight deaths. I think the Wall Street Journal a day or two ago said there had been three or four more deaths, maybe five more deaths since the recall was announced. What did Firestone know? Ford has claimed that they started asking Firestone is there something wrong with these tires, and that Firestone was saying, no there isn't. It was a TV station down in Houston that broke the story. Some lawyer told a reporter that there had been a number of deaths with the Firestone tires on the Explorers. She started checking it out, and they ran the story that it appears that there's an



unusual number of deaths here where Ford Explorers roll over that are using Firestone tires. Firestone vehemently denied that there was a problem with their tires. We know only recently, in August, did Firestone say yes there has been a problem. What did Firestone know, and what time did they know it? Obviously, they wouldn't have known of the first deaths. No one can develop a perfect product. You can't expect businessmen to be prophets, and one can't expect that. Certainly with probably every tire and every vehicle there are going to be some accidents and some deaths, so as those first reports trickled in one would not expect something other than to watch what was happening. But, after an alarming number comes in, a person of common-sense would say what's going on? There has been some report that the Firestone warranty people, the financial end, saw the claims coming in and expressed some concern. To whom did they express it? What did Firestone know, and at what point would a person of common-sense say, just a minute. Was there someone with *guts* in that company that prepared a memo up to the bosses that said, "Look, something's going on here; there ought to be a recall. There's real danger here." Was such a memo prepared? Were such conversations conducted? Did someone say, "What will it cost to recall 6.5 million tires, let's not do it?" What was said; what was known? You'd have to show as a district attorney the following: Firstly, that in fact there was a defective tire and if a death ensued that the defective tire had a substantial causation in the loss of the life. In other words, this tire did have a role. Secondly, that the company had knowledge of it. They knew it was dangerous; they knew that to let people continue to operate these vehicles without notice, without recall, would be dangerous and that knowing that, they nevertheless did nothing and let the situation continue.

We have a case in Wisconsin, *State ex rel. Cornellier v. Black*<sup>41</sup>, that says "a reckless act need not be an affirmative act. A failure to act when there is a duty to act can constitute reckless conduct."<sup>42</sup> I am causing a check to be made now to see whether any of those deaths occurred in this county; whether any of the Firestone/Explorer deaths occurred within the confines of this county. If there has been such a death, there will be a criminal investigation by our office. I was pleased to see, within the past week or two, Attorney General Janet Reno announced the Justice Department was opening a criminal investigation. However, as has been noted, when the National Traffic Highway Safety Act was

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41. 425 N.W.2d 21 (Wis. Ct App. 1988).

42. *Id.* at 25.

adopted, I don't know who fought against it, but there are no criminal sections apparently under that Act. I know that when OSHA was adopted in 1970 there was business resistance to criminal sections of that act—and finally the act wound up with only a few misdemeanor sections so that it may very well fall to district attorneys around the country. If so, I hope they will respond to it.

It takes a lot of resources; we're a staff of 115. For a small staff such as that gutsy district attorney Mike Constantino in Elkhart, Indiana, to mount a prosecution against Ford Company for those Pinto incidences took a hell of a lot of guts. It was a volunteer law professor. I'll call on you, Judge Geske, if you decide to do that.

It's interesting however, and I say this to the credit of Marquette University, Dan Blinka on your staff, volunteered to assist in the Chem-Bio prosecution. We were considering some knotty evidentiary problems. Professor Blinka is an expert in evidence, and has published volumes on evidence. I sat down with Dan in a two-hour period and cleared up all of the evidentiary problems with which I would have wrestled for months.

I hope first of all, that there has been no criminality by Ford or by Firestone; I seriously hope that. I hope that no one has, particularly for profit, has made a decision to risk the lives of people riding on Firestone tires and Ford Explorers. But, if evidence emerges to the contrary, then I think they should be aggressively prosecuted. In a corporation there is a broad diffusion of authority, and I suspect that if a decision has been made maybe it's been made by a number. It's difficult to nail down responsibility. Our statute provides only \$10,000 for a conviction for reckless homicide. Clearly in the *S.A. Healey Company*<sup>43</sup> case, legal fees in the first week shot well beyond the \$20,000 that we were prosecuting for the two deaths. It's the stigma, the taint of a corporation involved in reckless homicide. I hope Firestone and Ford aren't criminally involved, but if they are I hope the district attorneys of this country will sedulously nail them to the wall. Thank you.

**Frank Daily:** In all of these situations, or at least in many, there is often an implication about a corporation acting through its workers, and in some instances those workers may be members of unions. We've seen that already in the Firestone cases where there's a definite divergence among people looking to diffuse responsibility here, and there's some fingerpointing going on that it's really the union workers

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43. Case not appealed.

fault, or it was the union that did this, or the failure to do that, and the union will say we were not given the opportunity to provide the proper quality control. In many of these instances that we see in civil litigation, there is that basic tension that occurs between the employees of the company, the management of the company, and especially in those instances where products are manufactured, in companies in which the workers are represented by one or more unions. Noel Beasley is somebody who brings a special perspective to that whole issue—one that I think is going to be getting a lot more attention because of situations like the Ford and Firestone situation and others that have occurred. Noel, can you speak to us about how this affects the union people?

**Noel Beasley:** I'd like to start with this whole idea of the "corporate citizen." In the study of literature, there is a concept called the pathetic fallacy, and literary critics use that term when a novelist, or more typically a poet, bestows human characteristics on an inanimate object. So, for example, if I wrote a poem about a tree, and I ascribed human emotions to that tree, and I ascribed a name to the tree, or in this specific case I ascribed a nationality and a citizenship status to that tree, I would be committing what a literary critic would call a pathetic fallacy.

I would pose just for purposes of discussion here this afternoon in order to kind of stir things up and maybe get some debate going, that we often do commit an act of pathetic fallacy when we talk about corporate citizenship. In my estimation, after thirty years of mostly fighting with corporations, corporations are vehicles that are sometimes weapons that are constructed and guided by human beings who make very, very conscious decisions. The bumper sticker here in this case might read: "Corporations don't kill, people do." I would further point out that corporations are not citizens of any country. If at one point in time corporations would have considered themselves collectively citizens of a country, that time is long gone. I would ask for example, where are the people of Venezuela going to go for the citizenship of Bridgestone/Firestone and the citizenship of Ford? What country is Bridgestone/Firestone a citizen of? Citizens, when they commit the most egregious crimes, are guilty of treason.

Assuming for purposes of this discussion that there is guilt involved in the knowing distribution of tires that were improperly made, where is the treason trial going to take place, and ultimately, who is going to stand trial for the murder of the people who died in those situations?

Everything I know about corporate citizenship I learned in a shoe factory in Taiwan in 1972 outside of a port city called Kaoshung. I was

driven from the center of Kaoshung to the edge of the shore, and there was a ten-mile area of land that was fenced off, surrounded by electrified fences, and it was called an "enterprise zone." That was the first time in my life I had ever heard of an enterprise zone. When I passed through the armed guards at the gates and went inside the Kaoshung Port enterprise zone, I toured a shoe factory. I saw children between the ages of twelve and sixteen turning large slabs of rubber into shoes—shoes that they would never wear because those shoes were never going to go back outside the gates into Taiwan. They were working for a Japanese company, making shoes in Taiwan, for the upscale U.S. apparel market. They were making it on a piece of property that in a technical, legal sense was nowhere on this planet. The enterprise zone was not a part of Taiwan; it was not a part of Japan; it was not a part of the United States, and these children were being exploited in a place of no country and, literally, no planet.

My battles and the battles of my union over the last thirty years with citizens who run corporations have changed a lot in those three decades. It is my belief that corporations respond only when discipline is imposed upon them. In our work in the union, we've moved from imposing that discipline in a domestic sense, to an international sense, and finally to questions of literally planetary corporate governance. I would begin in the mid-1970s and take it through a period of time throughout the mid-1980s when we were battling corporate renegades in two distinct kinds of ways. One you may recall, from the mid-1970s, was a relatively famous labor war involving a company called J.P. Stevens—which from the perspective of my union was a corporate renegade, consistently denied the rights of workers to organize, overtly and defiantly refused to follow the objections of the National Labor Relations Board which consistently ruled against them, and ruined literally thousands of lives in the course of ten years of combat with our union. We used some new techniques in that J.P. Stevens campaign. We had a nationwide boycott that led us to the first tentative corporate campaigns or comprehensive campaigns that we'd ever tried. We went after not only the corporate officials of J.P. Stevens, but members of their boards of directors, and held the directors of the company responsible for the actions of that corporation in violating labor laws. We also had some of our first, early attempts at international labor solidarity.

Certain unions in Japan who had influence with retailers went to those retailers and urged those retailers not to buy J.P. Stevens' products because of the problems our union was having with them in the United States. So that was one way about twenty-five years ago of

imposing discipline on corporations and forcing them to obey the laws.

We were also dealing in Milwaukee, especially in the early and mid-1980s, with wave after wave of plant closings. A conscious de-industrialization of the Midwestern part of the United States was accompanied by some very, very difficult, and in some cases very vicious, concession bargaining, and we fought back in a variety of ways, both at the bargaining table and the legislative arena. I remember working on a campaign in Indiana called the "Save Our Jobs" campaign in which we wanted to ask the Indiana state legislature to impose laws that would make it difficult if not impossible for corporations to close plants in communities without having some responsibility for the effect of that plant closing on the communities involved—notice, reparations, and so forth. The best that we got out of that after about a decade of struggle is something that's since been called the Warn Act that some of you may be familiar with that, ironically enough, provides no kind of warning at all. It's essentially a death certificate that's issued to a union and a group of employees announcing that the plant is already dead, it just hasn't been closed yet. It's as though a sign reading "beware of falling rocks" would only be posted on cars that had already been crushed by boulders. That's the kind of victory we won out of the plant closing legislation fight.

We decided we were going to have to change our tactics and become more aggressive and learn a lot more about business and corporations than we had ever known before. Beginning in the mid-1980s and continuing through current times, the struggle against exploitation of labor around the planet, and in particular the struggle against exploitation of child labor has begun out of those early understandings and fights. It began in the early 1980s with solidarity campaigns with workers in El Salvador, Guatemala, Honduras, and other parts of Central America where those enterprise zones had spread and had become rampant, and where workers were being paid substandard wages in very severe, dire circumstances. This came out of a recognition on our part that pirates were going to gather from around the globe and descend on a country and produce goods in these so-called enterprise zones that were directly linked to jobs that were being lost here in Wisconsin, Illinois, Indiana, throughout the industrial heartland of the United States.

That movement has since expanded and increased in velocity until in the late 1990s we now have a student movement that's combined with religious activists and labor union activists in a broad-based coalition across the country. In the last couple of years we have brought to the

front pages and to the six o'clock and ten o'clock news the question of the responsibility of consumers to be aware of and alerted to the conditions under which products made. We basically have advanced the proposition that consumers have a responsibility to deal with where products are made everywhere in the world, and that we as consumers, and certainly as worker activists, have a responsibility to hold everyone involved in that accountable—everyone who's involved in the production of those goods; everybody who's involved with the distribution of those goods from the manufacturing level to the retailing level. This includes those who advance financing to anyone who's involved in the manufacturing and distribution of those goods. That has created quite a bit of interesting controversy in board rooms around the country and around the world. I think that accountability is appropriate. The conditions of the workers who make the products that we consume and the products that we wear is an absolute responsibility of ours as citizens of the world.

The leading example of that in the Milwaukee area and the Midwest right now is a campaign we are conducting against the Kohl's retail stores. It's a name that rings some bells here in Milwaukee and in the state of Wisconsin. Right now, as we speak hundreds of workers are working in Nicaragua in enterprise zones producing apparel for the Kohl's stores. They are being exploited. They are being badly treated in every possible way you can imagine. Most of them are children; most of them if they were here in Milwaukee today would be in school instead of running sewing machines and we hold Kohl's accountable. Thousands of people across the country have been involved in demonstrations and leafleting and applying pressure to Kohl's because if they're going to sell those clothes, they should understand the conditions and take responsibility for the conditions of the workers who are manufacturing them.

There's another way that we've begun to impose accountability and responsibility on corporations that I particularly enjoy because it's so unexpected and it's taken so many corporations by surprise. It turns out, and we knew this for a long time before we knew what to do with it, that the working people of this country have millions and millions and ultimately billions of dollars invested in publicly trade corporations. We own it through our pension funds. We've proven, and we think we've got unequivocal evidence of this, that properly governed corporations are more profitable for their shareholders than corporations that are not properly governed, that don't follow good guidelines of corporate governance. There was a marvelous ruling by the SEC a few years back

that's known as the *Avon Letter*.

It turns out that trustees of pension funds who have fiduciary responsibility for how those funds are invested must consider the distribution of the portfolio and the performance of the portfolio as an asset of the plan beneficiaries and are accountable in a fiduciary sense for whether those companies are properly run. So that has put some of us who are pension fund trustees into the position to argue that corporations should follow good corporate governance processes because it will enhance our participants' pensions, and the corporation should be run to enhance the wealth of many in this country, not just a few managers and directors. We've been using proxy voting and shareholder initiatives to hold corporations accountable on issues like independent directors, executive compensation, sourcing (where your products are made and the conditions under which they are made), and benefits to employees.

For example, last year we created quite a furor with IBM when they made a move to change from a defined benefit pension plan to a cash balance plan that adversely affected tens of thousands of IBM employees, none of whom were represented by unions. We actively engaged in a shareholder initiative and a proxy voting initiative that brought attention to that matter and showed the arrogance of IBM at taking its loyal employees and gutting their pension plans in order to enhance corporate profits.

So, we've learned to apply pressure in some new ways. We've learned to bring some new levels of responsibility and accountability, and we're going to continue to do it. We're going to do it in the courts through litigation, in the workplace through continuing to unionize the workforce in this country and fight for the rights of workers in this country, in the legislatures where we haven't given up on labor law reform or getting criminal penalties inside the OSHA legislation some day. It's going to take a major change in legislature composition to accomplish that, but the time is way overdue for that. We're going to do it in the malls. You'll see us there with our leaflets as you're going into Kohl's and other department stores. We're going to be asking you to think about where the clothes that you are about to buy were made and the conditions that those children were in when they sewed your garments. We're going to continue to do it in the streets. I think what happened in Seattle a few months ago was an indicator that the world has had enough of unbridled exploitation of the planet, all of its resources, including its human resources.

So, to go back to the phrase that Dr. Bennett was working with at

lunchtime, if we're going to prevail in this moral renewal then we have to work actively to expose some fact from some illusion and separate the fiction out to get at the core of what's really going on with morality, economics, and corporate responsibility. There's been a lot of discussion today about how good the economy is, and I think there's a tremendous illusion of widespread prosperity that somehow or another has been taken for granted. The workers that I represent are earning roughly between seven dollars an hour on the low end and twelve to fourteen dollars an hour on the high end. There's a reason why it looks like there are more single parents or it looks like there are children at home alone watching televisions and playing video games with no parental supervision. It's because whether there is one parent, two parents, or half a dozen older children in the room, everyone else is out working. They're working crazy shifts. Sometimes they're handing their babies off in the parking lot between one spouse and another as they work their twelve-hour continuous operation shifts. They are not rolling around in some widespread prosperity. Every member that I represent took a huge wage cut this summer when the price of gasoline went up in Milwaukee and Chicago. For some of our members that was the effect of fifteen-, twenty-, twenty-five-cent-an-hour wage cut, even if it was only imposed for that two to three month period of time through the summer. That was an economic action that somebody in a corporate board room was able to impose on a workforce without bargaining, without a sense of the responsibility and the hardship that would cause. We've got to get at the root causes of what degradation really is about.

In my estimation and the estimation of the trade union movement, degradation begins with economic deprivation, and if we don't raise the standards of living and provide living wages for workers in this country and around the globe, we will continue to see a deterioration in morality because morality, some would say, begins on a full stomach and not on an empty one.

I also want to make just a couple of comments about the image of youth that's been presented on and off here today. I think we have to be very careful about bashing youth culture and overly generalizing about where the youth of this country are going. I'm no fan of rap music myself, and I find a good deal of it very offensive, but most of the young people that I've been working with for the last couple of years in the United Students Against Sweatshop Movement, while they listen to rap music, they are more offended by children working in Honduras for slave wages than they are by what they're hearing on their radios. They're doing things to take action, and moving in a way that provides



me with a great deal of hope about the youth that's forming up around the world in a genuine global culture right now. It's a culture that I find to be tolerant of differences in a way that I don't find tolerance of differences in corporate America.

It's a youth movement that I find to be celebrating diversity in a way that I find very little of celebration of diversity in the corporations that I deal with. I believe it's a youth movement that's intolerant of exploitation, cruelty, and decisions that are made without understanding, and appreciating and caring about the impact that it has on real human beings. This provides me with a great deal of optimism about where we're going in spite of the necessity that I see for a great deal of fighting about where we're going as well. I want to thank the conveners of the meeting today. I've found it to be very instructive and very interesting with a wide range of views, and thanks for staying this afternoon, too. We appreciate it.

**Frank Daily:** Thank you Noel, and all of our panelists. There'll be some time for questions. I have one for Noel because you've touched on an issue that has become more significant in the context of what I do, which is product liability litigation. In the Firestone situation, for example, I've heard the proposition advanced that the fault, if any, is directly at the foot of the union workers who are cutting corners and who are not putting together the product the way the product is designed. Without having any way to judge whether those allegations are true, what would be labor's perspective on the view that if that were true the punishment ought to be leveled not against the corporation but rather against either the individuals or the union of which they are members.

**Noel Beasley:** Let me make a couple of comments on that because, again none of us are moving on definitive evidence here and I've read and watched as much as I could about it. It's important to remember a couple of things. Firestone, both before its ownership by the Japanese corporation Bridgestone and after it, had major problems with defective parts. In 1988, just before Bridgestone bought Firestone there was a huge recall of Firestone tires that went on at that time. It was a very, very troubled period of labor relations between Bridgestone and its workers. The period of time in the Decatur, Illinois plant that's been focused upon was one in which there was a strike, and the majority of the tires that have been focused upon in terms of these accidents and these deaths were produced, not by the unionized work force, but by replacement workers who were brought in during that period of time.

From the perspective of the union workers and leaders that I've

talked with, the steel workers were not properly trained, and the products were rushed out the door to create the illusion that the strike was not in any way interrupting the ability of the company to produce and distribute the tires. So, I just wanted to lay that out as a basic foundation. The union obviously has some concerns and raised those concerns in the mid-1990s when those tires were being produced. Those were largely ignored. It's not a surprise to me that right now the workers in Decatur are conflicted about how they want this case to come out. Nobody wants to lose their job, and if it's concluded that the outcome of the Firestone controversy is that the factory in Decatur should close and those good union jobs should be lost forever that would be a terrible way to conclude this incident it seems to me. I think, from our perspective, somebody from Venezuela a couple years ago knew that there were problems with those tires. Who were those individuals, and how did they allow them to continue to be distributed?

**Frank Daily:** Let me ask you, Mike McCann, if you were presented with a fact situation in which the employees of a company were implicated, for example, in the environmental case in Cook County and the evidence was that corporate officers were unaware of that kind of activity going on, would your office look at individual prosecutions as being one remedy in that situation?

**E. Michael McCann:** We would. One example is dangerous horseplay, which oftentimes management is against that for a variety of reasons, that results in real danger. There have been instances where people have been horribly injured by that. We have not been confronted with that, but we would look at it. I do want to briefly say on the Decatur thing, it's interesting because in the civil litigation what was just discussed will be very important. How were these tires made? No one has suggested that there was a criminal intent to subvert the quality of the tires, so that'll be a real civil issue.

If we tried a criminal case it would be an issue that there was causation there, but our review would be only after the company had knowledge, then I see a duty to act. If they thought this is lethally dangerous, and someone made a decision not to report it, that's what our focus would be. The civil litigation focus will be on the tires. How were they made, who was at fault, and so it's a different perspective, but the answer is yes. We have not had that happen yet with a co-worker doing something in the industrial scene that is so dangerous that they had killed somebody else.

**Frank Daily:** Janine, certainly within your career, both on and off the bench, the concept of sunshine that's brought by the media attention in

these kinds of situations is something that lawyers and indeed judges confront. Do you have any thoughts about how the media interplays with this whole issue of corporate responsibility and whether it's a good or neutral influence on that?

**Professor Geske:** It's interesting that even though there's a community sense that crime is rampant and that courts don't react appropriately to crime, jurors tend to take their responsibilities very seriously. They listen to those instructions. They do their job, and they're actually able in lots of cases to set aside prejudice and biases that the public may have or that the media has created. That's why sometimes you have media or community outrage at what a jury does because they don't understand what it was like to sit and take those responsibilities seriously. That being said, I think the media over a long period of time can drum in a sense that there is a substantial problem here and can affect both judicial opinions and jurors over a long period of time. Although there is indication that there is not an anti-corporate feeling out there in the public, we have a whole lot more cases of Firestone time after time—and if Firestone proves to be what it looks like, which is serious that something should've been done about—I think ultimately that does have an impact in both on how courts respond to it, how common law develops in the tort area, and how jurors react to evidence.

**Frank Daily:** Thanks, Janine. I think it picks up perfectly with some of the points Valerie was making. In your research have you found that the jurors' attitudes have been shaped and influenced by the media?

**Dr. Valerie Hans:** There is one way in which I saw some clear linkages, and that is this idea of us being in the middle of a litigation crisis of rampant civil litigation and many unjustified lawsuits. That's both a theme of media and advertising campaigns. Many of the jurors I interviewed and people I spoke to in my other lines of research parroted back features of the ads and things that they had heard about rampant litigation. The fact of the matter is, a lot of us has had a possible negligence lawsuit at some point. You fall in a store, it's really the store's fault. Maybe you have a moderate injury or you've got a rear-end collision and the damage is minor. There are lots of times when we're injured, it's probably the fault of someone else, we make the decision to forget and not get into litigation and then you put these people in a jury box and see someone who does bring a lawsuit. That kind of experience when jurors are sitting there they're really testing the plaintiff's claim. They're testing it and they're pretty and want to make sure it rises to the legal notion of liability.

One of the other things that I noticed is that in some ways the jury can be the corporation's best friend in the courtroom, which is kind of ironic given our notions about what jurors are doing. What they can and might well do in a Firestone, Ford, Bridgestone kind of litigation setting is to think about what kinds of consequences to workers if a lawsuit resulted in a plant closing. They're actually pretty sophisticated in some ways about thinking of the consequences to both parties—plaintiff and defendant.

**Noel Beasley:** I think the media plays a role in instructing people on consequences. I mean, people become more aware that there are other implications out there to what they do.

**Frank Daily:** Now we're talking about the news media, but also there's the Madison Avenue version of the marketing, and I'm sure, Noel, that you must be confronting that because if people are satisfied with the sweatshirts that they buy at Kohl's Department Store or their Nike shoes or whatever they're wearing and they like the product, it must be hard for them to accept the notion that they're doing something wrong by buying the product. How do you address that?

**Noel Beasley:** Well, we've addressed it by shifting away from a boycott mentality to asking the consumers to contact the chief executive officers of the companies and the chief purchasers directly and go after the conditions in the factories rather than asking them not to buy the garment. You're not going to get people to not buy Nikes. Some people will not just because they're personally offended or it offends their own sensibilities. I think what we've tried to do is shift the focus back on the heads of the corporations. I think the Kohl's case is a good example. We've got Larry Montgomery, the chief executive officer of Kohl's, his e-mail address, and we've asked consumers to e-mail him demanding that he intervene in the Nicaraguan situation and insist that conditions be improved; not that they stop manufacturing garments, but that the conditions be improved. I think that that's the way we've shifted the emphasis. We're not trying to stop manufacture of garments around the world. That would be a futile endeavor at this stage of trade relations. We do think that the consuming public wants to buy garments that are made in decent conditions for decent wages. They don't feel good about buying goods made by exploited children. The evidence is that it's not going to cost a lot of money. The price of a garment made for twenty-five-cents a shirt and the price for a garment made for two-dollars a shirt which is roughly the difference between making it in Honduras and making it in the U.S., the retail price is exactly the same.

**Frank Daily:** Just the margin of profit you're saying?

**Noel Beasley:** Exactly, the margin of profit is fantastic, but the cost to the consumer is exactly the same.

**Frank Daily:** We have time now for some questions from the floor.

**Professor Jack Kircher:** I was impressed with Mr. Beasley's pathetic fallacy comment, and it would appear to me as just one observer who drives a Ford with Firestone Tires that can't be replaced for two months that, while you say it may be difficult to find out who the corporate employees are who are the wrongdoers, doesn't bringing your criminal prosecution against the corporation rather than the people who engaged in the egregious conduct within the corporation render those people anonymous so that they can continue to go on to other corporations and other corporations can engage in similar conduct in the future?

**E. Michael McCann:** Yes, there's no doubt in my mind that if an individual is named at the executive level, that has a deterring impact. I've read that the prosecution that involved Westinghouse and someone else I believe, in the late 1950s conspiracy to fix prices, several executives went to prison and the debt slowed down anti-Sherman Act violations very measurably. It wasn't just a corporate fine, but that people went to jail. My suspicion is that in a closely held corporation to have someone and say the corporation will plead guilty as long as you don't go after the executive. There's no need for a lawsuit. We'll pay the fine just forget about the executive.

Obviously with someone like Firestone where there's a national reputation involved, even our measly \$10,000 fine, which we all know the legal fees will cover that immediately—if that should happen, even for the \$10,000, they'll pay millions before they'll take a conviction for reckless homicide in my opinion. It's the taint and the stigma of being involved in a reckless homicide.

**Frank Daily:** To follow up Mike, I think the issue is if that happens the corporation is left with the taint but the ones who perpetrated it have moved on with impunity and now they're the vice-president or executive vice-president of marketing for another corporation making even more money.

**E. Michael McCann:** I think you're right. The deterrent effect is much better when an individual is named. I think there is diffusion of this. At the same time that this story has been running another story that I knew nothing about broke and it doesn't have criminal implications, but it's about the ignition problems with the Fords. The *New York Times* quoted a former highway safety expert as saying that this is the biggest fraud on government that he's ever seen an

automobile maker do because there were repeated questions of whether there was failure of the ignition. Apparently it was going on and it was well known it was going on within Ford. At the same time, there was a report that the Ford president was never given a report on this. There's reason why that might happen—some would say protective others might say, hell, he'll fire us if he finds out. He may roll heads at the top of the division. So, there may be reasons why the top guy doesn't know what's going on. Some people don't want to tell me bad news in my office. They say well, don't tell McCann. I'm sure that must happen. Is there a committee somewhere that said, gee we'll all be in trouble if we let this get out? All of those possibilities are real. I do think when an individual top-notch executive is prosecuted, there's bigger deterrence.

**Professor Geske:** I just want to add, piggyback on that, because of litigation and the results of litigation and fear of litigation, we have really taken a lot of moral decision-making away. Whether it's the influence of lawyers or lawsuits, employees are frightened from even reporting things; they bury things or hide things, and there's just that culture that this could result in some liability or this may be some exposure; I may lose my job. As a result, we've taken away from people the ability to make the decisions they would like to make because they know it's the right thing to do.

**Noel Beasley:** One follow-up on that are some discussions that I've heard that say one of the biggest problems in these situations is the unpredictability of the civil litigation system. One jury might award \$50 million and another might award \$1 million. Why can't we have a civil justice system that mirrors the criminal system where the punishment is clearly defined? If you do this, these are the consequences, whereas in the civil arena, they are confronted with a notion that the consequences may be very minimal or may be far beyond what anybody could reasonably anticipate.

Thank you all for coming.