

CAN A CORPORATION COMMIT MURDER?

On June 14, 1985, an Illinois corporation, Film Recovery Systems, was convicted of involuntary manslaughter in the cyanide-poisoning death of a corporate employee.¹ The small suburban Chicago company used large vats containing cyanide to extract silver from x-ray and photographic film. Film Recovery's employees, mostly aliens unable to speak or read English, worked over unvented vats without proper safety equipment. On February 10, 1985, after several employees complained of symptoms associated with cyanide poisoning, Stephan Golab, a 61-year-old Polish worker, collapsed and died.²

The *Film Recovery* case marks a new trend in corporate homicide prosecutions. Prosecutors are more willing to charge corporations and their officers for homicides.³ Since *Film Recovery*, a corporation has even

1. Illinois v. Film Recovery Sys., Nos. 83-1109 and 84-5064, see Spiegel, *The Liability of Corporate Officers*, A.B.A.J., Nov. 1985, at 48. Film Recovery Systems and a sister company, Metallic Mining Systems, were convicted of involuntary manslaughter under ILL. REV. STAT. Ch. 38, §9-3 (1985) for unintentionally killing an individual by recklessly performing acts "likely to cause death or great bodily harm." Three officers of Film Recovery Systems were convicted of murder under ILL. REV. STAT. Ch. 38, §9-1 (1985) by performing acts they knew created "a strong probability of death or great bodily harm" to an individual. The individuals and both corporations were also convicted of reckless endangerment of their employees' lives. See Spiegel, *supra*, at 48.

2. Spiegel, *supra* note 1, at 48. After a medical examiner established cyanide as the cause of death, investigators toured the plant and found numerous health and safety violations. *Id.* Judge Ronald Banks found that corporate officials knew of the dangers of cyanide, and the workers' symptoms, but failed to take safety precautions. Banks sentenced each of the individual defendants to concurrent terms of 25 years for murder and one year for each reckless endangerment count. Each individual was ordered to pay a \$10,000 fine and the two corporations were fined a total of \$48,000. All convictions are being appealed. *Id.* at 50.

3. Investigations to determine whether to file criminal charges against the corporation for employee deaths have been conducted in Massachusetts, New Mexico and California. See *Bus. Wk.*, Feb. 10, 1986, at 73. This new trend in corporate homicide prosecutions has also brought more criminal charges against individuals for corporate misconduct. See, e.g., Spiegel, *supra* note 1, at 50 (film director John Landis and members of his production crew have been charged with manslaughter for the deaths of actor Vic Morrow and two children during the filming of a helicopter scene for the movie *Twilight Zone*); *N.Y. Times*, Oct. 1, 1985, at 13, col. 1 (the owner and various supervisory personnel of Autumn Hills Convalescent Centers, were all charged with murder in the death of a patient).

This Note, however, discusses the criminal liability of individual officers only to the extent that such liability affects an analysis of the criminal liability of corporations. Criminal liability of individual officers for corporate crime is not particularly controversial. See *Overland Cotton Mill Co. v. People*, 32 Colo. 263, 269, 75 P. 924, 926 (1904) ("[A]n officer of a corporation, through whose act the corporation commits an offense against the laws of the state, is himself also guilty of the same offense.") Brickey, *Corporate Criminal Liability*, 40 *BUS. LAW.* 129, 138-39 (1984) ("[a] corporate

gone on trial for murder.⁴ Clearly, the attitude toward corporate accountability for homicide is changing, but many state statutes still insulate corporations from prosecution.

This Note examines the statutory and judicial treatment of corporate homicide liability and asserts that corporations should be made amenable to murder prosecutions in appropriate cases. Part I traces the history of corporate criminal liability for homicide in America. Part II reviews the policy reasons for imposing criminal liability for all homicide offenses on corporations. Part III contains recommendations to state legislatures for formulating homicide statutes to include corporations.

I. HISTORY

A. *Pre-Twentieth Century Limits On Corporate Criminal Accountability*

Early common law authorities held that a corporation could not commit any crime.⁵ As corporations increased in number and size, however, the old common-law notion changed. By the mid-nineteenth century, courts established the general rule that a corporation may be criminally liable for crimes which an agent commits on the corporation's behalf.⁶ A

agent may not use the corporate entity as a shield against personal liability for his own misdeeds" [citation omitted]).

4. See N.Y. Times, *supra* note 3, at 13, col. 1. Autumn Hills Convalescent Centers, a Houston-based corporation that runs nursing homes, was charged with murdering an 87-year-old patient by neglect.

5. This proposition is most frequently traced to the statement by Lord Holt, C.J., that "[a] corporation is not indictable, although the particular members of it are." Anonymous, 88 Eng. Rep. 1518 (K.B. 1701). See also W. BLACKSTONE COMMENTARIES *476: "A corporation cannot commit treason, or felony, or other crime in its corporate capacity, though its members may in their distinct individual capacities." See generally 1 K. BRICKEY, CORPORATE CRIMINAL LIABILITY (1984) (tracing the common law development of corporate criminal liability).

6. See, e.g., State v. Morris & Essex R.R., 23 N.J.L. 360 (1852). In *Morris & Essex R.R.*, the company was charged with nuisance for blocking a public highway. The court reasoned that because a corporation is civilly liable for the torts of its agents acting within the scope of their employment, the same doctrine could be applied to make the corporation criminally liable. *Id.* at 368-69.

Most of the early twentieth century cases continued to draw on principles of agency and tort law to impose criminal liability on corporations. Generally, courts held that as long as the agent was acting within the general scope of his authority and for the benefit of the corporation, the acts of the agent can be imputed to the corporation. See, e.g., New York Cent. & H.R.R. v. United States, 212 U.S. 481, 494 (1909); Standard Oil Co. v. State, 117 Tenn. 618, 670, 100 S.W. 705, 718 (1906). Moreover, the act may be imputed even if the corporation specifically prohibits the agent from violating the law. See Overland Cotton Mill Co. v. People, 32 Colo. 263-68, 69, 75 P. 924, 926. *But cf.* MODEL PENAL CODE §2.07(5) (1962) ("it shall be a defense if the defendant corporation proves by a

corporation could be indicted for acts of nonfeasance or misfeasance.⁷ Furthermore, a corporation could not immunize itself from prosecution by claiming the criminal acts were *ultra vires*.⁸

Even after corporate criminal liability became a generally accepted principle, courts hesitated to convict corporations of crimes requiring a specific criminal intent. In *Commonwealth v. Punxsutawney St. Passenger Ry.*,⁹ a manslaughter case, a Pennsylvania court rejected the contention that a corporation could formulate malice or criminal intent and refused to impute the malice or criminal intent of an agent to the corporation.¹⁰

preponderance of evidence that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission").

Not all writers agree which agents may subject the corporation to criminal liability. However, most confirm that officers and high managerial agents who commit criminal acts within the scope of their employment can subject the corporation to liability. See, e.g., Elkins, *Corporations and the Criminal Law: An Uneasy Alliance*, 65 KY. L.J. 73, 100-03 (1976); cf. Mueller, *Mens Rea and the Corporation*, 19 U. PITT. L. REV. 21, 47 (1957) (if the utility of corporate criminal liability for the crimes authorized by the board of directors is assumed, then the extension of vicarious liability to the other high managerial agents is proper). Authorities tend to disagree, however, whether a corporation should be held criminally liable for the crimes of subordinate employees. See, e.g., Brickey, *supra* note 3, at 131 ("[a] corporation may be held liable for the acts of its agents without regard to their status in the corporate hierarchy" [citations omitted]); Mueller, *supra*, at 41 (objecting to the extension of corporate criminal liability to acts of subordinate employees on the grounds that only the "inner-circle"—officers and high managerial agents—can act and think for the corporation); Elkins, *supra*, at 126 (concluding that "the title or position of the employee or agent should not be determinative for imputing criminal responsibility to the corporation").

7. Nonfeasance is a "neglect of duty" while misfeasance requires "a direct and positive act." See *State v. Morris & Essex R.R.*, 23 N.J.L. at 366-69 (abolishing the rule that a corporation is criminally liable only for acts of nonfeasance but not for acts of misfeasance). Accord *United States v. MacAndrews & Forbes Co.*, 149 F. 823, 835 (1906) (a corporation may be indicted for nonfeasance and for "such deeds of misfeasance as are complete by the mere doing of the thing prohibited"); *People v. Rochester Ry. & Light Co.*, 195 N.Y. 102, 104, 88 N.E. 22, 23 (1909) (a corporation may be indicted for nonfeasance if it is "capable of doing the act for nonperformance of which it is charged," and it may be indicted for misfeasance if the act is not "clearly and totally beyond its authorized powers").

8. See *State v. Morris & Essex R.R.*, 23 N.J.L. at 369. Accord *United States v. Mirror Lake Golf & Country Club, Inc.*, 232 F. Supp. 167, 172 (1964); *State ex rel. Losey v. Willard*, 54 So. 2d 183, 184 (Fla. 1951). An act is *ultra vires* when it transcends the scope of powers of the corporation. BLACK'S LAW DICTIONARY 1365 (5th ed. 1979).

9. 24 Pa. C. 25 (1900).

10. *Id.* at 26. The court also held that manslaughter is so far *ultra vires* that it could not be considered an act of the corporation. *Id.* See also *State v. Morris & Essex R.R.*, 23 N.J.L. at 370. The court said that a corporation could not be indicted for crimes requiring "a corrupt intent or *malus animus*" or for "other crimes, as treason and murder, for which the punishment imposed by law cannot be inflicted upon a corporation." The argument that corporations were exempt from prosecution for felonies such as murder because they could not be punished corporally was met with early criticism. See Brickey, *Corporate Criminal Accountability: A Brief History and Observation*, 60

By the turn of the century, courts began to impute the specific intent of agents to their corporations for crimes other than homicide. In the leading case, *Telegram Newspaper Co. v. Commonwealth*,¹¹ a Massachusetts court held that a corporation was subject to punishment for criminal contempt.¹² The court found it no more difficult to impute specific intent in a criminal proceeding than in a civil action.¹³ Furthermore, because the corporation's property could be taken as punishment for a public wrong as easily as it could be taken as compensation for a private wrong,¹⁴ the corporation's inability to be arrested or imprisoned was not an obstacle to criminal liability. Soon thereafter, corporations were held accountable for other specific intent crimes such as larceny,¹⁵ conspiracy,¹⁶ and the illegal practice of law.¹⁷

Even though corporate accountability for specific intent crimes increased during the early part of the twentieth century, corporations were not charged with homicides requiring a specific intent. Nevertheless, courts began holding corporations liable for homicides resting on negligence. In *United States v. Van Schaick*,¹⁸ officers of a steamship company were charged with aiding and abetting the corporation in committing manslaughter by failing to equip the steamship with satisfactory life preservers as required by statute.¹⁹ A fire which sank the steamship resulted in 900 deaths.²⁰ The officers argued that they could not be charged as accessories of a corporation in the commission of manslaughter because a corporation could not be indicted for such a crime. The

WASH. U.L.Q. 393, 410 n.99 (1982) (citing 1 J. BISHOP COMMENTARIES ON THE CRIMINAL LAW § 506 (3rd ed. 1865)): "A corporation cannot be hung: yet there is no reason why it may not be fined, or suffer the loss of its franchise, for the same act which would subject an individual to the gallows.").

11. 172 Mass. 294, 52 N.E. 445 (1899).

12. *Id.* at 297, 52 N.E. at 446. The corporate defendant was a newspaper that had published an article concerning an ongoing trial. A lower court found that the article was calculated to obstruct justice and prevent a fair trial. *Id.* at 295, 52 N.E. at 445.

13. *Id.* at 297, 52 N.E. at 446 (The court noted that specific intent could be imputed to a newspaper in a civil action for libel.).

14. *Id.*

15. *See, e.g.,* *People v. Canadian Fur Trappers' Corp.*, 248 N.Y. 159, 161 N.E. 455 (1928).

16. *Joplin Mercantile Co. v. United States*, 213 F. 926 (8th Cir. 1914), *aff'd*, 236 U.S. 531 (1915).

17. *People v. California Protective Corp.*, 76 Cal. App. 354, 244 P. 1089 (1926).

18. 134 F. 592 (C.C.S.D.N.Y. 1904).

19. *Id.* at 596-97. Another statute provided that an owner was guilty of manslaughter if his misconduct or violation of law destroyed the life of any person. *Id.* at 594.

20. *Id.* at 594.

court, however, rejected the argument on the grounds that the offense was the result of a statutory violation and no malice or intent to kill was necessary.²¹

In *State v. Lehigh Valley Railroad*²² a New Jersey court denied a corporation's motion to quash an indictment against it for involuntary manslaughter. The court said that a corporation can be criminally liable for its acts unless there is something in the nature or essential ingredients of the crime, or the character of the punishment which makes it impossible to hold the corporation liable.²³ In holding that involuntary manslaughter does not come within any of these exceptions,²⁴ the *Lehigh Valley* court became the first state court to uphold the indictment of a corporation for criminal homicide.²⁵

Even as courts advocated the seemingly irreconcilable positions of imputing specific intent in non-homicide cases but only subjecting corporations to prosecution for homicides based on negligence, a few courts, in dicta, indicated their willingness to impute specific intent if the homicide statutes were written to include corporations. In *People v. Rochester Railway & Light Co.*²⁶ a corporation was accused of negligently installing water-heating equipment in a home so that fumes escaped and killed a resident. The court said that, although the corporation could not be guilty of manslaughter under the existing statutory definition of the crime, the legislature could formulate a manslaughter statute which would apply to a corporation.²⁷ The court also noted that a corporation

21. *Id.* at 602.

22. 90 N.J.L. 372, 103 A. 685 (1917).

23. *Id.* at 373, 103 A. at 685-86.

24. The court held that the corporation could be punished because the applicable statute prescribed imprisonment or a fine, or both. *Id.* at 374, 103 A. at 686. Likewise, the court rejected the corporation's argument that the essential ingredients of manslaughter, as defined by some of the "old authorities" of common law, required the killing of one human being by another human being. The court noted that Blackstone's definition of homicide—"the killing of a human creature . . . without justification or excuse"—did not exclude corporations from criminal responsibility. *Id.* at 375, 103 A. at 686 (citing 4 W. BLACKSTONE, COMMENTARIES*188). Finally, the court, citing *State v. Morris & Essex R.R.*, 23 N.J.L. 360 (1852), said that perjury was the type of crime a corporation could not commit, but did not explain what "in the nature of the crime" of perjury mandated this conclusion, or why involuntary manslaughter was distinguishable. 90 N.J.L. at 373, 103 A. at 685-86.

25. The *Van Schaick* case was brought in federal court under a federal statute. See *supra* notes 18-21 and accompanying text.

26. 195 N.Y. 102, 88 N.E. 22 (1909).

27. *Id.* at 107, 88 N.E. at 24. The applicable statute defined homicide as "the killing of one human being by the act, procurement or omission of another." *Id.* The state argued that "another" should be interpreted as another "person" which includes corporations. The court, however, decided that "another" referred to another "human being." *Id.*

may be liable for a crime requiring specific intent.²⁸ Taken together, the two statements indicate that, under an appropriate statute, the court would have held a corporation criminally liable for a homicide requiring specific intent.²⁹

C. *Statutory Language and Recent Judicial Interpretation*

Despite courts' willingness to hold a corporation criminally accountable for homicide, corporations still avoid criminal accountability because of narrowly written, vague and ambiguous homicide statutes.³⁰ Courts, hesitant to uphold homicide indictments against corporations without strong precedent,³¹ have looked to the express statutory language, legislative history, and applicable punishments to discern whether the legisla-

28. *Id.* at 106, 88 N.E. at 23 (citing *Telegram Newspaper Co. v. Commonwealth*, 172 Mass. 294, 52 N.E. 445 (1899)). See *supra* text accompanying notes 11-14.

29. See also in *United States v. MacAndrews & Forbes Co.*, 149 F. 823 (1906), an action charging a corporation with conspiracy in restraint of trade. While dispensing with the argument that a corporation is incapable of committing a specific intent crime like conspiracy, the court said it is "as easy and logical to ascribe to a corporation an evil mind as it is to impute to it a sense of contractual obligation." *Id.* at 836. The court maintained that the only limits on holding a corporation accountable for specific intent crimes like "homicide or larceny" is the "impossibility of visiting upon corporations the punishments usually prescribed." *Id.* The court concluded by saying "[t]he same law that creates the corporation may create the crime, and to assert that the Legislature cannot punish its own creature because it cannot make a creature capable of violating the law does not . . . bear discussion." *Id.* If the legislature may create the crime, surely it can also create a punishment suitable for a corporation.

30. See, e.g., *Vaughan & Sons, Inc. v. State*, 649 S.W.2d 677 (Tex. Crim. App. 1983). In *Vaughan & Sons*, a Texas corporation was convicted of criminally negligent homicide in the death of two persons in a motor vehicle collision. On appeal, the conviction was reversed and the case dismissed on the grounds that the Texas Penal Code did not make corporations liable for any degree of homicide. *Id.* at 679.

The Texas Penal Code provides that criminally negligent homicide occurs when "[a] person . . . causes the death of an individual by criminal negligence." TEX. PENAL CODE ANN. § 19.07(a) (Vernon 1974). In addition, a corporation is criminally responsible for the conduct of its agents acting within the scope of employment. *Id.* at § 7.22(a). While the definition of "person" includes a corporation, *id.* at § 1.07(a)(27), an "individual" is defined as a human being who has been born and is alive, *id.* at § 1.07(a)(17).

The *Vaughan & Sons* court conceded that a "superficial" reading of these statutes indicated that a corporation "could" be found guilty of negligent homicide. 649 S.W.2d at 678. Nevertheless, the court "declined" to hold corporations criminally responsible for homicide "without a stronger, clearer indication from the legislature." *Id.* at 679.

31. A lack of precedent, binding or persuasive, lay beneath the *Vaughan* court's decision. See *supra* note 30. The court noted that *Vaughan & Sons, Inc.* was the first corporation to appeal its homicide conviction under the existing Penal Code. The court also looked to other states and found that "those . . . which have addressed the issue are divided as to criminal responsibility for personal crimes such as homicide and rape." 649 S.W.2d at 677.

ture intended to make corporations criminally liable for homicide.³²

Early homicide statutes were often based on the common law definition of homicide which required that the act be committed by "a person."³³ Consequently, in *State v. Pacific Powder Co.*³⁴ the Oregon Supreme Court refused to hold a corporation criminally accountable for manslaughter. The court reasoned that, by enacting the common law definition of homicide, the legislature considered only human actors capable of the crime.³⁵ Although the Oregon Penal Code followed the common law definition of homicide,³⁶ it further defined the word "person" to include corporations "unless the context requires otherwise."³⁷ The *Pacific Powder* court concluded that, in the instance, the "context" required the word "person" to mean something other than its statutory definition—it was limited to human beings.³⁸

In many homicide statutes the word "person" refers to the slayer or the victim, or both. Often "person" is defined in the state penal code to include a corporation. As in *Pacific Powder* such a definition may be susceptible to judicial interpretation. For instance, in *People v. Ebasco Services, Inc.*,³⁹ a New York court was faced with a negligent homicide statute that used the word "person" when referring to both the slayer

32. See, e.g., *Granite Constr. Co. v. Superior Court*, 149 Cal. App. 3d 465, 197 Cal. Rptr. 3 (1983) (statutory language, provisions for corporate punishment and the absence of contrary authority in the California code commissioner's notes all indicated that a corporation can be prosecuted for manslaughter); *Commonwealth v. Fortner LP Gas Co.*, 610 S.W.2d 943 (Ky. App. 1981) (language and commentary to new corporate liability statute clearly expressed the legislative intent to hold corporations criminally liable); *State v. Pacific Powder Co.*, 226 Or. 502, 360 P.2d 530 (1961) (use of the word "person" in manslaughter statute and mandatory penalty of imprisonment and a fine, indicated a legislative intent not to make corporations criminally accountable for manslaughter); *Commonwealth v. Ill. Cent. R.R.*, 152 Ky. 320, 153 S.W. 459 (1913) (dismissing manslaughter indictment in part because the only punishment recognized was death or imprisonment).

33. See, e.g., OR. REV. STAT. § 163.040(2) (1954) which provided that "(2) Any person who, in the commission of . . . a lawful act without due caution or circumspection, involuntary kills another, is guilty of manslaughter." (emphasis supplied).

34. *State v. Pacific Powder Co.*, 226 Or. 502, 360 P.2d 530 (1961).

35. *Id.* at 507-08, 360 P.2d at 532.

36. See *supra* note 33.

37. *Id.* OR. REV. STAT. § 161.010 (1967) provided that "As used in the statutes relating to crimes and criminal procedure, unless the context requires otherwise: . . .

(11) 'Person' includes corporations as well as natural persons. . . ."

38. 226 Or. at 507, 360 P.2d at 532. The court also relied on the statutory punishment prescribed for the offense to support its conclusion that the context required "person" to mean "human being." The mandatory penalty for manslaughter included imprisonment, which cannot be imposed on a corporation. *Id.* Oregon has since revised its criminal law to eliminate all reference to the commission of the act by a "person." See OR. REV. STAT. §§ 163.118 and 163.125 (1985).

39. 77 Misc. 2d 784, 354 N.Y.S.2d 807 (1974).

and the victim, but defined "person" in the homicide article solely in terms of the victim.⁴⁰ A broader definition of "person" contained in the Penal Law's general definitional article provided that "[p]erson—means a human being, and where appropriate, a . . . corporation."⁴¹ Unlike the *Pacific Powder* court⁴² the *Ebasco Services* court did not use the "where appropriate" language to immunize the corporation from prosecution. The court held that New York law allowed corporations to be prosecuted for homicide.⁴³

The homicide statute which most clearly includes corporations is found in the California Penal Code. The California Penal Code defines manslaughter as "the unlawful killing of a human being without malice"⁴⁴ while other states' statutes define manslaughter as the killing "of a human being . . . by another."⁴⁵ In *Granite Construction Co. v. Superior Court*,⁴⁶ the California Court of Appeals held that corporations may be prosecuted for manslaughter under the California manslaughter statute.⁴⁷ The court also found support for its holding in Section 26 of the Penal Code which provides that "any person is capable of committing crimes except children, idiots and those lacking mens rea through mistake of fact, etcetera,"⁴⁸ and section seven which defines "person" to include a corporation.⁴⁹ Finally, the absence of any "contrary expression"

40. The statute provides that "A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person." N.Y. PENAL LAW § 125.10 (McKinney 1975) (*italics added*). The Penal law further provided that a "[p]erson, when referring to the victim of a homicide, means a human being who has been born and is alive." N.Y. PENAL LAW § 125.05(1) (McKinney 1975) (*italics added*).

41. N.Y. PENAL LAW § 10.00(7) (McKinney 1975).

42. See *supra* notes 34-38 and accompanying text.

43. 77 Misc. 2d at 787, 354 N.Y.S.2d at 811. Even though the court concluded that a corporation could be held accountable under its existing homicide statutes, it dismissed the indictment as defective because of a failure to particularize sufficiently the facts as required by statute. *Id.* at 788, 354 N.Y.S.2d at 812. In *Granite Construction Co. v. Superior Court*, 149 Cal. App. 3d 465, 197 Cal. Rptr. 3 (Cal. Ct. App. 1983), the court noted that the *Ebasco* court could "easily" have prevented the prosecution of corporations through the "where appropriate" language, "particularly in light of the 'killing by another' language in New York's manslaughter definition." *Id.* at 473, 197 Cal. Rptr. at 8.

44. CAL. PENAL CODE § 192 (Deering 1985).

45. 149 Cal. App. 3d 465, 197 Cal. Rptr. 3 (1983).

46. *Id.* at 467, 197 Cal. Rptr. at 4. The corporation was indicted for manslaughter in the death of seven construction workers.

47. *Id.* at 467, 197 Cal. Rptr. at 5 (reviewing statutes from New York, Oregon, Kentucky, Texas, and Pennsylvania).

48. CAL. PENAL CODE § 26 (Deering 1985).

49. CAL. PENAL CODE § 7 (Deering 1985). The corporation in *Granite Construction* argued that the very *absence* of the word "person" in § 192 indicated the statute was not intended to reach

in the code commissioners' notes encouraged the court to follow the clear language of the statute which makes corporations responsible for crimes against persons.⁵⁰

Courts also consider the penalties prescribed for homicide to determine whether a corporation can be prosecuted. The fact that a corporation cannot be subjected to usual punishments, such as death or imprisonment, often is used to illustrate the futility of a corporate homicide prosecution.⁵¹ However, when punishment is either a fine or imprisonment, or both, a corporation is not necessarily immune from prosecution.⁵² Similarly, when the statute provides for imprisonment if the fine imposed is not paid, the corporation may be liable.⁵³ Finally, if a statute creates the offense but provides no punishment, a court may impose the common law punishment of a fine.⁵⁴

The California Penal Code provides another obvious solution to the punishment problem.

Under section 193, the ordinary punishment prescribed for manslaughter is imprisonment.⁵⁵ Section 672, however, provides that a court

corporations. The court rejected this argument on two grounds. First, it said that § 192 merely defined the crime while §§ 7 and 26 defined the scope of application. 149 Cal. App. 3d at 468, 197 Cal. Rptr. at 5. Second, the court noted that acceptance of the corporation's argument would lead to absurd results. Crimes like mayhem, kidnapping and assault with intent to do great bodily harm, defined under statutes using the word "person," could be committed by corporations but murder and manslaughter could not. *Id.*

50. 149 Cal. App. at 468, 197 Cal. Rptr. at 5.

51. *See, e.g., State v. Pacific Powder Co.*, 226 Or. 502, 360 P.2d 530 (1961); *State ex rel. Losey v. Willard*, 54 So. 2d 183 (1951); *Commonwealth v. Illinois Cent. R.R.*, 152 Ky. 320, 153 S.W. 459 (1913). *See generally* Annot., 83 A.L.R.2d 1117 (1962). *But see United States v. Van Schaick*, 134 F. 592, 602 (1904) (although the statute prescribed only imprisonment, the court concluded that Congress could not have intended to immunize a corporate violator; a "more reasonable alternative" was that Congress inadvertently omitted to provide a suitable punishment for the offense when committed by a corporation).

52. *See United States v. Union Supply Co.*, 215 U.S. 50 (1909). In *Union Supply*, the corporation was charged with violating a federal record keeping statute. The Court concluded that when a statute prescribes two independent penalties, a court should inflict them as far as it can. The defendant should not be allowed to escape merely because one of the penalties is impossible to impose. *Id.* at 55.

53. *See Overland Cotton Mill Co. v. People*, 32 Colo. 263, 268, 75 P. 924, 925-26 (1904) (concluding that although the corporation cannot be imprisoned if the fine is not paid, the fine can still be collected through the means provided for the collection of money judgments).

54. *See Commonwealth v. Illinois Cent. R.R.*, 152 Ky. 320, 324, 153 S.W. 459, 461 (1913) (noting that the punishment for the nonstatutory offense of involuntary manslaughter would be either a fine, or imprisonment, or both. Typically, only the lesser degrees of homicide, such as involuntary manslaughter, fall within the common law fine penalty. *Id.*

55. CAL. PENAL CODE §193 (Deering 1985).

may impose a fine on a corporation convicted of "any crime punishable by imprisonment."⁵⁶ Thus, under California law, inability to impose the statutory punishment no longer stands as an obstacle to liability.

In sum, under the current state of the law a corporation *could* be made amenable to prosecution for any degree of homicide. Until recently, however, few corporations were prosecuted for manslaughter and corporate liability in intentional homicide cases is still virtually unknown. Nevertheless, the recent increase in corporate homicide cases indicates that prosecutors are looking for new ways to control corporate misconduct, and they may find the criminal justice system the best solution.

II. POLICY

Of all factors a court considers in imposing criminal liability on corporations, public policy is the most compelling. Corporations, large and small, are essential, pervasive elements of modern life. Unfortunately, some corporate activity endangers life. Unsafe products present serious risks to consumers, and hazardous working conditions threaten the safety and health of corporate employees.⁵⁷ Corporations, however, often ignore such risks to maximize profits or minimize losses.⁵⁸ Shortcutting expensive safety precautions or responding forcibly to strikes can result in substantial indirect economic benefits.⁵⁹ Some courts have recognized that the criminal law can and should be invoked to deter and correct the

56. CAL. PENAL CODE § 672 (Deering 1985).

57. See Spurgeon & Fagan, *Criminal Liability for Life-Endangering Corporate Conduct*, 72 J. CRIM. L. & CRIMINOLOGY 400, 400 (1981). Spurgeon & Fagan divide corporate life-endangering activity into "three categories: occupational harm, dangers to consumers, and deterioration of the environment affecting the general public." *Id.* at 402 (citing Schrager & Short, *Toward a Sociology of Organizational Crime*, 25 SOC. PROB. 407 (1978)). One study estimates that "approximately 20 million Americans are injured each year in the home as a result of accidents involving unsafe consumer products. These accidents result in about 30,000 deaths . . ." (citation omitted). In addition, "federal health officials have estimated that 25% of the work force is exposed to regulated toxic substances. . . ." Spurgeon & Fagan, *supra* at 402.

58. *But see* Spurgeon & Fagan, *supra* note 57, at 427 (Some commentators claim that established corporations seek "longer range goals such as growth, increased market share and improved social image," rather than profit maximization.) (citing M. CLINARD & P. YEAGER, *CORPORATE CRIME* 261 (1980)). This argument is undermined, however, by particular instances of corporate conduct. For example, it is alleged that an internal Ford Motor Co. memorandum shows Ford knew its Pinto fuel system was prone to explode in rear-end collisions, but decided not to make a safety improvement costing only \$11 per car. See Dowie, *How Ford Put Two Million Firetraps on Wheels*, 23 BUS. & SOC'Y REV. 46 (1977).

59. *Granite Construction Co. v. Superior Court*, 149 Cal. App. 3d 467, 197 Cal. Rptr. at 5. (Noting that crimes against persons can be directly linked to the profit motive).

abuses of such corporate misconduct.⁶⁰

A. Deterrence

A criminal prosecution has several detrimental effects on a corporation, and thus acts as a strong deterrent to corporate misconduct. Corporations, like individuals, suffer from the stigma associated with a criminal conviction.⁶¹ If the conviction stems from a work-related death, as in the *Film Recovery* case, negative publicity may make it difficult for the corporation to hire and maintain an adequate work force.⁶² If a consumer death is caused by an unsafe product, the corporation may lose current and potential customers. In either case, stockholders may lose confidence in the corporation. Ensuing stock sales may cause stock prices to plummet. The threat of these potentially devastating effects provides a strong deterrent to future corporate misconduct.⁶³ As the number of homicide prosecutions increases, more and more corporations will realize they are susceptible to the stigmatizing effects of the criminal justice system. As a result, consumers and workers will benefit from corporate unwillingness to take safety risks.

60. *Id.* See also *New York Cent. & Hudson River R.R. v. United States*, 212 U.S. 481, 495-96 (1909):

While the law should have regard to the rights of all, and to those of corporations no less than to those of individuals, it cannot shut its eyes to the fact that the great majority of business transactions in modern times are conducted through these bodies, and particularly that interstate commerce is almost entirely in their hands, and to give them immunity from all punishment because of the old and exploded doctrine that a corporation cannot commit a crime would virtually take away the only means of effectually controlling the subject-matter and correcting the abuses aimed at.

61. *Id.* See Elkins, *supra* note 6, at 77-81; Elkins notes that the stigma of a criminal conviction has more effect on an individual because he values his *social* standing in the community while a corporation does not enjoy the same kind of social position. Nevertheless, a corporation does have an "image" to maintain for its various "publics." Consumers, employees, stockholders, creditors, suppliers and potential customers all have an interest in the corporation's image. *Id.* at 78. See also Spurgeon & Fagan, *supra* note 57, at 426. The response of the Ford Motor Co. to a reckless homicide charge for the Pinto-related deaths of three girls demonstrates that corporations fear the effects of a criminal conviction. Ford spent an estimated one million dollars in litigation expenses to defend itself against a potential \$30,000 fine. *Id.* (citing M. CLINARD & P. YEAGER, *CORPORATE CRIME* 261 (1980)).

62. See *Illinois v. Film Recovery Sys.* *supra* note 1. In *Film Recovery* the workers did not speak or read English and were not warned of the occupational dangers to which they were exposed. Before the death of a co-worker, they probably were unaware of the risks. See text accompanying *supra* notes 1-2. One can reasonably assume that if the workers were aware of the life threatening conditions, many would not have continued working.

63. See generally W. LAFAVE & A. SCOTT, *HANDBOOK OF CRIMINAL LAW* §5 at 22-23 (explaining general and particular deterrence).

Criminal fines also act as a deterrent, albeit a weaker one, to corporate misconduct. A corporation, motivated by profit, normally will not want to risk losing a portion of its earnings through a fine. Yet, the economic pressure of fines will not be effective if corporations determine that liability is less expensive than the costs of avoiding it. For instance, a large company incorporating potential fines in its cost-benefit analysis may find criminal or civil penalties less costly than safety precautions.⁶⁴ Similarly, a smaller corporation may be willing to risk liability because it can simply go out of business to avoid paying the fine.⁶⁵ In either situation, however, solutions do exist.

Statutory provisions can be drawn to increase the deterrent effect of a criminal fine. Homicide statutes can prescribe fines that are scaled to the economic resources of an individual corporation.⁶⁶ The Texas Penal Code, for example, contains a corporate fine provision that is based on the profits of each corporation.⁶⁷ The more the corporation profits from its misconduct, the greater the potential fine. Ultimately, such scaled

64. In 1972, Chevron Corp. paid a one million dollar fine for violation of pollution laws. This fine represented only .03% of the gross income of Chevron's parent, Standard Oil of California. Spurgeon & Fagan, *supra* note 57, at 427. See also Elkins, *supra* note 6, at 81:

The criminal fine is often so small that criminal violations are economically more advantageous than compliance. Thus, the fine has no deterrent effect. A fine of several thousand dollars, while it might destroy a small business, is a negligible factor in the budget of General Motors, and hardly overcomes the lure of large profits or increased political power to be gained from some forms of illegal activity.

65. *Id.* Cf. Spiegel, *supra* note 1. Spiegel noted that "large civil fines . . . may be a hollow threat to a small firm willing to go out of business rather than pay a fine." *Id.* at 50. The Occupational Safety and Health Administration has not yet collected a civil fine assessed against Film Recovery Systems for health and safety violations. *Id.*

66. See Elkins, *supra* note 6, at 81-82 (also recommending an increase in statutory fines to produce the maximum deterrent effect). See also Spurgeon & Fagan, *supra* note 57, at 427. Spurgeon & Fagan argued that "judges should have the option of adjusting the size of the fine to the ability of the corporation to pay and to the magnitude of the harm caused." *Id.* This recommendation may not be as effective as a statutorily scaled fine, however, because courts are often lenient in imposing fines on corporations. See Radin, *Corporate Criminal Liability for Employee-Endangering Activities*, 18 COLUM. J.L. & SOC. PROBS. 39, 56 (1983); Comment, *Corporate Criminal Liability for Homicide: Can the Criminal Law Control Corporate Behavior?*, 38 SW. L.J. 1275, 1286-87 (1985).

67. TEX. PENAL CODE ANN. § 12.51 (Vernon Supp. 1986):

(b) If a corporation . . . is adjudged guilty of an offense that provides a penalty including imprisonment, or provides no specific penalty, a court may sentence the corporation . . . to pay a fine in an amount fixed by the court, not to exceed:

(1) \$20,000 if the offense is a felony of any category.

(c) In lieu of the fines authorized by . . . (b)(1) . . . if a court finds that the corporation . . . gained money or property or caused personal injury, property damage, or other loss through the commission of a felony or . . . misdemeanor, the court may sentence the corporation . . . to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation to be lost, whichever is greater.

finer will increase the economic pressure on a corporation to conform to appropriate safety standards.

A small corporation willing to go out of business, however, will not be affected by a scaled fine. Nevertheless, the criminal justice system can prevent misconduct by small corporations through increased homicide prosecutions against individual officers and agents.⁶⁸ The officers of a small corporation are often closely connected with the specific misconduct which causes death.⁶⁹ Consequently, it is easier for a prosecutor to identify and gather evidence against the individuals involved.⁷⁰ Finding themselves more susceptible to individual prosecution, officers in small corporations will be less inclined to cut corners on safety.

Finally, criminal fines may deter corporate misconduct because they impose hardships on stockholders by increasing investment risks. Defendant corporations and commentators have argued unsuccessfully that criminal fines ultimately punish innocent stockholders and deprive them of property without due process of law.⁷¹ Stockholders also suffer when a

This construction presents two problems. First, it provides for judicial discretion. In a felony conviction, the judge has the option to impose the \$20,000 fine contained in § 12.51(b) or set as the fine a discretionary amount as provided in § 12.51(a). This "option" allows the judge to be "lenient" and thus, undermine the deterrent effect. See *supra* note 66. Second, a court may have difficulty determining, in the case of a national corporation, the amount of profit made within the state. Comment, *supra* note 66, at 1288. Any substantial difficulty may encourage the judge to impose the \$20,000 fine under §12.51(b). In the case of a large, national corporation, such a fine would be negligible. A mandatory scaled fine which removes the judicial "option," would be a better solution.

68. See Elkins, *supra* note 6, at 82-84. Elkins argues that the effectiveness of prosecuting individuals does not undermine the argument for corporate liability. *Id.* at 82. In a larger corporation, however, the individuals responsible for the crimes benefitting the corporation are often difficult to identify. "The size and structural diffusion of the modern corporation often masks 'individual' responsibility and makes it extremely difficult to investigate and successfully prosecute corporate-related crimes." *Id.* at 83. But see, e.g., *Developments in the Law—Corporate Crime: Regulating Corporate Behavior Through Criminal Sanctions*, 92 HARV. L. REV. 1227, 1375 (1979) (arguing that criminal sanctions are effective *only* when applied to individuals).

69. See Elkins, *supra* note 6, at 83-84.

70. See Spiegel, *supra* note 1, at 50 (describing the *Film Recovery* case as a "prosecutor's dream" because the negligence was dramatic and sustained and "the negligent parties . . . were close—spatially and bureaucratically—to the workers"). Cf. Flynn, *Criminal Sanctions Under State and Federal Antitrust Laws*, 45 TEX. L. REV. 1301, 1305-06 (1967) ("The available statistics on criminal antitrust prosecutions suggest that the smaller the corporate defendant, the easier it is to impose criminal sanctions upon those responsible for the corporation's antitrust violation.").

71. See, e.g., *New York Cent. & Hudson River R.R. v. United States*, 212 U.S. 481, 492 (1909); Comment, *Corporate Homicide*, 54 NOTRE DAME LAW. 911 (1979).

Radin argues that shareholders are not the only "innocent" parties suffering the penalties of corporate misconduct. The value of bondholders' securities may be diminished and other creditors' accounts receivable will be at risk. Radin, *supra* note 66, at 53. Employees may be laid off under a cost cutting campaign triggered by a severe fine. *Id.* In addition, consumers "will bear at least a

corporation pays damages after a finding of civil liability or when corporate management makes a bad business decision. The resulting loss in these situations is viewed as part of the investment risk assumed by shareholders when they purchase stock. Similarly, a management decision which ultimately results in criminal liability and a corresponding fine may be viewed as part of a stockholder's ordinary investment risk.⁷²

B. Retribution & Incapacitation

A criminal homicide conviction against a corporation also fulfills a retributive function. Punishing blameworthy conduct "serves to satisfy social passions for vengeance" which, in turn, deters individual attempts to gain revenge.⁷³ In addition, unpunished conduct leads to a general lack of respect for the criminal justice system.⁷⁴ To foster respect for all laws, the state must be willing to prosecute corporations for homicides resulting from serious misconduct.

Homicide prosecutions also serve to incapacitate corporate wrongdoers, at least temporarily. Small corporations, like Film Recovery Systems for example, may be forced out of business.⁷⁵ The possibility exists, however, that such corporations may simply reform under a new corporate name and continue to engage in culpable conduct. The erection of statutory barriers to reincorporation by owners and officers of convicted

portion of the criminal fine in the form of higher prices." *Id. But see Elkins, supra* note 6, at 82 (arguing that competition may make price increases impractical).

Radin proposes to solve this overspill problem by imposing fines payable in the equity securities of the corporation rather than in cash. Radin, *supra* note 66, at 54 (citing Coffee, "No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment, 79 MICH. L. REV. 386, 401 n.53 (1981)). The corporation would be ordered to issue shares, having a value equal to a fine, to a fund benefitting the victims of the corporation's misconduct. The equity fine, unlike a cash fine, will not deplete the capital of the corporation, so price raises and cost cutting would be less likely to occur. Radin, *supra* note 66, at 54.

72. See Elkins, *supra* note 6, at 82 ("The law protects the shareholders with limited liability to induce risk capital in the corporate enterprise, and the loss of profits due to corporate criminal fines should be viewed as an investment risk."); Spurgeon & Fagan, *supra* note 57, at 427-28 n.137 (quoting Geis, *Deterring Corporate Crime*, in THE CONSUMER AND CORPORATE ACCOUNTABILITY 347 (R. Nader ed. 1973) ("purchase of corporate stock is always both an investment and a gamble; the gamble is that the corporation will prosper by whatever tactics of management its chosen officers pursue.")).

73. See Spurgeon & Fagan, *supra* note 57, at 412 (citing Fisse, *The Social Policy of Corporate Criminal Responsibility*, 6 ADEL. L. REV. 361, 406 (1978)). See also W. LAFAYE & A. SCOTT, *supra* note 63, at 24.

74. See Spurgeon & Fagan, *supra* note 57, at 412.

75. See *supra* note 65 and accompanying text.

corporations,⁷⁶ or the prosecution of officers engaged in culpable conduct,⁷⁷ avoids this possibility.

In a sense, incapacitation of the product or condition that causes death will also result from homicide prosecutions. Widespread publicity of the prosecution will encourage store owners to remove unsafe products from their shelves. The threat of prosecution may encourage manufacturers to recall defective wares, remedy unsafe working conditions or close hazardous plants.⁷⁸

C. *The Lack of Alternatives*

Corporate homicide prosecutions are necessary to correct corporate misconduct considering the inadequacy of currently available alternatives. Civil actions, for example, do not generate the potentially devastating adverse publicity which is effective against a large corporation,⁷⁹ and civil damage awards are merely included in the corporation's cost-benefit analysis.⁸⁰ Effective regulatory procedures and fines are similarly lacking. In contrast, the corporate fear of a homicide prosecution is vividly illustrated in *Granite Construction Company v. Superior Court*.⁸¹ In *Granite Construction*, the corporation argued that the appropriate remedy for its misconduct was a fine under the Labor Code even though that fine was greater than the maximum fine under the California Penal Code.⁸² Clearly, the corporation was more willing to suffer a greater fine than the stigma of a manslaughter conviction.⁸³

76. Such a statute could prohibit an individual who has previously been an officer or controlling shareholder of a corporation convicted of homicide or other serious criminal offense from serving in a similar capacity in a subsequent corporation. The penalty for a violation could be the suspension or revocation of corporate status.

77. See *supra* notes 68-70 and accompanying text.

78. See Spiegel, *supra* note 1, at 48.

79. See *supra* notes 61-63 and accompanying text.

80. See *supra* notes 64-65 and accompanying text.

81. 149 Cal. App. 3d 465, 197 Cal. Rptr. 3 (1983). See *supra* notes 45-50 and accompanying text.

82. 149 Cal. App. 3d at 473, 197 Cal. Rptr. at 9. Under CAL. LAB. CODE § 6452 (Deering 1985), a corporation may be fined up to \$20,000. Under CAL. PENAL CODE § 672 the maximum fine was \$5,000.

83. 149 Cal. App. 3d at 470 n.2, 197 Cal. Rptr. at 6 n.2. The court stated:

The inadequacy of the penalty provided by section 672 is a legislative problem irrelevant to this case. The existence of a penalty applicable to corporations makes this prosecution more than "waste motion." Regardless of the penalty, the corporation has reason to defend itself against the charge, because of damage to its reputation, the standing of management in the eyes of its shareholders, and the like.

Id.

Prosecuting individual officers and agents rather than the corporation is also an adequate alternative. Because decisionmakers in large corporations are usually thousands of miles from the effects of their decisions, it is difficult to pinpoint the individuals most responsible for the death. The diffusion in the decisionmaking process adds to the confusion.⁸⁴ Similarly, the specific employees whose work resulted in a defective product may be entirely unknown.⁸⁵ Finally, juries are less willing to convict individuals than corporations.⁸⁶ The result may be corporate misconduct which is not redressed.

The recent increase in criminal prosecutions⁸⁷ indicates society's demand for the implementation of criminal sanctions against corporations. Civil remedies and existing criminal sanctions against corporate officers are not effective.⁸⁸ Consequently, state legislatures should reevaluate their homicide statutes and remove any limiting or ambiguous language that would immunize a corporation from prosecution.

III. LEGISLATIVE RECOMMENDATIONS

To successfully prosecute a corporation, the state's homicide statutes must expressly apply to corporations and be drawn to avoid potential "loopholes." Each state penal code should contain an independent section expressly providing that corporations may be convicted of criminal offenses.⁸⁹ This section should specifically designate the crimes for which

84. See *supra* notes 68-69.

85. See *State v. Morris & Essex R.R.*, 23 N.J.L. 360 (1852):

It is said, again, that the individuals who concur in making the order or in doing the work are individually responsible. And so is every servant or agent by whose agency a *tort* is committed, but it has never been supposed that the principal is therefore exempt from liability. On the contrary, the principle and the policy of the law has ever been to look to the principal rather than to the mere agent; and in the case of corporations, it is the clear dictate of sound law not only, but of public policy, to look rather to the corporation at whose instance and for whose benefit the wrong is perpetrated, than to the individual directors by whose order the wrong was done, who may be entirely unknown, or to the laborers by whom the work was performed, who, in a great majority of cases, would be alike unknown and irresponsible.

Id. at 369.

86. See Radin, *supra* note 66, at 57-58; Comment, *supra* note 66, at 1289. In *Film Recovery*, the individuals were convicted of murder and sentenced to 25 years imprisonment. This conviction indicates that the courts are less reluctant to convict individuals for corporate crime. The trial, however, was before a judge, not a jury, and the evidence against the individuals was substantial. See *supra* notes 1 and 71.

87. See *supra* notes 3-4 and accompanying text.

88. See *supra* notes 79-86 and accompanying text.

89. See, e.g., MODEL PENAL CODE § 2.07 (1962).

a corporation should and should not be held accountable.⁹⁰ Such a provision would leave no doubt that the legislature intended to hold a corporation liable for enumerated crimes.

Several statutory phrases and constructions should be avoided or used with extreme care. If the homicide statutes contain the word "person," the term should be defined, in the homicide statute itself or in an independent section, to include corporations as well as human beings.⁹¹ This definition should not contain ambiguous phrases such as "unless the context requires otherwise" because courts may use such language as evidence of a legislative intent to exclude a corporation from prosecution.⁹²

In addition, the homicide statute should not define the victim in terms of the perpetrator, such as "the killing of one person by . . . another."⁹³ Courts could interpret "another" to mean a "second or additional member of the same . . . class . . . referred to by the preceding words."⁹⁴ Even if "person" was defined to include a corporation, a court may reason that the inability of a corporation to be a victim indicates the legislature did not intend to make it capable of being the slayer.

California Penal Code section 192, providing that "[m]anslaughter is the unlawful killing of a human being without malice"⁹⁵ avoids many of the ambiguity problems. Such a provision combined with an independent section providing that a corporation is liable for all criminal offenses, would make it unlikely that a corporation could escape criminal prosecution.⁹⁶

90. For example, bigamy is a crime for which a corporation could *not* be convicted. See Mueller, *supra* note 6, at 23.

91. See, e.g., ILL. REV. STAT. ch. 38, § 2-15 (1985); CAL. PENAL CODE § 7 (Deering 1985).

92. See *supra* notes 34-43 and accompanying text.

93. See, e.g., MODEL PENAL CODE § 210.1(1): "[a] person is guilty of criminal homicide if he purposely, knowingly, recklessly or negligently causes the death of another human being."

94. See, e.g., *People v. Rochester Ry. & Light Co.*, 195 N.Y. 102, 107, 88 N.E. 22, 23. In that case, the actual statutory language was "the killing of one human being by . . . another." *Id.*

95. CAL. PENAL CODE § 192 (Deering 1985).

96. An alternative approach could be patterned after ILL. REV. STAT. ch. 38, § 9-1(a) (1985): A person who kills an individual without lawful justification commits murder if, in performing the acts which cause the death:

(1) He either intends to kill or do great bodily harm to that individual or another, or knows that such acts will cause death to that individual or another; or

(2) He knows that such acts create a strong probability of death or great bodily harm to that individual or another; or

(3) He is attempting or committing a forcible felony other than voluntary manslaughter.

By using "person" when referring to the slayer, and "individual" when referring to the victim, the statute clearly articulates that the slayer and the victim are not necessarily of the same class. The word "person" is defined to include corporations. ILL. REV. STAT. ch. 38, § 2-15 (1985). Under

The state penal code should also contain a suitable punishment for a corporation. The punishment may include forfeiture of the corporate charter, revocation of the certificate to do business in the state, or a fine.⁹⁷ An effective fine should be based on the pecuniary gain derived from the offense.⁹⁸ Finally, in commentary and legislative hearings, the legislature should clearly express its intention to hold corporations liable for all degrees of homicide.

IV. CONCLUSION

Because public interest in corporate criminal accountability has grown, the number of corporate homicide prosecutions is increasing.

State legislatures should accommodate these new attitudes by making the appropriate statutory changes. Such actions will enable courts to protect the safety and well-being of the public and punish guilty corporations for their criminal wrongdoings.

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this approach, a legislature could further ensure corporate accountability if the pronoun "he" is defined to include the neuter. *See Granite Construction Co. v. Superior Court*, 149 Cal. App. 3d 465, 471-72, 197 Cal. Rptr. 3, 7-8. Interestingly, Film Recovery Systems was charged with involuntary manslaughter even though its officers were charged with murder. *See supra* note 1. The language of the Illinois statute does not appear to warrant such disparate treatment.

97. *See, e.g.*, MODEL PENAL CODE § 6.04 (1962). To assure that the corporation's directors, officers or stockholders do not merely reform under a new name, statutory provisions may be necessary as an obstacle to reformation. *See supra* note 76 and accompanying text.

98. *See, e.g.*, MODEL PENAL CODE § 6.03(5) (1962) (prescribing a fine "equal to double the pecuniary gain derived from the offense"); TEX. PENAL CODE ANN. § 12.51(b) (Vernon 1986). *See supra* note 67 for a discussion of the Texas provision.