

## CHAPTER 1

### THE CRIMINALIZATION OF CORPORATE VIOLENCE

#### Summary

This book is organized around one of the most famous corporate crime cases: Ford Motor Co.'s prosecution on charges of reckless homicide when three teenagers died in a fiery crash of their Pinto on an Indiana highway. Part II of the book tells the story of this case in considerable detail. This section is a conduit through which the reality of corporate violence and attempts to define it as a "crime" come to life. This can be a wonderful way to teach students about the prospects and problems of taking on a corporation with the criminal law. Part III of the book, which contains the final two chapters (7 and 8), tells what has occurred in the aftermath of the "Ford Pinto Case," which concluded in 1980. This section explores how the criminal law has, and has not, expanded in the past 25 years in the control of corporate misconduct. It also examines what is likely to lie ahead in the twenty-first century. Part I of the book, which contains three chapters, discusses the nature of the corporate crime problem (Chapter 1) and the social and legal changes that moved the United States to the point at which a corporation's prosecution for reckless homicide was even conceivable (Chapters 2 and 3). The authors argue that the Ford Pinto Case was a "sign of the times"—an event that would not have taken place a decade earlier. It was also a landmark case that likely encouraged future corporate prosecutions.

In Chapter 1, the "Plan of the Book" is relayed to students. In this way, they will be given a clear road map for what lies ahead. Again, the point is not just that a fascinating landmark prosecution occurred, but rather that this case reflected the intersection of a number of social and legal factors that created the opportunity for holding corporations *criminally culpable* for harming consumers, workers, and the public. The chapter then covers four additional points.

First, an effort is made to define for students what "corporate crime" is. This issue is placed within the broader debate between Edwin Sutherland and his critics (such as Paul Tappan) over the definition of "white-collar crime." Sutherland argued that even though many white-collar crimes, including those by businesses, were not punished by the criminal law, they were still potential violations of that law. As a result, the key criterion is whether an act is "punishable" as a crime—not whether it is so punished. In this book, the authors thus define corporate crime as *illegal acts potentially punishable by criminal sanctions and committed to advance the interests of the corporate organization*.

Second, the book alerts readers that white-collar and corporate crime were long neglected and then shows how this illegality was "discovered." It traces how "muckrakers" and academics (such as E.A. Ross) in the Progressive Era called attention to the crimes of "big business." This section then conveys how Edwin Sutherland coined and popularized the concept of "white-collar crime." More recent scholarship (e.g., by

Marshall Clinard and Peter Yeager) showing the prevalence of corporate crime is also reviewed.

Third, the book then turns to the “costs of corporate crime.” Given the inordinate size and reach of corporations, the point is made that the financial loss due to business scandals likely far exceeds the money lost through “street crimes.” This thesis is illustrated through a review of the major corporate frauds that have been perpetrated, including cases involving E.F. Hutton, the Savings and Loan industry, and Enron.

Fourth, the “punch line” of the chapter is that contrary to what is often popularly believed, corporate crime not only exacts financial costs but also can be violent. The book systematically reviews the ways in which corporate misconduct is physically harmful to workers, consumers, and the general public. The issue at hand is whether cases in which corporations violently victimize people should be “criminalized”—that is, defined as crimes and sanctioned by the criminal courts. Again, the prosecution of Ford illuminates not only why such prosecutions might be called for but also many of the controversies involved in using the criminal law against corporations. This is what the rest of the book explores in more detail.

### **Study/Discussion Questions**

1. What was Sutherland’s definition of white-collar crime? What was his debate with Paul Tappan all about? That is, how did they differ on what should be included under the concept of white-collar crime? Whose side is taken in the book?
2. What is meant by the concept of “corporate crime”? What makes corporate behavior “criminal”? What makes a crime “corporate”? Are crimes against corporations included in this definition?
3. What is the “traditional image of crime”? To the Social Darwinists and the Progressives? How did all this deflect attention away from the crimes of the rich?
4. How did self-report researchers help to “revise” the traditional image of the crime problem? What about the Muckrakers of the Progressive era?
5. Why is E.A. Ross given so much attention? What were the main themes of Ross’s work? How did he anticipate much of what was to come? Why did he feel that the “sins of the criminaloids” were not recognized and controlled? Did he favor using criminal sanctions against corporate executives?
6. How did Edwin Sutherland help to revise the traditional image of crime? What concept did he invent? What kind of white-collar crime did he study in his book? What conclusions did he draw about the behavior of corporations?

7. How prevalent is corporate crime? What did the *Fortune* and *U.S. News & World Reports* articles conclude? What about Orland's research? The research of the article that was published in the *Academy of Management Journal*? In particular, what did Clinard and Yeager report from their study? How many corporations committed a legal violation? What about chronic offenders?
8. Why is corporate crime so costly economically? Be familiar with these cases: EFCA, E.F. Hutton, First Bank of Boston, ESM, electrical conspiracy, Revco, and Allied Chemical Kepone incident. Also be familiar with the various ways in which corporate crime can be costly economically: financial fraud, closing the enterprise system, letting the buyer beware, violation of workplace standards, and burdening the public.
9. In what ways are workers victimized? What percentage of workers who die in accidents might be killed through illegal safety violations? What are silent killers? What does Paul Brodeur's book *Outrageous Misconduct* tell us about the effects of asbestos? Pay special attention to the following cases: Film Recovery Systems (FRS), W.R. Grace, and the Triangle Shirtwaist Company.
10. Are consumers victimized physically by corporations? What were the Corvair, B.F. Goodrich, and MER/29 cases about? In particular, what does Morton Mintz book, *At Any Cost*, tell us about the Dalkon Shield, which was produced by A.H. Robbins?
11. Can the public be victimized physically by corporations? How is the public threatened by environmental pollution? What happened at Love Canal?

### Multiple-Choice and True/False Questions

1. Whose definition of white-collar crime "could fit any illegal way of accumulating profits whether it violated existing criminal codes or not"?
  - \* a. Sutherland's
  - b. Tappan's
  - c. Clinard and Yeager's
  - d. E.A. Ross's

2. In Sutherland's study of corporate crime, which of the following is false?
  - a. the majority of the corporations in the study were habitual criminals and recidivists
  - b. many of the corporate violations are industry-wide
  - c. corporate officials who violated the law did not lose status among peers
  - d. corporate crime is usually deliberate and organized
  - \* e. corporate criminals have a great deal of respect for the laws that govern their industries
3. Which of the following would Sutherland disagree with?
  - \* a. a corporation is a criminal only when it has been found guilty by a criminal court
  - b. official crime statistics are biased because they do not include the occupational crimes of the rich
  - c. white-collar crime is widespread
  - d. the traditional image of crime is misleading
4. The authors define corporate crime as illegal acts potentially punishable by criminal sanction and committed to advance the interest of the corporate organization.
  - \* a. true
  - b. false
5. According to E.A. Ross, "criminaloids" refer to:
  - a. vagrants
  - \* b. rich and powerful business leaders
  - c. biological "throwbacks"
  - d. drug users
  - e. hard-core street offenders
6. According to the Progressives, crime is due to:
  - \* a. defects of the social order of society
  - b. poor nutrition
  - c. broken homes
  - d. mental deficiencies
  - e. anomie
7. Who was influential in exposing crimes by business people (e.g., helping to discover white-collar crime and corporate crime during the early 1900s)?
  - a. the FBI.
  - b. Clinard and Yeager
  - c. Cullen
  - \* d. the muckrakers