Lecture 4: Corporate Crime

WHITE COLLAR CRIME

Definition

Corporate Crime includes:

- Offenses committed **by** corporate officials **for** their corporation

  and/or

- Offenses of the corporation itself

Ways to Categorize Corporate Crime

- Primary victims
- Nature of the harmful activity
- Size and scope of the corporate entity
- Type of product or service involved

Corporate Violence

- Activities of a corporation that have violent consequences

The Ford Pinto

Difference from "Conventional" Crime

- **Indirect** – victims are not assaulted by another person. Instead, injures result from policies and actions undertaken on behalf of the corporation

- Effects are typically **removed in time** from the implementation of the corporate policy/action that caused the harm

- The **causal relationship** between the corporate policy/action and the injury cannot always be clearly established.

- Typically caused by a large number of individuals acting collectively.

- Typically unintentional and a by-product of the desire to **maximize corporate profits** and **minimize corporate overhead**.

Victims


CITIZENS/TAXPAYERS
Defense Contract Fraud
Health Care Providers Fraud
Corporate Tax Evasion
CONSUMERS
Price-Fixing
Price Gouging
False Advertising
Misrepresentation of Products
EMPLOYEES
Economic Exploitation
Corporate Stealing
Unfair Labor Practices
Unsafe Working Conditions
Corporate Surveillance
COMPETITORS, OWNERS, & CREDITORS
Monopolistic Practices
Theft of Trade Secrets
Managerial Fraud
Self-Dealing
Strategic Bankruptcy

Unsafe Environmental Practices: A Case Study

- ✓ **Love Canal**, a neighborhood in Niagara Falls, NY, was envisioned to be a shipping lane that would bypass the Niagara Falls. The canal was not completed because money ran out, and gradually filled with water.

- ✓ In the 1920s, it became a dumping site for the municipality. In the 1940s, a company by the name of Hooker Chemical and Plastics Corporation began searching for a **dump** to store its **chemical waste**.

- ✓ Hooker Chemical made arrangements with the owner of Love Canal to dump waste there.

- ✓ Hooker Chemical drained the canal and lined it with clay. Hooker then began placing 55-gallon metal barrels into the canal.

- ✓ Hooker purchased the land outright in 1947.

- ✓ Thereafter, Niagara Falls' population grew and the Niagara Falls School Board became desperate for land.

- ✓ The Niagara Falls School Board attempted to purchase an area of property from Hooker Chemical in which toxic waste had not been buried.

- ✓ Hooker Chemical **refused,** stating that the property was **unsafe**.

- ✓ Hooker Chemical even demonstrated to the school board that toxic chemicals were below the surface by drilling bore holes into the surrounding clay.

- ✓ Nonetheless, the school board insisted that it purchase the property.

- ✓ Hooker Chemical agreed to sell the land on the condition that the school board buy the entire property for **$1**.

The Agreement

- ✓ In its sales agreement with the school board, Hooker Chemical included the following language:

- ❑ "The grantee herein has been advised by the grantor that the premises above described have been filled, in whole or in part, to the present grade level thereof with **waste products**. . . ."

- ❑ "The grantee **assumes all risk and liability** incident to the use thereof."

- ❑ No claim, suit, action or demand of any nature whatsoever shall ever be made by the grantee, its successors or assigns, against the grantor. . .for injury. . . caused by, in connection with, or by reason of the presence of said industrial wastes.

- ✓ The school board began constructing the 99th Street School on the purchased site, but was forced to relocate the site when two pits filled with toxic chemicals were unearthed.

- ✓ The new location was directly on top of the former landfill and during construction, contractors broke through the clay seal that had been installed by Hooker Chemical to contain the chemical waste.

- ✓ In 1957, the City of Niagara Falls constructed sewers for a mixture of low-income and single family residences to be built on lands adjacent to the landfill site. During construction, the clay seals were once again broken and chemicals began to seep from the canal.

Something Is Rotten In The State Of. . . New York?!

- ✓ In 1978, Lois Gibbs, a local mother discovered that her 7-year old son's school (the 99th Street School) was built on a toxic waste dump. She began to wonder if her children's recurring health problems (epilepsy, asthma, and urinary tract infections) had any connection to their exposure to leaking chemical waste.

- ✓ Gibbs thereafter discovered that her entire neighborhood, Love Canal, had been built on top of 21,000 tons of buried chemical waste.

- ✓ In response to her discovery, Gibbs formed the Love Canal Homeowners' Association and mobilized her neighbors.

- ✓ The Love Canal Homeowners' Association struggled for three years to prove that the toxins buried by Hooker Chemical were responsible for the health problems of Love Canal residents.

- ✓ During that time, concerns of the Homeowners' Association were ignored by both Hooker Chemical and members of the local government.

David vs. Goliath

- The Homeowners' Association brought suit against Hooker Chemical.

- Throughout the legal battle, residents of Love Canal were unable to sell their properties and move away.

When all else fails. . .
Deny! Deny! Deny!

- ✓ Hooker Chemical and the local government argued that the area's endemic health problems were unrelated to the toxic chemicals buried in the canal.

- ✓ You be the judge:

  - In 1979, the United States Environmental Protection Agency noted that Love Canal residents exhibited a "disturbingly high rate of miscarriages."

  - In one case, two out of four children in a single Love Canal family had birth defects: one girl was born deaf with a cleft palate, an extra row of teeth, and slight retardation, and a boy was born with an eye defect.

  - A survey conducted by the Homeowners' Association found that 56% of the children born in Love Canal from 1974-1978 had a birth defect.

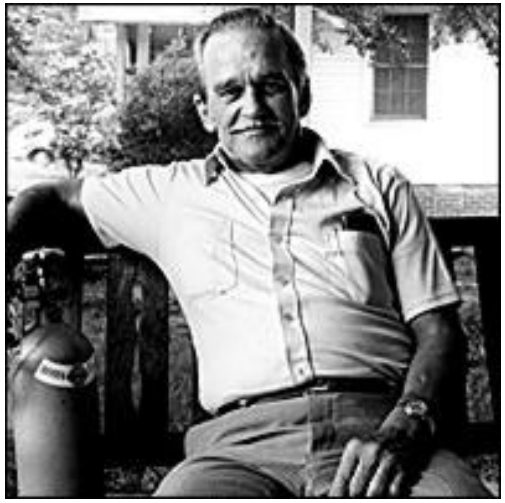
- ✓ Ultimately, Love Canal residents could not prove that the chemicals on their property had come from Hooker Chemical's waste disposal site, and as a result, could not prove liability.

Government Response

- ✓ On May 21, 1980, President Jimmy Carter declared a federal emergency at Love Canal, and those living closest to the site were relocated –approximately 833 families. Those families were reimbursed for their homes.

- ✓ Congress passed the Comprehensive Environmental Response, Compensation,a nd Liability Act (CERCLA), also known as the Superfund Act, that holds polluters accountable for their damages.

UNSAFE WORKING CONDITIONS: A CASE STUDY



For 27 years, Nat Thomas Wilkins worked at the Westpoint Pepperell cotton mill in Opelika, Alabama, cleaning and combing cotton.

- ✓ Every day, Wilkins inhaled millions of microscopic cotton dust particles that clogged his lungs, making him so ill he could barely work.

- ✓ He was sent to a doctor and placed on medical leave.

- ✓ After helping Wilkins apply for Social Security benefits, the company terminated his employment.

- ✓ Westpoint Pepperell never informed Wilkins of what it had suspected for years – mill workers like him were in danger of contracting byssinosis, a preventable work-related lung disease commonly known as "brown lung." By the time Wilkins discovered the truth he required a respirator.

- ✓ The Southern Poverty Law Center took Westpoint Pepperell to court in *Wilkins v. Lanier* (1979).

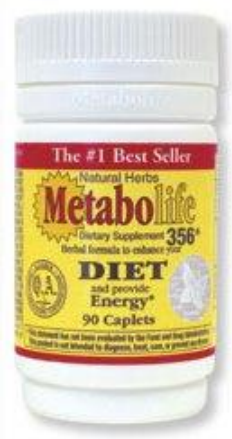
- ✓ Evidence showed the industry had concealed information about brown lung disease from its workers.

- ✓ While the suit could not restore Wilkins' health, it did clear the way for brown lung victims to receive some financial security.

Government Response

Since the case ended in 1983, federal regulations control the level of dust to which cotton workers may be exposed and require textile companies to provide regular medical screenings.

Unsafe Products: A Case Study



- ✓ In 1997, in response to mounting concern over serious side effects of the herbal supplement, ephedra (also known as ephedrine and ma huang), the FDA proposed a ban on products containing 8 mg or more of ephedrine alkaloids and stricter labeling of low-dose ephedra supplements.

- ✓ The FDA also proposed that ephedra labels be required to disclose the health risks of ephedra, such as heart attack, stroke, or death.

- ✓ During this time, Metabolife, makers of the best-selling brand of ephedra supplement, had received over 14,000 complaints of adverse events associated with its product, but did not provide these reports to the FDA.

- ✓ Senators Orrin Hatch and Tom Harkin, authors of the Dietary Supplements Health and Education Act, questioned the scientific basis for the FDA's proposed labeling changes and suggested that the number of problems reported were insufficient to warrant regulatory action.

- ✓ Trivia: At the time, Hatch's son was working for a firm hired to lobby Congress and the FDA on behalf of ephedra manufacturers.

Money Talks?

- ✓ In response to the FDA's labeling proposal, the supplement industry created a public relations group, the Ephedra Education Council, to oppose the changes, and commissioned a scientific review by a private consulting firm, which reported that ephedra was safe.

- ✓ In addition to the activities of the Ephedra Education Council, Metabolife spent more than $4 million between 1998 and 2000 lobbying against state regulation of ephedra in Texas.

- ✓ In 2000, the FDA withdrew the proposed labeling changes and restrictions.

A Change of Heart

- ✓ In 2000, the *New England Journal of Medicine* in 2000 published a review of ephedra-related adverse reactions. The review detailed a number of cases of sudden cardiac death or severe disability resulting from ephedra use, many of which occurred in young adults using ephedra in the labeled dosages.

- ✓ Subsequently, in response to pressure from the consumer advocacy group Public Citizen, Metabolife was compelled by the Department of Justice in 2002 to turn over reports of over 15,000 ephedra-related adverse events, ranging from insomnia to death, which the company had previously withheld from the FDA.

- ✓Then, on February 17, 2003, Steve Bechler, a pitcher for the Baltimore Orioles, died of complications from heatstroke following a spring training workout. The medical examiner found that ephedra toxicity played a "significant role" in Bechler's sudden death. Following Bechler's death, the FDA re-opened its efforts to regulate ephedra use.

- ✓ Senator Orrin Hatch, who had previously helped block the FDA's attempts to regulate ephedra, said in March 2003 that "...it has been obvious to even the most casual observer that problems exist," and called FDA action to regulate ephedra "long overdue.“

- ✓ On December 30, 2003, the FDA issued a press release recommending that consumers stop buying and using ephedra, and indicating its intention to ban the sale of ephedra-containing supplements. Subsequently, on April 12, 2004, the FDA issued a final rule banning the sale of ephedra-containing dietary supplements.

But Hold On To Your Hats, It Ain't Over!

- ✓ Nutraceutical Corporation, a supplement manufacturer based in Park City, Utah, challenged the legality of the FDA's ban of ephedra as exceeding the authority given the agency by the Dietary Health Supplements and Education Act. Nutraceutical Corporation stated that they did not intend to start marketing ephedra, but were concerned about the scope of the FDA's regulatory action.

- ✓ Judge Tena Campbell of the Utah Federal District Court ruled that the FDA had not proven that low doses of ephedra were unsafe, although she also noted that studies to address the safety of low-dose ephedra would be unethical.

- ✓ Her ruling overturned the ban on the sale of ephedra in the state of Utah, and called into question whether the ban could be enforced anywhere in the United States.

- ✓ The ruling was appealed to the U.S. Court of Appeals for the Tenth Circuit in Denver, Colorado.

- ✓ On August 17, 2006, the Appeals Court upheld the FDA's ban of ephedra, finding that the 133,000-page administrative record compiled by the FDA supported the agency's finding that ephedra posed an unreasonable risk to consumers.

- ✓ Nutraceutical Corp. filed a petition for a writ of certiorari seeking a rehearing on the ban of ephedra; however, on May 14, 2007 the United States Supreme Court declined to hear this petition.

The sale of ephedra-containing dietary supplements remains illegal in the United States due to their health risks.

Can A Corporation Be Held Criminally Liable?

Yes:

Imputation	Identification	Respondeat Superior
• Corporation is liable for the intent and acts of its employees.	• Corporation is liable for the intent and acts of its employees. • Employee must be acting on behalf of the corporation.	• Agent of corporation has committed a crime. • While acting w/in scope of authority. • With the intent to benefit the corporation.