As Dan has pointed out, there has been discussion of possible criminal liability for BP for its conduct leading to the Deepwater Horizon oil spill. David Uhlmann of the University of Michigan, a former federal environmental criminal prosecutor, has expressed optimism that a robust criminal prosecution of BP would appropriately punish BP, make it more likely that victims will be compensated, and "send a clear message that an environmental disaster of this magnitude cannot be allowed to happen again."

It's worth noting, however, that our criminal justice system is often ill-equipped to address bad outcomes of this magnitude. Especially when the damage is so high, penalties imposed for the most damaging environmental crimes often seem to fail to meet any primary goals of the criminal justice system: deterrence, retributive justice, rehabilitation, restitution to victims, or fairness and equity. Although the Exxon Valdez spill led to a criminal penalty of $125 million, it's hard to make the case that criminal prosecution of the spill really came close to accomplishing those goals.

But our criminal justice system's ability to deal with this type of disaster is no worse than, and probably better than, those in other countries. Today, 26 years after a gas-fueled explosion at a plant run by Union Carbide killed thousands of people in Bhopal, India, a court finally found seven officials of the company guilty of criminal negligence, sentenced them to two years in prison, and fined them each 100,000 Indian rupees, or a little over $2,000 in U.S. dollars.

According to a Wall Street Journal blog, "the officials were charged with 'causing death by negligence,' a charge that carries a maximum prison term of two years and is most often used in connection with hit-and-run traffic accidents, according to representatives of the victims. This is the first legal verdict in the long-standing case and will likely be appealed to a higher state court and eventually to the Supreme Court."

According to the Indian news source sify.com:

> As all the seven were released on a personal bond of Rs.25,000, the verdict was denounced by activists, environmental and legal experts. 'Today's verdict is a disaster… They've made it look like a traffic accident,' said Satinath Sarangi of the Bhopal Group for Information and Action, an NGO representing the survivors and an activist who has been

> involved with the victims since the 1984 disaster. 'The charges have been diluted. The victims are disappointed,' Sarangi said.
>
> The anger was palpable among the survivors of the horrific industrial disaster that grabbed worldwide attention. Nupur Dhimya, 62, who lost her two children and husband in the disaster, said: 'Twenty-five years have passed since the disaster……look what we have got. The accused were convicted only for name's sake and bailed out within minutes.' Ramesh Baghel, 50, who claimed he could not marry because of ailments caused due to exposure to the gases, said: 'We have been waiting for 25 years to see that some day those guilty of ruining our lives would be punished but these men have effectively been set free.'

These responses reveal the human tragedy of the criminal justice system's ineffectiveness in addressing corporate environmental crime. Victimized families feel victimized yet again: too little, too late. And given the possibility of appeals, it's not even over.

Here in the United States, a twenty-six year long criminal trial is unthinkable. But with appeals, complex insurance and bankruptcy issues, and other complications, some civil environmental cases have led to decades-long court battles, including the well-known Stringfellow Acid Pits case and the Montrose Chemical DDT contamination case, both in Southern California. Complex criminal cases in the U.S., though typically not that protracted, still can take a long time to resolve.

Aside from the lengthy proceedings, the legal tools available to the U.S. are strong, but not as strong as they could be. As Uhlmann has pointed out, of all the statutes that can be used to prosecute BP or its executives criminally, only the Clean Water Act carries felony charges. And fines such as the $125 million assessed in the Valdez case just don't seem likely to solve the problem. As with other corporate crime, environmental crime just isn't taken seriously, even when it costs lives and livelihoods. We are willing to balance costs against benefits of corporate behavior in a way that we don't with individuals, who we feel comfortable judging and imprisoning even at net societal cost.

I have no opinion right now on whether the facts justify criminal charges against BP. I hope that if they do, we find the tools to make the prosecution count, both for future deterrence and as a symbol of justice for those who have been harmed. If

our system lacks those tools, we should think hard about whether we need to strengthen our laws and enforcement practices. But in the end, cases such as Bhopal feed my skepticism that any country’s criminal justice system can really serve the functions we expect.