



COMMENTARY

When a Workplace Tragedy is Also a Crime

By [Rena Steinzor and Katherine Tracy](#) on May 31, 2016



Construction workers in New York City working 11 stories above ground, but without required fall protection. (Photo by Charles Evans Jr.)

When we hear about shootings, bank robberies, or home invasions, we expect the perpetrators to be arrested, tried, and punished appropriately if they are found guilty. When a drunk driver kills an innocent bystander, we treat that death as a criminal act punishable with fines and jail time.

When an employer ignores workplace safety and causes a worker to be seriously injured or killed on the job, it is just as criminal, yet arrests and prosecutions are rare. Why does our justice system so often shield businesses, CEOs, and other executives from criminal charges when they gamble with workers' lives?

The central goals of the criminal law are punishment, deterrence, and upholding the core values of the community. Prosecutors' responses to criminal behavior by managers in the workplace are so weak as to sideline all of these goals.

Versions of this commentary also published by:

[The Sacramento Bee](#)
[Business Ethics](#)

With rare exceptions, police and prosecutors treat workplace deaths and injuries as “accidents” that are unforeseeable and therefore not preventable. In too many cases, workers die, not just because they are unlucky, but because the workplace itself is made dangerous by the absence of rudimentary safety precautions.

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When a worker dies because a trench collapses, and it turns out that managers sacrificed precautions to get the job done faster, that's a crime. When managers operate factories with equipment that does not have an accessible, emergency shut-off switch, as required by federal rules for decades, and an employee loses a limb, a manager should be indicted. But prosecutions for such blatantly reckless behavior are so rare that too many companies think they can save money by cutting corners on worker health and safety, and they view the potential cost of injuries and the small fines involved as a cost of doing business.



Rena Steinzor

Just consider the wrongdoing that led to the August 2012 death of [Lawrence Daquan “Day” Davis](#), a 21 year-old on his [first day of work](#) as a temp worker at a Bacardi bottling facility in Jacksonville, Florida. He started his day filling out the usual forms for new hires and watching a very brief safety video. Ignoring legal requirements to provide Davis (and other workers) with comprehensive safety training, Bacardi put Davis to work within 15 minutes of his arrival. So when a machine malfunctioned and caused several glass bottles to break, no safety measures were taken to prevent workers from being injured during the cleanup and repair. Davis was one of the workers asked to help with the cleanup. Tragically, while he was underneath the machine picking up broken glass, it was turned back on, and he was crushed to death. Yet the only punishment that Bacardi received in Davis' case was a [\\$110,000 fine](#) from the Occupational Safety and Health Administration (OSHA). The staffing agency who employed Davis, Remedy Intelligent Staffing, received no citation at all. Neither OSHA nor the state attorney's office brought criminal charges against either company or their executives.

Davis' story is all too common. On average, [more than 4,600 workers](#) a year are killed on the job across the nation. Like Davis, these workers are much more than just an alarming statistic—they are parents, siblings, neighbors, and friends who are just trying to make a fair day's pay, provide for their families, and maybe even one day live out the American dream.

Work-related injuries and deaths are not just “tragic accidents.” They're tragic, to be sure. But calling them “accidents” misses an important point: Often, they don't occur by chance or happenstance. Rather, all too frequently, they result from unacceptably risky business decisions that put profits over people. In other words, they happen when someone higher up on the company ladder rolls the dice and they lose.



Katherine Tracy

Not all injuries and deaths on the job should result in criminal charges. But instead of continuing to unjustifiably shield businesses and executives from criminal liability, every serious on-the-job injury and fatality should be treated as a potential crime and examined carefully. Police and prosecutors should investigate promptly and thoroughly, in coordination with occupational safety and health officials.

Fortunately, several workers' centers and other workers' rights groups are already leading efforts to enhance criminal prosecutions in worker injury and death cases by urging local and state prosecutors to file charges under their states' criminal laws, such as manslaughter and assault and battery. Our organization, the Center for Progressive Reform has also just released [a new manual](#) building on the pioneering work of these advocacy efforts and providing a roadmap for workers' rights organizations across the country to reach out to local prosecutors, law enforcement, and regulators about investigating workplace incidents as potential crimes.

Last month, West Virginia coal baron [Don Blankenship was sentenced](#) to a year in jail for charges growing out of the outrageous safety shortcuts that contributed to a mine collapse that killed 29 miners in 2010. He's one of the first CEOs to go to jail for such behavior. But he's hardly the only one who has earned it. As the threat of spending time behind bars grows, business executives will have to think twice before gambling with workers' lives. It's far past time that they did.

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