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DANGEROUS BUSINESS | PART THREE

## Deaths on the Job, Slaps on the Wrist

By DAVID BARSTOW and LOWELL BERGMAN

**E**LMIRA, N.Y. — After all the search warrants, witness interviews and forensic tests, a team of veteran prosecutors and investigators came to an overwhelming conclusion about the death of Frank Wagner. The industrial explosion that killed him, they agreed, was the result of reckless criminal conduct by his employer, McWane Inc., the Alabama conglomerate that owns a cast-iron foundry here in upstate New York.

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"The evidence compels us to act," the prosecution team wrote in a confidential memorandum to the state attorney general, Dennis C. Vacco, in 1996. The team urged him to ask a grand jury to indict McWane and its managers on manslaughter and other charges. A grand jury inquiry, senior investigators believed, could have taken them up the corporate ladder.

But Mr. Vacco never sought an indictment against McWane for any crime. Only after an unusual intervention by the United States attorney in Buffalo, who threatened federal charges, did McWane agree to plead guilty to a state felony and pay \$500,000. But as the company and Mr. Wagner's widow are quick to note, that charge, a hazardous-waste violation, specifically did not hold McWane accountable for Mr. Wagner's death.

Looking back in bitterness, many of the investigators view the devolution of the Wagner case as the result of a hardball campaign of political interference orchestrated by McWane, one of the world's largest makers of cast-iron sewer and water pipes.

"It was a reckless act on the part of certain individuals in that company that caused the death of that person. I'll believe that till the day I die," said Donald Snell, who supervised the state environmental agency's investigation. "The ends of justice were not met."

Still, what is most remarkable about the two-and-a-half-

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Top, Mark Graham for the New York Times

### Crushed

On Oct. 29, Guadalupe Garcia was caught between a truck and a bin at Tyler Pipe. Days later, his legs were amputated. Above, his wife Celia comforted his mother, Juliana. The day of the accident, OSHA was inspecting the plant .

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year investigation of Mr. Wagner's death is that it happened at all.

McWane is one of the most enduring violators of worker-safety and environmental laws, according to government records and regulators. In interviews, exasperated regulators who have tangled with the company use words like "lawless" and "renegade" to describe McWane.

The responsibility for that record, though, is hardly McWane's alone. McWane has persisted largely unchecked by taking full advantage of a regulatory system that has often proven itself incapable of thwarting flagrant and continual safety and environmental violations by major corporations, according to a nine-month examination by The New York Times, the PBS television program "Frontline" and the Canadian Broadcasting Corporation program "The Fifth Estate."

In plant after plant, year after year, McWane workers have been maimed, burned, sickened and killed by the same safety and health failures. Flammable materials are mishandled; respirators are not provided; machines are missing safety guards; employees are not trained. The evidence spills forth from hundreds of regulatory files scattered in government offices around the country — more than 400 safety violations and 450 environmental violations since 1995 alone.

Yet regulators and law enforcement officials have never joined forces to piece this record together, never taken a coordinated approach to end patterns of transgression. Their responses, piecemeal and disjointed, bring into sharp relief weaknesses in government's ability to take on corporations with operations spread far and wide.

"The current law is inadequate to deal with serious violators, repetitive violators, situations where people are put at risk day after day," said Charles N. Jeffress, who headed the Occupational Safety and Health Administration in the late 1990's.

Nine workers have been killed in McWane plants since 1995. OSHA investigators concluded that three of those deaths resulted directly from McWane's deliberate violations of federal safety standards, records show. Safety lapses at least contributed to five other deaths, investigators found.

Yet those deaths rarely received more than cursory attention from state and local law enforcement authorities. The police often did little more than photograph the body and call the coroner. Local district attorneys, if they were informed, generally deferred to OSHA.

For its part, OSHA referred only one of the deaths to the Justice Department for possible federal prosecution. That case ended with a single misdemeanor plea; no executive was charged.

Referrals are "considered a waste of time," said Patrick Tyson, an OSHA director in the Reagan administration.

Indeed, under federal law, causing the death of a worker by willfully violating safety rules — a misdemeanor with a six-month maximum prison term — is a less

### About This Series

"*Dangerous Business*" is a joint effort by *The New York Times*, "Frontline" and the Canadian Broadcasting Corporation.

**FRONTLINE** 

Articles in this 3-part series examine the safety and environmental record of McWane Inc., one of the world's largest makers of cast-iron pipes.

### In the Forums

**Live Event: David Barstow and Lowell Bergman**

The reporters who worked on this series will appear in a closed forum today at 12:30 p.m. Eastern time to answer questions.

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James Estrin/The New York Times  
 After a worker's death at Kennedy Valve, a McWane foundry, co-workers expressed their desperation.

serious crime than harassing a wild burro on federal lands, which is punishable by a year in prison.

A close look at McWane's recent history, and especially at the Wagner case and deaths in McWane plants in New Jersey, Texas and Alabama, illustrates how the company has been able to evade, beat back and often outlast government scrutiny. The examination was based on thousands of government and company documents and hundreds of interviews with current and former McWane employees, including senior managers, safety and environmental supervisors, personnel directors and production superintendents.

McWane, current and former managers said, viewed the burden of regulatory fines as far less onerous than the cost of fully complying with safety and environmental rules. At the time of Mr. Wagner's death, company budget documents show, McWane calculated down to the penny per ton the cost of OSHA and environmental fines, along with raw materials. Since Mr. Wagner's death at the Kennedy Valve plant here, 85 miles southeast of Rochester, the company has paid less than \$10 million in fines and penalties for its safety and environmental violations and three criminal convictions — less than 1 percent of its annual revenues.

In a written statement, the company's president, G. Ruffner Page, said it was company policy to obey the law.

"In organizations made up of human beings we must deal with human errors that sometimes have tragic consequences," Mr. Page wrote. "In those situations where we have not been successful in preventing violations of our policies, we have taken concrete steps to prevent future occurrences, including management changes, increased focus on safety and the institution of more rigorous compliance programs."

Mr. Page asserted that McWane "recently reached an agreement" with OSHA "to begin a cooperative effort to further improve safety." No such agreement exists. On Jan. 3, OSHA notified McWane that it did not qualify as an "OSHA partner" because the company had not yet shown sufficient commitment to workplace safety.

"Clearly they have a serious record with us, and we need to do something different," said the current OSHA administrator, John L. Henshaw.

After Frank Wagner's death, the desperation of fellow workers found expression in a bumper sticker that began showing up on pickups in the parking lot of the plant on the edge of town: "Pray for me. I work at Kennedy Valve."

#### Foiling OSHA: The Forklift Case

Resistance starts the moment an inspector shows up at the gate, say managers and workers at McWane plants across the country and in Canada. Several senior managers said their plants followed a set procedure.

Step 1, they said, was to stall the inspectors outside as alarms went out to supervisors to fix or cover up violations. Machines operating without required pollution controls would be shut down. Machines with obvious and irreparable safety defects would be hidden behind stacks of pallets. Chemical spills would be mopped up. Safety guards, often left off for weeks at a time, would be reattached.

Clyde E. Dorn, former safety director at a plant in Anniston, Ala., said he simply lied. Once, he recalled, he withheld test results that showed workers were severely overexposed to silica, which can cause the lung disease silicosis. Robert S. Rester, a former plant manager in Birmingham, said his workers fooled environmental regulators by submitting samples from the city water supply. It was just that simple, he said.

Mr. Page wrote, "To my knowledge, the company has never deliberately submitted false test results to any agency."

In violation of OSHA rules, McWane managers have also altered workplace death scenes before investigators arrived, police and OSHA records show.

One such case occurred at the Atlantic States foundry in Phillipsburg, N.J. Not only was a possible criminal investigation undermined, but the case also yielded a picture of persistent safety problems disregarded there and at other McWane plants.

At 6 a.m. on March 24, 2000, an Atlantic States worker named Alfred E. Coxe was run over by a forklift. Patrol officers arrived within minutes, and as Mr. Coxe was being airlifted to a hospital, they set about preserving the scene. Using chalk, they marked the position of the forklift and tire marks, their reports show. Meanwhile, detectives from the county prosecutor's office and the Police Department were summoned, along with officials from the medical examiner's office and OSHA. The detectives arrived first, within two hours.

The forklift was gone.

In their reports, the detectives said plant officials were evasive about its whereabouts. What is more, they wrote, plant workers had repeatedly run a street sweeper over the area, wiping away chalk marks and tire marks. Workers told a local newspaper reporter that supervisors had rushed to "clean up" before OSHA arrived.

The detectives interviewed the driver, Juan F. De Los Santos Sr., who told them that the forklift brakes had failed when he tried to keep from hitting Mr. Coxe, according to police reports.

There was one more thing: the driver told detectives that "supervisors were aware of this problem and continued to allow him and other employees to use this forklift," records show. Only after finishing his statement was Mr. De Los Santos told that Mr. Coxe, a 47-year-old Vietnam veteran with a wife and son, had died of grievous internal wounds. Mr. De Los Santos put his head in his hands and began to cry.

OSHA inspectors arrived four and a half hours after Mr. Coxe was struck. They asked plant managers to produce the forklift. It was brought from the maintenance area. Plant officials were asked if it had been tampered with. They said no, and a manager conducted a series of skid tests. "At full speed the front wheels, which are the only wheels with brakes, leave 12 1/2 feet of skid marks," the medical examiner, who witnessed the tests, noted in his report.

The tests seemed to put to rest any questions about the brakes. Later that day, an OSHA official told the local newspaper that the forklift appeared to be fine.

The county prosecutor, John Laky, decided not to pursue charges. "It troubled me that that forklift was removed before it could be inspected," he recalled in an interview. Still, he said, it was not clear that Mr. De Los Santos could have avoided Mr. Coxe even if the brakes had worked perfectly.

But Mr. Laky acknowledges making his decision without knowing several things about the forklift, its driver and McWane.

Contrary to the skid tests witnessed by OSHA, photographs and notes taken by the first officers at the scene neither showed nor described any skid marks from the front tires, the only ones with brakes. According to those records, the only tire marks at all were behind the rear tires, a discrepancy that remains unexplained.

Mr. Laky said he had assumed that the marks were skids caused by applying brakes on the rear tires. He was shocked when told that the forklift's only brakes were on the front.

Mr. Laky was also unaware of persistent forklift problems at Atlantic States, a pattern that OSHA inspectors began to discover in the weeks after Mr. Coxe's death.

The first clue came from another driver assigned to the forklift that struck Mr. Coxe. That driver told OSHA inspectors that it had been having brake problems for more than a month, that he had reported those problems and that nothing had been done.

With a little more digging, OSHA inspectors found that defects reported by drivers were routinely ignored, in part because there was only one mechanic for 14 forklifts in 24-hour use. They also discovered that neither the mechanic nor the drivers were authorized to take forklifts out of service for safety defects. Only senior supervisors could do that, they found.

There were problems with the drivers, too. Mr. De Los Santos was not certified to operate a forklift; the year before, he had struck his supervisor with a forklift, breaking the man's foot. What is more, managers had assigned at least six other uncertified workers to drive forklifts.

McWane's corporate safety policies required that forklift drivers be trained and certified, and that forklifts with safety problems be pulled from service and repaired. But the same forklift problems that OSHA found at Atlantic States have also been discovered at other McWane plants.

One forklift very nearly ran over an OSHA inspector at Union Foundry in Alabama, records show. During another visit there, inspectors found that brakes and horns "on most forklifts" were not working.

Union Foundry "cut back on their servicemen for the vehicles, and consequently there is not enough help to get all the repairs completed as needed," OSHA wrote. Employees had to keep running them "even when vehicles are reported with defects."

This particular inspection, which resulted in a \$2,000 fine for the defective forklifts, was conducted one year before Mr. Coxe was killed at Atlantic States.

Several weeks after Mr. Coxe's death, OSHA officials returned to inspect the foundry's forklifts. They examined forklift inspection sheets filled out each day by the drivers. The sheets indicated safety defects on all 14 machines — including No. 24, the one that had killed Mr. Coxe.

Its brakes were not working properly.

Mr. Page blamed "driver inattention" for Mr. Coxe's death and denied any effort to alter the scene "for the purpose of deceiving OSHA." He said the police had given plant workers permission to move the forklift. Several police officers involved in the case rejected this assertion, saying that even rookie officers know to preserve fatality scenes until detectives arrive.

Without admitting any fault, McWane paid \$10,500 to settle OSHA violations for operating unsafe forklifts at Atlantic States and failing to train drivers.

In a prepared statement, Mr. Henshaw, the OSHA administrator, said his investigators "acted to the fullest extent possible" based on the available evidence. Because of a six-month statute of limitations on OSHA violations, he said, the agency cannot act now, he said.

But, he added, "if other law enforcement officials have reason to pursue questions about the case at this time, we would defer to their authority and cooperate fully."

#### Politics and an Exploding Oven

Jane Wagner saw the priest waiting at the hospital and understood at that precise moment that her husband was dead. "All our plans that we had, you know, hopes and dreams that we had, were just all gone," she said. "Just blew up. Literally blew up."

Frank J. Wagner, 40, was operating an industrial oven at Kennedy Valve when it exploded just before 2 p.m. on Jan. 13, 1995. The oven's heavy steel door was blasted open, crushing Mr. Wagner against a pillar.

Local authorities, the first on the scene, performed the barest of investigations. The police conducted no witness interviews, reports show. James T. Hayden, then the Chemung County district attorney, says he quickly determined there was no basis for homicide charges. "There was no way to know he would be at the wrong place at the wrong time," Mr. Hayden said.

The case might have ended there, but OSHA investigators called criminal investigators at the New York Department of Environmental Conservation, who also brought in the state attorney general's office. They soon turned up a wealth of evidence never considered by Mr. Hayden.

The oven exploded, they concluded, because it was being used to incinerate hundreds of gallons of old industrial paint. The paint was exceptionally volatile. The paint label said: "Warning! Flammable. Keep away from heat, sparks and flame." The oven's instruction manual warned that the oven should not be used for "anything that is easily ignitable." A plant engineer told investigators he had warned bosses "that burning flammable liquids in the oven was an absolute no-no."

Yet senior plant managers had ordered workers, including Mr. Wagner, to do just

that, instead of paying for proper disposal. "Burn in the incinerator," the plant manager wrote in a memorandum seized by investigators. As for being in the wrong place at the wrong time, Mr. Wagner was under specific instructions to monitor a control panel by the oven door.

Nor was this an isolated error. OSHA's civil inquiry found 85 safety violations, mostly serious or repeat offenses, including exposing workers to fire hazards.

By late 1995, prosecutors had prepared draft indictments that proposed charging McWane and several executives with a string of felonies, including second-degree manslaughter, endangering public health and unlawful possession of hazardous waste, records show. "Even a child knows that you shouldn't put a bucket of gasoline in a fire," prosecutors wrote in one memorandum, summarizing the theory of their case.

All they needed was for Mr. Vacco, New York's new Republican attorney general, to let them present the case to a grand jury. But as a newly obtained McWane legal document shows, McWane made it clear that Mr. Vacco would pay a steep political price for pursuing any indictment.

In a memorandum to Mr. Vacco, the company's lawyers asserted that an indictment would send a message that contradicted his "business-friendly policy." They also warned that an indictment would bring Mr. Vacco "adverse press" and would mean the "possible closure" of Kennedy Valve, which provided 320 jobs in an "economically depressed area" that was part of Mr. Vacco's upstate political base.

To help deliver the message, McWane enlisted John O'Mara, one of the state's most powerful Republicans and a man extraordinarily well positioned for the job.

Mr. O'Mara, a former Chemung County district attorney, was an adviser not just to the Republican governor, George E. Pataki, but also to Mr. Vacco's political patron, Alfonse M. D'Amato, then a United States senator. Mr. O'Mara was chairman of Mr. D'Amato's judicial-screening panel and had been on the selection committee that recommended Mr. Vacco for his previous job, as the federal prosecutor in Buffalo.

Records also show that, as attorney general, Mr. Vacco had hired Mr. O'Mara's daughter-in-law as a supervising assistant attorney general in Binghamton.

While the career prosecutors dealt with one set of McWane lawyers, Mr. O'Mara opened secret discussions with Mr. Vacco's chief political aide, William M. Flynn, the first deputy attorney general, several officials involved in the case said.

"You were walking into a buzz saw," said Ed Saslow, who supervised all criminal prosecutions in Mr. Vacco's office. "You had the D.A. and O'Mara saying, 'No case.' It was the wrong foot from the get-go."

Months went by without a decision from Mr. Vacco. "The more time that elapsed, the more we realized it was drying up and dying on the vine," said Mr. Snell, now retired.

Mr. Flynn and Mr. O'Mara did not return telephone messages seeking comment.

In a recent interview, Mr. Vacco acknowledged contacts between Mr. O'Mara and

his office but denied having been improperly influenced. He said he had taken a personal interest in the case "to make sure that we did everything by the book." Any lack of action, he added, was not because of political interference but because of "foot dragging" by indecisive career prosecutors. "What happened here is that my assistants couldn't make a decision," he said.

Prosecution records suggest otherwise. In a 1996 confidential memorandum summarizing their legal case and analyzing potential defenses, the prosecution team, supported by senior supervisors, strongly urged Mr. Vacco to seek an immediate indictment.

An indictment for manslaughter or criminally negligent homicide, they said, was "legally and practically justified." The company's economic threats, they said, were a "naked attempt at extortion."

Still, Mr. Vacco demurred.

Today, he acknowledges that he could have obtained an indictment for criminally negligent homicide. But he says he was not persuaded by what he called a "tenuous" prosecution theory.

"Would there have been a conviction? I don't know," he said. "It would have been a titanic battle."

As for McWane's economic threats, he said, "I don't think that a prosecutor should put his or her head in the sand when making these judgments."

But investigators, prosecutors and Mrs. Wagner's lawyer were so upset that they quietly approached the United States attorney in Buffalo, Patrick Nemoyer, a Clinton appointee. Peter J. Ahearn, the Federal Bureau of Investigation chief in Buffalo, said his agents were struck by the strength of the evidence. "I mean it was right there on a silver platter to be done," he said.

In January 1997, two years after Mr. Wagner's death, federal prosecutors convened the Kennedy Valve Task Force and issued their first grand-jury subpoenas. At the same time, OSHA inspectors were discovering evidence that Kennedy Valve was still dangerous. They found that the plant was running machinery against manufacturers' instructions, resulting in two explosions that burned several employees.

Mr. Vacco was livid at the federal intrusion. In a contentious discussion, his aide, Mr. Flynn, persuaded the federal prosecutors to halt their investigation. McWane and the attorney general's office quickly began negotiating a plea bargain.

"The corporation and their advocates didn't want to face federal charges," Mr. Snell said. "They had absolutely no control of the federal government. They apparently had a lot of confidence in facing the state and the attorney general's office."

McWane admitted no responsibility for Mr. Wagner's death. Instead, the company pleaded guilty to illegally possessing hazardous waste — the obsolete paint — and agreed to a \$25,000 fine and \$475,000 in contributions to various environmental programs and local organizations. The plant manager pleaded guilty to a misdemeanor and was ordered to pay \$90 in court costs.

"The death was not the result of any criminal misconduct on the part of anyone at Kennedy, but rather a terrible industrial accident," Mr. Page, McWane's president, said in a written response.

Mr. Vacco announced the plea deal on the courthouse steps. "Not only does this plea agreement hold Kennedy Valve accountable for the wrongful death of its employee, but it also honors Frank Wagner's memory in a lasting and positive way," he said.

Two weeks later, OSHA reported 35 more safety violations at Kennedy Valve. Mr. Vacco's chief environmental prosecutor, Andrew D. Goldsmith, resigned to join the Justice Department — in part, colleagues said, because he was demoralized over his boss's handling of the Wagner case.

After her long battle to have McWane held accountable for her husband's death, Jane Wagner says she felt worn down and defeated. "After a while," she said, "everybody gets tired of hearing about it, you know. It's like, 'Oh, isn't this over yet?' you know, and, 'Jane, you need to move on.' "

### Looking to Punish

On June 29, 2000, a maintenance mechanic named Rolan Hoskin was crushed in a conveyor belt at Tyler Pipe in Tyler, Tex. His death was the result of several serious and preventable safety failures.

There was no safety guard on the conveyor, though McWane had been cited many times for similar violations. Mr. Hoskin had also been trained to adjust the belt while it was moving, another violation for which McWane had been repeatedly fined.

The history of the Tyler plant was a case study of a persistent violator, of fines assessed and paid without any discernable impact. Only nine months before Mr. Hoskin's death, OSHA had announced \$169,500 in fines against Tyler Pipe for, among other things, putting employees' lives at risk by allowing them to work on and around unguarded and moving conveyor belts. OSHA officials had been particularly appalled by the case of Ira Cofer, a maintenance mechanic whose arm was torn apart in an unguarded conveyor belt.

Now, with Rolan Hoskin's death, federal officials resolved to punish McWane.

As with Mr. Wagner in Elmira, local authorities in Tyler had no such interest. The police did not even notify the district attorney's office about Mr. Hoskin's death.

One official in Texas was intensely interested, though — Kathryn Delaney, the OSHA area director responsible for Tyler. She had long experience with Tyler Pipe. Union leaders admired her doggedness. Once, they recalled, she had threatened to open a field office across the street. Tyler Pipe's executives viewed her with utter contempt, several supervisors said.

Although OSHA had already proposed civil fines of \$1,015,000 in response to Mr. Hoskin's death, Ms. Delaney and other top agency officials took the rare step of referring the case to the Justice Department.

Of some 200,000 workplace deaths since OSHA's creation in 1972, OSHA has

referred just 151 cases to the Justice Department, records show. Federal prosecutors declined to act on more than half of those referrals; 11 people have been sentenced to prison.

The Hoskin case made its way to William P. Sellers IV, virtually the only department lawyer dedicated to prosecuting workplace deaths. More than any prosecutor in the country, he has seen the formidable obstacles to winning even a misdemeanor conviction for causing an employee's death.

To convict a company, prosecutors must prove that a death was caused by willful disregard of safety rules. As for prosecuting individual officials, appellate decisions have made it especially difficult. It is not enough to show that supervisors or middle managers knowingly put lives at risk. Prosecutors must prove that senior executives knew of a specific safety problem, understood the risk of death and ignored it.

The essence of McWane's defense — set forth in response to a civil suit brought by Mr. Hoskin's family — was that senior executives were blameless, that Mr. Hoskin and perhaps low-level supervisors had failed to abide by corporate safety procedures.

Nonetheless, Mr. Sellers pressed on, with help from Ms. Delaney and federal prosecutors from Dallas. Their hope was to use other federal criminal laws with felony penalties, like lying to a federal officer, to prosecute McWane executives, a person involved in the investigation said. By last spring, the investigation appeared to be gathering momentum. Several years of medical records had been subpoenaed. Federal investigators began requesting interviews with supervisors.

At a meeting last spring with the human resources manager and company lawyers, several supervisors were advised not to cooperate with investigators, one supervisor said in an interview. "He explained a lot to us about the Fifth Amendment," the supervisor said of the manager. By summer, a grand jury was hearing evidence against Tyler Pipe, according to Layne C. Lathram, a spokeswoman for OSHA.

Then the case came to an abrupt end.

It happened in an unusual court hearing last July 19. In a brief session, a charge was filed, a plea was entered and a McWane subsidiary was sentenced for a single misdemeanor — causing Mr. Hoskin's death by willfully violating federal safety rules. The company paid \$250,000, half the maximum, and was placed on probation for a year. It will be subject to four random OSHA inspections. No executive was charged, nor was the name McWane uttered in open court.

The sudden plea left a lot of people disappointed and confused. Some Tyler Pipe workers had seen in the federal investigation a ray of hope. Senior OSHA officials said they had been given no heads-up about the deal, even though Ms. Delaney and other OSHA compliance officers were deeply involved in the investigation. Nor was Mr. Hoskin's family consulted.

The Justice Department refused to let Mr. Sellers speak to a reporter about the plea.

But if the outcome suggests the system's limitations, it pays to consider what happened at another McWane plant less than two months after Mr. Hoskin's death.

On Aug. 22, 2000, at Union Foundry in Alabama, Reginald Elston, 27, an ex-Navy man with an infant daughter, was crushed to death while clearing debris from a conveyor belt. As in the Hoskin case, the safety guard had been removed. It was being used as a table for Cokes. The police closed the case in six days.

When OSHA investigators arrived, they did not know about Mr. Hoskin's death, and Mr. Dorn, the safety director, was careful not to volunteer the information. "You don't tell OSHA, you know, more than they need to know," he said in an interview.

OSHA's failure to quickly connect the two deaths — it took at least several weeks, records show — was understandable. There is no centralized rap sheet for corporations as complex as McWane, with its web of subsidiaries under different names.

But even if they had a central file, OSHA inspectors have no authority to undertake a comprehensive investigation of a corporation with similar violations in several states, agency officials said. As a result, they said, patterns of misconduct often go undetected. Cooperation between OSHA and other regulatory agencies is all but nonexistent, because of incompatible computer systems and age-old bureaucratic resentments.

As at Tyler Pipe, at Union Foundry a critical question was whether senior managers were aware that the safety guard had been removed. The company did not make it easy to answer that question.

Shortly before Mr. Elston's death, Mr. Dorn said in the interview, a maintenance worker had identified the missing guard as a potential hazard in a handwritten note to his supervisors. Mr. Dorn said he discovered the note just as OSHA was concluding its investigation of Mr. Elston's death. Recognizing that the note could trigger a criminal prosecution, he said, he briefly considered handing it over to OSHA. Then he thought better of it. "I couldn't afford to be fired," Mr. Dorn explained.

Mr. Page denied any company cover-up. "If Mr. Dorn concealed anything from investigators, he likewise concealed it from the company," he wrote.

OSHA did not refer Mr. Elston's case to the Justice Department, though the agency investigators concluded that his death, like Mr. Hoskin's, was the result of deliberate indifference to safety rules. OSHA officials would not discuss their handling of the case.

OSHA did, however, propose \$181,200 in civil fines, later reduced to \$147,700.

#### A Toothless Watchdog

Since OSHA's establishment by President Richard M. Nixon, workplace deaths have been cut in half, the agency says. How large a role OSHA has played in achieving this reduction, though, is the subject of considerable debate.

The agency's charter is prevention, not punishment. But its critics — and many inspectors — have long complained that OSHA lacks the tools to change the conduct of major employers with egregious records.

The agency does not do regular inspections of all workplaces; indeed, the rules sharply limit its access. Moreover, critics say the agency's fines are far too low, particularly given the lengthy appeals process. In its 32-year history, the fines have been increased just once, in 1990, when the maximum sanction for a single safety violation was increased to \$70,000 from \$10,000.

OSHA can seek higher fines by citing multiple violations. But over three decades it has proposed civil fines exceeding \$1 million against just 15 employers, OSHA officials said.

"The real solution is they need to change the law," said Mr. Tyson, who ran the agency in the Reagan administration. "They need to make 'killing a worker' a felony."

Senior Justice Department officials have testified before Congress about the urgent need for increased criminal penalties for repeat violators.

But the current OSHA chief, Mr. Henshaw, says he sees no such need. Existing laws, he said in an interview, are "fairly strong," and the rules governing fines give him flexibility to punish the worst violations. He declined to say if causing a worker's death by willfully ignoring safety rules should be upgraded to a felony.

"My role is on the civil side," he said.

The Bush administration has proposed a 1.7 percent cut in OSHA's budget for 2003. But Mr. Henshaw said he had adequate resources "to carry out strong, fair and effective enforcement." OSHA, he said, has increased inspections by cutting paperwork. Fines are up slightly, too, the agency said.

Still, Mr. Henshaw acknowledged that despite more than 100 inspections, his agency had failed to protect McWane's employees. His plan, he said, is five more unannounced inspections in the next year.

"They've got to change, and they indicate the willingness to work," he said. "But the proof's in the pudding. We will not put any more people in jeopardy."

#### Adding to a Grim Toll

Several weeks after that interview, on Oct. 29, a machine operator at Tyler Pipe was crushed between a truck and a metal bin. The worker, Guadalupe Garcia, 43, was nearly cut in half, his family said, and doctors had to squeeze bags of blood into him, more than 200 units. Both legs were amputated, and he is recovering.

On the day he was crushed, OSHA was in the midst of an inspection at Tyler Pipe. Ms. Delaney, the OSHA area director, declined to comment on the results but said, "Mr. Garcia's incident caused us to shift and expand the focus of what we are looking at."

Mr. Garcia's injuries, though, touched off a new wave of despair among Tyler Pipe's employees. Employees once afraid to speak with reporters eagerly sought them out. "What more will it take?" one manager asked as Mr. Garcia lay in critical condition.

Indeed, several Tyler Pipe employees, who asked not to be identified for fear of

being fired, said safety shortcomings had played a role in the accident. They said Mr. Garcia had been struck by an inexperienced driver backing up in a poorly lighted area.

Mr. Page said that the lighting was adequate. "We do not know why Mr. Garcia was behind that truck," he wrote. "He had no work responsibilities in the area."

But Mr. Garcia's relatives say senior plant managers told them he was crushed as he hurried to hook the metal bin — known as an on-off bed — to the truck. "They thought what had happened was that he was trying to rush, trying to hook up the bed back to the truck and he was trying to rush back to his work station and didn't make it," his daughter said.

Mr. Garcia, the relatives said, had repeatedly complained of production pressures; he was being asked to handle more tasks, take more risks, they said.

"What does a life mean to them?" asked Eloise Soriano, a family friend. "How can the management or the owners go to sleep at night knowing that a family's dad is in a hospital fighting for his life? That's all the family has. How can they sleep at night?"

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