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This study represents the first large-scale comprehensive investigation of corporations directly related to their violations of law. The extent and nature of corporate illegal activities are investigated, the data being examined in terms of the corporate structure and the economic setting in which the violations occur. It has concentrated on an empirical investigation of the 582 largest publicly owned corporations in the United States. The major focus has been on manufacturing corporations whose annual sales (1975) ranged from \$300 million to more than \$45 billion, with an average sales volume of \$1.7 billion for the parent firms. Data cover all enforcement actions obtainable, actions initiated or imposed by 24 federal agencies during 1975 and 1976. This reveals for the first time the wide range of the types of corporate violations, as well as actions initiated and imposed by government agencies.

Predictions of violations are attempted through analyses of data in terms of corporate structure and finance that are then used to compare with industry-level and economy-level data. These data project the hypotheses that unfavorable trends in sales, profits, earnings, greater product diversification, etc. are associated with violations. An analysis is presented of the characteristics of corporations against which limited actions have been initiated with those against which initiated actions have been extensive. On the hypothesis that pressures from parent corporations to increase profits contribute to the greater violations of the subsidiaries, actions against parent corporations are then compared with their 101 largest subsidiaries, whose 1976 sales ranged from \$300 million to \$7.8 billion.

In addition there is an analysis of the methodological problems in studying corporate crime and the inadequacy of federal government statutes on corporate crime. Other topics discussed in the study are corporate organization and corporate crime, regulatory agencies and federal and state relations in controlling corporate crime, corporate antitrust and filegal payments violations, corporate executives and criminal liability and the control of corporate crime.

Illegal Corporate Behavior

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October 1979

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SUMMARY

This research represents the first large-scale comprehensive investigation of corporate violations of law. The only previous study of a somewhat similar nature was Edwin H. Sutherland's famed <u>White</u> <u>Collar Crime</u>, which was the study of the violations of law by 70 of the 200 largest U.S. non-financial corporations. Corporate crime is, of course, white collar crime, but it is white collar crime of a particular type. Actually it is organizational crime that occurs in the context of extremely complex and varied sets of structured relationships and inter-relationships between boards of directors, executives, and managers on the one hand and parent corporation, corporate divisions and subsidiaries on the other.

A. Corporate Organization

A corporation is a legal entity that allows a business to use the capital provided by individuals called shareholders or stockholders. Typically, however, large corporations are management controlled by corporate executives and boards of directors; the stockholders have little influence over decisions. There are in the United States some 2 million corporations; in terms of this research and the general concern about "corporations," however, they are customarily regarded as the 500 to 1000 largest as listed in Fortune. The assets and sales of the largest corporate conglomerates often total billions of dollars, and their economic and political powers are enormous. Total sales of many exceed the gross national product of most countries. Some of these corporate giants control wide areas of the American economy. These large corporations have provided employment to millions of persons, and they have increased the wealth of the nation in many other ways, including payments of stock dividends to millions. By their very size they are able to organize and centralize production and distribution and to develop a high degree of concentrated specialization in specific areas. The capital resources of the large corporations enable them to develop, adopt and change technology on a massive scale. All this means that the high production and financial returns that have resulted from modern technology and industrial expansion have removed large numbers of the population from the pressures of physical want.

Most large corporations are conglomerates; although all of them have some leading lines of business each has acquired a variety of other product lines through mergers. The movement toward mergers and subsequent mammoth size of corporations have resulted from several broad trends: a hedge against business fluctuation, the acquisition of immediate capital and assets, the acquisition of new techniques, the reduction of costs of starting a new product line, enhancement of the corporation's image of growth and extended enterprise and the presumed increases in corporate profits. About two-thirds of the manufacturing industries are highly concentrated, only a few firms controlling most of the major manufacturing sector. Over the past fifty years aggregate concentration has rison substantially. There is considerable evidence from opinion surveys that corporate executives believe that unethical and illegal practices are common. The socio-cultural environment within which many modern American corporations operate actually encourages unethical or criminal behavior. Lawbreaking can become a normative pattern within certain corporations. The goals of a corporation and their role in it may take precedence over the personal ethics of corporate executives.

Corporations have tremendous power and influence on government; this is not true of ordinary offenders. They exert power through cabinet positions, through political influence on governmental decisions and through their ability to block legislation or weaken the ability of government regulatory agencies to enforce controls affecting them.

A complex variety of defenses are offered by corporations to explain their violations of law. These include :

- (1) All measures proposed constitute government interference with the free enterprise system.
- (2) The government is to blame because the additional costs of regulations and bureaucratic procedures cut heavily into profits.
- (3) The government is to blame because most of their regulations are incomprehensible and too complicated.
- (4) The government is to blame because the things being regulated are unimportant.
- (5) There is little deliberate intent in corporation violations; must of them are simply errors of omission rather than commission, and many are mistakes.
- (6) Other concerns in the same line of business are violating the law, and if government cannot prevent this situation there is no reason why other corporations cannot also benefit.
- (7) Although it is true, as in price-fixing cases, for example, that some corporate violations may involve millions of dollars, the damage is so diffused among a large number of consumers that individually there is little loss.
- (8) If there is no increase in corporate profits, a violation is not wrong.
- (9) Violations are due to economic necessity.
- (10) The corporation has changed it practices and is no longer in violation.
- B. Corporations and Criminal Behavior

The very size and power concentration of such large corporations, particularly the conglomerates, raises a number of serious economic, political and even ethical questions about them. What is increasingly debatable is whether or not the goods produced by the large corporations are necessarily of the highest possible quality and safety or if they have been put on the market at the lowest possible prices. Because many are virtual monopolies, corporate pricing is often not based on competition but actually constitutes "administered pricing," that is, pricing decided by the corporation itself with limited regard to competitive factors. It has also been demonstrated that the multinational corporations have exercised undue political influence in relation both to domestic and foreign governments. Their ethical standards have been questioned in many areas, among them the misrepresentations made in their costly advertising, and there has been concern about their violations of law.

As these large corporations have grown rapidly in economic power during the past fifty years or more their activities have increasingly been regulated by a number of laws designed to control such illegal acts as restraint of trade (price-fixing and monopoly), financial manipulations, misrepresentation in advertising, the issuance of fraudulent securities, falsified income tax returns, unsafe work conditions, the manufacture of unsafe foods and drugs, illegal rebates and foreign payoffs, unfair labor practices, illegal political contributions, discriminatory employment practices, and environmental pollution.

Often businesses, particularly large corporations, complain that most government regulations are largely unnecessary. One might readily agree with this complaint if assurances could be given that the basic ingredient of strong ethical principles were guiding the conduct of corporate business. There are many types of corporate ethical violations, all of which are closely linked to corporate crime: misrepresentation in advertising, deceptive packaging, the lack of social responsibility in television programs and, particularly, commercials, the sale of harmful and unsafe products, the sale of virtually worthless products, restricting development and built-in obsolescence, polluting the environment, kickbacks and payoffs, unethical influences on government, unethical competitive practices, personal gain for management, unethical treatment of workers, and the victimization of local communities by corporations.

Many corporate practices formerly considered simply unethical have now become illegal and thus subject to punishment. They include such practices of tax evasion as false inventory values; unfair labor practices involving union rights, minimum wage regulations, specific working conditions, and overtime; violations of safety regulations related to occupational safety and health; the fixing of prices to stabilize them on the market and to eliminate competition; food and drug law violations; air and water pollution that violate government standards; violation of regulations established to conserve energy; submission of false information for the sale of securities; false advertising; and illegal rebates.

Costs of ordinary crimes are usually estimated primarily in financial terms and in the social costs of the fear they incite in the general population; far more varied are the criteria used to calculate the costs of corporate crimes. Corporate crime costs run into billions of dollars. These costs involve not only large financial losses but also injuries and health hazards to workers and consumers. They also include the incalculable costs of the damages done to the physical environment and the great social costs of the erosion of the moral base of our society. They destroy public confidence in business and our capitalist system as a whole, and they inflict serious damages on the corporations themselves and on their competitors.

The costs of specific corporate crimes are high but they fail to They do not touch the total losses that accrue from corporate crimes. cover losses due to sickness and even death that result from the environmental pollution of the air and water and the sale of unsafe food and drugs, defective autos, tires, and appliances, and of hazardous clothing and other products. They also do not cover the m numerous disabilities that result from injuries to plant workers, including contamination by chemicals that could have been used with more adequate safeguards, and the potentially dangerous effects of work-related exposures that might result in malignancies, lung diseases, nutritional problems, and even addiction to legal drugs and alcohol. Nader claims that corporate crime causes injuries to persons on a larger scale than do the so-called "street crimes." Far more persons are killed through corporate criminal activities than by individual criminal homicides; even if death is an indirect result the person still died.

Corporations under the law are regarded as "persons." The bridge between the acts of individuals and an entity such as a corporation has been developed in part because many of the acts of corporations are acts that could be done by individuals such as producing injurious goods, polluting the environment, bribery or engaging in tax frauds. Corporate crime is distinguished from ordinary or lower socio-economic crime in two respects: the nature of the violation and the fact that administrative and civil law are more likely to be used as punishment than the criminal law. Because of their more recent origin and the considerations of legislative power that both white collar and corporate bodies possess they are far less likely to be punished under the criminal law; in other cases the statute may provide for alternative sanctions such as civil and administrative actions. A corporation, moreover, cannot be imprisoned; only its executives can. Serious corporate violations of law are often handled under civil or administrative law rather than criminal law because limited government enforcement staffs often dictates that injunctions, warnings or consent agreements be used rather than prolonged civil or criminal litigation. From a research point of view, therefore, corporate crime includes any act punished by the state regardless of whether it is punished under administrative, civil or criminal law.

In the research study of corporate crime, which is the main subject of this report, however, the wide range of seriousness of corporate violations has been recognized. Consequently violations were ranked as serious, moderate and minor and much of the analyses reflect this distinction. Reporting, such as paperwork, violations and similar violations of administrative law were generally considered minor violations; other types of violations of administrative law were considered serious or moderate, depending on the nature of the violation. On the other hand, when considering enforcement actions no such distinction was generally made as to seriousness because, for example, a warning letter, an administrative consent agreement or a courtimposed consent order may actually have involved a serious or moderate violation.

C. The Regulatory Agencies

Corporate crime is controlled by a variety of federal regulatory agencies, each of which has been delegated its authority to regulate and police given areas of Congress. Such agencies have rule-making powers delegated by Congress; otherwise Congress would be faced with the enormous task of legislating thousands of additional laws. In addition, many such laws would be so controversial that any enactment would either be virtually impossible or very time-consuming. The fact that the statute creates the regulatory agency and theoretically gives it authority to do something does not mean that the instruments will actually be used effectively. Limited budget and manpower considerations, the legal and economic power of the corporations, the difficulty in securing corporate records, the relative lack of agency coordination and the consequences of too drastic of action on the economy and the public set limitations on what an agency can do in enforcement.

State agencies take only limited enforcement action against large corporations, as compared to smaller ones. The reasons for this are: (1) The responsibility for the large corporations, whose operations are generally interstate in nature, is largely left to federal agencies; (2) The intercorporate structure of the parent corporation, its divisions and subsidiaries, some wholly and some partially owned, makes state prosecution difficult; (3) Large corporations are more careful to comply with the law, and their violations are not as flagrant, in general, as those of the smaller corporations; (4) Large corporations have more and better informed attorneys than the small ones; large staffs of attorneys are available to defend the corporation both from within its own offices and through local legal counsel; and large sums of money are available for legal defense; (5) Large corporations are sensitive to public opinion and their public rela-tions image; (6) Most states have inadequate staffs of legal and technical experts to develop and handle prosecutions, as is more likely in the case of federal agencies; (7) Large corporations have funds available to settle cases readily and easily; this is not necessarily the case with the small corporations; (8) Large corporations frequently threaten a state to close down their operations or to move outside the state if the remedial actions are thought to be too costly; and (9) Federal preemption, which means that federal laws take precedence over similar state laws.

D. The Research Study of Corporate Violations

This study has investigated the extent and nature of corporate illegal activities, the data being examined in terms of the corporate structure and the economic setting in which the violations occur.¹ It has concentrated on an empirical investigation of the 582 largest publicly owned corporations in the United States in these areas: 477 manufacturing, 18 wholesale, 66 retail, and 21 service. The major focus has been on manufacturing enterprises, corporations in banking,

¹ The study has been supported by a grant of \$247,839 from LEAA for a period of 22 months. Previously, two pilot research grants were given by the University of Wisconsin Research Committee.

insurance, transportation, communication, and utilities being excluded. The annual sales (1975) for the corporations studied ranged from \$300 million to more than \$45 billion, with an average sales volume of \$1.7 billion for the parent firms. Data cover all enforcement actions obtainable, actions initiated or imposed by 24 federal agencies during 1975 and 1976. This reveals for the first time the wide range of the types of corporate violations, as well as actions initiated and imposed by government agencies. Predictions of violations were attempted through analyses of data in terms of corporate structure and finance that were then used to compare with firm and industry-level data. Actions against parent corporations were compared with 101 large subsidiaries, whose 1976 sales ranged from \$300 million to \$7.8 billion.

1. <u>Sources of data</u>. This study has used four main sources of data, although even they have not provided complete information on all corporate violations and enforcement actions. Each source has certain limitations. The findings probably represent at least a onethird undercount of actual government actions against corporations.

- (1) Data obtained directly from federal agencies on enforcement actions taken against the corporations in the sample.
- (2) Law Service Reports (principally those of Commerce Clearinghouse and the Bureau of National Affairs) which give decisions involving corporation cases in such areas as antitrust, consumer product safety, and environmental pollution.
- (3) Annual corporation financial reports (Forms 10-K) prepared for the SEC, which include a section on legal proceedings initiated against the firms.
- (4) A computer print-out of abstracts of enforcement proceedings involving corporations that have been reported in <u>The New</u> <u>York Times</u>, <u>The Wall Street Journal</u>, and the leading trade journals.

2. <u>Research problems</u>. Research in the area of corporate crime presents many difficulties not generally encountered in research on either ordinary or white collar crime that involves occupations such as various small businesses, doctors, lawyers, etc. It involves issues such as corporate organizational structure and complexity, problems of data collection and analysis, the wide diversity of sanctions, and the problems of ranking the seriousness of the violations.

Corporate crime occurs within an extremely complex organizational structure. This complexity provides methodological challenges to the quantitative researcher interested in the structural and economic correlates of corporate crime. Product diversification provides a good example of such problems. Many corporations are huge conglomerates with annual sales often totaling billions of dollars and which are derived from a variety of product lines. Although these corporations may have a "main line" of business, they derive significant portions of their income from activities remote from their central product.

Corporate subsidiaries pose special problems. Large corporations often have many subsidiaries in several product lines. In attempting to compile the violation record of corporations, ideally one would include all violations of all the subsidiaries. This is not practical in a study the size of the one undertaken here, particularly since violations of subsidiaries are often not reported with the name of the parent corporation. Consequently, in this study, it was decided to focus on those wholly owned subsidiaries with annual sales of at least \$300 million. Furthermore, data are not readily available for corporate crime studies.

Research that involves the enforcement activities of numerous agencies necessitates broad knowledge of the nature of, and the differences between, an extremely wide range of possible enforcement actions. In analyzing the data about violations complicated problems are encountered in making comparisons and ranking relative seriousness. No precedents have been established, which necessitated establishing guidelines for the rankings. The coding of corporate violations and enforcement actions are immeasurably more complex than those for ordinary criminal offenses. Moreover, no precedents have been established for coding procedures, and it was necessary in this research to work out more than 450 different codes for corporate violations and sanctions.

Due to the complexity of the violations, enforcement actions, and the great amount of economic data involved, extremely complex computer programming is involved in the data analyses, and these problems are further complicated when attempts are made to predict corporate violations with economic data.

Before one considers any findings from a study of corporate violations it is essential that one recognize the significance of the small frequencies of corporate cases and why they must be evaluated differently from statistics on ordinary crimes such as assault, larceny, or burglary. A single case of corporate law violation may involve millions and even billions of dollars of losses. The injuries caused by product defects or impure or dangerous drugs can involve thousands of persons in a single case. For example, in one case, the electrical price-fixing conspiracy of the 1960s, losses amounted to over \$2 billion, a sum far greater than the total losses from the 3 million burglaries in any given year. At the same time, the average loss from a larceny-theft is \$165 and from a burglary \$422, and the persons who commit these offenses may receive sentences of as much as five to ten years, or even longer. For the crimes committed by the large corporations the sole punishment often consists of warnings, consent orders, or comparatively small fines.

E. Enforcement Actions Initiated

The world of the giant corporations does not necessarily require illegal behavior in order to compete successfully. The fact that 40 percent of the corporations in this study did not have a legal action instituted a ainst them during a two-year period by 24 federal agencies attests to this conclusion. On the other hand, more than 60 percent had at least one enforcement action initiated against them in the period. An average of 4.8 actions were taken against the 300 parent manufacturing corporations that violated the law at least once. Moreover, a single instance of illegal corporate behavior, unlike "garden variety" crime, often involves millions of dollars and can affect the lives of thousands of citizens. This study found that almost one-half of the parent manufacturing corporations had one or more serious or moderate violation; and these firms had an average of 3.1 such violations.

The study found that more than 40 percent of the manufacturing corporations engaged in repeated violations. About one-fourth had two or more serious or moderate violations. Further, 83 firms (17.4 percent) had 5 or more violations; 32 corporations (6.7 percent) had 5 or more serious or moderate violations. One parent corporation had 62 actions initiated against it.

Over three-fourths of all actions were in the manufacturing, environmental and labor areas of violation. About one-fourth of the corporations violated these regulations at least once. Illegal corporate behavior was found least often in the financial and trade areas, but even here 5 to 10 percent of the corporations did violate.

Large corporations had a greater proportion of the violations than their share in the sample would indicate. Over 70 percent of the actions were against them but they made up less than one-half of all corporations; and they had more than two-thirds of all serious or moderate violations. Each large parent manufacturing corporation averaged 5.1 violations and 3.0 serious or moderate violations. They most often violate environmental and manufacturing related regulations.

The motor vehicle, drug and oil refining industries accounted for almost one-half of all violations, and 4 out of every 10 serious or moderate violations. About 90 percent of the firms in these industries violated the law at least once, and 80 percent had one or more serious or moderate violation.

Little difference was found between parent and subsidiary corporations in the distribution of their initiated actions. Violation type and seriousness of violation were slightly related to primary industry type and size of corporation; violation type was moderately associated with seriousness. The nature of the associational measures used does not allow confident statements to be made as to prediction of violations.

F. Enforcement Actions Completed

Over 60 percent of the corporations in this study had at least one enforcement action completed against them in 1975 and 1976. The average for those with one or more was 4.2 actions. There were twice as many warnings used as compared to any other sanction type, with an average of 3.6 warnings for those corporations with at least one. Monetary penalties and orders were used many times more often than injunctions and, generally, corporations were not subjected to the full force of the legally possible sanctions when they violated the law. Corporate actions that directly harm the economy were more likely to receive the greater penalties, while those affecting consumer product quality were responded to with the least severe sanctions. Although over 85 percent of all sanctions were administrative in nature, those harming the economy were most likely to receive criminal penalties. Large corporations received more sanctions than their proportion in the sample would indicate. They had about 70 percent of all sanctions, and tended to be assessed a monetary penalty. Small and medium firms tended to more often receive warnings and orders.

The oil refining, motor vehicle and drug industries accounted for approximately 4 out of every 10 sanctions for all cases and for serious and moderate cases. They had 3 times more actions than their size in the sample indicates, and they had 2.7 times more actions for serious and moderate cases.

Each type of violation has a typical sanction type associated with it, with level of enforcement strongly related to seriousness of violation and violation type. The court or agency nature of the enforcing institution was slightly related to sanction type, and moderately related to whether an order had a retroactive or future effect. Generally, orders by administrative agencies tend to be future in effect and court orders show no preference.

The average time to complete a case was 6.7 months. Civil cases took the longest (two and one-half years) and administrative cases took about 4 months. Serious cases took approximately 1 year and minor cases about 1 month.

Monetary penalties, although at times extremely large, tend to be in the \$1000 range. Less than 1 percent were over \$1 million, while over 80 percent were for \$5000 or less. When those for \$5000 or less were removed from consideration, there were still only about one-fifth that were over \$100,000. Because of the fact that large corporations are more often assessed a monetary penalty for their minor violations, there is a general negative relationship between corporate size and amount of monetary penalty.

Corporations were most likely to consent to a future effect court order and to a retroactive administrative order. Consent agreements were more likely than unilateral orders to have a retroactive effect. Of the consent agreements, administrative agencies tended to use future effect sanctions, and courts generally did not show a preference.

In terms of repeated sanctions within a two-year period, more than one-third of the parent corporations and more than two-fifths of the parent <u>manufacturing</u> corporations had two or more enforcement actions completed against them. About one-fourth had two or more for serious or moderate violations. Moreover, one out of every six corporations had 5 or more sanctions imposed, and one out of every 13 had 5 or more sanctions in serious or moderate cases.

G. Corporate Executives

In many ways the ethical and legal problems of a corporation result from the modern corporate structure that separates ownership from management. The typical corporation is a multi-unit enterprise administered by a group of salaried and top managers with the board of directors exercising little direct power other than to dismiss management; in general, management recommendations are rubber stamped.

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Corporate managers have considerable autonomy, therefore, over decisions regarding production, investment, pricing and marketing as long as profits result from their decisions. For these duties executives are rewarded with salary increases, bonuses, promotions, and perks; they are penalized by demotion or dismissal. Badly performing firms are more likely to dismiss their corporate executives.

Legal difficulties are encountered in the criminal prosecution of executives. First of all, it is not easy to specify legal responsibility due to the division of tasks within a corporation and criminal liability cannot be determined without solid proof of actual knowledge of the violation. Second, corporate violations are usually far more complex than conventional crimes. Antitrust violations, for example, generally necessitate high-order economic statistical data, as well as proof of a written or unwritten conspiracy among individuals. Third, the effects of the violation are extremely diffuse in nature, such as antitrust conspiracies, pollution and substandard foods or drugs.

The government's response to corporate violations cannot be compared to its response to ordinary crime. Generally penalties imposed on top corporate management are quite lenient, particularly if one looks at them in relation to the gravity of the offenses committed, as compared to the penalties imposed on ordinary offenders. Few members of corporate management ever go to prison even if convicted; generally they are placed on probation. If they do go to prison, it is almost always for a very short period of time. In this study, for example, of the 56 federally convicted executives of all 683 corporations, 62.5 percent received probation, 21.4 percent had their sentences suspended and 28.6 percent were incarcerated. Almost all (96.4 percent) had a criminal fine imposed. Those convicted of price conspiracies and income tax violations were most frequently given more severe sentences. The average prison sentence for all those convicted, whether or not they went to prison and regardless of the offense averaged 2.8 days. There were 10 officers who had their prison sentences suspended.

A total of 16 officers of 582 corporations were sentenced to a total of 597 days imprisonment (not suspended sentences); 360 days (60.6 percent) were eccounted for by two officers who received six months each in one case. Of the remaining 234 days, one officer received a 60 day sentence, another was sentenced to 45 days, and another received 30 days. The average for all imprisoned executives was 37.1 days; excluding the two six-month sentences the remaining 14 averaged 16.7 days; and excluding the 60, 45 and 30 day sentences the remaining eleven averaged 9.0 days. The 14 executives who received 60 days or less were all involved in the folding carton price-fixing conspiracy. The other case involved tax fraud. The sentences were often suspended after some parts of them were served.

Problems of modest sentence following criminal conviction of corporate executives may lie with the statutes and the judges, but there are other difficulties in securing a prison sentence. Businessmen may have sought legal advice as to how to circumvent the law even before they committed the offense, and this advice may be cited as evidence of good faith in avoiding any violation of law. Businessmen defendants in criminal cases also hire lawyers known for their skills in defending their clients, presenting arguments about the health problem of the client, his previous clear record, and the unlikely event of his becoming a recidivist, all of which should warrant a light sentence. These legal experts are able to cite many precedents where a businessman charged with similar behavior had not been punished for it. Skilled corporate counsel seek, furthermore, to restrict the evidence presented in court in an attempt to conceal other offenses; plea bargaining by a corporation in a violation may in fact, be used to avoid naming individual members of corporate management so that they will not even be tried. Due to the problems entailed in the imposition of a prison sentence on prestigious corporate executives, some judges have resorted to imposing sentences of the performance by them of socially useful activities, a privilege rarely extended to ordinary offenders.

No pattern seems to have evolved from what happens to corporate executives after they have been charged with serious law violations or have been convicted of them. In general, however, most of them are allowed to retain lucrative retirement benefits, while others may have their salaries reduced temporarily. Some are kept in the firm for some time, or at least until the case is finally resolved, largely for public relations purposes. An ordinary criminal offender is almost never retained in his position after he has been found guilty or even charged with an offense. One year after twenty-one corporate executives were fined or sent to prison for making illegal campaign contributions in 1973-1974, for example, twelve still remained in their pre-conviction corporate positions, five had resigned or retired, two were serving as consultants, and two had been discharged.

H. Predicting Corporate Violations

The various analyses of financial and economic factors produced mixed findings in terms of the original hypotheses. While the financial results have produced some contradictions, financial strain leading to increased violations receives general -- if not complete -- support, especially for the measures of five-year trends in performance. The measures of firm and industry structure variously act as predicted for some violation types, contradict the hypotheses for others, and prove irrelevant to violations in many cases. Some characteristics of industries -- apart from individual firm characteristics -- may be related to normative patterns of behavior which are significant in the study and analysis of corporate illegalities. More intricate analyses of these data might help to explain the interrelationships between the various independent variables, and between these and offense measures.

The results indicate that, except for manufacturing violations, the measures of firm and industry characteristics were not strong predictors of corporate violations. This was not an unexpected result. Clearly something else has to be added. A more satisfactory hypothesis is that economic factors operate largely in a "corporate environment" that is conducive to unethical and illegal practices. Second, the violation measures, even when specified as to types, are still relatively broad types; in addition, the independent measures are defined at the firm and industry levels, rather than at the product line level where they may well have more predictive power.

I. Antitrust Violations

Antitrust policy and enforcement are currently experiencing a period of difficult challenges and new opportunities. Recent legislation has increased the penalties available to enforcement officials, and regulatory agencies are beginning to tackle the hard problems of increasing concentration in the economy. Historically, antitrust has failed to stem growing firm market power in many industries, with the result that prices are often relatively free from the discipline of competitive forces. Also, there have been no indications that such blatant criminal offenses as price-fixing are on the decline. The next decade will be critical for antitrust enforcement. First, the federal government's inclination and ability to successfully implement the more stringent enforcement penalties available will be determined, as will -- hopefully -- their deterrent effect. The results of this study indicate that as of the end of 1976, sanctions imposed against responsible corporate officials remained relatively minor. More recent Department of Justice data indicate a trend toward the issuing of harsher penalties. However, it is too early to predict what effects the more serious sanctions available will have on the attitudes of judges and juries toward their use, and toward criteria for proof. Second, the outcome of recent government concern with such structural conditions as shared monopoly is yet to be determined. New legislation may be needed to control growing concentration and problems such as parallel pricing and excessive profits. In any event, the burden on antitrust enforcement will in all probability only increase. The future structure and operation of the American economy will be heavily influenced by the direction and tenor of antitrust policy.

J. Corporate Illegal Payments

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Nothing has so tarnished the image of corporations within recent years as has the public revelation of the widespread violations of law in the form of corporate illegal payments to attain certain corporate objectives. For the most part, these exposures developed from the Watergate investigations of the 1970s. The federal governments' SEC disclosure drive on questionable domestic and foreign payments revealed that up until 1978 at least \$1 billion had been paid illegally by many of the Fortune 500 largest industrial corpora-These payments have included kickbacks, foreign payoffs and tions. illegal political contributions. Kickbacks and foreign payoffs have had a long history in a wide variety of fields; corporate contributions to political figures have been a long-established practice, but only recently have certain contributions become illegal. All of them are practiced for the purpose of influencing corporate objectives: to obtain advantages ever competitors, to avoid harrassment, and either to influence or support a political party in this country or abroad.

Examined together, these payments are forms of bribery, either for the purpose of selling a community of influencing decisions. Foreign payoffs, for example, represent another form of kickbacks; they are paid to government officials to influence certain decisions, usually by these same officials, to purchase a specific corporation's commodity rather than that of a competitor. This is similar to domestic kickbacks, but here the purchasing agents of the business concern, generally private, make decisions for the corporation. Political contributions to a specific party serve similar purposes.

The 1974 SEC investigation of foreign payoffs discovered that a large number of corporate financial records had been falsified in order to hide the source of corporate funds, along with the disbursement of "slush funds" not handled in the normal financial accountability system. These practices reflected on the honesty and reliability of corporate accounting and thus represented threats to the system of full disclosure of information which the securities laws were designed to insure in order to protect public investors. The primary interest of such disclosure is to guarantee that investors and stockholders receive accurate information on which to make informed investment decisions, to assess the effectiveness of management, and to make sure that certain corrective measures are taken by management to curb any improper practices. In the past five years much publicity has been given to the role of some accountants and auditors in the direct or indirect concealment of corporate crime particularly kickbacks, foreign payoffs and illegal political contributions.

K. Controlling Corporate Crime

This study has found that approximately two-thirds of large corporations violated the law, some of them many times. Serious and moderate violations were extensive. These violations are more likely to occur in some types of industries than in others. These conclusions are supported by data from other studies, Law Service Reports, government reports, congressional mearings, and by numerous news articles appearing in <u>The Wall Street Journal</u> and in various trade journals. The measures to deal with corporate crime, however, are quite distinct from measures used for ordinary or even white collar crime.

The control of corporate crime can follow three approaches. It can be examined in terms of changing corporate attitudes or structures, it can be viewed as requiring the strong intervention of the political state through forced changes in corporate structure and effective legal measures to deter or punish, or it can be seen as needing effective consumer and public pressures. The first approach can imply the development of stronger business ethics and corporate organization reforms. Government control of corporations, on the other hand, can mean federal corporate chartering, deconcentration and divestiture. larger and more effective enforcement staffs, more severe penalties, the wider use of publicity as a sanction, and, as a last resort, nationalization. Third, consumer pressures can be exerted through selective buying, consumer boycotts, and the establishment of large consumer cooperatives. Along with all these possible measures there is the obvious need for improved information on corporate crime.

1. <u>Development of stronger business ethics</u>. Many corporate practices formerly considered simply unethical have now become illegal and thus subject to punishment. They include such practices of tax evasion as false inventory values; unfair labor practices involving union rights, minimum wage regulations, specific working conditions, and overtime; violations of safety regulations related to occupation safety and health; the fixing of prices to stabilize them on the market and to eliminate competition; food and drug law violations; air and water pollution that violate government standards; violation of regulations established to conserve energy; submission of false information for the sale of securities; false advertising; and illegal rebates.

Many types of ethical violations exist today in business, all of them closely linked to corporate crime: misrepresentation in advertising; deceptive packaging; the lack of social responsibility in television programs and, particularly, commercials; the sale of harmful and unsafe products; the sale of virtually worthless products; restricting development and built-in obsolescence; polluting the environment; kickbacks and payoffs; unethical influences on government; unethical competitive practices; personal gain for management; unethical treatment of workers; and the victimization of local communities where plants are located for the benefit of the corporation. Businesses, and particularly large corporations, commonly complain that most government regulations are largely unnecessary. One could agree readily with this complaint if assurances could be given that the basic ingredient of strong ethical practices guided the conduct of corporate business.

In the long run reliance cannot be placed exclusively on the development of government regulations, with its concommitant legal force, to straighten out unerhical practices and the lack of social responsibility among large corporations. Both management itself and the schools of business administration must show more concern with the issue of ethical standards of business conduct. The inculcation of ethical principles forms the very basis of all crime prevention and control, whether ordinary, white collar or corporate. Persons in the corporate realm, whether management or boards of directors, must recognize that the very nature of laws that regulate antitrust, pollution, unfair labor practices, product safety, occupational health and safety, taxes, and other areas represent a compelling force for compliance. The development of stronger business ethics must come first from the individual corporation and second from corporate business codes and more effective trade associations and related organizations.

2. <u>Corporate organizational reform</u>. Some experts in the area of corporate violations are skeptical of how successful legal means can be in achieving corporate compliance; the nature of the available legal means makes deterrence largely ineffective against the corporations. These experts feel that remedial actions such as monetary payments or fines do not seriously hurt a large corporation and that imprisonment, the traditional method of controlling human behavior, is impossible except for some corporation officers. The entire regulatory process is too complex to be successful

If such a position is adopted, the major alternative appears to be some type of corporate organizational reform that would more effectively prevent violations. This includes, primarily, a more effective role for the board of directors and the appointment of public directors by government. If this is done the board of directors would be responsible not only for the corporate financial position and stockholder dividends but also for the public interest, which would include preventing illegal activities to increase profits.

3. <u>Corporate chartering</u>. A somewhat related but still different approach is the requirement that all large corporations be federally chartered and consequently subject to the control provisions of such a charter. Corporations are chartered under the laws of the various states, not under federal law. Over the years most large corporations have been incorporated in the small state of Delaware where the laws were very permissive and the state lacked strong enforcement resources as well as the will to use them. It is obvious that since the states cannot effectively accomplish this mandate against the large corporations, one alternative is for the federal government to take over the chartering. Specifically, federal chartering, it is maintained, would result in greater social responsibility, increased accountability, and wider disclosure. It would also make possible more effective regulation of corporations by various federal agencies, both in prevention and enforcement.

4. Deconcentration and divestiture. The extensive evidence that has been presented in this study should leave little doubt of the immensity and the corresponding power of the large corporations. Few of them operate exclusively in a single product line; rather, they have extended holdings and operations in diverse fields. In some areas so great is the concentration of a few corporations that they can virtually control prices, thus leading to frequent antitrust and other suits.

The size and the complex interrelationships of large corporations make it extremely onerous for government agencies to exercise any effective social control, or even to compete with them on an equal basis, as for example in investigations and litigation. Some government suits have involved millions of pages of testimony and documents, thousands of exhibits, and hundreds of witnesses. Conglomerates are able to maintain a high degree of corporate secrecy, since their consolidated financial statements give overall data, and the data for the subsidiaries are only occasionally given in spite of a recent court decision that requires that these data be furnished to the FTC. This thwarts the shareholders' abilities to assess the performance of individual firms and thus makes extremely arduous any enforcement efforts of the government agencies. Consequently, a partial solution would be to break up the power of the large corporations by forcing them to deconcentrate and to divest themselves of certain product lines or subsidiaries.

5. Larger and more effective enforcement staffs. The evidence shows that regulatory agencies, either at the federal or state level, do not have adequate resources to deal with either white collar or corporate crime. Federal regulatory agencies and the Department of Justice, as well as departments at the state level, should have greatly increased enforcement budgets with which to employ additional investigators and lawyers. Also greatly needed are adequate specialized technical personnel such as accountants, engineers, and laboratory technicians to deal with the investigation of corporate crime. It will not be easy to secure sufficient additional personne? for the enforcement of corporate regulations. Powerful opposition will come from business and conservative members of Congress.

. 6. More severe penalties. It has generally been conceded among knowledgable persons that penalties for corporate offenses are far too lenient, as shown in this study. Administrative actions such as warnings and consent agreements are used too often. Civil and criminal actions are infrequently utilized, and monetary penalties, frequently because of statutory limitations, are often ludicrous in terms of the corporations' assets, sales and profits. Although executive responsibility and consequent criminal prosecutions are increasing, the number prosecuted is still small. In most cases of conviction the offender is put on probation.

Penalties might be increased in a number of ways:

- (1) Consent decrees should be strengthened so that they call for substantial remedial actions.
- (2) Where fines are fixed by statute, they would be increased to a minimum of \$100,000 and a maximum of \$1 million, but even these large sums can be absorbed by big corporations. Preferable would be a fine assessed in terms of the nature of the violation and in proportion to the assets or annual sales of the corporation.
- (3) With few exceptions if the corporation has previously been involved in a similar offense, new cases of violation would involve administrative monetary payment or the filing of civil or criminal litigation.
- (4) More adequate would be fines that are levied by the day, as in the case of the Environmental Protection Agency criminal fine of \$25,000 each day a corporation is in violation and \$50,000 if there have been previous convictions.
- (5) More extensive prosecution of corporate officials should take place. If convicted, a mandatory four months sentence, or possibly in particularly flagrant cases a minimum sentence of eighteen months, should be levied. Probation could not be given except for extreme circumstances; such factors as no prior conviction or active participation in community organizations would not be considered extreme circumstances. The use of community service instead of imprisonment would be prohibited by law except in unusual circumstances. Indemnification of convicted corporate officers by their corporations would be prevented by federal legislation which would preempt state laws permitting it. Any management official who is convicted of criminally violating his corporate responsibilities would be deprived of assuming similar management positions within his corporation or exercising such duties in any other corporation for a period of three years.

Rather than penalizing corporations the federal government might well inaugurate a program for rewarding those corporations who had not been found in violation of the law. This might be accomplished through preference in government contracts, tax breaks. or by giving such corporations some recognition, such as a symbol of compliance which could be used in their advertising. Those executives of corporations with a record of non-violation might be invited to a Washington conference where they could discuss what measures they used to achieve compliance.

7. <u>Publicity as a sanction</u>. Media publicity can be either informal or formal. Informal publicity is that ordinarily carried in the media as news items. In formal publicity the corporation is required as a part of an enforcement action to give the media an advertisement or other statement of acknowledgement of a violation and the corrective measures being taken. Studies have indicated that a relatively small number of violations, as well as enforcement actions that involve corporations, are publicized in the general media.

Publicity can also constitute a formal action, a sanction in itself. This is an effective and practical means of deterrence which is offered through the use of formal publicity methods, such as mass media advertisements (e.g., corrective advertising) setting out the details of a corporation's illegal conduct, compulsory notification to the stockholders and to others by means of an annual report, and even a temporary ban on corporate advertising. The proposed new Federal Criminal Code (Section 2005) states that a court may order a convicted corporation to "give notice and explanation of such corrections, in such form as the court may approve to the class of persons or to the section of the public affected or financially interested in the subject matter of the offense, by mail, by advertising in designated areas or through designated media or by other appropriate means."

8. <u>Public ownership</u>. Public ownership, or nationalization, is one alternative means of socially controlling certain large corporations, possibly the means of last resort. As a viable alternative in the context of corporate crime control, public ownership should be considered only for those large industries that have become oligopolies with little or no competition and socially irresponsible both to national interests and those of the consumer.

There is an implicit assumption in the 9. Consumer pressures. notion of social responsibility that the "good behavior" of corporations will be recognized by the consumer and rewarded in the market-place; conversely it is implicit that irresponsibility and illegal behavior will result in decreased patronage, even consumer boycott. Were this the case consumer pressure, through the withdrawal of patronage, could be an effective tool in the control of illegal corporate behavior. Unfortunately, this relatively simple measure of social control appears not to be effective. In the first place, it assumes that persons who will withdraw patronage know that a corporation has been engaging in either irresponsible or illegal activities. Second, the relation of social irresponsiblity and illegality to a corporation is complicated by the existence of multiple component firms. Third, when cognizant of the reputation of the corporation and constantly pressured by favorable corporation advertising to purchase a product, the consumer is not likely to relate the personal failure to purchase a product to the possible control of the corporation. The cooperative movement, however,

offers an alternative method of controlling corporate crime; at the same time they make it possible to sell cheaper products of higher quality to the consumer. Cooperatives also offer a more active control by the consumer over management decisions than is provided the shareholders in large corporations.

L. Recommendations for Research

Substantial funds should be appropriated to support not only research on white collar crime in general but specifically on corporate crime. Both of these areas of criminality have had only limited funds for research, nothing to compare with the research support that has been given to the study of ordinary crimes. Each year there are hundreds of research studies being carried out on conventional crimes, while only a few are being conducted in the area of white collar and corporate crime. Research on corporate crime, although extremely difficult and complex, is essential. Studies in this particular area involved such complex organizational structures that the costs of research grants must be substantially higher than studies in the area of ordinary crime. In view of the very limited research that has been done in the field of corporate crime innumerable topics remain unexplored. Among the research topics needing research are:

- (1) A representative sample of large corporations should be followed in terms of actions initiated against them and enforcement actions completed. With the use of procedures similar to those utilized in this study, a sample of corporations could be followed longitudinally to determine the effectiveness of the sanctions, among other things.
- (2) The most extensive studies made up to this point have been related to antitrust violations. We need studies of violations of laws that deal with other important areas, such as environmental pollution, consumer product safety, occupational safety and health, food and drugs, and equal employment opportunities.
- (3) Studies of the enforcement process should be made, beginning with the complaints and investigations through the choice of the particular corporate sanctions.
- (4) The effectiveness of certain sanctions should be analyzed, and this should be accompanied by the extensiveness of corporate recidivism.
- (5) Along with studies of those corporations who violate the law, studies are also needed of those that do not or who seldom violate government regulations. In our study, for example, 232 large corporations had no enforcement actions instituted against them during the two-year period studied.
- (6) The relation of corporate decision making to violations is a complex area that should be studied. This would involve confidential interviews with corporate executives not with reference to their own corporations but about the general situation.
- (7) Some corporations have many violations. The culture of the corporation and the internal pressures for violations should be studied, including socialization into unethical and illegal behavior.

(8) Studies should be made of violations by subsidiaries and the relation of these subsidiaries to the parent corporation.

A major problem in corporate crime research is the present largely inadequate agency statistical data on large corporate violations and enforcement actions. Each of the regulatory agencies and the U.S. Department of Justice publish summary statistics on their enforcement operations. These data are largely valueless, however, for the study of corporate crime, as they make no distinction in the data for actions against corporations. No centralized federal enforcement statistics are available on enforcement actions instituted or completed against United States corporations.

Many agencies in the federal government, whose headquarters are in Washington, cannot even know what actions are outstanding against a large corporation except through a most time-consuming and antiquated procedure. It is virtually impossible, moreover, for most of these agency headquarters to be able to determine the previous history of corporation violations of agency regulations, in other words, the degree of corporate recidivism. It is of equal importance for an agency to know the extent to which any given corporation has violated other agency regulations. The knowledge that the corporation had been in violation of several agency regulations, or, on the other hand, to learn that the corporation had no record of violations, might have a significant bearing on the selection of a particular enforcement action. In some cases, it might be possible for agencies to answer requests after considerable delay, but this could largely be only in the case of a contemporary action.

The most important studies in terms of present needs, are for longitudinal studies of corporate crime. At present, trends in this area cannot be studied, and trend analyses are essential to estimate changes in the extent andnature of corporate crime over time and to evaluate the effectiveness of control methods, including various types of sanctions. Within the past five years corporate penalties have been increased in many federal and state agencies, and without baseline statistics it is not possible to evaluate their deterrent effects.

It is inconceivable that centralized data are not available on the illegal behavior of each of the giant U.S. corporations, controlling as they do tremendous economic power of large segments of the economy as well as the well-being of millions of consumers. Greater knowledge about violations by large corporations as a group, and for individual corporations, is essential both for the prevention and the control of corporate crime. The following improvements in federal government statutes should be made:

- (1) The collection of corporate crime data should be provided by a special unit within the proposed Bureau of Justice Statistics, Department of Justice, that has been recommended to replace statistics now gathered by the FBI and the Department of Justice. This data collection would be limited to the 1000 largest corporations. Other white collar crimes statistics would be handled separately.
- (2) Individual enforcement reports should be submitted by federal regulatory agencies and the Department of Justice on special forms. They would include complaints, investiga-

tions, and all actions initiated, pending, completed, or recommended.

- (3) These data would be compiled and analyzed annually by corporate size and industry type, as well as by types of violations and enforcement actions. An annual report on Corporate Violations would be issued.
- (4) All complaints and actions taken by state and local governments should also be reported, tabulated together, then tabulated separately. This should not burden them, as state and local governments do not deal extensively with violations by large corporations.

CHAPTER I

CORPORATE ORGANIZATION

6

Legally speaking, there are some 2,000,000 corporations (any two persons can become legally "incorporated" in some business enterprise) in the United States, but in terms of this research and the general concern about "corporations," they are customarily regarded as the 500 to 1000 largest as listed in Fortune and Business Week magazines. Large corporations have contributed enormously to the industrial and commercial development of the United States, as has been true also of most other Western countries. These large corporations have provided employment to millions of persons, and they have increased the wealth of the nation in many other ways, including payments of stock dividends to millions. By their very size they are able to organize and centralize production and distribution and to develop a high degree of concentrated specialization in specific areas. Given the contemporary requirement for the use of machines and complicated technology, a large corporation alone can "deploy the requisite capital; it alone can mobilize the requisite skills" (Galbraith, 1971: 24). The capital resources of the large corporations enable them to develop, adopt and change technology on a massive scale. All this means that the high production and financial returns that have resulted from modern technology and industrial expansion have removed large numbers of the population from the pressures of physical want.

The current size of United States corporations staggers the imagination. In 1974 the total annual sales of <u>Fortune</u>'s 500 largest corporations was \$834 billion. The annual revenue of General Motors, the world's largest industrial corporation, is larger than that of any government in the world other than the United States and the Soviet One can better comprehend the immensity of the largest U.S. Union. corporations, however, if one compares them with corporations generally. About half of the nation's business is accounted for by 2,000 of the giant corporations (Mintz and Cohen, 1976: 120). The largest 500 corporations account for two-thirds of all industrial sales and more than three-fourths of all manufacturing assets. Large corporations, moreover, are increasing faster than their proportionate share of the economy: whereas the 200 largest corporations controlled half of all manufacturing assets in 1950, by 1975 they controlled two-thirds. In 1978 International Business Machines (IBM) and American Telephone and Telegraph (AT&T) combined were paying dividends amounting to more than \$1 for every human being on earth, with IBM's dividend the equivalent of almost \$10 a year for every United States citizen.

Today's multinational corporations represent the largest accumulation of wealth ever seen in the world: the annual product of American companies abroad totals some \$200 billion (Barnet and Müller, 1974: 15). "Since only the U.S. and the USSR had greater gross national products than Japan in that year, American business overseas is equivalent to the third most powerful economic unit in the world" (<u>Business Week</u>, as quoted in Woodmansee, 1975: 12).

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The implications of a business world dominated by corporations large enough to be compared with nations are far broader than the economic sphere. Recently attention has been turned to the infiltration by multinational corporations into all aspects of human life;

...the managers of firms like GM, IBM, Pepsico, GE, Pfizer, Shell, Volkswagen, Exxon, and a few hundred others are making daily business decisions which have more impact than those of most sovereign governments on where people live; what work, if any, they will do; what they will eat, drink and wear; what sorts of knowledge schools and universities will encourage; and what kind of society their children will inherit (Barnet and Müller, 1974: 15).

Examined in terms of total assets, the American Telephone and Telegraph Company is by far the world's largest corporation, with assets of more than \$60 billion. Customarily corporations are ranked, however, by size of sales, and of the world's fifteen largest in 1977, all but four were American. The two largest in the world, General Motors and Exxon, had annual sales totaling over \$50 million, a sum that far exceeds the total income of any state in the United States (see Table 1, Text). Their net incomes were \$3.3 billion and \$2.4 billion respectively. In general, corporations retain the same positions from year to year, but there are some changes. Between 1974 and 1977 Mobil Oil, for example, moved from eighth to fifth and Standard Oil of California moved from fourteenth to ninth, thus making oil corporations at present seven out of the ten largest. General Electric's position declined from sixth in 1974 to twelfth in 1977.

The amazing growth and global operations of the giant corporations has come about from five major developments. (1) A primary cause has been corporation mergers. A 1969 review by Fortune concluded that mergers had continued to account for the largest increase in the sales of individual companies. (2) The self-perpetuation phenomenon of the large corporations has resulted in tremendous growth and increasingly wide geographic mobility. Success has bred success, as is indicated by the fact that the prime interest rate, the lowest rate at which large bank loans are made, are given primarily to the largest corporations. Even after taxes they have had large sums of money available for capital investment. (3) Rapid productivity and efficiency have been aided by increased productive capacity and reduced unit costs, both of which have been fundamentally brought about through scientific technology and advanced and improved management techniques. (4) The growth of large corporations is also a result of the overall growth of the economy. (5) Extensive foreign expansion in the form of exports and foreign subsidiaries has greatly increased the size of corporations.

A. Conglomerates and Mergers

Most giant corporations today are conglomerates; although all of them have some leading lines of business, each has acquired a variety of other product lines through mergers. Seventy years ago the large corporations generally did confine themselves to a single product line, primarily in mass production in heavy industry; today these corporations may have innumerable product lines, some of which are in no way related to their original products. These massive conglomerate corpo-
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The Fifteen Largest Corporations in the World, 1977¹

Rank	Cerporation	Sales (\$000)	Net Income (\$000)	
1	General Motors Corporation	\$54,961,300	\$ 3,337,500	
2	Exxon Corporation	54,126,219	2,422,964	
3	Royal Dutch/Shell Group	39,680,211	2,338,691	
4	Ford Motor Company	37,841,500	1,672,800	
5	Mobil Corporation	32,126,828	1,004,670	
6	Texaco Incorporated	27,920,499	930,789	
7	National Iranian Oil	22,315,269	19,336,936	
8	British Petroleum	20,940,927	530,797	
9	Standard Oil of California	20,917,331	1,016,360	
10	IBM	18,133,184	2,719,414	
11	Gulf Oil Corporation	17,840,000	◦ 752,000	
12	General Electric Company	17,518,600	1,088,200	
13	Chrysler Corporation	16,708,300	163,200	
14	Unilever	15,965,116	456,789	
15	ITT	13,145,664	550,667	

¹ Source: "The Fifty Largest Industrial Companies in the World." <u>Fortune</u>, August 14, 1978.

rations produce and operate in a variety of lines, and as a result they have dimensions of power, political as well as economic, that extend well beyond that of the large traditional corporation. One characteristic of the conglomerate, according to Mueller, is "its special capacity to practice cross subsidization, the practice of using profits from one line of business to support another line" (Mueller, 1977: 450).

Most mergers in recent years have been of the conglomerate type rather than horizontal or vertical types (Mueller, 1977: 445). Mergers of the horizontal type are among companies that produce identical or what might be termed interchangeable products, such as two manufacturers of textile goods. Vertical mergers are those between companies with buyer-seller relationships such as a tire manufacturer and a tire retailer. During 1948-1955 most mergers were horizontal or vertical; as the laws against them were more and more strictly enforced there was a tendency to shift to conglomerates, which also permitted greater product differentiation. Among 25 of the 100 largest corporations whose growth was accelerated sharply by primarily conglomerate mergers, all but two grew by more than 500 percent and 11 grew by more than 1,000 percent during this period. Whereas the sales of all corporations engaged in manufacturing from 1960 to 1974 grew by 135 percent, these large corporations grew by 772 percent (Mueller, 1977: 445).

Mergers have played a major role, therefore, in the various factors that have contributed to the growing share of assets held by the largest corporations. The share of manufacturing assets of these corporations grew from 8 percent in 1939 to 53 percent in 1973 (Mueller, 1977: 444). Between 1948 and 1975 the 200 largest manufacturing and mining corporations acquired 2,173 companies with assets exceeding \$10 million (Mueller, 1978: 77).

Those corporations acquired with over \$100 million assets represented 20 percent of all companies and 7 percent of all assets of companies in the category in 1976. Such large corporation acquisitions by other already large corporations is illustrated by the fact that from 1956 to 1977, 163 corporations of <u>Fortune</u>'s largest industrial corporations were on the list prior to their acquisition (Mueller, 1978: 35).

The movement toward mergers and the subsequent mammoth size of the conglomerates has resulted from several broad trends: a hedge against business fluctuation, the acquisition of immediate capital and assets, the acquisition of new techniques, the reduction of costs of starting a new product line, enhancement of the corporation's image of growth and extended enterprise, and the presumed increases in corporate profits.

B. Market Concentration

About two-thirds of the manufacturing industries are highly concentrated, only a few firms controlling most of the major manufacturing sectors. No single United States concern dominates an entire major market, but some are close to doing so: Western Electric produces virtually all telephone equipment, and General Motors produces practically all diesel locomotives. This market concentration in the control of only a few top corporations, commonly referred to as the "big three" or the "big four," is commonly known as oligopoly, derived from the Greek word meaning "few sellers." Through the oligopolistic process of weakening competition and reducing the number of sellers, these giants have immeasurable power over both output and over prices. When the economic power in broad sectors of the economy becomes centralized there develops what is referred to as "aggregate concentration" (see Mueller, 1978: 74). It is this super-concentration that, many fear, threatens free competition and thus adversely affects our social and political institutions.

Over the past fifty years, aggregate concentration has risen substantially. Four firms control 75 to 100 percent of a large number of industries. At present some 90 percent of the cereal food industry, for example, is in the hands of four corporations, and two of them, Kellogg and General Foods, dominate the market.

The domination of a market by a few giants enables them to set "administered" prices, that is by a corporate decision of what the price of a product or an increase in the price shall be, or what the market will bear, rather than on the natural market forces of free competition. A high degree of market concentration means that similar pricing decisions can be reached without any necessary conspiracy in violation of the antitrust laws; thus, for example, a loaf of bread containing three cents worth of wheat can be administratively priced at 65¢ a loaf, or the price of a box of dry cereal with approximately three or four cents worth of wheat can be set at \$1.09, as will be the prices of most so-called competitors. Television advertising appears to have played a major role in the increasing concentration of the consumer goods industries (Mueller and Rogers, 1978: 31).

C. The Corporation

Corporate crime is complex organizational crime in that it occurs within the context of the complex and varied sets of structured relationships between boards of directors, corporate executives, managers and other employees on the one hand and between the parent corporation, the divisions and the subsidiaries on the other. The organizational structure involved in any large corporation includes relationships between large numbers of persons -- workers, supervisors, group executives, the corporate staff and the boards of directors with its chairman and vice-chairman.

The corporation in actuality is a legal entity that allows a business to use the capital provided by individuals called shareholders or stockholders. Shareholders have little control over corporations (Eisenberg, 1969: 23-24). In this sense stockholders can be treated not in reality as owners, "but as legitimate claimants to some fixed share of the profits of a corporation -- and to nothing more" (Bell, 1977: 227). Typically large corporations are management controlled. Their mere size creates a managerial problem for which a bureaucratic organization is the only answer. Both major and minor decision makers are hired employees whose principal remuneration is their salaries and for whom the expectation for economic improvement is by means of advancement in the corporate hierarchy. As a result of acquisitions, mergers, and the establishment of branch operations, most large corporations additionally have numerous domestic and foreign subsidiaries. All of these subsidiaries play a role in the corporate structure of the parent corporation.

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D. Government Control of the Corporation

The separation of ownership from control has fired a good deal of debate about how policy decisions are made and carried out, whose ends are served, and who is responsible for corporate behavior. As managers became increasingly independent from both owners and shareholders during the 20th century, the legal system was, and is, faced with developing laws that realistically reflect the intricacies of corporate structure and process as well as effectively control behavior. Confusion still exists in this area, as for example, the language of the courts still has "owners" as being in control and the managers simply as "hirelings" who do the owners' bidding. "This leads occasionally to some judicial nonsense, equalled by finding the corporation. as a 'legal person,' guilty of criminal offenses" (Moore, 1962: 7).

Although the more technical aspects involved in developing corporate law as a distinct area continued to be worked out through the legal system, the federal government was faced with more general issues of corporate control and regulation, and government regulation did succeed in controlling a limited amount of the most blatant misuses of corporate power through such laws as the Sherman Act (1890), the Clayton Act (1914) and the FTC Act (1914). The Great Depression, however, brought with it a change in attitude toward corporations as concern arose regarding the responsibility of corporate power. The rights and powers of shareholders became a major impetus for "increasing reliance on regulations external to the corporation" (Hurst, 1970: 900). This external regulation became more highly specialized through the establishment of both state and federal regulatory agenties. The mid-20th century saw an increase in the rise of the administrative process that began to play a major role in the development of public policy toward corporations. Administrative action added flexibility and specialized knowledge to the executive, judicial and legislative branches' contributions to corporate control (Hurst, 1970: 112-130).

2. The Corporation as a Legal Entity

The contemporary corporation is a "legal personality" that comes into existence upon being granted a charter by a state. The hundreds of thousands of small, private, owner-managed corporations and the large corporations with dispersed ownership may be equal "persons" in the eye of the law, but they are not so in any other respect. Most states grant perpetual charters, and allow the incorporators to designate the purpose of the corporation and the extent of their authority over the operation of the corporation. An annually elected board of directors is charged with the direction and management of the corporation for legal purposes. The board generally controls policy, but the officers control the day-to-day operations. The powers of the board and of the shareholders are defined in the charter, but the authority of the corporation officers is determined by the board and may thus change during the life of the corporation.

The laws affecting the proscribed behavior of corporations has developed out of a body of laws addressed to "persons," laws based on the acts of individuals, some of them crimes, others torts. The bridge between acts of individuals and an entity such as a corporation has been developed in part because many of the acts of corporations are acts that could be done by individuals, such as producing injurious goods, polluting the environment, bribing, or engaging in tax frauds. But it is hard to determine who might be injuring us -- that is, even if we know that we have been injured by a particular product, we are faced with the difficult task of proving the extent of the injuries, and it is even more difficult to prove to what extent they were due to any specific source. Furthermore, the nature of the evidence that has to be evaluated by the court is far more complex and technical.

F. The Structure of Large-Scale Organizations and Its Relation to Corporate Crime

Their mammoth size, combined with the growth trends of diversification and merger, require that corporations decentralize their decision making structures and operating procedures in order to produce efficiently. Decentralization is, almost by definition, accompanied by the establishment of elaborate hierarchies, based on authority position and functional duties This allows the abdication of personal responsibility for almost every type of decision, from the most inconsequential to those that may have a great impact on the lives of thousands. Under these conditions almost any type of corporate criminality, from production of faulty or dangerous products to bribery, bid-rigging and even theft is possible. Executives at the higher levels can absolve themselves of responsibility by rationalizing that the operationalization of their broadly stated goals has been carried out without their knowledge. A sharp split can develop between what the upper levels believe is going on below and the actual procedures being carried out below. There may even be genuine ignorance about the production level. It is also not simply that the lower levels, for whatever reasons, do not wish to inform the higher ups; often the upper levels do not want to be told. Decentralization is also often accompanied by other potentially harmful processes. No single individual at the highest levels may make a decision to market a faulty product or take short cuts on product testing; instead, such decisions are made in small steps at each level.

The desire to increase profits provides one explanation for a wide range of corporate deviance, from refusal to install pollution control equipment (Barnet and Müller, 1974: 345) to well-planned decisions to produce a shoddy product that will wear out and then need to be replaced (Cook, 1966: 95). Several writers have examined how certain industries, as for example the drug and chemical industries, are characterized by severe competition and strong profit drives that are linked to demands for continuous innovation of new products (Conklin, 1977; Barnet and Müller, 1974; Kefauver, 1965). Under these conditions, the pressures to falsify test data, market new products before their full effects are known, or engage in unethical sales techniques can have disastrous results on human beings as well as on the environment.

In some industries, even though profits are high, the survival of the corporation depends more upon its ability to expand by creating new markets with demands for new products than the corporation introduces. Swartz (1978: 126-127) notes this drive in the chemical and plastic industries, as does Galbraith (1967) in the automobile industry. Given this orientation, there is growing impetus for certain types of corporate crime such as bribery, illegal payments to foreign and domestic government officials, and illegal campaign contributions to insure the stability of operations.

Cressey (1976) has shown that the rates of corporate crime are similar for organizations in certain industry types. One study of

price-fixing conspiracies reported that these offenses are more likely to occur when the companies deal with a homogeneous product line (Hay and Kelley, 1974). This can be illustrated with the extensive antitrust violations over the years in the paper and corrugated box industry, culminating in large-scale convictions in 1978.

G. The Socio-Cultural Environment of Corporations and Law Violators

It can be argued that the socio-cultural environment within which the modern American corporation operates may actually encourage criminal or deviant behavior. Corporate norms of doing business may conflict with one or several societal norms. A corporation that emphasizes profits above business ethics and ignores corporate social responsibility to the community, the consumer, or to society is likely to have difficulties in complying with legal norms.

Lawbreaking can become a normative pattern within certain corporations, and violation norms may be shared between corporations and their executives. The atmosphere thus becomes one wherein participants, as in the Equity Funding case and in several other well-known corporate cases, learn the necessary values, motives, rationalizations, and techniques favorable to particular kinds of crimes.

As one type of large-scale organization, the corporation benefits from its ability to create its own world and to shape individuals within it to fit needed roles. By emphasizing its own goals, the corporation attempts to provide its members with a set of guidelines within which they act for the benefit of the corporation. Studies have been made in detail of how corporations lead new managers through an initiation period designed to weaken their ties with external groups, including their own families, and encourage a feeling of dependence and attachment to the corporation (Margolis, 1978; Madden, 1977). A variety of justifications are available for those who are confronted with doubts or guilt feelings, and these justifications allow them to neutralize the negative connotations of their behavior.

There is considerable evidence that business executives believe that unethical practices are common. A <u>Harvard Business Review</u> survey found that four out of five executives maintained that at least some generally accepted practices in their industries were unethical, and when asked if they thought that other executives would violate a code of ethics if they knew they would not be caught, four out of seven replied affirmatively (Baumhart, 1961). Confidential interviews with top corporate management in 1975, usually chief executive officers, of 57 of the largest U.S. corporations, indicated that they felt unethical behavior was widespread in business and for the most part had to be accepted (Silk and Vogel, 1976). Executives felt that business results and the survival of the corporation inevitably came first.

H. Influence of Corporations on Government,

Corporations have tremendous power and influence on government. This is not true in the case of ordinary offenders. On occasion, heads of organized crime syndicates operating at the local or state level may indirectly, or even directly, have an influence on government, but offenders like burglare and robbers do not influence, on their behalf, the formulation and the enforcement of laws that affect them. The power of the corporation in the government is now conceded by innumerable scholars; in fact, some feel that on many matters corporations exercise undue power (Galbraith, 1974: 13). One study of business interlocks of presidential cabinet secretaries between 1897 and 1973 concluded that at least three-fourths of the Cabinet members were interlocked with corporate businesses in the thirteen presidential administrations covered in the study (Freitag, 1975: 137-152).

Political considerations have affected antitrust enforcement, as in the famous case of the ITT merger when President Nixon ordered the Attorney General not to intervene. Corporations influence government in a variety of other more subtle ways. When they are unsuccessful in blocking legislation they oppose, trade-industry lobbyists can put pressure on Congress to see that limited funds are available for enforcement. Corporations also constantly press for changes in the present laws that could at least provide some controls, attempting to weaken controls currently in effect.

I. Corporate Defenses for Law Violations

A complex variety of defenses are continuously being offered by corporations, their corporate executives and counsel, business organizations, trade and other journals, particularly the prestigious Wall Street Journal, to explain corporate violations of law. In a sense, these explanations represent important rationalizations for them, as they serve to reconcile the law violations of the business sector. In so doing, however, they follow a general tendency in our society to obey laws selectively, that is, obeying and disobeying laws according to one's occupation, class, etc. Many businessmen, for example, firmly believe, and act accordingly, that such laws as those regulating securities and banking procedures, restraint of trade, labor regulations, environmental pollution and others are not as formally binding on the behavior of individual decision makers as are our burglary and robbery laws. Similar selective reasoning and obedience applies to labor union leaders, politicians, government employees, doctors, lawyers and other groups. These beliefs reduce the effectiveness of legal sanctions on the behavior of corporations and their executives. They circulate widely in industry and financial circles, but it would be unfair to presume that everyone in top corporate management accepts them all without question. The following beliefs are the most significant; in general they lack validity or are greatly exaggerated. Many of these views were expressed by top executives of the largest corporations in confidential interviews conducted in a study (Silk and Vogel, 1976).

- 1) All measures proposed constitute government interference with the free enterprise system.
- The government is to blame because the additional costs of regulations and bureaucratic procedures cut heavily into profits.
- 3) The government is to blame because most of their regulations are incomprehensible and too complicated.
- 4) The government is to blame because the things being regulated are unimportant.
- 5) There is little deliberate intent in corporation violations; most of them are simply errors of omission rather than commission, and many are mistakes.
- 6) Other concerns in the same line of business are violating the law, and if government cannot prevent this situation there is no reason why other corporations cannot also benefit.

- 7) Although it is true, as in price-fixing cases, for example, that some corporate violations may involve millions of dollars, the damage is so diffused among a large number of consumers that individually there is little loss.
- 8) If there is no increase in corporate profits, a violation is not wrong.
- 9) Violations are due to economic necessity.
- 10) The corporation has changed its practices and is no longer in violation.

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CHAPTER II

CORPORATIONS AND CRIMINAL BEHAVIOR

With the rapid growth in economic power of these large corporations, most of which are international in operation, during the past fifty years or so, their activities have increasingly been regulated by a number of laws designed to control such illegal acts as restraint of trade (price-fixing and monopoly), illegal financial manipulations, misrepresentation in advertising, the issuance of fraudulent securities, falsified income tax returns, unsafe work conditions, the manufacture of unsafe foods and drugs, illegal rebates and foreign payoffs, unfair labor practices, illegal political contributions, discriminatory employment practices, and environmental pollution. The bulk of the regulations designed to control these practices are enforced through administrative governmental agencies (the Federal Trade Commission [FTC], the Food and Drug Administration [FDA], the Securities and Exchange Commission [SEC], the Environmental Protection Agency [EPA], the Consumer Product Safety Commission [CPSC], and others) and by some of the more specific law enforcement agencies such as the Antitrust Division of the Department of Justice. Many federal agencies have counterparts at the state level in the areas, for example, of fair trade practices, environmental pollution and antitrust (see pages 43-45).

In spite of the increasing regulatory measures designed to control corporate power abuses, their violations of law have not been subjected to the same scrutiny or concern that has been evidenced in the many careful studies made of their economic and legal structure. In present day society the crimes of chief concern remain such ordinary infractions of law as burglary and robbery, the "crimes of the street" as contrasted with the "crimes in the suites." Yet from the time of the so-called Robber Barons in railroads and oil over the past century, it is evident that corporate crime has presented both serious and extensive problems; they simply have not been subjected to rigorous scientific investigations. After many vicissitudes through the years, corporate crime as a major issue has, fortunately, developed more recently into a concern of major proportions -- to the public, to government agencies and to scholars. Increasingly also corporate liability is handled under the criminal law, along with the more common measures of civil and administrative enforcement actions such as consent orders and agreements not to repeat a violation, seizure or recall of a commodity, and court injunctions to refrain from further violations. Although only corporate officers can, of course, be imprisoned, corporations can be punished under the criminal law by increasingly heavy fines. Whether corporate violations are handled under the criminal law or civil and administrative law they are still "crimes" and are more and more being studied as such by researchers, beginning with Sutherland (1949) -a subject which will be discussed more fully later on.

The extensive nature of law violations by corporations is unquestioned today; it has been widely revealed by many government investigative committees, both state and federal. These investigations have covered banking institutions, stock exchange operations, insurance, railroads, and the large oil, food and drug industries. More recently, investigations have exposed widespread corporate domestic and foreign payoffs and illegal political contributions. Throughout the violations have shown the immense economic and political power, the widespread operations, and the enormous amounts of money involved.

More sophisticated corporate violations have been carried out through the use of computers, as was done in the Equity Funding case, which is the largest single company fraud known. (For details of this case, see Whiteside, 1977; Parker, 1976 and Conklin, 1977: 46-47). This fraud case, discovered in 1973, resulted in losses estimated at \$2 billion, the victims being the company's insurance customers. Through fraudulent means the Equity Funding Corporation of America was made to appear one of the country's largest, most successful and fastest growing financial institutions in the world. The scheme, which was carried out by the corporation management itself, inflated reported company earnings primarily by the use of computer and false bookkeeping; one operation, for example, involved 64,000 fictitious insurance policies out of 97,000 claimed to have been issued. The purpose of this operation was to secure funds to cover fraudulent activities elsewhere and which could have been created and concealed only by computers. At company direction, one computer specialist created fictitious insurance policies with a value of \$430 million, with yearly premiums totaling \$5.5 million.

Many corporate violations of law are exceedingly difficult to discover, to investigate, or to develop successfully as legal cases due to their extremely complex and intricate nature. These characteristics also distinguish them rather clearly from both ordinary and other types of white collar crimes. This is especially true of antitrust cases, foreign payoffs, and corporate illegal political contributions, but it is also true of many others.

A. The Cost of Corporate Crime

Costs of ordinary crimes are usually estimated primarily in financial terms and in the social costs of the fear they incite in the general population; far more varied are the criteria used to calculate the costs of corporate crimes. These costs involve not only large financial losses but also injuries and health hazards to workers and consumers. They also include the incalculable costs of the damages done to the physical environment and the great social costs of the erosion of the moral base of our society. They destroy public confidence in business and our capitalist system as a whole, and they inflict serious damages on the corporations themselves and on their competitors. In the heavy electrical equipment case (Herling, 1962), for example, the price-fixing offenses victimized the federal government, the Tennessee Valley Authority and similar agencies; income tax crimes deprive taxing authorities of needed revenue. In this respect millions of citizens may be victims, as many of the costs of these illegalities are passed on to them (Geis, 1975).

Corporate crime costs run into billions of dollars; the Judiciary Subcommittee on Antitrust and Monopoly, headed by Senator Philip Hart, estimated that faulty goods, monopolistic practices, and similar law violations annually cost consumers between \$174 and \$231 billion. A Department of Justice estimate put the loss to the taxpayers from reported and unreported violations of federal regulations of corporations at \$10 to \$20 billion each year, and the Internal Revenue Service estimates that about \$1.2 billion goes unreported each year in corporate tax returns (cited in Shostak, 1974: 246). The loss from the electrical price-fixing conspiracy of the 1960s has been estimated to have been nearly \$2 billion, far greater than the total burglary losses during any given year. The losses resulting from the conspiracy of the largest plumbing manufacturing corporations totaled about \$100 million, and during the 1970s Lockheed Corporation admitted illegal payments of more than \$220 million, primarily concealed foreign payoffs. In 1979 nine major oil companies were sued by the Department of Energy and the Justice Department for illegal overcharges of more than \$1 billion. The lawsuits accused the companies of either charging too much for products derived from natural gas liquids or "banking" excessive costs on their ledgers in order to boost consumer costs at a later date (<u>The Wisconsin State Journal</u>, January 6, 1979). In contrast, the largest robbery ever to take place in the United States involved the 1978 theft of \$5.4 million from the Lufthansa airport warehouse in New York City. Previously, the famous Brinks armored car robbery of approximately \$2 million in Boston had been the largest robbery loss. These highly publicized robbery cases are atypical; the typical robbery involves the armed theft of about \$250, while a typical burglary is about \$350 and a typical larceny about The largest welfare fraud ever committed by a single person in \$125. the United States totaled \$240,000. It involved a woman in the Los Angeles area in 1978; she had used eight different names to collect money for 70 dependent children.

These costs of specific corporate crimes are high but they fail to touch the total losses that accrue from corporate crimes. They do not cover losses due to sickness and even death that result from the environmental pollution of the air and water and the sale of unsafe food and drugs, defective autos, tires, and appliances, and of hazardous clothing and other products. They also do not cover the numerous disabilities that result from injuries to plant workers, including contamination by chemicals that could have been used with more adequate safeguards, and the potentially dangerous effects of work-related exposures that might result in malignancies, lung diseases, nutritional problems, and even addiction to legal drugs and alcohol. Nader claims that corporate crime causes injuries to persons on a larger scale than do the so-called "street crimes." Far more persons are killed through corporate criminal activities than by individual criminal homicides; even if death is an indirect result the person still died.

One must, of course, recognize that the public is far less fearful of dying a slow death as a result of air pollution, or of a disease caused by their occupation than they fear being robbed or burglarized. Individually, and also from a financial point of view, ordinary crimes have little effect upon society as a whole, but cumulatively their effects upon our society have been serious. The fears these crimes create can be felt and understood even though they cannot always be explained. This is not the same with white collar and, especially, corporate crime, particularly large corporate crimes

that seriously affect the entire moral climate of American society. This position was taken over a decade ago in a report by the President's Commission on Law Enforcement and Administration of Justice (The President's Commission on Law Enforcement and Administration of Justice, 1967: 104). Certain well-known cases have had serious effects on the moral fabric of society, but they have also affected the fabric of the American capitalistic system. When the rules of the game by which the free enterprise system operates, as particularly when the basic tenets of free and open competition are flaunted, the entire system is endangered. False advertising diverts consumer expenditures from one corporation's product to that of another; favored customer agreements in violation of the Robinson-Patman Amendment to the Clayton Act tend to attract business from one corporation at the expense of another (Edwards, 1959). Fraudulent advertising may reduce the sales of an honest firm. "Research espionage leading to the theft of ideas and designs may be costly to a company which pays the bill for research and then gains little in profits when its ideas are stolen" (Conklin, 1977: 7).

B. Corporate Crime as White Collar Crime: Distinctions

Corporate crime is, of course, white collar crime; but it is of a particular type. As will be explained, corporate crime is actually organizational crime that occurs in the context of complex and varied sets of structured relationships and interrelationships between boards of directors, executives, and managers on the one hand and between parent corporation, corporate divisions and subsidiaries on the other. Such a concept, in terms of crime, has developed rather gradually, and it is only natural that it should often be confused with a broader area of more general crime among the so-called "white collar" groups. The concept of white collar crime was developed to distinguish a body of criminal acts that involved monetary offenses not ordinarily associated with criminality. It is distinguished from lower socioeconomic crimes in two respects: the nature of the violation and the fact that administrative and civil penalties are far more likely to be used as punishment than criminal penalties. Relatively speaking, it is a rather recent addition to criminological theory.

Most white collar crimes are crimes associated with, and linked to, an individual's occupation. They are acts of individuals, or of small groups of individuals, as for example, a typical business or concern that sells securities. Except for the similarity to some types of business violations, corporate crimes are completely different. Crimes committed by them cannot be likened to those of individuals, even if one regards a giant corporation, in a legal sense, as a "person." As was initially pointed out, they are organizational crimes occurring in the context of extremely complex interrelationships. Corporate conduct "must be enacted by collectivities or aggregates of discrete individuals, it is hardly comparable to the action of a lone individual" (Shapiro, 1976: 14). Here it is the organization, not the occupation, that is of prime importance.

The entity that is called a corporation is completely different from the collection of its management personnel; many corporations are, in fact, huge conglomerates. If occupational crime is to be considered as synonymous with white collar crime a distinction can be made between the crimes of corporate officials which represent corporate crime and those that constitute white collar or occupational crime. Distinctions are based on whether the official is acting for the corporation or for his personal interest and against the corporation. If a policymaking corporate executive is acting in the name of the corporation and the individual's decision to violate the law is for the benefit of the corporation, as in price-fixing violations, the violation would constitute corporate crime. If, on the other hand, the corporate official acts against the corporation, as in the case of embezzlement, and financing benefits in a personal way from his official connections with the corporation, his acts would constitute white collar or occupational crime. White collar criminal acts committed for the benefit of a corporate official, therefore, such as embezzlement of corporate funds, etc. are not considered corporate crimes. Doing something for the corporation and for oneself against the corporation can, on occasion, however, coalesce.

C. The Recognition of Corporate Crime

In the field of criminology there has been limited research on white collar crime, and within this area there has been very little research on corporate crime. Sutherland carried out the first empirical study in the field, and his work served to convince criminologists of the importance of doing research in this field. His White Collar Crime, published in 1949, dealt with the illegal behavior of 70 of the 200 largest U.S. non-financial corporations (Sutherland, 1949). For 25 years following Sutherland's work, however, there was only limited follow-up research and only minimal study was made on illegal corporate behavior. Relatively few quantitative research articles have appeared, all rather narrow in scope and again dealing largely with antitrust violations. Of significance is this relative lack of research; Sutherland's study remains basically the only broad research on corporate crime, as his White Collar Crime should actually have been Corporate Crime. It continues, therefore, to be widely cited in spite of its largely obsolete data, the weak methodological procedures, the unsystematic analysis of the data, and Sutherland's failure to use independent variables in data analyses. In addition, this study covered only federal law violations by a small group of large corporations.

For some decades since Sutherland, criminologists paid only lip service to the topic of corporate crime; largely it has been only since the mid-1970s that corporate crime has been incorporated into the criminology discipline and serious studies have been undertaken. The first basic book to include a chapter on corporate crime appeared in 1973 (Clinard and Quinney, 1973: Chapter 8). Criminology textbooks now conventionally include a chapter or a lengthy discussion on the subject. Corporate crime first appeared as a separate topic covered at a professional society meeting at the 1975 session of the American Society of Criminology; in each subsequent year there has been a section on corporate crime. Similar sections are now included in the meetings of the Society for the Study of Social Problems and those of the American Sociology Association, and articles on corporate crime are appearing more frequently in professional journals.

This increased recognition of corporate crime has largely been a quite natural response to social forces, particularly the growth of public concern for, and knowledge about, corporate wrongdoings. Perhaps a central force in the present and growing interest in crimes in this area of business might be said quite simply to be the dramatic increase in both the role and the impact of the major corporations in contemporary American society. The major corporations are the very central institutions in our society; little wonder then that public and regulatory attention is turning increasingly toward them.

It is possible to identify some of the more specific social forces in American society which have contributed to what appears to be an almost sudden criminological interest and concern with corporate crime (see Clinard and Yeager, 1978). They include certain highly publicized serious corporate violations, increased recognition of corporate irresponsibility, the growth of the consumer movement, increased environmental concern, reaction to the overconcentration on concern with lowerclass crimes and poverty problems, and the influence of conflict analysis and Radical Criminology on Criminology (see Quinney, 1974 and 1977; Chambliss and Seidman, 1971; and Taylor, Walton and Young, 1973).

The paucity of research on corporate illegalities has been due to a number of factors. First, an important barrier has been a lack of experience and appropriate training. For criminologists trained in criminal law and accustomed to studying individual offenders, the study of corporate crime has necessitated a significant reorientation--greater familiarity with the concepts and research in the areas of political sociology, complex organizations, administrative law (for example, the regulatory agencies), civil law, and economics. Corporate violations, as well as their control, take place within a complex political and economic environment, and most often they involve administrative and civil sanctions to which criminologists have generally had only limited exposure. State and federal agencies rather than the courts, furthermore, handle most of the enforcement, and criminologists for the most part have had little experience with these agencies. Second, it was generally believed in the past to be difficult to gain access to regulatory agency enforcement data, or to court cases related to corpora-Third, only limited funds have been available for research in tions. this area, while resources have been plentiful for research on ordinary crime, due to the traditional interest in conventional crime, to a lack of concern for research on illegal corporate behavior, and also to the fact that criminologists have felt unable to set up viable research projects. As a result, criminologists have generally taken the easy path and have continued to study conventional crime, or, at best, smallscale consumer frauds. This situation is now changing, particularly in the availability of research funds for studies on white collar and corporate crime. Many of these funds have recently been made available through the Law Enforcement Assistance Administration of the Department of Justice.

D. The Definition of Corporate Crime

The criminal law may be defined as a body of specialized rules of a politically organized society that contain provisions for punishment (probation, fine, imprisonment, and even death) administered in the name of the political state when a violation has been substantiated through judicial or court procedures. In a strictly legal sense, an act is a crime only if the statutes so specify; these statutes, together with the subsequent interpretation of them by the courts, constitute the body of criminal law. This definition applies well to burglary and robbery; corporate crimes, however, cannot be defined and studied in such a limited manner. Our criminal laws represent only a part of a larger body of law; there are in addition administrative and civil laws. Although these laws are not applicable to the ordinary criminal offender, they are for the most part the manner in which corporate violations are handled. Violations of these civil and administrative laws are also subject to punishment by the political state. From the research point of view, then, corporate crime includes any act punished by the state, regardless of whether it is punished under administrative, civil or criminal law (Sutherland, 1945 and 1949; Clinard, 1952; Clinard and Meier, 1979: 168-169).

In the research study of corporate crime, which is the main subject of this report, however, the wide range of seriousness of corporate violations has been recognized. Consequently violations have been ranked as serious, moderate and minor and much of the analyses reflect this distinction. Reporting, such as paperwork, violations and similar violations of administrative law have generally been considered minor violations; other types of violations of administrative law may be considered serious or moderate, depending on the nature of the violation. On the other hand when considering enforcement actions no such distinction can generally be made as to seriousness because, for example, a warning letter, an administrative consent agreement or a court-imposed consent order may actually have involved a serious or moderate violation.

Because of their more recent origin and the considerations of legislative power that both white collar classes and corporate bodies possess they are far less likely to be punished under the criminal law. The criminal sanctions used in criminal law cases are, therefore, not as likely to have been provided as penalties for corporate violations. Penalties provided for the latter violations are far more likely to be exclusively or alternatively civil or administrative. Any definition of crime, therefore, solely in terms of the criminal law is too restrictive for an adequate understanding of behavior like corporate crime; in many cases the regulation of white collar and corporate offenses provides for the criminal law along with alternative sanctions such as civil and administrative actions. Moreover, the criminal law, because of power difficulties in its application, is not as likely to be used. In general business and corporate offenders are "administratively segregated" from conventional offenders in the United States (Sutherland, 1940: 8). Administrative rather than criminal sanctions against corporations are widely used in Great Britain and Canada (Goff and Reasons, 1978). Moreover, civil and criminal cases cannot be distinguished on the basis of the formal burden of proof required. It appears that, if anything, civil courts, in practice, have a more exacting burden of proof than do criminal courts (Pepinsky, 1974: 226). The two categories in actuality do not necessarily differentiate wrongs by seriousness.

The administrative and civil enforcement measures generally used in corporate violations include warning letters, consent agreements or decrees and agreements not to repeat the violation, seizure or recall of commodities, administrative or civil monetary penalties, and court injunctions to refrain from further violations. For the most part corporate lawbreakers are handled by administrative quasi-judicial boards of government regulatory agencies such as the Federal Trade Commission, the National Labor Relations Board and the Food and Drug Administration. These government regulatory agencies may impose an administrative "remedy" or they may ask the civil or criminal courts to do so, as for example to issue an injunction. Although only officers of a corporation can be sent to prison or fined, an action seldom taken, corporate liability is becoming increasingly common under the criminal law. Corporations are also being more often punished by fines, sometimes heavy ones, under the criminal law. A "corporation" cannot, of course, be jailed, so the major penalty of imprisonment, as used to control individual persons (with the exception of corporate officers), is unavailable in the case of corporations.

It is believed by many that violations that lead to administrative or civil penalties are not really crimes. Unless one uses a more inclusive concept of "crime" it is not possible to deal analytically with the different illegal activities that are punished by law according to social class, such as corporate crime. A conviction in the criminal court is not an adequate criterion, since a large proportion of those who commit crimes are not convicted in the criminal courts but through administrative hearings and civil courts (Sutherland, 1940: 5). Sutherland stated that the criterion of the criminal law should be supplemented by other forms of law and in doing so the criteria of the crimes of one class should be kept consistent in general terms with the criterion of other class crimes (Sutherland, 1940: 5).

Even in the broad area of legal proceedings, however, corporate crime is generally treated with an aura of politeness and a respectability rarely afforded, if ever, in cases of ordinary crimes. As alternative penalties to the criminal law are provided, corporations are also seldom referred to as "criminals." Even if violations of the criminal law were involved along with other laws, this study revealed in conversations about corporate crime that enforcement attorneys, as well as corporation counsels, generally refer to the "corporation having a 'problem,'" or "the corporation should bring its 'problem' to the enforcement official." One does not speak of the robber or the burglar as "having a 'problem' with the government."

Even after a consent order or other legal settlement has been reached it is typical for a corporation to deny guilt partly to avoid possible other government actions and private suits. In one settlement of \$229,000 for illegal campaign contributions of millions of dollars, which involved "laundering" the money, a Gulf Oil spokesman stated that the company had made the payment settlement "without admitting any corporate liability." He added that it was made to "protect the company against any future claims" regarding the past transfer of political funds from overseas (The Wall Street Journal, November 14, 1977). In settling a \$4.3 million Saudi Arabian payoff, Hospital Corporation of America stated: "The company believes that its actions with regard to payment of fees was reasonable and appropriate under the circumstances and its actions did not constitute violations of appliable laws," It agreed to terminate this controversy in order to avoid expenses and the inconvenience of protracted litigation (The Wall Street Journal, October 27, 1978). After Schlitz Brewing Company had pleaded guilty to kickbacks to retailers and had been fined \$761,000 the brewing company said it should not be construed as an admission on the part of the company that it had violated any law or regulation.

E. The Present Study

This particular research represents the first large-scale compre-

hensive investigation of corporations directly related to their violations of law. It examines the extent and nature of these illegal activities, and examines the data in terms of the corporate structure and the economic setting in which the violations occurred. The study has concentrated on an empirical investigation of the 582 largest publicly owned corporations in the United States: 477 manufacturing, 18 wholesale, 66 retail and 21 service. A major focus has been on manufacturing enterprises. Corporations in banking, insurance, transportation, communication and utilities have been excluded as in Sutherland's 1949 study because of the unusual nature of these businesses (i.e. they are subject to more strict regulation and/or licensing). The annual sales for 1975 of the corporations studied ranged from \$300 million to more than \$45billion, with an average sales volume of \$1.7 billion for parent firms. Data covered all enforcement actions that could be secured, initiated or imposed by 24 federal agencies during 1975 and 1976. Revealed for the first time ever, therefore, is the wide range of types of corporate violations, as well as actions initiated and imposed by government agencies. Predictions of what types of corproations violate the law have also been attempted through an analysis of data in terms of corporate structure and financial data which are then used to compare with industry-level data. Some of the hypotheses are that unfavorable trends in such areas as sales, profits, and earnings are associated with violations. An analysis is presented of the characteristics of corporations against which limited actions have been initated with those against which initiated actions have been extensive. Actions of parent corpora-tions have then been compared with their 101 largest subsidiaries, whose 1976 annual sales ranged from \$300 million to \$7.8 billion, on the hypothesis that pressures from parent corporations to increase profits contribute to the greater violations of the subsidiaries.

The present study is basically similar in approach to that used by Sutherland: both study the largest corporations and attempt to cover a wide range of enforcement actions rather than actions restricted, for example, to antitrust violations as has been done in other studies. Both define corporate "crime" as violations of administrative and civil, as well as criminal, law; they are in accord that research limited to the criminal law violations would give a limited, as well as a false, picture of corporate crime simply because alternative procedures are available, which is not the case with ordinary crime. They both also exclude public utility, transportation, communication, and banking corporations on the ground that they are regulated by commission and that the violations that might occur in these areas are thus restricted both in nature and in extent.

These are the similarities in the studies; the differences are extensive, in fact so extensive that only a few superficial comparisons of the findings are possible. This research is on a far more comprehensive scale; it is much more complex methodologically; and it also attempts to predict economic variables related to violations. Sutherland's methodology was simplistic, with little description even offered of the problems encountered and how they were met. Less than seven paragraphs or four pages were devoted to the description of the data and methodology. Sutherland's contribution was significant, in the final analysis, because he studied empirically and for the first time, the crimes of the giant corporations and because he attempted a theoretical interpretation of their importance and nature, not because of his findings or the rigor of his research. Among the more important differences between these two studies (termed here the first and the second) are the following:

- (1) Sample. The sample of the first study was 70 of the 200 largest non-financial institutions (publicly or privately owned); the second studies, with few exceptions, all of the 582 largest publicly owned manufacturing, wholesale, retail and service establishments. Nearly all of the analyses were confined to the 477 manufacturing establishments, as was largely Sutherland's sample.
- (2) <u>Time Span</u>. The analysis covered the life careers of the 70 corporations in Sutherland's study, with an average life of 45 years, covering in the case of some corporations the period from 1890-1944 and in the case of five actually prior to 1890. The second was limited to those cases arising during a two-year period, 1975 and 1976. Sutherland's method of using cumulative cases is difficult to comprehend due to a wide variation of the time periods for each corporation. He used ε figure, such as the average number of decisions against a corporation, which was actually derived from four different time spans.
- (3) Subsidiaries. The first study was designed to include data on all subsidiaries under the control of the parent corporation. In actuality, however, "many of the subsidiaries of these corporations are not listed in the financial manuals and could not be identified for the present study" (Sutherland, 1949: 19). The second study was limited largely to parent corporations, whose numbers were much greater; since Sutherland's day the number of corporate subsidiaries has greatly expanded, into the thousands. Moreover, it was found to be difficult to identify violations by subsidiaries since the name of the parent corporation was rarely mentioned in the source.
- (4) <u>Sutherland's study was restricted to decisions taken against</u> <u>a corporation by an administrative action or by a court</u> <u>decision</u>. They included the following:

. . .formal decisions and orders of courts, but also the decisions of administrative commissions, stipulations accepted by the court or commission, settlements ordered or approved by the court, confiscation of food as in violation of the Pure Food Law, . . .opinions of courts that the defendant had violated the law at an earlier time even though the court then dismissed the suit (Sutherland, 1949: 20).

The present study covered all known initiated and enforcement actions against a corporation, whether administrative or court. Enforcement actions were much more broadly defined than were Sutherland's; they consisted of final actions during the period studied (not necessarilythe final actions). Sutherland's, on the other hand, were limited to court decisions (criminal, civil, equity), commission (order, confiscation, and settlement). It is of interest that the only available detailed methodological clarification in Sutherland's study is in agreement with the present study; he tabulated decisions against corporations so that if in one suit decisions were made against three corporations each was counted separately. If two suits were made against a corporation and a decision was made against the corporation in each suit it was counted once, however.

(5) Coverage. When Sutherland was conducting his study the laws regulating corporations were primarily restraint of trade, illegal rebates, misrepresentation in advertising, unfair labor practices, and certain illegal financial manipulations. His study, therefore, did not cover laws regulating air and water pollution; consumer product safety; equal employment opportunity in terms of race, sex, religion and ethnic origin; occupational safety and health; and a number of other labor regulations. The present study, therefore, has a much wider coverage, involving, in fact, some 24 different federal agencies; obviously this increases greatly the number of potential decisions even though the time span was limited to only two years. The present study, on the other hand, was concerned with government actions and not with private competitor suits although some data were collected on them. Sutherland included cases involving decisions in infringements of patents, trademarks, and copyright cases that do not constitute an actual federal offense as they are dealt with by private suits.

The first study included decisions of federal, state, and in a few cases, municipal courts. In the second study most of the tabulations were confined to federal cases. Data were gathered on state and local cases, but they were tabulated separately. The feeling was that only a relatively small proportion of state and local cases were discovered, and this same situation must have been true of Sutherland's study.

(6) Data Sources. Both studies recognized the limitations of the sources of data on corporate crime, and this problem will be discussed elsewhere in more detail. The present study was far more comprehensive in the search for cases; data sources consisted of all pertinent Law Service Reports, including the Federal Reporter and 12 different types of specialized reports such as those for the Food and Drug Administration (FDA), the Federal Trade Commission (FTC), the National Labor Relations Board (NLRB), the Environmental Protection Agency (EPA), etc.; reports of legal actions against them by corporation to the Securities and Exchange Commission (SEC); data from federal agencies where available, and a computer newspaper search of all articles appearing in The New York Times, The Wall Street Journal, and over 50 leading trade newspapers. Sutherland limited his Law Service collection to the Federal Reporter, the published decisions of the FTC, the SEC, the NLRB, the FDA (but only for 1924-1927), and the Interstate Commerce Commission. In addition, he used the Official Gazette of the Patent Office which was not done in the present study since patent violations are not enforced by the federal government; only private suits can be filed. Only The New York Times was used by Sutherland in the newspaper search; in the present

study <u>The Wall Street Journal</u> and trade newspapers were found to be more useful. Sutherland sought state data primarily in <u>American State Reports</u> which was not used in the present study.

(7) <u>Data Analyses</u>. The statistical analyses presented in <u>White</u> <u>Collar Crime</u> were elementary; only simple counts of decisions were taken and occasionally an average was presented. In the present study data were analyzed in terms of averages and percentages, but primary attention was focused on the degree of association as determined by correlations, Chi-squares, Tau and regression coefficients.

Sutherland made no study of the characteristics of corporations as related to violations other than the main type of industry; even this was done rather unsystematically. As opposed to the earlier study, the present one makes use of extensive economic and business data gathered on each corporation's structural and financial characteristics, including trend data; they were then compared with industry and economic-level data with the view to predicting violations. Also comparisons were made of the characteristics of corporations with many violations and those with only a few, and between parent and the larger subsidiaries.

Mere counts of decisions by a few very broad types were presented in the first study, whereas in the present study the types of initiated actions and enforcement sanctions were analyzed by numerous subtypes. In the first study there were no statistical data on the details of the violations, as has been done here. Finally, Sutherland limited his analysis to c ints of the decisions divided by administrative and court. Since no effort was made to analyze violations in terms of levels of seriousness, as in the present study, there was no way in which the first study could discover, for example, the degree of association between seriousness of violations and seriousness of sanctions.

(8) Although Sutherland did not utilize sophisticated statistical analyses he made up for this lack in part by many shrewd interpretations of corporate crime. Many of these observations were undoubtedly derived from qualitative analyses of the large amount of case material which he collected, some of which is presented in White Collar Crime. Case analyses are used in this study but were not relied on to the extent that Sutherland did. After all, as he pointed out in the Preface, he had spent 25 years on the research; the present study was made over a three-year period.

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CHAPTER III

FEDERAL REGULATORY AGENCIES AND CORPORATE CRIME

Corporate crime is controlled by a variety of regulatory agencies or commissions, each of which has been delegated its authority to regulate and police given areas by Congress. Each agency generally is directed by a small group of persons, called a Commission, appointed by the President, and is headed by a chairman. In theory the Commission approves each act of the agency. This type of organization was first devised for the Interstate Commerce Commission (ICC); subsequently other agencies, such as the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC), have been patterned after it. Some newer agencies, like the Environmental Protection Agency (EPA), are headed by an administrator with a staff of assistants instead of by a commission. Congress gives the agencies their powers and their appropriations, but they depend upon the Presidential appointment power for the caliber of these commissions or directors and also for executive budget requests and political support if they are attacked. Such agencies have rule making powers delegated by Congress. Otherwise Congress would be faced with the enormous task of legislating thousands of additional laws. In addition, many such laws would be so controversial that any enactment would either be virtually impossible or very time-consuming.

A. Enforcement Powers

Within the regulatory agencies are the policing divisions, usually known as enforcement divisions. They investigate the violations that fall within the jurisdiction of the individual agencies, then refer their findings to the commission. These findings are then summarized in a memorandum of recommendation, in which are listed the facts of the investigation, the investogators' recommendations and the violations of law that are discovered. According to the commission's decision, one of three courses of action is pursued: administrative action, criminal referral, and civil prosecution, or even all three courses (Bequai, 1978: 142).

An administrative action involves an agency hearing in which an agency employee, known as a hearing examiner or administrative trial judge, sits in judgment. The case is prosecuted by the agency's own attorneys, while the charged party such as a corporation, the respondent, is defended by its own attorneys. These administrative tribunal holdings are then appealable, first to the commission, then to the U.S. Court of Appeals. Criminal referrals, in the form of a "criminal referral memorandum," are an agency's recommendations for criminal prosecution to the Department of Justice. After the facts of the case have been outlined and the violations of law cited, the Justice Department then decides whether to prosecute. Should the decision be made not to prosecute, the agency itself has no criminal jurisdiction, although a U.S. attorney may on occasion ask the agency to refer the case to his office and thus circumvent the Justice Department. Even this decision, however, rests with the prosecutor and not the agency.

The option of conducting a civil prosecution, in which its own attorneys prosecute the case, is open to the agency, but the impact of such a route is restricted. The agency may ask a federal court to order an injunction against the defendant, that is, to cease and desist from further law violations, and monetary damages may even be sought; to avoid prolonged civil litigation, however, a consent decree is usually sought. A consent decree is an agreement between the agency and the defendant, in which the defendant simply agrees to no further law violations without admitting guilt. Should the defendant then violate this agreement, the agency can ask the court to hold the violator in civil contempt. Unfortunately there is no uniformity in monitoring of consent agreements. Some agencies do monitor, some do not, while others, operating in a random fashions, sometimes monitor consent decrees and at other times do not do so. Further, the contempt citation requires proof that, in fact, there was such a violation; and this is not an easy task.

Although Bequai (1978: 143) estimates that more than 90 percent of all agency prosecutions result in consent decress, this roughly parallels enforcement activity elsewhere in the legal world. Roughly this percentage of all civil actions which are filed are settled and criminal actions outside the corporate area generally result in plea bargains of one kind or another being accepted by the court. The resources available to defendants and the courts make this resolution of most actions a necessity, otherwise the dockets of agencies and courts would be even more crowded than they are now (Newman, 1966).

All agencies have investigative and subpoena powers; an agency can cite the corporation or individual officers, even at the administrative stage, such as the Consumer Product Safety Commission (CPSC) has done. Despite administrative powers, regulatory agencies often must fall back on court enforcement and then on civil and criminal penalties.

> By and large, agencies differ from traditional legal approaches not because their sanctions and other motivating strategies are any more sophisticated for dealing with a corporate-dominated society, but rather because their fact-finding and perhaps rule-making procedures are more specialized (Stone, 1975: 107).

The various policing agencies also have the power to conduct regulatory or administrative searches. Since many agencies have noncriminal policing roles, regulatory searches usually are allowed by the courts without the need for a search warrant. Many are actually "fishing expeditions" for criminal prosecution, even though this is opposed to the implied powers of regulatory agencies. In this way they get around a need for a warrant. The courts have taken the position that such searches are of a civil nature, with criminal sanctions coming into play only when the violator has refused to take steps to remedy the violations found on his premise. Moreover, the privilege (self-incrimination)

> does not protect the custodian of a corporation from producing the corporate books and records, even if these would serve to incriminate the corporation as well as himself. The [Fifth] Amendment is not available to corporations as a defense; as creatures of the state, they are open to inspec

tion and examination by government agents (Bequai, 1978: 160).

On the other hand, if a private individual should be asked questions about his own personal papers, he can refuse to answer based on the Fifth Amendment protection against self-incrimination.

B. Available Penalties

Over the past few years corporate penalties have continued to increase in severity; although possible penalties may appear to be strong in many agencies, they must be evaluated in terms of hundreds of millions and often billions of assets and sales of large corporations (see Table 1, Text). For antitrust violations the monetary penalty may be as high as \$1 million; a Consumer Products Safety Commission (CPSC) penalty can be up to \$500,000. Still other agencies have penalties for each day of violation, and they can mount up to large figures. The EPA has a penalty of \$25,000 a day for the first offense and \$50,000 each day thereafter. Similarly, the FTC can impose a \$10,000 per day penalty for each day its rules and orders are violated. On the other hand, the corporate monetary penalties available to some agencies are quite small; for example, for the SEC and the Occupational Safety and Health Administration (OSHA), it is only \$10,000 and for the Food and Drug Administration (FDA) \$1,000 for the first offense and \$10,000 thereafter. One might also maintain that an FDA seizure order could result in substantial monetary losses.

Most agencies may use injunctions, but the National Labor Relations Board (NLRB) has available only an injunction, except for remedial actions like back-pay. In its 1976 report, the NLRB pointed out that a major difficulty was its lack of an independent statutory power to enforce its decisions and orders. It suggested that it might seek enforcement through the U.S. Court of Appeals and that parties to its cases might also seek judicial review. Private suits are allowed under applicable statutes in the majority of regulatory agencies; exceptions include the FDA, the Internal Revenue Service (IRS), OSHA and the FTC.

In the majority of the 24 regulatory agencies surveyed, a corporate executive may be named in a complaint (see Table 2, Text).¹ The exceptions are regulatory agencies that concern themselves with employment, such as the Equal Employment Opportunity Commission (EEOC), the Office of Federal Contract Compliance (OFCC), and OSHA. Maximum individual penalties vary, ranging from injunctions to fines and prison sentences. With few exceptions, the fines and maximum jail sentences are modest. Agencies imposing fines of \$10,000 or less on individual executives include IRS, FDA, and the SEC. On the other hand, the EPA, the CPSC and the Antritrust Division of the Department of Justice can levy fines that range from \$25,000 to \$100,000. Prison sentences can range from six months, available to OSHA, to three years in antitrust violations.

The fact that the statute that creates the regulatory agency theoretically gives is allocatly to do something does not mean that the instruments will actually be used. Budget and manpower considerations, the legal and economic power of the corporations, the consequences of too drastic actions on the economy and the public, and sheer agency

¹ See Appendix A for functions of those agencies used in this research.

TABLE 2

ANALYSIS OF REGULATORY AGENCIES USED IN STUDY, 1976¹

AGENCY	YEAR AGENCY BEGAN	COMPLAINT MAY NAME INDIVIDUAL	MAXIMUM INDIVIDUAL PENALTY	MAXIMUM CORPORATE PENALTY	PRIVATE SUIT ALLOWED
AGRICULTURE MARKETING AGREEMENT ACT (DEPARTMENT OF AGRICULTURE)	1937	YES			
PACKERS AND STOCKYARDS ADMINISTRATION (DEPARTMENT OF AGRICULTURE)	1967	YES	Injunctions, forfeitures	Injunctions, forfeitures	
PERISHABLE AGRICULTURE COMMODITIES SERVICE (DEPARTMENT OF AGRICULTURE)					
ARMY CORPS OF ENGINEERS		YES	Fines, injunctions (cease and desist)	Fines, revocation of permit, injunctions, court action	
CONSUMER PRODUCT SAFETY COMMISSION	1972	YES	\$50,000, one year, or both	\$500,000, injunctions	YES
ENVIRONMENTAL PROTECTION AGENCY	1970	YES	<pre>\$25,000 per day, one year, or both for first offense; \$50,000 per day, two years, or both thereafter</pre>	\$25,000 per day, first offense: \$50,000 per day thereafter: injunction	YES
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION	1964	NO		Injunction; backpay award; reinstatement, fines and/or jail sentence	YES
FEDERAL ENERGY ADMINISTRATION	1974	YES	Criminal and civil penalties, fines	Criminal and civil penalties refunds	, YES
FEDERAL POWER COMMISSION	1930			6	

¹ From 1976 Annual Reports of agencies and <u>Federal Regulatory Code</u>, 1978.

TABLE 2 (continued)

AGENCY	YEAR AGENCY BEGAN	COMPLAINT MAY NAME INDIVIDUAL	MAXIMUM INDIVIDUAL PENALTY	MAXIMUM CORPORATE PENALTY	PRIVATE SUIT ALLOWED
FEDERAL TRADE COMMISSION	1914	YES	Restitution, Injunction	Restitution, Injunction, Divestiture, \$10,000 per day for violation of rules	NO
FOOD AND DRUG ADMINISTRATION	1907	YES	\$1000, one year, or both for first offense; \$10,000, three years, or both there- after	\$1000 first offense; \$10,000 thereafter; seizure of con- demned products, injunctions	NO
DEPARTMENT OF THE INTERIOR				Revocation of permit	
ANTITRUST DIVISION (DEPARTMENT OF JUSTICE)	1890	YES	\$100,000, three years or both	\$1 million, Injunction Divestiture	YES
CRIMINAL DIVISION (DEPARTMENT OF JUSTICE)		YES	Fine, up to life imprisonment	Fines	YES
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS (DEPARTMENT OF LABOR)	1965	NO		Backpay, Suspension, Cancellation of contract	YES
WAGE AND HOUR DIVISION (DEPARTMENT OF LABOR)		YES	Backpay, \$1000 for each violation	Backpay, \$1000 for each violation, injunction	YES
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (DEPARTMENT OF LABOR)	1970	NO *	\$10,000, six months or both	\$10,000	NO
NATIONAL LABOR RELATIONS BOARD	1913	NO		Injunctions, backpay award	YES

*Except sole proprietorship.

TABLE 2 (continued)

AGENCY	YEAR AGENCY BEGAN	COMPLAINT MAY NAME INDIVIDUAL	MAXIMUM INDIVIDUAL PENALTY	MAXIMUM CORPORATE PENALTY	PRIVATE SUIT ALLOWED
SECURITIES AND EXCHANGE COMMISSION	1934	YES	\$10,000, two years or both	\$10,000, Injunction	YES
NUCLEAR REGULATORY COMMISSION	1974	YES		Suspension of license, cease and desist, fines	YES
NATIONAL HICHWAY TRAFFIC SAFETY ADMINISTRATION (DEPARTMENT OF TRANSPORTATION)	1966	NO		Fines, recalls, court action	YES
U.S. COAST GUARD (DEPARTMENT OF TRANSPORTATION)	1915	YES	Fines, court action, seizure	Seizures, fines, court action	YES
INTERNAL REVENUE SERVICE (DEPARTMENT OF THE TREASURY)	1862	YES	\$5000, three years, or both	\$10,000, 50% assessment, prosecution costs	NO
U.S. CUSTOMS SERVICE (DEPARTMENT OF THE TREASURY)	1930	YES	\$5000 for each offense, seizure	\$5000 for each offense, seizure	NO

inertia are all factors that set limitations on what an agency can do in enforcement.

C. Limited Enforcement Staffs

The greatest handicap to the successful enforcement of agency regulations in the corporate area is not the availability of legal tools, problems of investigation, or direct industry influence; it lies in limited agency budgets and inadequate enforcement staffs. The assigned enforcement tasks of some newer regulatory agencies are clearly immense. For example, the EPA data as of February 1978 on water pollution control alone showed 41,000 permit applications (the permits spell out construction schedules for abatement equipment and the amounts of specialized pollutants a plant may discharge) from non-municipal (largely industrial) dischargers, with 27,500 permits having been processed and issued by the EPA or approved states (which administer the permits and enforcement under EPA regulations; 29 states and the Virgin Islands have been approved). Including municipal treatment plants and other dischargers, total applicants numbered 67,500, with almost 50,000 permits issued. In addition, the EPA has been given the technically complex assignment of determining "best practicable technology" and "best available technology" for the numerous industrial categories being regulated.

This conclusion was also reached from a study of annual agency reports, interviews with government officials, and from other material. The 1976 annual agency reports, for example, referred frequently to limited enforcement resources in view of increased responsibilities, increased agency workloads, and the complexity of the enforcement cases the agency faced. Regulatory agencies reported an increased caseload due to newly promulgated or extended laws and regulations. The Criminal Division of the Department of Justice pointed to a rising caseload in the Public Integrity Soction due to new cases referred from the recently established Federal Election Commission (FEC), the Privacy Act, and new domestic lobbying statutues. This is due to increased public interest in exposing corporate bribery, further revelations of conflicts of interest involving defense contractors, as well as increased criminal referrals from the Commodity Futures Trading Commission (CFTC) and the SEC. the Antitrust Division of the Department of Justice and the U.S. Customs Service described their growing responsibilities in relation to other regulatory agencies. The NLRB reported a steadily mounting number of unfair labor practice cases, which generally require about two and a half times more processing effort than do representation cases.

One may well wonder why such small budgets and professional staffs are allocated to deal with business and corporate crime when billions of dollars are willingly spent on ordinary crime control and the payment to over 500,000 policemen, along with tens of thousands of government prosecutors and other officials. The federal system alone, for example, employs more than 10,000 lawyers; the Justice Department alone over 1,000 excluding attorneys in the 94 U.S. Attorney offices. Of this large supply of legal talent, the prosecution of white collar and corporate crime rests on the shoulders of less than 200 assistant U.S. Attorneys in the fraud section (Bequai, 1978: 150). With the exception of specialized units like the tax and antitrust divisions in Washington, the real workhorse of the federal prosecutorial machinery is the local federal prosecutor, the U.S. Attorney. A total of less than 2,000 of them are employed by these 94 offices. The largest office employs about 160 attorneys, the smallest less than a dozen; the larger offices are those of the District of Columbia, Southern District of New York, Central District of California, and Northern District of Illinois. Until recently, with the exception of the few larger offices, most of them had no specialized units to handle white collar and corporate cases. In 1979 an Economic Crime Enforcement Division to deal with white collar crime was established in the Justice Department to provide specialized staff at the local offices.

Several factors account for this disparity in enforcement. (1) Congress has only recently been subjected to the type of consumer and environmentalist pressures that lead to budgetary increases. Previously public pressure was almost exclusively on crime in the streets, not crime in the executive suites. (2) Corporate and industry groups have exerted pressures on congressional members not to give regulatory agencies so much help that they might become as powerful as the corporations they confront. "The Congress keeps the FDA, the OSHA, and the FCC on token budgets: just enough to insure that those agencies' names remain on organization charts, but not nearly the amounts necessary to hire personnel who might challenge corporate conduct in a ser-ious way" (Hacker, 1973: 174). Moreover, "regulatory agencies are kept weak by having restricted budgets, lacking the power to subpoena the records of companies which are under investigation, and being forced to rely upon reports by the manufacturers of new products rather than being given the resources to conduct in-house tests of those products" (Conklin, 1977: 123). (3) Even if agency enforcement were to be doubled they would still be grossly insufficient to carry out the inspection and prosecution needs. Shortage of staff not only means that corporate violations are not followed up but also that agencies have to settle for a large proportion of consent agreements or decrees or, as in the case of SEC with the illegal campaign contributions and foreign bribery scandals, require that corporations submit to special investigations by outside directors. The SEC enforcement chief, Stanley Sporkin, stated in 1976 that "We have to have consents, otherwise the thing would not run. If the commission had to litigate every case, its force of trial lawyers would dry up fast" (Business Week, May 10, 1976: 112). Because of limited budgets regulatory agencies must prosecute cases selectively.

D. Lack of Information

The regulatory agencies often lack the kind of data necessary for effective regulation and enforcement. They must have broad-based data, or they must have sufficient funds, manpower, and authority to obtain them. This puts them at a distinct disadvantage in enforcement actions, particularly in litigation. First of all, the agency staff, particularly the economic staff, is usually inadequate in number. Second, the 1942 Federal Reports Act has been used by industry to restrict the collection of needed data, the only source of data thus being the industry itself. It was not until late 1978, and after an eighteen-month lawsuit, for example, that a federal court ordered all corporations to furnish the FTC essential product line business data to aid their antitrust enforcement activities. The FTC order had been resisted by over 200 major corporations who refused to comply, primarily because they claimed it furnished information to competitors which might be leaked from FTC. On the other hand, the FTC has regarded line-of-business reports as their most important programs for measuring economic performance and opening up a more competitive economy (Benston; 1975: 174-179). In general government agencies must depend on industryfurnished data. Third, industry often has the only available data, as, for example, in the case of the oil industry. These data are often incomplete, however, in terms of agency needs and often the agency simply "does not have staff (or the power in some cases) to verify the numbers even on a selective basis" (Stephenson, 1973: 45).

E. Coordination

Other problems within the agency hinder their effectiveness. Regulatory agencies in general do not adequately coordinate their activities and enforcement actions. As a result, only limited exchange of information on violations and government agencies takes place. For the most part the enforcement statistical records maintained are so inadequate that it would be impossible for most of them to exchange information in any case. The agencies operate under different policies, and few consistent enforcement policies cut across agency lines.

A rather drastic solution for these problems has been proposed, namely a cabinet-level coordinator of regulatory agencies, many of which are now independent and most are semi-independent.

> One cabinet-level presidential appointee should be responsible for the behavior and performance of all the regulatory agencies. In effect, the heads of the ICC, CAB, FCC, FMC, SEC, FPC and banking authorities would be his cabinet, responsible to him. Such an arrangement would enable the public, the press, the Congress, and the president to focus attention on economic regulation (Green, 1973: 26-27).

F. Some Criticisms of Regulatory Agenices

Polls taken by even the business-oriented Opinion Research Corporation have indicated strong public support for government-enforced regulations to protect the health of workers (4 - 1), product safety (3 - 1), and the environment (2 - 1). Despite this and agency achievements in many areas, corporations and the business media constantly level charges of big government, bureaucratic procedures, and the excessive paperwork and costs of complying with regulations.

1. Excessive paperwork. One of the most persistent charges leveled against regulatory agencies is that the corporations are required to do too much paperwork to supply the agency with all the information it seeks from them. Actually there is a great difference between paperwork and other issues in the political context. The purpose of paperwork is to achieve valued objectives like computing taxes, protecting the environment, and health and worker safety. Although it is undoubtedly excessive, paperwork problems generally arise from efforts to meet the objectives of congressional statutory enactments and to have data that will make possible successful legal prosecution. Basically the Commission on Federal Paperwork set up by Congress, and which reported back in 1978, deals with the effects of various statutes over the past ten years; these statutes represent new values in which the regulation and enforcement must be carefully monitored. Among the agencies with the most serious paperwork problems for corporations and others are the EPA, OSHA and the Equal Employment Opportunity Commission (EEOC) (Weaver, 1976: 206).

2. <u>Costs of complying with regulations</u>. One of the most common charges against many of the more recently created agencies, as for example agencies that deal with pollution and product safety, is that compliance with their regulations is so costly that profits seriously decline. In some cases corporations and even a single industry, it is claimed, are placed in a precarious financial situation. These arguments have been refuted by Mark Green, who claims that these cost estimates are derived from the regulated industry and are vastly overstated (Green, 1979).

The EPA estimates, moreover, that although 20,000 jobs have been lost in plants that could not comply, 600,000 jobs have been created by pollution control expenditures (Green, 1979). Some government agencies have been trying to reduce the number of rules; OSHA in 1978, for example, eliminated 2,400 fire safety regulations in a step to strip away "nit-picking" rules and condense 400 complex pages to ten (<u>The Wisconsin State Journal</u>, December 21, 1978). These were originally developed, however, by the National Fire Protection Association. In order to meet some of the problems of regulating agencies, leaders of the Senate Governmental Affairs Committee introduced a bill in 1979 that would require agencies to conduct and to publish a "review" of desired benefits when introducing and implementing any rule.

G. Industry Influence on Regulatory Agencies

Regulatory agencies are not quite in the same situation as the judicial branches of government. Basically law is derived from statutes of the legislature, although judges also make laws by establishing precedents. By their very nature regulatory agencies are quasi-judicial bodies that both issue regulations and later enforce them. As a result the regulatory agencies can be subject to industry influence and pressure in the development of regulations which are, in turn, the subject of enforcement. Regulatory agencies are then likely to be interested in protecting an industry to see that the operations are fair and at the same time geared to deal with violations. Industry influence is exerted through direct influence on the regulatory agency, industry promotion of a favorable business climate, later employment with the corporations and placing industry personnel on the regulatory commissions.

This view, known as the "capture" theory of administrative agencies, is widely held but there is an increasing belief that the problem is not so much "capture" as it is inadequate representation of interests other than those of the regulated parties (Stewart, 1975). This, in turn, has led to efforts to find ways to obtain greater public participation in at least some of the processes of the regulatory agencies.

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CHAPTER IV

FEDERAL-STATE RELATIONS IN CONTROLLING CORPORATE CRIME

It is commonly believed that all "roads lead to Washington" in the control of corporate crime, as in the majority of other matters, as if the federal government alone, and not the separate states, handles the illegal behavior of the large corporations. This is indeed the impression given by the communications media; corporate crime news emanates almost exclusively from Washington, although important corporate crimes within states are occasionally covered in the national media. In order to determine if this picture of enforcement activity is accurate, as well as to study the problems associated with state and federal relations, interviews were conducted in 1978 and 1979 with Assistant Attorneys General and other enforcement officials in five states -- California, Georgia, Illinois, Texas and Wisconsin (see Appendix B for interview questions). Similar issues were also raised in interviews with federal officials (see Appendix C for names, states and federal agencies of those interviewed). Actions are also occasionally taken against large corporations by local government, usually in the very large cities, but time limitations precluded making inquiries into this local administrative area.

At the state level, smaller corporations, on the whole, present more enforcement problems than do the larger ones, and state enforcement measures are usually concentrated on them. This is a product, in part of course, of a general tendency for state agencies either to leave to, or to turn over to the federal government the violations of the large corporations due to the interstate nature of their businesses. In addition, smaller corporations do not often have adequate resources for product safety testing or for providing equipment needed to assure their meeting EPA standards or those of other agencies.

In the area of corporate crime control, state and federal relations may take a number of forms. In the first place, there may be no activ-ity at all in this area, as in the case of National Highway Traffic Safety Administration, the agency that deals with auto and tire defects of manufacturers on a nationwide basis. Drug safety certification is carried out only by the Food and Drug Administration (FDA). Second, the federal government may handle enforcement work because the laws in certain areas like antiturst are more likely to affect large corporations. Thirty states have had antitrust laws, some of which even precede the Sherman Antitrust Act of 1896; yet most enforcement actions against large corporations are still carried out by federal authorities. Smaller corporations remain the primary concern of the states, although efforts are being made to increase state enforcement against large corporations. Third, the main impetus, and the setting of quality and other standards, is of federal origin; in some cases, however, the enforcement work is done by the states under federal supervision. In the case of the Environmental Protection Agency (EPA), for example, 28 states have agreements to enforce this agency's standards, under a 50 percent federal subsidy. The United States Department of Agriculture

is moving increasingly to decentralize agricultural commodity inspections to the states. Fourth, many states have enacted laws quite similar to the federal in actual provisions, although they operate independently. Here the enforcement operations supplement each other even though jurisdictions will be assumed largely by the federal agency in such areas as interstate commerce and large corporations. An example of this is the state "little FTC" regulations that have been enacted to combat unfair trade practices in all states except Alabama. They take three forms: fourteen states use the broad language of Section 5 of the FTC Act to prevent "unfair methods of competition or deceptive acts or practices" in trade or commerce; fourteen states cover all forms of fraudulent deception and sometimes unfair acts and practices in trade or commerce; and fifteen states itemize deceptive practices with a "catch-all" clause to reach other forms of deception. Thirteen states and the District of Columbia have regulations similar to the last alternative, but the law is also extended "to unconscionable consumer sales practices."

A. Division of Labor

Although the general tendency is for the states to deal with the smaller businesses and corporations while the federal agencies handle, and exercise jurisdiction over, the large corporations doing interstate business, this is not always the case. The FTC, for example, makes it a practice to inform a state regarding possible action on illegal situations it may have discovered; if the illegal situation involves several states, the action is quite likely to be brought by FTC. In some cases, however, the federal government may take independent action, and in some cases where the corporation is recalcitrant, both the federal and the state agencies may take action. This opens a "second front," as one Illinois EPA official termed it. Both the FDA and California may initiate enforcement actions against a firm. State actions can be begun before or after federal action has been instituted; it is claimed that many firms need two injunctions.

Where federal agencies act independently it may be due not only to the national scope of the corporate violation but also to the peculiarity of the violation and where they might have had greater experience in dealing with the issues. For example, this may happen in EPA cases that involve more complicated technology and equipment; in 1978 California reported that it had the only mobile air pollution tester in the world; EPA had none.

A division of labor may be made in certain aspects of an enforcement situation in some special areas. California has some 500 drug manufacturing concerns, but only six of them are major drug producers. Most of their operations are intrastate, and the state does most of the inspecting, including checks on the purity of old drugs. They also check the warehouses of the national corporations to ascertain legal compliance. On the other hand, the federal government deals with the safety and marketing of new drugs and more specific programs, such as marketing of medical devices.

The control of corporate misconduct is improved by increasing the use of state inspectors and investigators rather than federal personnel, often with a federal subsidy. This procedure serves to increase the staff at the local level and also reduce the need for federal expansion. On the other hand, it permits the use of available federal penalties and enforcement staffs to deal with the violations. For example, the federal government pays the Illinois Product Safety Division the time and travel expenses of a number of their inspectors. Such a relationship also furnishes a sense of partnership with the federal government. In some areas inspections are being turned over entirely to the states, a development that may well be expanded in the future. Increasingly, FDA sanitation inspection is being turned over to the states; in California, for example, state inspectors are now partly funded by the federal government.

Another illustration of joint enforcement, with some duplication, is the manner in which state and federal authorities work together to enforce regulations in the agricultural field, including those that involve large corporations. The U.S. Agricultural Marketing Services enforcement in California, for example, works closely with the state, the state referring to them complaints of an interstate nature. There is, however, a division of labor; the federal government works jointly in certain agricultural areas and leaves other areas to the state. Criminal prosecutions are generally carried out by federal authorities, but if the federal government does not act, then California takes the action. The federal government has the advantage of being able, however, to inspect shipments after they leave California, that is at both ends of the transaction. In addition, federal authorities can remove a license in any state, an important consideration if the concern moves after losing its license.

B. State Little FTCs

In the area of consumer action, the FTC jurisdiction is broad, complaints are numerous, and the need for state and local enforcement is great. Fortunatley, all states (except Alabama) and the District of Columbia now have "little FTC" laws. FTC rules preempt (i.e. take precedence over) those of state and local governments, but such rules represent only what may be regarded as "federal minimum standards." The state may add to these rules if it so wishes. These state laws typically contain authorization for the administrative or enforcement officials to conduct investigations through the issuance of subpoenas and cease and desist orders, or to obtain injunctions to halt the use of anticompetitive, "unconscionable," deceptive, or unfair trade practices. In addition, nearly all of these state laws provide for restitution; there are also provisions for civil penalties, class actions, and private action suits. Restitution may be obtained by the administrative or enforcement official on behalf of consumers in 46 states and the District of Columbia; civil penalties are available in 16 jurisdictions, and class actions in 16. In 42 jurisdictions a variety of actions are authorized: private actions by consumers, possibly with minimum recovery of \$100 or \$200, sometimes with double, treble, or punitive damages and usually including costs and attorney fees, are permitted.

Large corporations present problems to the little FTCs, mostly because of defective products, deceptive advertising, items not in stock, advertisements involving bait and switch, and the change of sale items to regular prices. Many of these problems are difficult for a state to handle, as violations represent a combination of national marketing policy that emanates from New York City, for example, to the retail outlet with which the state must deal. Georgia reported a situation that was presenting problems for interstate travelers passing through Georgia en route to Florida; the exorbitant prices the travelers were being charged for gasoline, tires, etc. by the retail service station outlets of national corporations constituted real "piracy," a situation the state authorities found difficult to control.

Nearly all of the 48 states with unfair or deceptive trade practice statutes, or with established consumer protection programs, have followed the recommendations of the National Association of Attorneys General of enforcing them through the state Attorney General's office (National Association of Attorneys General, 1976). In 38 states the Attorney General has the sole responsibility for the consumer protection program; in only two states, Hawaii and Montana, does the Attorney General have no consumer protection responsibilities.¹ The increasing practice of locating consumer protection within the offices of the Attorneys General really began in the 1950s and 1960s. New York was the pioneer in this field when, in 1957, the Attorney General made use of statutes that permitted him to seek injunctions against certain types of firms that were committing illegal acts, and even to annul the charter of a corporation. This practice of putting consumer protection under the office of the Attorney General is founded on a number of basic reasonings.²

- (1) Consumer fraud activities can be centralized in the office of the state's chief law enforcement officer. The bureau is thus enabled to deal more effectively with local issues and to maintain coordinated files.
- (2) The Attorney General's office has had more long-term experience with fraud cases, more legal expertise, and greater access to additional legal staffs, all of which enables them to implement more rigorous enforcement.
- (3) This office is the only state body that can proceed immediately with litigation if other measures fail.
- (4) Attorneys General characteristically empahsize consumer protection, working with other agencies and both representing and enforcing state antitrust laws.
- In two other states, Delaware and South Dakota, the Attorney General has no administrative responsibilities, but he does handle legal matters for the consumer agencies. In ten jurisdictions he and another state agency handle complaints; in six others he furnishes legal representation for the other agency. In cases of exclusive or shared responsibility the enforcement agency can be a special consumer protection agency, the Department of Commerce, Agriculture, Business, or State Trade Commission, or even the Governor's office.
- ² National Association of Attorneys General (1976) is the basic source for the advancement of these reasons, along with the following: William A. Lovett, "State Deceptive Trade Practice Legislation," <u>Tulane Law Review</u>, Volume 46, Number 724, pp. 734-735 and John H. Kazanjian, "Consumer Protection by the State Attorneys General: A Time for Renewal," 49 <u>Notre Dame Law Review</u> 410, at 416-417 (1973). Also see <u>Attorney Generals' Intervention Before Regulatory Agencies</u>, National Association of Attorneys General, Raleigh, North Carolina, January, 1975.

(5) The office frequently intervenes on behalf of the consumer before the state regulatory bodies.

As previously indicated, most of the state agency actions are against smaller corporations, leaving the FTC largely to assume the responsibility for the large corporations. The latter are more likely to involve violations that affect consumers nationally. It is difficult for the FTC to deal with numerous consumer complaints and for the state to deal effectively with large corporations whose headquarters are located outside the state, thus making investigations and the subpoena of records difficult. Both state and federal agencies may exchange information, however. Moreover, states often do not have adequate penalties available to deal effectively with the large corporations. The FTC has broader powers and a larger enforcement staff; for example, in California and Wisconsin, antitrust actions are limited to civil litigation, and the agency cannot refer cases for criminal litigation, as can the FTC. States may generally utilize, however, the decisions and the rulings established by the FTC when they go to court. When actions are taken against large corporations it is more likely that several states will go together, as happened in the General Motors engine switch case where 46 states brought a joint action in Chicago in 1978. The FTC may furnish "back door advice" when states do become involved in litigation with large corporations; in the GM engine switch case they secured a consent order in 1979 to control such cases in the future.

C. State Antitrust Actions

All states except Alaska, Rhode Island, Vermont, West Virginia, and Delaware, the haven of corporate incorporation, have antitrust sta-Surprisingly, fifteen state antitrust statutes actually pretutes. ceded the enactment of the federal Sherman Antitrust Law of 1896. Most of the state legislation originated in the Midwest during the 1880s and 1890s; it grew out of the Populist anti-big corporation sen-timent that was later termed "the trust busters." An Attorney General in any state may bring antitrust actions under either state or federal antitrust laws; he serves as attorney for the state and its political subdivisions that have been the victims of the violations of these acts under the Sherman and Clayton Acts. In addition to prosecuting suits against companies and corporations, the state Attorney General has the responsibility to defend state regulatory laws that might conflict with federal antitrust laws. In addition, any private person can bring treble damage actions in an antitrust case and in other types of suits. Through the Attorney General the states may also sue for damages in the name of an individual or in class actions, but the federal government cannot do so under a 1976 federal law dealing with antitrust cases. In these suits the U.S. Department of Justice does furnish assistance to state Attorneys General.

On the whole, state antitrust enforcement action has not been extensive. What has been done is generally not directed at the large interstate corporations; their control is left largely to the federal government. States find that antitrust actions against large corporations are often too complex and take too much time away from a limited staff that could be enforcing other state laws. Moreover, the headquarters of large corporations are often outside the state; even trade association meetings where a price-fixing conspiracy may be hatched is unlikely to be held in the state. The subpoena powers for out-of-state witnesses is limited. A large corporation may be engaging in nationwide violations, such as giving illegal kickbacks, but only a small number of such violations occur within a given state. Consequently, some states appear to file antitrust law suits for purposes of harassment and with the hope, having inadequate proof, that some settlement can be reached. In the case of large corporations, states are more likely to, as one Assistant Attorney General put it, move in on the "coattails of the Feds" to secure some additional damage settlement at the state level.

Recently the federal government has made it clear to the states that, in the interest of competition, anticompetitive or "fair price" laws that enable a manufacturer to fix prices for its products must be changed.

Federal spokesmen have indicated on numerous occasions in the past several years that state governments are repositories of similar anachronistic and anticompetitive regulations, and if they do not proceed with all deliberate speed with their own regulatory reform projects, the federal government will utilize all its constitutional authority to bring about those reforms without doing damage to the concept of federalism. Therefore, it would appear to be in the best interests of the state governments and their citizens for such reforms to be generated and carried out from within, by the states themselves, rather than from without, by the federal government (National Association of Attorneys General, 1975: 20).

Under the antitrust statutes of most states jail sentences can be imposed on individuals for law violations. In fact, in several states the possible prison sentence for an antitrust violation exceeds that provided by federal law. One writer has mentioned the possibility, however, that the failure to enforce vigorously the state antitrust statutes may be attributable, in part at least, to the general harshness of the sanctions (Flynn, 1967). State enforcement officials have generally been reluctant to request prison sentences; a 1967 survey. found that up to that date jail sentences had been imposed in only four cases; in one case the sentence had not been imposed under the statute even though the violation was of an antitrust nature (Flynn, 1967). A few cases were found where jail sentences had been imposed for refusal to comply with court orders for the production of evidence in an antitrust investigation or for violation of a related injunction. A number of reasons might be cited for this relative state inactivity. Certainly, the number of attorneys and budgets available is limited. In 1977 only 28 states had full-time antitrust staffs with a total of 112 attorneys (Memorandum from John R. Wallace, Committee on the Office of Attorney General Antitrust Coordinator of the National Asso-ciation of Attorneys General on the subject of "Update Information on State Antitrust Enforcement," March 8, 1977). This represent: a large increase, however, as in 1970 there were only nine Attorneys General and 45 full-time attorneys. Still, in 1977 only one or two attorneys were available in ten states; only 14 states have an antitrust investizator available.

The budget aspect is even more striking. Of the states that reported their budgets for the 1975-1976 fiscal year, seven had an annual budget of less than \$50,000, six of \$50,000 to \$99,999, and in only six states was the budget \$200,000 or more. Despite these budget restrictions, some states were able to recover substantial sums of money in a single year through antitrust actions. Three states --Wisconsin, Virginia and Kansas, for example -- recovered \$200,000 or more, California \$28 million. In order to supplement limited legal staffs some states employ outside legal counsel on a contingency fee basis to initiate antitrust cases.

In an effort to increase state antitrust activity and to relieve some pressure on the Department of Justice, Congress appropriated in 1976 \$10 million annually for three years. These state funds are administered by the Department of Justice; in order to obtain a grant a state must submit a plan of action directed largely at hard-core criminal actions. A major problem in such a program is that the hiring of additional attorneys may strengthen a state Attorney General's office but not necessarily result in antitrust actions, and also present a budget problem for the state when the federal grant runs out. Moreover, the activity may well be directed largely against intrastate companies and corporations, not against large interstate cor-porations that remain the federal government's chief concern. The states can, however, move against the headquarters of a large corporation, particularly through a joint action with other states. In addition the 1976 Hart-Scott-Rodino Act gave to state Attorneys Generthe right to bring suits under federal antitrust laws on behalf al of their state citizens and to recover damages and to enjoin further violations. States have an antitrust role other than that as protector of their citizens.

States are also purchasers and consumers of goods and services, and thus are potential victims of antitrust crimes. When a public building or paving contract is bid-rigged, when a commodity purchased by the state is price-fixed, then tax dollars are stolen and the state suffers. States can, and do, file civil damages actions to recover for their own account overcharges paid as a result of antitrust violations. This is a function that cannot, and should not, be performed by the federal government. It is the legitimate, and increasing, province of state attorneys general to protect the revenues of the states in this fashion (Shenefield, 1978).

D. Federal-State Corporate Tax Enforcement

The Internal Revenue Service (IRS) of the federal government and the states generally do not exchange detailed tax information on corporations; these returns are considered privileged information, as are individual returns. The collection of state taxes from the large multinational corporations is often extremely difficult, and the possibilities for violations great. Consequently, a unique system has been developed by a large number of states to deal with corporate tax collections and enforcement problems; this so-called unitary concept or formula method of fixing corporate taxes is followed in 34 states. This system undoubtedly reduces the possibility of tax evasion by some corporations in those states where the formula procedure is followed. Some California officials, where the system was first instituted in 1936, claim that it is the most efficient method so far devised. The formula method works in this manner: a state takes the worldwide sales and profit figures of a given corporation, includes its foreign subsidiaries, then calculates its own share as based on data of sales (gross receipts), payroll (salaries, wages, etc.), and property assets. State corporate taxes are then levied on this percentage of the corporation's worldwide operation and profits. Under Georgia's corporate tax law, for example, the payroll factor on the formula is

the numerator of which the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which the total compensation paid during the tax period. The term compensation means wages, salaries, concessions, and other forms of remuneration paid to employees for personal services (Georgia Public Revenue Laws, Sec. 92-3113).

This method has been approved both by federal authorities and by the U.S. Supreme Court. This particular part of the code, which is somewhat similar to Section 482 of the Internal Revenue Code of 1954, empowers the IRS to allocate income and deductions in multinational corporations that operate in several countries to prevent tax evasion or to reflect income (Harvard Law Review, 1976).

Under the formula method there appears to be relatively limited means for corporations to deceive a state on taxes. Property and payroll valuations can easily be checked. The method inevitably depends, of course, on the accuracy of the figures provided by the corporation on total national and international operations and profits. Furthermore, if this is the only method used, a state cannot be certain if illegal payments have been made or if other tax frauds have been committed. From interviews with tax officials, it appears that corporations are not satisfied with this formula method of tax collection. Some 92 of the largest corporations have formed a Committee on State Taxation associated with the U.S. Chamber of Commerce to limit federal taxation on subsidiaries to funds not brought back to the U.S. The states continue to use a proportional tax on profits, however, whether or not the subsidiary is foreign or domestic. Bills have also been introduced in Congress to prevent corporate taxing by a state; a modified version even passed the House in 1975. In order to prevent corporate and congressional criticism, a multi-state tax compact, consisting of 20 states and 15 associated states, was formed to use the same tax formula.

More corporate tax violations are said to occur in those states where the formula method is not followed. The most common manner illegally to avoid state taxes is to make it appear, inaccurately, that more of a firm's earnings were accrued in states with low tax rates or in states such as Texas where there are no corporate taxes. Some corporations even fail to file state tax returns; for example, six of the top 500 corporations filed no returns in Colorado in 1976; five of them had never filed returns (Wolman, 1977). In its home state of Pennsylvania, U.S. Steel paid no taxes in 1967 and 1968, even though profits of \$426 million were reported. Several states have reported that an incredible amount of merchandise is "in transit" on inventory tax day and thus not actually within the state. Some corporations keep these inventories as much as possible in states where tax rates are low. Not all of this is illegal; the mechanics of corporate state tax avoidance, according to one Colorado official, is part "wizardry, part gimmickry, and part fraud" (Wolman, 1977).

E. Problems of State Enforcement

States appear to have one major advantage over the federal government; on the whole they can move faster in case of a corporate viola-tion. Time is required to deal with a federal agency either through the national headquarters or through its regional offices. In the control of food and drugs the federal government uses seizures, whereas the states, like California, use an embargo against a product in order to prevent its being distributed. Moreover, states on occasion revoke a license or at least threaten to do so; this more rapid sanction is usually not available to federal authorities, as an agency must often obtain a court order for its actions. The Illinois Product Safety Division, for example, can order an immediate embargo on an unsafe product, whereas its federal counterpart must take the time-consuming action of going to court. It was pointed out that in California, as in other states, it is possible to obtain quicker action on consumer affairs cases than could the FTC. It is too centralized for rapid action, due to the fact that clearance must often be obtained from Washington. In California, enforcement actions can be taken by state officials and the Attorney General's office, as well as by City and District Attorneys. In general, states are more concerned about individual consumer actions.

Likewise, court actions may sometimes be filed by both state and federal agencies, as happens in California, because state filing is faster. The state can take action in a week; federal agencies may need a year, as federal litigation must usually be reviewed and then the action must proceed through the Department of Justice. The penalty may also be increased through an action at both levels, but a state decision is effective only within its boundaries while the judgment in a federal decision is nationwide.

In spite of the greater speed of state action, states generally do not have as strong measures for enforcing regulations against corporations as the federal government. In particular, most state agancies are hendicapped by not having available criminal sanctions, especially imprisonment.

F. Differences Between Large and Small Corporations

Interviews with state enforcement officials have clearly indicated that strong enforcement actions against large corporations are the exception, certainly far less numerous than against smaller corporations. The failure to prosecute large corporations is due not to a fear of them; actually, as one enforcement official stated, "large corporations are afraid of state actions," particularly the more local unfavorable publicity they get and the fear that other states may then prosecute. On the whole, however, negative publicity probably has a far greater effect when enforcement action is taken at the national level.

The following reasons have been given for the less frequent state enforcement actions being taken against large corporations as compared to smaller ones:

(1) The responsibility for the large corporations, whose operations are generally interstate in nature, is largely left to federal agencies.

- (2) The intercorporate structure of the parent corporation, its divisions and subsidiaries, some wholly and some partially owned, makes state prosecution difficult. Also involved may be the relation of the state retailer to the national corporate manufacturer; for example, a product may be sold with a service guarantee by the large corporation, yet with few local retail establishments able to provide this service.
- (3) Large corporations are more careful to comply with the law, and their violations are not as flagrant, in general, as those of the smaller corporations. Large corporations tend to comply with state laws, often because they know what is expected of them, whereas the smaller corporations, because of inadequate legal staff, often seem not to know as well how to comply and thus become subject to more enforcement actions.
- (4) Large corporations have more and better informed attorneys than the small ones; large staffs of attorneys are available to defend the corporation both from within its own offices and through local legal counsel, and large sums of money are available for legal defense. In the General Motors engine switch case, in which 46 states joined in an enforcement action in Chicago, the corporation had available 100 attorneys plus outside legal aid. The smaller corporation has a quite different situation; as they have no such legal and technical resources to resist state enforcement actions an agreement can usually be reached.
- (5) Large corporations are sensitive to public opinion and their public relations image. When found to be in violation, they are more likely to mediate rather than to engage in long litigation, as they do not wish to become subjected to adverse publicity at the state level. One enforcement official stated that "the bigger they are, the faster they comply." An agreement can often be reached without stronger actions, as, for example, taking a product off the shelves even though this action means a loss of sales and profits. Settlements have the advantage to a corporation of avoiding costs, negative publicity, and consumer suits that might follow an adverse litigation decision.
- (6) Most states have inadequate staffs of legal and technical experts to develop and handle prosecutions, as is more likely in the case of federal agencies. The files of large corporations may contain thousands of documents relevant to a given case; sometimes the corporation may offer to furnish all such documents, knowing that the state would encounter problems in finding the relevant ones. Because of limited personnel, consequently, in many state cases involving large corporations, conferences may be held but no action taken. If the corporation is prepared to solve the problem, which is all the state wants, this can sometimes be achieved without even sending a warning letter. State authorities, however, must convince the corporation that it is willing to sue if need be. If there is an industry-wide problem involving violations, a general

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statewide meeting may be held.

- (7) Large corporations have funds available to settle cases readily and easily; this is not necessarily the case with the small corporations.
- (8) Large corporations frequently threaten a state to close down their operations or to move outside the state if the remedial actions are thought to be too costly. Corporate relocation from California presents problems to them; as an enforcement official pointed out: "Oregon does not want them as it wishes to reduce industrial growth, Nevada and Arizona do not have the facilities and they cannot go to Mexico. Moreover, California is a market of nearly 25 million persons and shipping costs from a more distant point would be too great." Sometimes they do close down, but it is hard to show that it was related to the state government's actions: rather, the plants' operations were probably marginal. For example, in three Illinois EPA enforcement cases cited, two reported that their closing had had no relation to the EPA, while the third blamed the closing on the enforcement action.

G. Federal Preemption

Federal law preempts state law; this represents the most crucial problem in state enforcement. At least 30 to 40 federal laws involve the problem of preemption. The FTC law, for example, takes precedence over similar state laws regulating such procedures as labeling. The issue of preemption embodies basic U.S. governmental structure -- federalism or the protection of states' rights. The question arises as to whether Congress actually intended to give the power of federal preemption to the various agencies. For example, Congress established the right of the Department of Agriculture to set certain national standards and the Supreme Court has ruled that the states cannot intervene or supercede federal standards such as those of FTC related to labeling.

The basic rule concerning FTC and state regulation of unfair trade practices, for example, is that the state may adopt standards that are "more beneficial" to the interests of consumers or fair competition than the FTC rule, but that they might not adopt standards "less beneficial" to consumers or more restrictive of competitions. This is the criteria used when there is an explicit FTC rule in the area. Where this is not stated in the law, some vacuum does exist.³ In fact, the major conflict between FTC standards and those of the states probably arises in the area of the FTC rules on deceptive advertising. Yet state standards may be set higher than those of the federal government; thus there is no conflict.

³ A good example of explicit FTC rule that adopts this standard is the trade regulation rule abolishing the holder-in-due-course doctrine for consumer paper. 16 CFR 433.2, 40 <u>Federal Register</u> 53506 (November 18, 1975, effective May 14, 1976). An example of Congress taking this view is found in a statute in the Magnuson-Moss Warranty-FTC Improvement Act, 88 Statutes 2183, Sections 104 and 111. Some local state jurisdictions, for example, do not permit the use of plastic pipes in the plumbing business, and this rule restricts competition even though the FTC has no rules on the subject.

The problems produced because of federal preemption are illustrated by the method of U.S. Department of Agriculture inspection versus state requirements. Consumers are often cheated by shortweighted meat, poultry, flour, etc. Some of the short-weighting is deliberate, while other instances are due indirectly to moisture loss that occurs during the manufacturing or packaging process. Large meat packers may inject water into meats, adding as much as 30 percent extra fluid; flour manufacturers may dampen flour to increase its weight. Federal agricultural inspectors are primarily concerned with health and quality, such as the grade of the meat or flour, and as contrasted with state consumer interests, they do not enforce weight regulations at the retail level. California, for example, employs about 1,000 retail and wholesale inspectors to check weights of food and other products. Fines are levied for shortages, but it is claimed that the absence of stricter federal regulations at the manufacturing level prevents effective enforcement. Consequently, there is much short-weighting due to later shrinkage due to climatic conditions; a pound actually gives the consumer no more than 14 ounces of product. Likewise, the weight of flour in a bag may not be correct. A vice-president of Pillsbury Company has stated that the only loss of flour is from moisture in it, but he also admitted that "obviously you are going to get some people trying to short-weight products" (Morehouse, 1978, as quoted in The Wisconsin State Journal, October 5, 1978).

Since it is assumed that a short-weighted package is due to the manufacturing process, the states would like to assume that shortweighting is real and thus be able to charge the manufacturers. To do this, state inspectors would also have to operate within plants. In 1977, however, the Supreme Court ruled against a joint action by 38 states on the grounds that the federal government preempts control at the manufacturing level. The Supreme Court decision grew out of a federal district court case in which California's Department of Food and Agriculture had alleged that the large national corporation, Rath Packing Company, had short-weighted their products. In this case, the state claimed that the weight marked on a container of bacon was not the actual net weight of the package. Rath contended that, on the contrary, the weight was that at the time of the packaging and that the federal U.S. Department of Agriculture regulations took precedence over the state regulations. The USDA regulations permitted some moisture loss, but California's short-weight regulations permit far less.

After the Supreme Court ruled that the USDA had preemptive jurisdiction, 48 states petitioned the Department of Agriculture for tougher regulations. By the end of 1978 there were some indications that the federal government was considering stricter regulations about moisture loss. A senior officer of the USDA meat and poultry inspection division stated: "If the consumers' view. . . that they are losing millions of dollars as part of net weight their rationale is correct" (Morehouse, 1978). This inspector cited the case of a three-pound chicken packaged at two and seven-tenths pounds would result in the consumer's paying considerable more per pound than was marked on the package. Proposed regulations would require that products weigh what the labels indicate they weigh.

Within the last two or three years state officials have been increasingly aggressive in attacking corporate misconduct. These enforcement efforts are even affecting some of the largest corporations, particularly in joint actions involving several states. Most states have adequate jurisdiction to deal with large corporations but often lack the resources or adequate incentives to bring such actions and have, consequently, in the past tended to defer to the federal government.

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CHAPTER V

METHODOLOGY OF CORPORATE CRIME RESEARCH

This study examines the extent and nature of initiated (to be termed violations) and completed enforcement actions taken against the largest U.S. publicly owned manufacturing, wholesale, retail and service corporations over a two-year period of time. It involves a systematic analysis of federal administrative, civil and criminal actions initiated or imposed by 24 federal agencies during 1975 and 1976. At this stage of research on corporate crime it has not been possible to do research on the extent and nature of corporate violations reported by consumers, competitors, and other injured parties, or those discovered by government investigators. These data would have been roughly equivalent to data on crimes known to the police reported in <u>Uniform Crime Reports</u>, but there is no equivalent report for the study of corporate crime. The data, therefore, had to be limited to actions initiated against corporations (roughly the equivalent of arrests or prosecutions) and actions completed (equivalent to convictions). These official actions may be only the tip of the iceberg of violations, but they do constitute an index of illegal behavior by large corporations.

Originally, plans called for the inclusion of state and local enforcement actions as well as competitor suits, but incomplete data precluded this procedure. The data that were collected, however, show that there were 152 state and 45 local actions initiated against the corporations in the sample. In this study it was possible to identify 168 suits initiated by other large corporations, which could be identified as competitors, against the corporations in the sample. This was obviously incomplete because there are in the United States approximately 1000 antitrust suits per year brought by other business concerns against the largest corporations (conversation with Willard Mueller, Department of Agricultural Economics, University of Wisconsin-Madison). In some cases, the government action actually follows a corporation's action, for example in suits involving International Telephone and Telegraph (ITT) and International Business Machines (IBM). Of the suits which were identified, 93 (55.4 percent) were for antitrust violations, 38 (22.6 percent) involved breach of con-tract, 20 (11.9 percent) were related to financial transactions, 8 (4.8 percent) were for trademark and patent infringements, and 9 (5.3 percent) were other types of violations. Thirty-nine (23.2 percent) of these competitor suits were brought by one of the other corporations included in this sample. Actions initiated by noncompetitors (i.e., dealerships, franchisees, and licensees) totaled 201, with 158 (78.6 percent) of them involving antitrust violations. Class action suits totaled 176; 104 (59.1 percent) were for antitrust and unfair trade practices, 24 (13.6 percent) were financial, 21 (11.9 percent) were labor, 13 (7.4 percent) environmental, 8 (4.6 percent) manufacturing, and 6 (3.4 percent) other types of violations.

The two-year period used in this study, rather than a single year, provided longer coverage, which is particularly important because of new regulations on consumer and environmental protection. A possible trend study was eliminated for several reasons. Governmental enforcement funds, manpower and policies are particularly subject to fluctuation in the area of corporate violations. Some major laws relating to corporations are recent and would thus affect any time series. Building on data gathered in this study it would be possible, however, to make a follow-up study of enforcement actions taken against a sample of the corporations. Longitudinal studies of corporate violations and enforcement actions would be a major contribution to research in this area.

A. Sample of Corporations

The original sample of corporations included the 620 largest manufacturing, wholesale, retail and service corporations in the United States with annual sales of \$300 million or more. This sample was taken from the Fortune 500 and Business Week lists for 1975, with the 500 largest industrials and 49 of the largest retailing companies coming from Fortune. Business Week provided 17 additional retailing companies, 29 service industries and 25 supplemental corporations. Because of the prevalence of mergers and acquisitions taking place during this two-year period studied, difficulties were encountered in determining which corporation should be held responsible for a violation. The sample was, therefore, made more uniform and reduced to include only those organizations that had been publicly held U.S. parent corporations for the full two-year period and not subject to out of the ordinary business operating circumstances that might affect both the nature and extent of violations. As a result, a total of 38 parent corporations were dropped from the sample; 5 were cooperatives, 1 was under a trusteeship due to failure to divest as directed by an FTC order, 1 went bankrupt during the two years, 1 was an investment company, 5 were privately held or for other reasons not required to be registered with the Securities and Exchange Commission (SEC), 21 had not been a parent for the full two years or had been acquired by a foreign or domestic firm during the two years, and 1 was a foreign firm. In addition, 3 corporations had appeared on the original list but were in fact subsidiaries of other corporations in the sample and therefore analyzed as subsidiaries.

1. <u>Inclusion of subsidiaries</u>. In an attempt to compile the violation records of corporations, ideally one would include all violations of all subsidiaries. But large corporations often have many subsidiaries in numerous product lines; in fact in the original sample of 620 corporations, it was estimated that they control in the neighborhood of 9,000 American wholly owned subsidiaries. Therefore, in a study of this size it was not possible to gather the necessary data on such a large number of subsidiaries, especially since violations of subsidiaries are often not reported with the name of the parent corporation. Consequently, the study was limited first to those wholly owned subsidiaries with \$100 million annual sales and finally to those with at least \$300 million in annual sales, the same lower limit as that used to determine inclusion of parent corporations in the sample.

The 1977 Dun & Bradstreet Million Dollar Directory was used to identify all those subsidiaries of corporations in the original sample whose annual sales for 1976 were at least \$1 million. It was from this source that were also recorded each subsidiary's 4-digit Standard Industrial Classification (SIC) codes and the number of their employees. Of the 1209 subsidiaries recorded with annual sales of at least \$1 million, 114 had sales of \$100-199 million, 55 of \$200-299 million, and 110 with at least \$300 million annual sales (28 had sales of more than \$1 billion annually). It was not possible to gather data (for example, from the Law Services) on even all these large subsidiaries, so a decision was made to limit them to the largest, or \$300 million sales, which was the lower limit of the parent corporations. Nine of these 110 subsidiaries were eliminated when their parents were excluded, leaving a final sample of 582 parents and their 101 largest wholly owned American subsidiaries, whose addition made the research design more logical (see Appendices D and E for lists of corporations and subsidiaries included in this sample). The study concentrated on parent corporations, primarily those in manufacturing and mining. Data on subsidiaries have been used primarily to make some comparisons in the extent and nature of violations with their parent corporations.

B. Data Collection

No systematic study was attempted to ascertain various government agency sources of information on corporate violations, as this would have required a detailed study involving an analysis of agency enforcement manuals as well as interviews with key agency officials. From information derived from this study of corporate violations, it appears that these violations become known to an agency from a number of sources, depending in part on the nature of a particular agency.

- (1) Consumer complaints -- Each year the federal government receives more than ten million complaints from consumers.
- (2) Government investigations -- A leading source of information on violations is the investigations carried on by the enforcement staff of the agencies themselves, although they are naturally limited by budget constraints and are difficult to obtain in many cases, simply because the records are often not publicly available unless violations have been revealed.
- (3) Congressional committees -- A source of information is the various congressional committees. The Kefauver Senate Antitrust Subcommittee, for example, played a prominent role in persuading the Department of Justice to investigate and prosecute the electrical conspirators. When Senator Hart headed the Senate Antitrust Subcommittee he likewise played a central role in stimulating the Department of Justice actions against the "children's books" conspiracy and the international quining cartel, as well as encouraging more aggressive merger enforcement by both agencies.
- (4) Competitors -- Complaints are often made to the government by competitors who feel threatened by unfair competition because of violations. The extent of this possibility can be readily seen when one reads the numerous antitrust, misleading advertising and other competitor suits reported almost daily in The Wall Street Journal.

- (5) The press -- Cases that involve, for example, industrial accidents, and private suits appearing in the press, as well as through investigative reporting are sources of information.
- (6) Employees -- Present and former employees, or executives, particularly those who are disgruntled, are often sources of information. Employees who furnish this type of information, however, may encounter serious difficulties. Ralph Nader has proposed that employees be given job protection by law so that their positions are no different from that of a citizen informing the police about an ordinary crime (Nader, Green and Seligman, 1976).
- (7) Customers -- Antitrust violations are frequently reported by customers, particularly by government purchasing agencies who note the uniformity or the peculiar nature of bids submitted to them. Antitrust investigations begin quite frequently when attention is focused upon the activities of relatively low-level corporate officials. A government antitrust official has pointed out that:

Federal agencies. Thirty-one federal agencies were identified in the U.S. <u>Government Manual</u> as having some possible relation to corporate violations. After a systematic canvassing by telephone and letter, four of them (Commodity Futures Trading Commission, Patent and Trademark Office of the Department of Commerce, National Transportation Safety Board and Office of Workers' Compensation Programs of the Department of Labor) were found to be irrelevant for the purpose of this study. For three other agencies (Department of Interior's Mining Enforcement and Safety Administration, Employment Standards Administration of the Department of Labor and the Interstate Commerce Commission), it was impossible to secure the data requested either because the data were available only through district, regional or area offices, the material was not on computers or readily available by other means, the data were not available by corporation name but only by case number or by the name of the subsidiary, or the computer cost would have been prohibitive. Four agencies originally surveyed failed to provide any initiated or enforcement actions relating to the corporations or subsidiaries included in the sample. They were the Federal Communications Commission, the Land and Natural Resources Division and the Tax Division of the Department of Justice, and the Office of Employee Benefits of the Department of Labor. Through the course of the data collection, however, information was gathered

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. . .since many of our leads come from customers and suppliers, they are likely to lead us to their points of contact within a particular corporation or industry. Our initial contact with individuals of a corporation are therefore likely to be at lower levels. Assuming that a corporation pursues a damage-limiting posture, it will seek to confine the investigation to those levels of involvement. This may be quite acceptable to the corporate vicepresident who may have directed the conduct now under investigation, but it certainly puts lowerlevel officials in a difficult posture. The success of this corporate strategy will depend on the loyalty of these shocktroops (Kauper, 1976: 7-8).

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(although not systematically) with regard to four additional agencies, the Federal Power Commission, the Nuclear Regulatory Commission (formerly the Atomic Energy Commission), certain bureaus of the Department of the Interior and the Army Corps of Engineers. The analysis therefore reflects the enforcement activities of a total of 24 federal agencies (see Appendix A for a list of these agencies and their functions and Appendix F for the number of actions initiated and sanctions imposed by agency).

2. <u>Sources of data used in study</u>. In order to compensate for deficiencies in completeness and comprehensiveness in any one source, four main sources of data, some of which would not have been publicly available prior to the Freedom of Information Act of 1974, were relied upon.

- (1) Data obtained directly from federal agencies on enforcement actions taken against the corporations in the sample.
- (2) Law Service Reports (principally those of Commerce Clearinghouse [CCH] and the Bureau of National Affairs [BNA]) which give decisions involving corporation cases in such areas as antitrust, consumer product safety and environmental pollution.
- (3) Annual corporation financial reports (Forms 10-K), prepared for the Securities and Exchange Commission, which include a section on legal proceedings initiated and concluded against the firms.
- (4) A computer print-out of abstracts of enforcement proceedings involving corporations reported in <u>The New York Times</u>, <u>The</u> Wall Street Journal and the leading trade journals.

a. Data from federal agencies. As noted previously (see pages 36-37), government data on corporate violations vary in accessibility. There is no guarantee of a complete data set, even with the Freedom of Information Act that helps researchers to secure much previously unavailable data. In general, federal agencies could not furnish enforcement data on the large corporations in the sample. Frequently their data were not set up by name, but rather by case file number, they were kept in large case files that were difficult to handle, were located in different parts of the agency, covered only current cases, data were only in the district or regional offices, or only incomplete data could be furnished even though what was desired was basic information.

A few examples will illustrate the types of difficulties. One agency in desperation sent two large boxes containing photocopies of over a thousand orders of a particular type that they had issued during the two-year period, with instructions for the project to search for the corporations in the sample. Due to a lack of centralization of initiated agency actions, it might be necessary to contact as many as 90 area offices in the country, as in one case, because the information is not centralized in the 10 regions; this was an impossible task. Likewise, the Office of Federal Contract Compliance Programs could not provide data on cases involving the withdrawal of government contracts from violating corporations; it was therefore necessary for us to contact each of the 16 agencies it coordinates.

Data are generally kept in forms more wheful for agency operational use than for outside research durposes. The Department of the Interior's Mining Enforcement and Safety Administration, which regulates mining safety conditions, has the data on computer but its approximately 90,000 cases a year covering over 15,000 mines are listed by name of mine rather than by parent corporation. Likewise, the National Labor Relations Board (NLRB) has its data on computer, including such information as when the case was filed, the alleged violation and judge's decision, but the cases are listed by number rather than alphabetical and are also on a fiscal rather than a calendar year basis. The agency with the most complete data is the Environmental Protection Division, U.S. Coast Guard, which furnished a complete computer print-out on spills and enforcement actions. Still, it was necessary to contact several persons at this agency numerous times to understand their enforcement procedures with regard to certain types of cases.

Computer costs incurred in securing the data may be prohibitive in a research study of this scope. To secure data through the Office of Federal Contract Compliance would have required a substantial initial computer cost to the project and then costs for data from each of the 16 agencies associated with them. The Occupational Safety and Health Administration (OSHA) could provide the requested data, but it would have involved a major programming effort for which programmer resources were not available.

Some corporate violation data cannot be made public, even under the Freedom of Information Act. Such is the case for tax actions taken by the Internal Revenue Service (IRS) except when, as seldom happens, the enforcement proceeding goes to appeal. The Wage and Hour Division of the Department of Labor does not disclose information on administrative actions, and their computer does not have complete information on individual cases.

Informal enforcement actions (as opposed to the formal administrative and judicial proceedings) are often difficult to collect as they are not always reported by district or regional agencies. Finally, the reporting of federal court cases in the <u>Federal</u> <u>Supplement is not complete</u> (includes only about 60 percent of federal court cases), and is left to the discretion of the individual courts. The <u>Federal Reporter</u> carries decisions of the federal Courts of Appeal as well as the <u>Federal Supplement</u>. Many administrative decisions, by statute, go from the federal agency to the Court of Appeals, bypassing the district court.

b. Law Service Reports. Various Law Services provide fairly extensive information on violations and enforcement actions taken by the federal governmental agencies (see Appendix G for list of Law Services used in this study). Frequently, however, this coverage is not complete. For example, the government reports only those <u>leading</u> LAB-initiated court cases in the area of labor law which are <u>appealed</u> to the full board to seek enforcement of an order following initial determination by an Administrative Law Judge. In addition to this selectiveness, cases are represented only when final or when some other interim determination has been made. Initiated court cases, that is those which are <u>settled</u> in 1975 or 1976 or are still pending at the end of 1976, are therefore missing. Some leave out various

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important pieces of information, the most critical for this study being the date the complaint was filed (date of initiation), making it difficult to determine whether the case should be included in this study of the two-year period. The available information also may not contain the specific nature of the violation.

The <u>FDA Consumer</u> reports seizures of food products and subsequent actions taken, specifically injunctions and prosecutions. In the reporting of seizures, however, the <u>FDA Consumer</u> often does not name a company involved, or it will often mention only the distributor or warehouse where it was stored "under unsanitary conditions," making it impossible to determine which firm is responsible for the violation. Also, there generally is no indication of quantity of goods seized or their value. Little is reported on state activity.

With regard to tax cases, administrative actions within IRS are only reported by case in the Law Services when they are appealed to the tax court or other federal courts. Also, in reporting sanctions, the Law Services report one sum, combining back-tax and penalty, thus making it impossible to determine the amount of the sanction. Likewise for trade violations, the Justice Department cases are only the court cases; if the Department uses informal settlements in any way, this is not reflected in the Law Service accounts.

Besides varying degrees of completeness, Law Service reports are somewhat difficult to use in that they are designed for the lawyer and businessman rather than for the researcher. One resulting practical problem is that the researcher must often read rather lengthy case reports (especially prevalent in NLRB cases) to extract fundamental information on such variables as the violation, its date of occurrence and the penalty, among others. In addition, some such information may be missing from the account.

The Law Services proved most valuable in providing data for the NLRB, the Wage and Hour Division of the Department of Labor, Occupational Safety and Health Administration (OSHA), Securities and Exchange Commission, Internal Revenue Service, Federal Energy Administration, trade, credit and consumer product safety violations. It is for these agencies, also, that information from other sources was neither complete nor systematically presented. Violations by subsidiaries not included in the sample were not systematically recorded from this source, but there were attempts to do so from other sources.

Although not official and incomplete, the various "services" published by Commerce Clearinghouse and the Bureau of National Affairs and competitors relate to specific areas of law (for example, <u>CCH Trade Regulation Reports, BNA Antitrust and Trade Regulations</u> <u>Reports, CCH Consumerism Reports, Warren & Gorham Commercial Code</u> <u>Letters, etc.). They also provide a source of general information</u> concerning official actions as well as likely complaints, settlements, speeches, and the apparent philosophy of the various regulators of different kinds of businesses. c. <u>Corporation reports to SEC</u>. Each corporation is required to submit annually Form 10-K to the Securities and Exchange Commission. The 10-K report has for a long time been available to the corporation stockholders upon demand. Under the Freedom of Information Act, they are now available to the public through the SEC files in Washington, D.C.

Letters were sent to the General Counsel of each corporation requesting their Forms 10-K, Annual Reports and such other reports made available to shareholders, the general public and the SEC (eg. Proxy Statements and Prospectus). Corporations were generally cooperative in sending these materials. Because some of their fiscal years did not correspond with the calendar years being studied, follow-up letters were sent for additional reports. If their fiscal year ended with 2 weeks of the beginning or end of the calendar years, the information was considered to be complete enough for purposes of Only 5 corporations actually refused the request, replythe study. ing that the 10-Ks should be obtained from the SEC. In 4 cases the corporation requested payment for a photocopy. In those cases where the corporation claimed that one of the forms requested was no longer available, reimbursement for photocopying costs incurred was offered; in all but those 4 cases copies were sent without billing. For those 61 corporations that repeatedly failed to provide these materials, copies of the relevant sections of the reports were ordered from Disclosures, Incorporated, a private service providing SEC 10-Ks.

When the research was begun, it was assumed, because of the mandatory reporting requirements of the SEC, that the 10-K reports on legal proceedings would be fairly complete. This assumption proved incorrect. Some reports may contain several pages of information, while others have only brief references. Some give the enforcement data by case, while others, for example, combine actions. The variation seems to be due to different interpretations of what is considered the reporting of a "material legal proceeding" and the fact that the SEC does not adequately monitor the reports. According to regulations of the SEC, Item 5 of Form 10-K requires the corporation to:

Briefly describe any <u>material</u> [emphasis added] pending legal proceeding, other than ordinary routine litigation incidental to the business, to which the registrant or any of the subsidiaries is a party. . Include the name of the court or agency in which the proceeding is pending, the date instituted, the principal parties, a description of the factual basis alleged to underlie the proceeding and the relief sought.

Further instructions state that "no information need be given with respect to any proceeding which involves primarily a claim for damages if the amount involved, exclusive of interest and costs, does not exceed 10 percent of the current assets of the registrant and its subsidiaries on a consolidated basis." Since current assets for those corporations in this study averaged \$595 million and monetary penalties sought generally remain low, it is likely that full reporting of proceedings among large corporations is understated.

The most detailed information contained in the 10-K section on legal proceedings involved actions related to the SEC (political contributions, payments to foreign government officials, improper reporting procedures, etc.) and FTC (antitrust, unfair competition and fraudulent advertising). Special requirements pertain to environmental violations. Administrative or judicial proceedings arising under any federal, state or local provisions concerning the discharge of pollution into the environment or otherwise connected with the protection of the environment are not to be considered "ordinary routine litigation incidental to the business" and the claim for damages need not exceed 10 percent of current assets. Furthermore, such proceedings that are similar in nature may be grouped and described generically, stating the number of proceedings in the group, a description of the proceedings and the issues involved and if, in the aggregate, they are material to the business or financial condition of the registrant. Thus, environmental actions including federal, state and local governments are reported quite frequently, but in such a manner that specific details for each case cannot be discerned. For example, damages sought are aggregated for all related violations and dates of institution, violation and decision cannot be determined for specific cases. Generally, reference is made to administrative actions (except EPA) only if the courts eventually become involved. Agency actions least likely to be reported involved the Food and Drug Administration (FDA), Occupational Safety and Health Administration (OSHA), Equal Employment Opportunity Commission (EEOC), Consumer Product Safety Commission (CPSC) and the National Highway Traffic Safety Administration (NHTSA).

Nevertheless, Forms 10-K provided valuable clues to violations not easily identified, and in particular was the most effective of all sources used in reporting state and local proceedings even though these were felt to be too incomplete to use in the research. Other sources, especially the newspaper search, served as supplements. Form 10-K was the major source of private, competitor, derivative action, stockholder and class action suits, and the only source from which these actions were systematically recorded. In addition, 10-Ks reported proceedings against subsidiaries more often than any other source. Such cases were recorded for parents and 100 percent owned American subsidiaries, although there may have been some ambiguity due to the number of persons on the research staff responsible for recording the data. Violations mentioned in the 10-Ks were recorded when it could be reasonably determined that the enforcement action was initiated or completed in 1975 or 1976.

In an experimental attempt to secure more complete 10-K data from corporations, follow-up letters were sent to the General Counsels of 35 corporations requesting details of specific cases, or asking for information on any administrative, civil or criminal cases in which they were involved. Twenty-five corporations did not reply at all. Only ten corporations replied, all promptly, but it was clear that this time-consuming means of gathering information would have little benefit even with them. Five corporations reported no governmental actions against their corporations, two knew of none, and one stated that they did not release this type of information. Only one corporation supplied information in a manner useful to the study. This failure in an attempt to use corporations as a source of data may indicate a lack of cooperation. On the other hand, it may mean that corporate enforcement records are no more complete than those of government agencies.

d. <u>Newspaper computer data bank</u>. Certain newspapers and journals are a major source of details on instituted and completed legal proceedings against large corporations. An individual search of different newspapers, where an index was available such as <u>The</u> <u>New York Times</u>, would have been difficult, time-consuming and <u>subject</u> to error due to the number and types of entries listed under each corporation in the various indexes. Newspaper indexes also do not contain information in the desired form of an easily identifiable listing of legal actions instituted or sanctioned; rather, cases are often indexed under various subject headings (e.g., the regulatory agencies, etc). This difficulty applies particularly to locating actions against subsidiaries.

A computer data bank search (Lockheed Dialogue System, available through Information Services, University of Wisconsin--Madison) was used to locate all articles relating to enforcement actions against the corporations from The Wall Street Journal, The New York Times and trade newspapers and journals. This computer bank contains all references in the F&S Index of Corporations and Industries, together with a brief abstract of what occurred, by corporations, title and location of article. After much experimentation with the computer, relevant articles appearing in 1975 and 1976 and the first quarter of 1977 (to control for any time lag in reporting) were identified by feeding in Predicast Event Codes related to corporate illegalities that had provided the relevant articles for trial runs. Those codes providing the most useful material included: divestiture, product recalls, product safety, water polluting, stockholder suit, corporation income tax, occupational safety rules, pollution regulation, antitrust regulation, financial regulation, labor regulation, consumer protection regulation, crime against persons, civil rights, judicial procedures, suits, justice, investigations and incarceration. The cost of the computer operations and the print-outs was \$3,112, or \$5.00 per corporation.

These print-outs by corporation were then edited to determine which abstracts were likely to identify new cases or to give details for cases already recorded from other sources. The original plan had been to identify these articles and have them photocopied, but this plan was revised in such a manner that, after checking the print-out of abstracts against existing data cards, the researcher went directly to newspaper microfilms and collections of trade journals to gather information on a new case or supplemental data. The most recent articles from The Wall Street Journal and The New York Times were examined first, because in most instances they provided more complete and up-to-date information. Trade journals and newspapers demonstrated great variation in the completeness of their information, and some were simply not available in the university and city library facilities. A preliminary examination was made of a great number of these publications to assess the usefulness of their articles dealing with corporate illegalities; the most useful and complete were <u>Advertising Age</u>, <u>Automotive News</u>, <u>Broadcasting</u> <u>Magazine</u>, <u>Business Week</u>, <u>Chemical Marketing Reporter</u>, <u>Chemical Week</u> and <u>Pulp and Paper</u>. The less useful publications contained relevant

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information that sporadically appeared in such sections as "Washington Scene," "Washington News," and the like.

If an article dealt with a conspiracy involving a number of the corporations in the sample, data for all of them were recorded at the same time, thus alleviating repetition of the search procedure. Although some new cases were identified by the newspaper search, the source served primarily in supplementing missing information and providing details for the cases previously recorded from other sources. Types of violations most likely to appear included antitrust, misrepresentation and other trade violations, labor violations relating to occupational safety and discrimination, financial (i.e. overcharging, disclosure infractions) and competitor, shareholder, class action suits. Actions involving subsidiaries were identified in the abstract for the parent corporation.

Data for the 2052 records of federal cases were obtained from 2571 pieces of information, an average of 1.25 sources per case. Agency-published data were the most productive source. They were used in 40 percent of all cases, and in 41.9 percent of the serious or moderate cases. The next most useful sources were unpublished data obtained directly from agencies through personal contact. The reports produced information for 34.2 percent of all cases (19.5 percent of serious or moderate cases). The Law Services provided data for 24.9 percent of the cases, 37 percent of the serious or moderate cases. The search of <u>The Wall Street Journal</u> furnished 8.2 percent of all cases, and 13.9 percent of the serious or moderate cases. The annual reports of the agencies provided data for 8.2 percent of all cases, and for 9.7 percent of the serious or moderate cases. The Forms 10-K produced information for 6.7 percent of all cases, and 7.8 percent of the serious or moderate cases. The least productive data sources were The New York Times, the trade journals, corporate reports other than 10-Ks and the miscellaneous sources. Individually, these produced data for less than 1 percent of all cases, and for less than 2 percent of the serious or moderate cases.

3. Data forms. Data for each case were recorded on one of two especially designed forms (see Appendix H). Corporate Violation Forms were used for those cases in which an enforcement action was actually imposed during the two-year period, while Legal Actions Instituted cards reflected cases begun but not necessarily completed in 1975 or 1976. Each of these forms included space for recording the source of the information, level of government involved, name of corporation (and parent if a subsidiary was involved), the agency initiating the action, date the action was initiated, (alleged) violation, length of violation, amount of violation, seriousness of (alleged) violation, (proposed) sanction, seriousness of (proposed) sanction, agency or court taking action, date of decision or present status of case; the reverse was for recording violation and sanction details. These cards were designed early in the research, before being aware of the great diversity in violations and sanctions that would be encountered in the course of the study. They proved to be adequate however, in spite of the wide variety of data for the cases recorded.

C. Unit of Analysis

The central unit of analysis examined in this research is the firm's "case of violation," which does not necessarily correspond to individual legal actions brought by various levels of government. For example, multiple legal cases (criminal, civil and/or administrative) may be brought by various units of government alleging the same set of facts concerning a firm's violation. Clearly only one "case of violation" is to be counted in this situation. On the other hand, a single criminal trial may involve several firms charged with a price-fixing conspiracy. In this instance, each firm involved is charged with a "case of violation." Thus, if four firms are charged in a conspiracy action brought by the Justice Department, four "cases of violation" -- or four firm-cases -- are recorded.

D. Objectivity

A major difficulty encountered in doing research in the area of corporate crime is the maintenance of objectivity and the avoidance of moral judgments about corporate illegalities. This scientific canon is often violated by criminologists working in this field, in contrast to the field of conventional crime where the burglar, or other type of offender, is seldom morally condemned. One possible explanation for the differences in maintaining objectivity may lie in the liberal political and economic views of many social scientists and criminologists who are doing this type of research. These views often lead to biased attitudes and research about corporations. In addition, social scientists are probably more sensitive than laymen to the ramifications of the social harm that results from unethical and . illegal corporate conduct. In this study every effort was made to conduct an objective study; where decisions had to be made, as in coding the seriousness of a violation, the decision was always made, in marginal situations, in favor of the corporations.

E. Developing a Code

The coding scheme developed represents a major contribution of the project and to future research in the area of corporate crime. Particularly difficult coding problems were encountered, due to the nature of the data and the social and legal processes that had to be considered. Codes for corporate violations are far more complex than those for ordinary crime; moreover, no precedent exists for the decisions that had to be made. This coding scheme presents probably for the first time a full picture of the range of corporate violations cutting across 24 federal agencies.

Many problems connected with coding the violations and sanctions were due to the large amount of case material recorded during the data collection stage of the study. It was necessary to retain as much of this detail as possible in order to maintain maximum flexibility in the analytic phase. The usual procedure for coding open-ended responses (developing categories as coding proceeds) proved to be inadequate due to the great variability of the data. A code had to be developed to cut across all types of violations, all enforcement agencies and jurisdictions, and all sanctions (both proposed and imposed). This problem was compounded by such considerations as assessing the seriousness of the violation and dealing with multiple violations. Further complications were encountered in the multiple sanctions, and the fact that an illegal action by a corporation may result in numerous separate cases under criminal, civil and administrative levels of enforcement.

These considerations led to the formulation of a four-tiered design for violations and enforcement actions, with each successive level representing greater detail. These categories had to be exhaustive, mutually exclusive and theoretically significant. This represented a major task that involved going through all data cards to list each detail of each violation and enforcement action to determine the behavioral meaning of each factor. The variety of legalistic wordings of the data made this task difficult, but it was accomplished by constant checking of the statutes and annual reports, as well as discussions with agency personnel.

The organization of the raw data cards presented time-consuming problems. Because the data were obtained from multiple sources and recorded by different researchers, many cases were duplicated in the collection process. It was therefore necessary to insure that the same violation (the unit of analysis) was not coded as more than one observation. This required organizing every card by corporation and behavioral violation, and then reading each card with care to match dates and details. This entire problem is complicated by the fact that the different data sources use different words to describe a violation and report varying amounts of detail.

The Food and Drug Administration violation data presented particularly time-consuming coding problems. Matching of cases from the various sources was necessary, and this step was difficult when information was missing, particularly the name of the product(s) involved, or if the recall identification numbers were not listed. For example, regulatory letters, an administrative by the FDA that warns the corporation to come into compliance, were occasionally followed by a recall action. Since these two actions are in response to one violation, matching was necessary to alleviate problems of double counting. Also, extensions of an original recall order were not considered to be a response to a new violation; usually the length of time between the dates of recall actions was less than two months, with the majority being within one or two weeks of one another.

Checking with the <u>Directory of Corporate Affiliations</u> and the corporation Forms 10-K and Annual Reports was often done to assure that corporate levels recorded as being involved in the violation were divisions of the parents or were subsidiaries included in the sample rather than being subsidiaries with less than \$300 million annual sales. Seizures and recall actions also involved questions as to which was the responsible firm. For seizure actions, the responsible firm was listed in the <u>Enforcement Report</u>, but not in the <u>FDA Consumer</u>. If multiple firms were involved in a violation that resulted in a recall, neither the FDA Consumer nor the <u>Enforcement Report</u> listed the responsible firm. In such cases, the contamination may have occurred while being held in storage or transported by another company; in other instances a foreign corporation may have packaged the goods and were later distributed by one of the corporations or subsidiaries in this sample. A request was made of the FDA to have the responsible firm for specified violations identified, but their systems were not set up to denote responsibility for recalls, and that information could not be quickly provided for seizures.

Overall, the code that was developed provided an optimal balance between consistency and ease in coding and an excessive attention to detail. The code should, and no doubt will, be improved by future researchers, but for now it represents a first approximation to a solution to a very difficult methodological problem.

1. Diversity of violation. Examination of all the data cards showed that the vast majority of all violations could be represented by six broad categories: administrative, environmental, financial, labor, manufacturing and trade; a seventh category was created to represent "other" types of violations, that is those which could not be clearly classified in any of the six main categories. These seven "Level Is" are each followed by three additional levels of increasing specificity relating to the details of the violations. This study focuses on the analysis of violations by Level I, with particular emphasis on the primary violation (that is, the violation considered to be the most serious if "multiple violations" are involved). Table 4 (Text) shows the great diversity of violation encountered in Levels II and III. There are 22 different Level II and 62 Level III violations which were represented. Level IV is so specific in nature that in many instances one of its codes may relate to only one violation or one agency's procedures. A total of 245 different Level IV details of the violation were exhibited in the data.

Administrative violations. This category primarily a. includes those violations that involve noncompliance with the requirements of an agency or court. Failure to obey agency orders (eg. to institute a recall campaign or to comply with an order to construct pollution facilities) or a court order enforcing an agency order fall into this Level I. Likewise, information violations are included; such "paperwork" violations as refusal to produce information (hindering investigations, denying access, inadequate recordkeeping), failure to report information (failure to submit reports, notify of discharge, respond to inquiry), and to register with the agency (failure to file, secure certification, or acquire permits) are considered to be administrative in nature. These "paperwork violations" apply to a number of agencies, and are all of minor seriousness and therefore excluded from some of the statistical analyses which were limited to serious or moderate violations. Failure to have an affirmative action plan or a spill prevention control and countermeasure plan are also classified as administrative. It can be seen that this category does become rather clouded, especially in view of the fact that court orders are included in the same category as paperwork violations.

b. <u>Environmental violations</u>. Air and water pollution, as well as violations of air and water permits that require capital outlays by the corporation for construction of pollution control equipment, were the types of violations included in this category.

Water pollution data involving spills were provided by the U.S. Coast Guard, Environmental Protection Division: computer print-outs of their enforcement activity were obtained directly from the agency. Most of these violations were of the Federal Water Pollution Control

Act (FWPCA), primarily discharges without a permit. Violations of the Marine Protection Research and Sanctuaries Act (ocean dumping) were not relevant to any of the corporations being studied. Three violations of the Refuse Act and one involving a discharge in violaof terms of permit accounted for the remainder of their tion enforcement activity against these corporations. Data were provided for subsidiaries as well as parent firms. Only those spills involving at least 500 gallons of substance were included in the analysis. Seriousness of violation was determined by amount of spill. Coast Guard information was also recorded from some Forms 10-K, but since the amount of spill was not specified, these cases were eliminated from the analysis. The EPA also initiates actions in response to spill violations, some of which resulted in criminal actions for failure to notify. These cases, which were referred to the Department of Justice, were recorded from the EPA Enforcement Report and were included in the analysis.

Only some data on administrative enforcement actions by EPA for water pollution are included in this analysis. The EPA Enforcement <u>Reports</u> for 1975 and 1976 do not record such actions, and these data were not directly requested from the agency though it is available. Therefore, data on water pollution violations other than spills include those cases that involved court action or those referred to the Department of Justice for which prosecution was subsequently dropped or declined. These actions are primarily responses to violations of the National Pollution Discharge Elimination System (NPDES), that is, discharges without or not covered by existing permits. Law Service Reports and Forms 10-K do provide some federal administrative water cases, but it is not at all systematic for all corporations.

The <u>EPA Enforcement Report</u> does, however, include administrative enforcement activity relating to air pollution. These involve violations of emission limits, the Clean Air Act and State Implementation Plans. Defective vehicle emission control systems and unleaded gas violations are two other types of air pollution violations which occurred in this study. In the areas of both air and water regulations, compliance and construction violations (i.e., failure to comply with compliance schedule, failure to complete construction, refusal to install sampling facilities and violation of requirements requiring vapor collection and disposal systems) occurred. "Other" environmental violations included solid waste dump_violations of law, illegal deposits of hazardous wastes in landfill, violation of waste disposal permit and acid spill from a tank car.

c. <u>Financial violations</u>. Financial violations included primarily those related to requirements of the Securities and Exchange Commission, the Federal Energy Administration, the Internal Revenue Service and the Department of Agriculture. Disclosure violations involve illegal payments (bribes, domestic political contributions, foreign payments,¹ payments to retailers and wholesalers,

¹ Foreign payments were made illegal under the Foreign Corrupt Practices Act of 1977, an amendment to the Securities and Exchange Act. Prior to this, the actual payments had not been illegal, but rather the subsequent efforts to hide them or the failure to conferring of illegal gratuities and benefits, and violation of foreign currency laws). Security related violations (such as false and misleading proxy materials and misuse of non-public material information) and fraud (removal of official grade identification stamp and issuing of false statements) also prompted enforcement activity.

Actions were initiated against corporations that participated in transaction violations: terms of sale (overcharging customers), agreement (failure to apply increased prices equally to classes of purchasers, illegal changing of base lease conditions, illegal termination of base supplier/purchaser relationship, and imposing more stringent credit terms than those existing during base period), and purchase (failure to pay full price when due, issuing insufficient funds checks and making preferential payments).

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Tax violations (fraudulent returns and deficiency in tax liability) are underrepresented in these data. Penalties are often determined administratively within IRS and procedurally, the corporation can appeal the assessment within the agency and, if still not satisfied, can appeal by petition to the Tax Court. Another set of procedures leads to appeal to the Court of Claims or federal district court. Administrative actions within IRS are only reported in Law Services by case when they are appealed to the Tax Court or other federal courts. But most tax cases are handled in the administrative appeals system and not by the courts, so these data are limited. Furthermore, tax violations were considered actions instituted only if the government was seeking a penalty in addition to payment of any deficient taxes or interest on delinquent caxes. A further problem with the tax data is that only one sum (tax plus penalty) is listed, Go the exact penalty cannot be determined. An examination of Commerce Clearinghouse's U.S. Tax Cases for 1975 and 1976, which reports cases from the federal district courts, courts of appeals, Supreme Court and U.S. Court of Claims, revealed only one case, and even this source did not cover court cases which were initiated in 1975 or 1976 but for which there was as yet no enforcement action. Data on tax violations are difficult to collect and therefore greatly underestimated in this study that relied mainly on Law Services for this information. Forms 10-K and newspapers did not provide this information consistently, and the agency itself does not provide data on administrative cases.

The final type of financial violation was in the area of accounting practices, such as internal control violations (inadequate control over disbursement of funds, unaccounted funds, failure to record terms of transactions that involved questionable pricing and promotional practices), false entries (borrowing against nonexistent receivables and recording fictitious sales), and improper estimates (improper accounting of costs, calculation of recoverable costs, misreporting of costs, etc.).

[continued] disclose this information in reports to stockholders and the SEC. Inasmuch as this study includes only those violations for which actions were initiated in 1975 or 1976, no foreign payments were counted as violations, but failure to follow disclosure provisions are considered relevant to the study. d. <u>Labor violations</u>. Four major types of labor-related violations comprised the Level IIs for this category: discrimination, occupational safety and health hazards, unfair labor practices and wage and hour violations. The four agencies reponsible for initiating actions for these respective violations were the Equal Employment Opportunity Commission (EEOC), Occupational Safety and Health Administration (OSHA), National Labor Relations Board (NLRB) and the Wage and Hour Division of the Department of Labor.

Four "protected classes" of employees were identified for coding information regarding discrimination violations (race, sex, national origin and religion). In addition, the violation was specified as to whether there were primarily pre-employment, postemployment or both pre- and post-employment practices prevalent in the case. Pre-employment practices included discrimination in the areas of: use of selection criteria and devices, investigations, testing, hiring, recruitment, educational requirements and failure to institute affirmative action plans; post-employment practices centered around such areas as job assignments, wages, job qualifications (performance) and classifications, promotion, seniority practices, transfers, segregated departments, benefits, facilities, harrassment, discipline, demotion, garnishment procedures, lay-offs and discharges.

Discrimination violations were handled as civil cases. Information on these court actions, including both initiated and completed actions, was gathered from <u>EEOC News Releases</u> for 1975 and 1976. None of the administrative activities are considered enforcement actions. If after an investigation "there is reasonable cause to believe that the charge is true, the district office attempts to remedy the alleged unlawful practices through informal methods of conciliation, conference and persuasion" (<u>U.S. Government Manual</u>, 1977/78, p. 493). These actions are not considered to be enforcement actions unless they made the court record, in which case they would appear in the <u>EEOC News Releases</u>. By law, the agency is not allowed to give names of corporations involved in these informal (voluntary) actions.

Violations involving occupational safety and health hazards, such as failure to enforce standards among the labor force and failure to provide safe and secure work areas and equipment, are monitored by the Occupational Safety and Health Administration (OSHA). The Bureau of National Affairs' Occupational Safety and Health Reporter was the source of most of the occupational hazard violations, but only completed actions could be recorded. The newspaper search and Forms 10-K provided a few initiated actions that were not final. The Labor Department inspector issues a citation after an inspection, and the company has 15 working days in which to appeal the citation to the Occupational Safety and Health Review Commission (OSHRC), an independent adjudicatory agency established by the Occupational Safety and Health Act of 1970. An enforcement action is final either when there is no appeal from a decision of an administrative law judge of the OSHRC after a thirty-day period or the decision is affirmed by a Review Commission to which the corporation appeals the matter. The administrative law judge's action does not become final except by an absence of action in taking the matter to a Review Commission within a defined statutory time. Appeals by the

corporation beyond the Review Commission were not considered in the enforcement action.

The National Labor Relations Board is responsible for initiating actions in response to unfair labor practices. The main categories of this violation type include: economic sanctions against employees (discharging, firing, refusing employment, suspension, reduction of income, reduction of benefits and shutdown of plant), job sanctions against employees (assigning onerous work duties, issuing discriminatory job assignments, discouraging union activity), threatening, coercing or bribing employees against union activity, actions against the union (withdrawing recognition from the union, refusal to bargain, etc.), interfering with union communication in the facility, and attempting to obstruct or interfere with the NLRB process.

In the entire study, only for NLRB cases is the activity of the Court of Appeals included as part of the enforcement action. NLRB administrative cases were included in this study because, even though charges of unfair labor practices against companies are brought by individuals and unions, it is the NLRB which files the complaint after investigating the charge and takes over the case. Most NLRB matters are settled or otherwise terminated prior to the entry of an Although, "the NLRB General Counsel may not act on his own order. authority to issue a complaint" because "an unfair labor practice must first be filed, the party who files the charge does not become a party to the proceeding _____Instead, the NLRB General Counsel takes charge of the prosecution of the case and determines whether or not to issue a complaint. Furthermore, no private party is authorized to ask for enforcement of a Board order by a court or to bring any court action to enforce the agency order. If the party who filed the charges seeks to withdraw them, the Board has discretion to determine whether or not the proceeding may be abandoned" (CCH Labor Law Reporter, Labor Relations, Volume 3, pp. 11094, 11011-11012, 11014).

Although it is technically true that "MLRB orders are not selfenforcing" (e.g. remedial only rather than punitive until the order is taken by NLRB to the courts) it is also true that an NLRB order of back-pay to an employee will result in the amount of back-pay increasing until the matter goes to court. Many would consider this continued "running of the clock" to be a <u>de facto</u>, if not a <u>de jure</u> penalty. After the Court of Appeals has <u>enforced</u> an NLRB order, further violations of the order may be judged in contempt of court. If the Court of Appeals is involved, then two cases are recorded in the violation -- one administrative case and one civil action.

e. <u>Manufacturing violations</u>. Three government agencies coordinate the enforcement of regulation relating to the manufacture of safe products: Consumer Product Safety Cordission (CPSC), National Highway Traffic Safety Administration (NHTSA) and the Food and Drug Administration (FDA). The majority of the enforcement actions for these agencies involve recalls, seizures, warnings, or administratively-imposed civil penaltics. Court actions are rare except for FDA actions, but some do occur in this sample.

Consumer Product Safety Commission's initiated actions result from violations of the Federal Mazardous Substances Act, the Poison Prevention Packaging Act, the Flaumable Fabrics Act and the Consumer Product Safety Act. Electric shock hazards, chemical and environmental hazards (poisonings and other injuries which are a result of handling, using or ingesting toxic or hazardous household substances, as well as chemicals and agents causing injuries initially discernable only years after exposure) and fire and thermal burn hazards (involving flammable fabrics, mattresses, carpeting and clothing, matchbooks and ovens) are the main categories of violation investigated by the CPSC.

The National Highway Traffic Safety Administration requires that manufacturers of motor vehicles or parts notify the Secretary of Transportation and owners, purchasers and dealers of defects that relate to motor vehicle safety or noncompliance with applicable federal motor vehicle safety standards, and subsequently to remedy these defects or failures to comply. The NHTSA publishes annually the Motor Vehicle Safety Defect Recall Campaigns, which contains safety related recall campaigns for foreign and domestic motor vehicle equipment and tires. It provides information on NHTSA's identification number, date of company notification, make/model/year of vehicle or part involved, brief description of defect and number of products recalled. These defects were classified as mechanical hazards, involving installation of faulty parts, improper installation of parts, improper manufacture of parts, defects or systems and inadequate design. There were also some instances of mislabeling (e.g. misplacement of labels, missing placards and signs for vehicle safety and maintenance). NHTSA's Annual Report provided information on violations that resulted in administratively-imposed civil penalties as well as actions involving the courts.

The main categories of manufacturing violations for infractions of FDA regulations were misbranding, mispackaging and mislabeling (sub/superpotency of drug, packaging in incorrect/defective containers, lack of adequate/correct content or ingredient statement, nislabeling, lack of adequate/correct directions for use on labels); contamination/adulteration (lack of assurance of sterility, product prepared/held/stored under unsanitary conditions); lack of effectiveness of product (failure to meet U.S. Pharmacopeia standards, defect in product); inadequate testing procedures; and inadequate blood/ plasma collection and laboratory processing practices (improper procedures in choice and use of donors, equipment or materials not acceptable, inadequate supervision of collection and manufacturing process, lack of assurance of sterility).

f. Unfair trade practices. Unfair trade and antitrust violations were by far the most complex cases for coding purposes. The major categories of violations were: abuses (monopolization, misrepresentation, price discrimination, maintaining resale conditions with coercion and credit violations and restraining trade and preventing competition); vertical combinations (tying agreements, maintaining resale conditions without coercion) and horizontal combinations (price-fixing, bid-rigging, illegal merger activity, illegal interlocking directorates, fixing fees and agreements among competitors to allocate markets, jobs, customers, accounts, sales, patents, etc.).

For violations involving a conspiracy, the process was facilitated by coding those violations for all corporations involved at one time. In addition, for those violations in which officers were
involved, special codes had to be set up to deal specifically with actions against individuals. In all instances, information relating to the criminal case was recorded in the primary violation and sanction fields. Law Services provided much of the information for these cases, but it was heavily supplemented by the newspaper search as well as Forms 10-K.

g. Other violations. As noted earlier, this category was created to accomodate those violations which could not be easily categorized in any of the previous six types described. Eighty percent of the category (N = 13) were unspecified FIFRA violations (i.e. those for which it was not possible to tell if it involved an administrative violation such as failure to notify, etc. or whether it related to adulteration or contamination of pesticides). Other behaviors included in this type represented very specific violations, such as breaking of Sunday Closing Laws and excessive noise from the company's blasting activities.

Seriousness of violation. Research on corporate crime 2. involves several analytical difficulties. One particular problem is the assessment of the absolute and relative seriousness of the various corporate violations. This issue largely does not arise with ordinary crime where the seriousness is generally agreed upon and usually approximates the statutory penalty, such as misdemeanors and felonies, or felonies that may be ranked in order, for example, as treason, murder, robbery, burglary, larceny, etc. In the case of corporate crime, one cannot use the sanction as an index of serious-Is a price-fixing scheme more harmful than fouling the ness. environment or marketing untested or unsafe goods? And, within a single regulatory area (trade regulation), is an illegal merger affecting commerce in five northwestern states more serious than a false advertising campaign conducted nationally for a single product? And are strict liability offenses such as oil spills in any way comparable to corporate offenses in which individual or group blame is assessed?

The extremely important issue of ranking the seriousness of a corporate violation was recognized at the outset. Some corporate violations are extremely serious and may cause great financial loss or injury to consumers, to workers, or to the general public. Other violations are of a minor nature, both in financial impact and injurious effect. Likewise, some violations are only of a reporting or recordkeeping nature. Some classification had to be worked out; if the criteria were not available from government agencies they had to be determined by the project personnel.

Coding of the variable "seriousness of violation" was done either by assigning it the level determined by the federal agency bringing the action or by those criteria set up by the researchers who followed general guidelines provided by some of the agencies involved. An attempt was made to secure from each agency the criteria they used to distinguish the degree of seriousness of violation. In most cases, none of the memoranda or other documents within the agency had addressed this question, except in relation to enforcement priorities. In the case of the Equal Employment Opportunity Commission (EEOC), however, the degree of seriousness of the violation of the statute might not have been the most important factor in the Commission's selection of cases for enforcement; in any event it would always be only one of several factors considered. Likewise, the Environmental Protection Agency (EPA) did provide an explanation of factors considered in determining the minimum amount of civil penalty to be assessed for a violation of the Clean Air Act. Of these factors, that of "seriousness of the violations" is taken into account by looking at the "harm done to public health and environment (violations may, however, be considered as serious, even though they do no measurable or quantifiable harm to the environment) and at the violator's recalcitrance, defiance or indifference to the requirements of the law" (U.S. EPA, 1978: 17). These guidelines, however, were not particularly useful for purposes of this study since information on a case by case basis was not available.

The Federal Trade Commission (FTC) could furnish no information on seriousness. To the extent that these data exist, they would be contained in all agency investigatory files containing the judgments of the Commission to prosecute or not to prosecute; they are not dealt with outside the context of a specific investigation. As a result, it would have been necessary to conduct a page by page review of the thousands of pages in a sample of cases filed, and the fees that would be charged for conducting this type of research would have been prohibitive for this research project.

The Consumer Product Safety Commission (CPSC), in its decisions to close or not to open a case, considered factors such as the willfulness of the violation, its seriousness in terms of the resulting risk to consumers, and the degree of cooperation revealed by the firm in bringing the violating product into compliance (CPSC Memorandum, May 25, 1978). As is the case of the EPA violations, this information is often not available among the data recorded from the sources used in this particular study.

The National Labor Relations Board (NLRB), although it has no authority to punish an employer or union found in violation of one or more of the Act's provisions, does take into consideration the likelihood of a respondent to commit unfair labor practices or the flagrancy or seriousness of unfair labor practices in devising remedies for these violations. The Board, however, makes decisions on a case by case basis. Violations specified by the Board as serious are cases in which the employer commits unfair labor practices of such a serious nature that a free and fair election cannot be held and a discriminatory discharge occurs. Factors considered in determining whether proceedings would be appropriate in a given case include: whether the case involves the shut-down of important business operations that would have an extraordinary impact on the public interest, whether the alleged unfair labor practices involve an unusually wide geographic area, whether the unfair labor practices involve interference with the conduct of an election or constitute a clear and flagrant disregard of Board certification of a bargaining representative or other Board procedures, whether the continuation of the alleged unfair labor practices will result in exceptional hardship to the charging party, whether the current unfair labor practice is of a continuing or repetitious pattern, and whether, if violence is involved, it is of such a nature as to be out of control of local authorities or otherwise widespread (NLRB, Casehandling Manual, Unfair Labor Practices Proceedings, 10310.2).

A three-level code for seriousness was decided upon for all violations: serious, moderate and minor. For only three agencies could a ranking of seriousness of violation on a case by case basis be determined from the data sources which were used: the Food and Drug Administration, Occupational Safety and Health Administration and the Environmental Protection Division of the U.S. Coast Guard.

Cases recorded from <u>FDA Enforcement Report</u> involving recalls were assigned a class code for seriousness. According to the <u>FDA</u> <u>Annual Report</u> (1976: 100-101), the following definitions of seriousness apply:

- (1) Class I: A situation in which there is reasonable probability that the use of, or exposure to, a violative product will cause serious adverse health consequences or death (serious).
- (2) Class II: A situation in which the use of, or exposure to, a violative product may cause temporary or medically reversible adverse health consequences or where the probability of serious health consequences is remote (moderate).
- (3) Class III: A situation in which the use of, or exposure to, a violative product is likely to cause adverse health consequences (minor).

For violations which lead to regulatory letters and seizures and involve court cases, however, criteria had to be set up by the research staff, attempting at all times to follow the definitions the agency had applied to their seriousness categories for recalls.

Occupational safety violations usually are ranked by seriousness in the Bureau of National Affairs' <u>Occupational Safety and</u> <u>Health Reporter</u>, and defined in OSHA's <u>Annual Report</u> (1974: 20-21) as follows:

- (1) Imminent danger: Involves the expectation with reasonable certainty that a hazard, if not corrected quickly, will cause death or serious harm (receives highest priority for enforcement by the agency).
- (2) Serious violation: There is a substantial possibility that death or serious physical harm could result from a condition which exists, or from one or more practices, means, operations or processes which have been adopted or are in use, in such places of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.
- (3) Non-serious violation: Situations where an accident or occupational illness resulting from a violation of a standard would probably not cause death or serious physical harm, but which would have a direct or immediate relationship to the safety or health of employees.

Some citations issued by the Occupational Safety and Health Administration contain multiple violations, some of which may have been assessed different levels of seriousness. For purposes of coding for this study, the case was assigned the highest level of seriousness assessed. The U.S. Coast Guard Environmental Protection Division furnished some criteria on seriousness in terms of the amount of the spill (including both oil and chemicals). The Coast Guard, however, considers every spill potentially serious and imposes a fine regardless of the spill size, primarily because due precautions should have been taken, small spills can be cumulatively serious, and this action also puts the company on record in cases of future violations. The criteria they submitted were prepared by the Council on Environmental Quality, Protection of the Environment.² A spill greater than 100,000 gallons constitutes a serious violation, 50,000-99,999 is moderate, and less than 50,000 gallons is minor. In actuality most spills were so small that only spills over 500 gallons were included in the study.

For those agencies for which there existed no way of determining the seriousness of a violation (serious, moderate and minor), specific criteria were set up by the project personnel, on the assumption that after nearly two years of experience they had the most extensive and only knowledge of corporate violations across all agencies. It would have been impossible to use other persons, such as students, faculty members, or a sample of the general population to rank violations according to seriousness because such persons are generally unfamiliar with the variety of the types of corporate violations or the laws affecting them. Decisions as to the degree of seriousness of particular violations were reached only after discussions between two or more members of the staff. The project director made decisions as to the general criteria and entered into the discussions and the decision making on a large number of individual cases. It is recognized that not all persons who read the report would agree with the criteria of seriousness. A classification, however, had to be devised or the study would have encountered even more difficulties if serious, moderate and minor violations had not been distinguished. It is probably a case of "damned if you don't and damned if you do." It is believed that the system devised to classify the seriousness of violations is both a sound and a defensible means of approaching the problem. The following criteria were used in determining the degree of seriousness of a violation type (where such information are available):

- (1) Repetition of the same violation by the corporation.
- (2) Knowledge that the action involved violation of law (intent).
- (3) Extent of the violation (that is, whether it occurred company-wide or involved only a limited number of facilities, especially in cases of discrimination and other unfair labor practices).
- (4) Violation involved large amounts of monetary losses to consumers, competitors or government.
- (5) Unsafe products were being manufactured in large amounts and involved multiple products and were actually reaching the consumer.

² Council on Environmental Quality, Protection of the Environment, "National Oil and Hazardous Substances Pollution Contingency Plan," Part 1510 Chapter 5 of Title 40, <u>Federal Register</u>, Volume 40, No. 28 (February 10, 1975), Part II.

- (6) Violation affected the economic well-being of the employee(s) or consumers.
- (7) Corporation refused to reinstate or rehire employee(s), recall defective products, or honor agreements, threatened witnesses or employees.
- (8) Length of time the violation took place.

The only instance in which a single rule applied to all violations regardless of agency involved was with those administrative violations related to paperwork. All violations that represented failure to submit proper reports to an agency or to keep adequate records (especially prevalent for FDA) were considered to be of minor seriousness.

It was considered essential to assess seriousness in terms of the violation rather than examining the nature of the enforcement action imposed or proposed. The only deviation from this rule involved water pollution cases; if a federal case was referred to the Department of Justice for criminal penalties it was considered to be serious and if it was referred for civil penalties it was considered moderate. If it was known that a case had been referred, but it was not specified whether for civil or driminal prosecution, the violation was coded as being moderately serious since it attained at least that level of seriousness by the fact that it had been referred. In some types of violations missing values had to be coded for seriousness of violation because there simply was not sufficient information recorded from the various sources. If a case was referred to the Justice Department and prosecution later declined (never filed) or dropped, seriousness was unknown, as was the case if it had never been referred.

On the basis of precedent set by Perez (1978), no antitrust violation was considered to be of minor seriousness. However, since they are not homogeneous a distinction was made between serious and moderate. Horizontal price-fixing conspiracies, monopolization, resale conditions, and other conspiracies and horizontal mergers were considered serious violations. Vertical mergers, misrepresentation and price discrimination were considered moderately serious.

Seriousness of discrimination violations (EEOC) was determined by considering both the number of "protected classes" involved (race, sex, religion and national origin) and how many "areas of discrimination" were represented. A violation was also considered more serious if it was company-wide rather than limited to one facility. Specific criteria for seriousness for financial violations involving the Federal Energy Administration included the amount of monetary loss suffered by the consumers or competitors victimized by the infraction, the time span of the violation and who was the victim (it was considered to be more serious if the major effect was on the consumers rather than a business). All SEC <u>financial</u> cases were considered to be serious violations because of the existence of multiple violations, involvement of large amounts of money and intent to violate, as evidenced by repeated falsification.

3. <u>Multiple violations</u>. In the statistical analysis of ordinary crime it is customary, in order that the number of cases and persons agree, to count only one type of violation when the person

has committed more than one. The violation chosen is generally the most serious in terms of the statute. For example, if a person commits robbery and also steals a car the case is usually counted as robbery. Likewise, the most important factor to be considered in dealing with corporate cases that involve multiple violations was the coding of the most serious violation (or count) in the primary violation field. The most serious (primary) violation was determined either by following the criteria discussed in the previous section or simply by coding the first violation recorded on the data card, if identification of the most serious violation was not possible.

The occurrence of multiple violations, however, necessitated coding procedures designed to reflect the extensiveness of the illegal behaviors included in one violation observation. Although the analysis focused only on the primary, or principal, violation, attempts were made to deal consistently with the problem of multiple violations across agencies. The criterion used to determine multiplicity of violation was whether any specific "count" could have, by itself, been considered a violation and have resulted in an enforcement action being sought by an agency or a court. For example, a violation of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) regarding the manufacture of pesticide may be stated as follows: "the charge was misbranding -- lack of adequate warning or caution statement, ingredient statement, assigned registration number, name and address of manufacturers, and assigned establishment number on labels or containers." Since any one of these "counts" of misbranding could potentially result in the institution of proceedings against the corporation, each violation was coded in one of the five violation fields provided on the punch cards. It was impossible in terms of the work involved to use more than five violations. Likewise, for occupational safety violations, each of the standards from which a corporation deviated was considered to be susceptible to action For example, a behavioral violation of OSHA may entail: by OSHA. (1) an inadequate safety guard on a machine and (2) failure to discover that employees had removed safety guards from a conveyor, thereby exposing others to hazard. Again, this detail was coded but their combination reflected "counts" and for purposes of the analyses were still treated as one observation of violation. The code, therefore, differentiates between a violation as a legal unit (count) and a violation as a unit of corporate behavior. As illustrated in the above examples, more than one legal violation can be contained within one instance of illegal behavior by a corporation.

For manufacturing violations, especially FDA cases, in which a number of different products may have been in violation over a period of time, they were <u>not</u> considered multiple violations because their manufacture may have been the result of one continuous process that simply had not been corrected until the infraction was discovered. However, if there were "counts" of violation, any one of which could have prompted an enforcement action, multiple violations were considered to have taken place. This was especially prevalent for data recorded from regulatory letters, which usually specified what section of the law was violated. Likewise for EPA, air violations involving numerous specified pollutants were not considered multiple violations since the various pollutants were all emitted because construction of pollution control facilities was not completed. Labor violations presented special difficulties. Discrimination violations that resulted in initiated actions by EEOC involved numerous possibilities of combinations that could occur, which would have made the code very cumbersome. Therefore, a special field was set up using dummy variables to reflect the protected class, whether it involved pre- or post-employment conditions, and the specific areas of discrimination (e.g., recruitment, hiring, benefits of employment, wages, seniority practices, etc.). In this way, every detail of the violation could be retained, even though the analysis focused on it simply as a labor violation. The number of protected classes and areas of discrimination, and how widespread infractions were among the corporation's facilities, were used as criteria for determining the seriousness of the violation. Likewise for NLRB actions, a single case usually contained numerous counts among the categories of economic sanctions against employees, job sanctions against employees, threatening employees about union activity, actions against the union, interfering with union communication and attempting to obstruct the NLRB processes. An attempt was made to assure representation of both the diversity of violation, as well as those counts which were the most serious.

F. Computer Analysis

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The research continually presented complex problems, primarily because no one had ever before attempted this type of research. Programming and computer costs were high, and a number of complex programming problems presented themselves, such as:

- (1) Complicated recoding by the computers to clean up the data even before analysis, due to the complexity of the data set and codes.
- (2) Transformation and aggregation of difficult independent variable data from a variety of institutional sources.
- (3) Generation of dependent variables from the violations data.
- (4) Multiple analysis on some counts due to the necessity to control on subsets of the data set.
- (5) Large number of variables controlled in any analysis because of the complexity of corporations and the variations in agency procedures and the structure of their laws, resulting in complications in the tabulations.
- (6) Data analyzed with statistical models that required combinations of variables and time lags.
- (7) Need for careful checking at each stage to assure the validity of data; difficult to work with retrievable systems on data sets.

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CHAPTER VI

CASES INITIATED AGAINST CORPORATIONS AND VIOLATION TYPES

One important fact must be recognized at the outset of any analysis of initiated actions and sanctions against corporations: even if the actions taken are numerically small, the consequences of the violations can be great. In other words, a corporate crime generally represents far more significant personal and monetary damages than does an ordinary crime. Persons accustomed to thinking about the higher incidence of theft and burglary, for example, must reorient their thinking when they examine corporate crime figures. It is important to repeat that the cost of the antitrust conspiracy in the electrical industry during the 1960s was \$2 billion, or much larger than the total loss from the approximate 3,000,000 annual burglaries in the United States. Corporate crimes must be viewed in a different perspective, particularly when they involve large national and multinational corporations.

Previous chapters have covered the many difficulties encountered in gathering data on initiated and complete enforcement actions against corporations. In spite of the careful and systematic efforts made to obtain information on as many cases as possible, data on certain types of cases were impossible to secure, as for example, a large number of labor cases, tax cases, mine inspection violations, etc. Moreover, as was pointed out, neither the Law Service Reports nor the 10-K reports to the SEC were complete. In this study undoubtedly there has been an undercount of administrative actions. What is being presented here, then, are minimal figures of government actions against corporations; the undercount may be as high as one-fourth to one-third. The statistical data, moreover, cover only <u>initiated</u> actions and do not represent the number of corporate violations or government investigations, which are impossible to determine

The following analysis deals with the total number of initiated actions for each corporation by violation type, both for all violations and for the primary violation. In most cases total parent initiated actions are analyzed and then those for parent manufacturing alone. In addition, the degree of association is measured between initiated action, violation type and seriousness of the violation for corporation size, industry type, and in one instance between parents and subsidiaries.

The analyses of enforcement cases initiated against the corporations, in terms of types of violations, will be presented in two forms. The first deals with cases initiated during 1975 and 1976, while the second analyzes types of violations in cases initiated in 1975 and 1976 and also in cases where sanctions were imposed during this period. The latter method increases the sample from 1553 to 1853 cases, but includes some cases initiated prior to 1975. The first method was used for descriptive statistics such as means, and the second method was used in the cross-tabular analysis in order to minimize zero-cells.

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Data on the extent of initiated actions will be presented in four ways. First, data will be analyzed by including up to five violations in a given case. These violations could be distributed over several types or concentrated in a single type. In either event, the analysis is in terms of violations and not cases, so that there are more violations than cases. Second, data are analyzed in terms of a single or the <u>primary</u> violation. In this case violations and cases agree, as each is counted only once. The amount of distortion in type of violation in using only the primary violation is minor (see page 95). Third, an analysis is made in terms of multiple violations and the number of violations for each corporation. This is a count of violations, not cases. Fourth, the seriousness of violation applies only to the case as a whole as defined by the primary violation rather than to multiple violations that might be involved. While the tables distinguish between serious, moderate and minor violations, the discussion combines serious and moderate in order to reduce the text and also largely to eliminate minor violations from the analysis.

The range and characteristics of federal legal actions instituted against the parent corporations in this study indicate the variability of corporate behavior. One can conclude that illegal behavior is <u>not</u> required in order to survive in the corporate world. Approximately 40 percent of both the total group of 582 corporations, as well as the 477 manufacturing (from the <u>Fortune</u> 500) were not charged with any violations by the 24 federal agencies. On the other hand, the corporations that did violate often had many violations, as will be discussed shortly. One corporation, for example, had 62 cases initiated against it. A total of 1553 federal cases were begun against the parent corporations during 1975 or 1976. Of the 582 parents, 350 (60.1 percent) had at least one federal action brought against them. There was an average of 2.7 federal cases per parent corporation, an average of 4.4 cases for those corporations which had at least one action instituted against them. It was found that 33 (2.1 percent) of the actions instituted were later dismissed.

A. Violations (Up to Five) for Parent Corporations by Type

A total of 1860 recorded violations were contained within the 1553 federal cases begun in 1975 or 1976 against parent corporations: 661 (35.5 percent) manufacturing violations, 508 (27.3 percent) environmental violations, 325 (17.5 percent) labor violations, 178 (9.6 percent) administrative violations, 88 (4.7 percent) financial violations, 83 (4.5 percent) unfair trade violations, and 16 (0.9 percent) other violation types. The mean number of violations per corporation was 3.2, with an average of 5.3 for the 350 corporations with at least one violation.

Table 3 (Text) shows the distribution of the number of corporations that had violations by each major type (Level I). Within each violation type, three-fourths of the parent corporations never violated the particular laws and regulations involved. But across all violation types, only 39.9 percent never violated. Those with one or more violations ranged from 23.8 percent for labor violations to 6.1 percent for financial violations. Generally, one-fourth of the corporations violated labor, manufacturing or environmental laws, while two out of ten violated administrative regulations, and one out of ten violated financial or trade laws. The maximum number of manufacturing violations

TABLE 3

TOTAL INITIATED ACTIONS FOR CORPORATIONS BY VIOLATION TYPE

(Up to Five Violations)

Violation	* *	مشیطینی با میشونی ماکنینی میشونی میشونی		Parer	its (!	582)		æ,4∋		Pa	rent	Manuf	actur	ing (477)	
Туре	0	1	2	3	4	5	6-20	21+	0	1	2	3	4	5	6-20	T
Administrative	478 82.2%	77 13.2	16 2.7	2 0.3	3 0.5	1 0.2	5 0.9	ð	381 - 80.0	69 14.5	16 3.3	2 0.4	-3 0.6	1 0.2	5 1.0	•0
Environmental	452 77.7%	58 10.0	23 4.3	6 1.0	- <u>14</u> 2.4	5	29-3.4		345 73.2	57 11.9	25 5.2	6 1.2	-14 2.9	5. 1.0	- 20 4.2	2 0.4
Financial	546 93.9%	17 2.9	6 1.0	6 1.0	3 0.5	1 0.2	3 0.5	0	448 94.1	12 2.5	6 1.2	5 1.0	2 0.4	1 0.2	3 0.6	0
Labor	444 76.2%	72 12.4	26 4.5	8 1.4	12 2.1	9 1.5	11 1.9	0	365 76.5	57 11.9	22 4.6	8 1.7	8 1.7	8 1.7	9 1.9	0,2 0,2
Manufacturing	446 76.8%	59 10.1	24 4.1	11 / 1.9	9 1.5	7	20 3.4	6 1.0	359 75.2	50 10.5	21 4.4	8 1.7	7	7./ 1.5	19 4.0	6 1.2
Trade	513 88.2%	57 9.8	10 1.7	2 0.3	0	0	0	0	417 87.4	51 10.7	7	2 0.4	0	0	0	0
ો	232 39.9%	112 19.2	64 - 11.0	35 6.0	31	19 3.3	75	14 2.4	177 37.1	86 18.0	56 11.8	32 6.7	29 6.1	16 3.4	67 14.0	

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by any one corporation was 63; for enviornmental violations it was 54; one corporation had 13 administrative violations, one had 12 labor violations and there were 13 financial violations by one corporation. There were two corporations with 3 unfair trade violations.

Table 4 (Text) shows the number of violations by total parent corporations and parent manufacturing corporations in the first three levels of the code for up to five violations. It also shows the number of corporations that violated the particular regulations involved and the mean number of violations per corporation with at least one violation of that type. On Level II, for example, there was a maximum of 389 hazardous product violations by 90 corporations, an average of 4.3 per corporation. At a maximum on code Level III, there were 235 mechanical hazard violations by a total of 36 parent corporations, an average of 6.5 per corporation. There were 275 pollution spills by 55 parent corporations, an average of 5.0. Of the 63 categories for parent corporations on Level III, 48 (76.2 percent) had a mean ranging from 1.0 to 1.9; 10 (15.9 percent) ranged from 2.0 to 2.9; and 5 (7.9 percent) had a mean of 3.0 or over.

B. Violations (Up to Five) for Parent Manufacturing Corporations

The 477 parent manufacturing corporations engaged in 1724 violations involving 1451 federal cases, 92.7 percent of all violations. There were 36.1 percent manufacturing type violations, 29.4 percent environmental violations, 15.3 percent labor violations, 9.9 percent administrative violations, 4.4 percent financial violations, 4.1 percent trade violations, and 0.8 percent other violation types. The mean number of violations per manufacturing corporation was 3.6 with a mean of 5.7 for the 300 corporations with at least one violation. Manufacturing type violations averaged 5.3 for the 118 firms with at least one violation. Environmental violations had a mean of 3.9 for the 129 companies with one or more. Labor violation. The mean for administrative violations for the 96 firms with one or more was 1.8. Financial violations averaged 2.6 for the 29 corporations with at least one. The mean for trade violations for the 60 companies with one or more was 1.2.

Table 3 (Text) also shows that 62.9 percent of the manufacturing corporations had an action instituted against them. Approximately 30 percent were charged with a violation of environmental regulations, and one-fourth for violations of labor or manufacturing standards. Onefifth were charged with a violation of administrative regulations. One out of ten corporations were charged with violations of financial or trade laws. One financial action was recorded for each of 12 corporations (2.5 percent), while within each other violation type between 10 and 15 percent had one violation. The maximum number for each violation type by a single corporation was: 63 manufacturing violations, 54 environmental infractions, 13 administrative violations, 11 financial violations and 9 labor violations.

For all 582 corporations, 41.5 percent had between 1 and 4 violations, 16.2 percent had between 5 and 20, and 2.4 percent had 21 or more. For the 477 parent <u>manufacturing</u> corporations, it was found that 42.6 percent had from 1 to 4 violations, 17.4 percent had between 5 and 20, 2.9 percent had 21 or more. There were 18.8 percent with from 1 to 4 administrative type violations, and 1.2 percent had from 5 to 20. NUMBER OF VIGLATIONS IN CODE LEVELS 1-III AND NUMBER OF PARENT CORPORATIONS AND PARENT MANUFACTURING CORPORATIONS VIOLATING (All Five Fields)

VIOLATION TYPE	Total Number of Corporations (582)	Number of Violations	Mean	Percentage of Violations	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Viclations	Mean	Percentage of Violations
LEVEL L								
Administrative	104	179	1.7	9.6	96	171	1.8	9.9
Environmental	130	508	3.9	27.3	129	507	3.9	29.4
Financial	. 36	88	2.4	4.7	29	76	2.6	4.4
Labor	138	325	2.4	17.5	112	263	2.3	15.3
Manufacturing	136	661	4.9	35.6	118	623	5.3	36.1
Unfair Trade Practices	69	83	1.2	4.5	60	71	1.2	4.1
Other	14	16	1.1	0.8	12	13	1.1	0.8
LEVEL II								
Unspecified Detail	4	5	1.3	0.3	3	4	1.3	0.2
Noncompliance with Order	13	20	1.5	1.1	13	20	1.5	1.2
Information Violations (Paperwork Violations)	56	104	1.9	5.6	49	97	2.0	5.6
Not Having/Implementing Required Plans	45	58	1.3	3.1	44	57	1.3	3.3
Water Pollution	73	311	4.3	16.7	73	311	4.3	18.1
Air Pollution	89	191	2.1	10.4	88	190	2.2	11.0
Compliance Schedules/ Implementation Plans	3	3	1.0	0.2	3	3	1.0	0.2
Disclosure	18	28	1.5	1.5	15	24	1.6	1.4
Transaction Violations	19	30	1.6	1.6	15	26	1.7	1.5
Accounting (Recording)	14	25	1.8	1.3	12	21	1.7	1.2
Tax Violations	3	5	1.7	0.3	3	5	1.7	0.3

TABLE 4 (continued)

VIOLATION TYPE	Total Number of Corporations (582)	Number of Violations	Mean	Percentage c≇ Violations	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Violations	Mean	Percentage of Violations
LEVEL II (continued)								
Discrimination Violations	74	102	1.4	5.5	61	86	1.4	5.0
Occupational Safety and Health Hazards	14	30	2.1	1.6	14	30	2.1	1.7
Unfair Labor Practices	71	190	2.7	10.2	56	145	2.6	8.4
Wage and Hour Violations	1	1	1.0	0.1	0	0	0.0	0.0
Hazardous Products	90	389	4.3	20.8	80	374	4.7	21.8
Nonhazardous Products	46	94	2.0	5.1	39	85	2.2	4.9
Hazardous and/or Non- hazardous Products	41	177	4.3	9.5	34	163	4.8	9.5
Abuses	21	25	1.2	1.3	16	18	1.1	1.0
Vertical Combinations	4	4	1.0	0.2	4	4	1.0	0.2
Horizontal Combinations	47	52	1.1	2.8	43	47	1.1	2.7
Violation of FIFRA (Unspecified)	11	13	1.2	0.7	10	11	1.1	0.6
Violation of Water Permit/Other Laws (Unspecified)	2	3	1.5	0.2	2	3	1.5	0,2
LEVEL III								
Unspecified Detail	32	46	1.4	2.5	28	41	1.5	2.4
Court Order	3	4	1.3	0.2	3	4	1.3	0.2
Agency Order	9	11	1.2	0.6	9	11	1.2	0.6
Refusal to Produce Information	15	48.	3.2	2.6		44	4.0	2.6
Failure to Report Information	16	17	1.1	0.9	16	17	1.1	1.0
Failure to Register with Agency	20	26	1,3	1.4	17	23	1.4	1.3

VIOLATION TYPE	Total Number of Corporations (582)	Number of Violations	Mean	Percentage of Violations	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Violations	Mean	Percentage of Violations
LEVEL III (continued)								
False Statements, Reports, Documents	13	13	1.0	0.7	13	13	1.0	0.8
Affirmative Action Plan	38	50	1.3	2.7	37	49	1.3	2.8
Spill Prevention Con- trol and Counter- measure Plan	6	6	1.0	0.3	6	6	1.0	0.3
National Pollution Dis- charge Elimination System (NPDES) Viola- tion/Other Illegal Discharges	27	37	1.4	2.0	27	37	1.4	2.1
Spills	55	275	5.0	14.7	55	275	5.0	16.0
Violation of Emission Limits/Clean Air Act/ State Implementation Plans/New Source Review	88	185	2.1	9.8	87	184	2.1	10.7
Defective Vehicle Emission Control Systems		3	3.0	0.2		3	3.0	0.2
Unleaded Gas Violations	3	4	1.3	0.2	3	4	1.3	0.2
Compliance/Construction	3	3	1.0	0.2	3	3	1.0	0.2
Illegal Payments	12	14	1.2	0.8	10	11	1.1	0.6
Security Related	8	10	1.3	0.5	7	9	1.3	0.5
Fraud	4	4	1.0	0.2	4	4	1.0	0.2
Sales Terms	16	22	1.4	1.2	14	20	1.4	1.2
Purchase Terms	3	6	2.0	0.3	1	4	4.0	0.2
Agreement Terms	2	2	1.0	0.1	2	2	1.0	0.1
Internal Control	8	10	1.3	0.5	6	8	1.3	0.5
False Entries	9	11	1.2	0.6		9	1.3	0.5
Improper Estimates	3	3	1.0	0.2	3	3	1.0	0.2

TABLE 4 (continued)

VIOLATION TYPE	Total Number of Corporations (582)	Number of Violations	Mean	Percentage of Violations	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Violations	Mean	Percentage of Viólations
LEVEL III (continued)								
Fraudulent Returns	2	4	2.0	0.2	2	4	2.0	0.2
Deficient in Tax Liability	1	1	1.0	0,1	1	1	1.0	0.1
Pre-employment Practices	9	10	1.1	0.5	8	9	1.1	0.5
Post-employment Prac- tices	32	38	1.2	2.0	26	32	1.2	1.9
Pre- and Post-employ- ment Fractices	37	44	1.2	2.4	30	37	1.2	2.1
Failure to Enforce Safety and Health Standards Among the Labor Force	4	4	1.0	0.2	4	4	1.0	ð,2
Failure to Provide Safe and Secure Work Areas and Equipment	11	22	2.0	1,2	11	22	2.0	1.3
Economic Sanctions against Employees	40	46	1.2	2.5	32	35	1.1	2.0
Job Sanctions against	8	9	1.1	0.5	6	7	1.2	0.4
Threaten, Goerce, Bribe Employees against Union Activity	33	68	2.1	3.6	26	52	2.0	3.0
Actions against the Union	27	41	1.5	2.2	19	29	1.5	1.7
Interfering with Union Communication in the Facility	13	20	1.5	1.1	l n	17	1.5	1.0
Attempting to Obstruct or Interfere with NLRB Process	3	3	1.0	0.2	2	2	1.0	0,1
Electric Shock Hazards	12 .	14	1.2	0.8	10	12	1.2	0.7
Chemical and Environ- mental Hazards	14	17	1.2	0.9	11	14	1.3	0.8

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	Total Number			and the second	Total Number of	A Dames	an da si kina si si si si San si si si si San si	
VIOLATION TYPE	of Corporations (582)	Number of Violations	Mean	Percentage of Violations	Manufacturing Corporations (477)	Number of Violations	Mean	Percentage of Violations
EVEL III (continued)		6. 1						
Fire and Thermal Burn Kazards	13	16	1.2	0.9	11	12	1.1	0.7
Mechanical Hazards	36	235	6.5	12.5	34	233	6.9	13.4
Misbranding, Mislabel- ing, Mispackaging (non-FIFRA)	46	122	2.7	6.6	41	115	2.8	6.7
Contamination/Adultera- tion of Product (non- FIFRA)	48	103	2.1	5.4	37	84	2.3	4.9
Lack of Effectiveness of Product	26	57	2.2	3.0	25	56	2.2	3.2
Misbranding, Mislabel- ing, Mispackaging (FIFRA)	7	17	2.4	0.9	7	27	2.4	1.0
Inadequate Blood/Plasma Collection and Labor- atory Processing Prac-		73	8 1	38	e,	73	8 1	4.2
Mononolization	3	a a a a a a a a a a a a a a a a a a a	1.0	0.2		3	1_0	0.2
Misrepresentation	15	17	1 1	0.9	12	13	1.1	0.8
Price Discrimination	1	1.0	1.0	0.1	0	0	0.0	ੱ 0.0
Maintaining Resale Conditions with			10				1 6	A 1
GOEICIOD	2	4	1.0	0.1	4		1.0	0.1 A 1
Maintaining Resale Conditions without				U.1				
Coercion	1		1.0	0.1	2		1.0	0.1
Other Agreements between Producer and Distributors		1	1.0	0.1	1	1	1.0	0.1
Price-Fixing	26	27	1.0	1.5	23	24	1.0	1.4
Bid-Rigging	1,	1	1.0	0.1	1	1	1.0	0.1

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TABLE 4 (continued)

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VIOLATION TYPE	Total Number of Corporations (582)	Number of Violations	Mean	Percentage of Violations	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Violations	Mean	Percentage of Violations
LEVEL III (continued)			وري المستورية المستند					
Illegal Merger Activity	14	14	1.0	0.8	13	13	1.0	0.8
Illegal Interlocking Directorates		7	1.0	0.4	7	7	1.0	
Agreements among Com- petitors to Allocate Markets, Jobs, Cus- tomers, Accounts, Sales	2	2	1.0	0.1 ³	2	2	1.0	0.1
Restraining Trade/ Preventing, Competition	1	2	2.0	0.1	0	0	0.0	0.0
Fixing Fees, Commis- sions or Other Expenses Paid by the Conspirators	I	1	1.0	0.1	0	0	0.0	0.0
Failure to Assure Meeting Compliance Schedul@ Date			1.0	0.1	1		1.0	0.1
Withholding Overtime Compensation		1	1.0	0.1	0	0	0.0	0.0
Inadequate Testing Procedures	2	3	1.5	9.2	2	3	1.5	0.2

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There were 21.2 percent with from 1 to 4 environmental type violations, 5.2 percent had from 5 to 20, and 0.4 percent had 21 or more. There were 5.1 percent that had from 1 to 4 financial violations, and 0.8 percent had from 5 to 20. There were 19.9 percent with between 1 and 4 labor violations, and 3.6 percent with from 5 to 20. From 1 to 4 manufacturing type violations were found for 18.1 percent, 5.5 percent had between 5 and 20, and 1.2 percent had 21 or more. From 1 to 3 trade violations were found for 12.6 percent. For the class interval distribution for all violations by non-manufacturing parent corporations, see Table 1 (Appendix J).

The remainder of the analysis of actions instituted will be based on the primary violation only; that is, only the most serious violation or the first one encountered on the data card, except where otherwise indicated. The words "case," "violation," and "action" will be used synonymously for the remainder of this chapter.

C. Corporations with Ten or More Actions Instituted

There were 38 parent manufacturing corporations (8.0 percent) which had 10 or more total actions initiated against them; no nonmanufacturing company had that many cases. These firms accounted for 892 (51.7 percent) of all violations when a maximum of five was considered. There was an average of 23.5 violations per firm. A total of 300 environmental violations (59.2 percent of all such violations) was recorded against 28 of these corporations, a mean of 10.7 per company. There were 406 manufacturing violations (65.2 percent) by 23 of the firms, an average of 17.7 per corporation. There were 20 corporations which accounted for 68 labor violations (25.9 percent), a mean of 3.4. A total of 70 administrative violations (40.9 percent) was recorded against 18 of these corporations, a mean of 3.9. A total of 19 trade violations (26.8 percent) was accounted for by 14 of these companies, an average of 1.4. There were 27 financial violations (35.5 percent) by 10 of the firms, a mean of 2.7 per corporation.

On Level II of detail, it was found that there were 260 initiated actions for violations involving the manufacture of hazardous products (69.5 percent) by 21 of these corporations, an average of 12.4. These firms accounted for 26.3 percent of those corporations with one such violation. Of the corporations, 20 accounted for 233 water pollution violations (74.9 percent), a mean of 10.1 per corporation. These firms made up 27.4 percent of all manufacturing corporations with at least one water pollution violation. On code Level III, 11 firms had 188 (80.7 percent) of the violations for manufacturing mechanically hazardous products.

D. Primary Violations of Parent Corporations

Of the 1553 actions instituted, 568 (36.6 percent) were manufacturing type cases, 497 (32.0 percent) were environmental, 218 (14.0 percent) were labor type actions, 133 (8.6 percent) were administrative violations, 73 (4.7 percent) were trade cases, 48 (3.1 percent) were financial violations, and 16 (1.0 percent) were other types of violations.

As mentioned previously, there was an average of 2.7 cases per parent corporation, and 4.4 for those with at least one action. The mean number of cases when considering only those corporations with at least one action instituted of the type indicated was 4.2 manufacturing violations, 3.8 environmental violations, 1.6 labor violations, 1.4 administrative violations, 1.5 financial violations, and 1.1 unfair trade violations. Table 5 (Text) shows that about one-fourth of the parent corporations had labor, manufacturing or environmental type cases brought against them. Administrative actions were instituted against approximately one-fifth, about one-tenth had one or more trade violations, and one out of twenty had one or more financial violations.

For the 582 parent corporations, 44.8 percent had from 1 to 4 actions initiated against them, 13.2 percent had from 5 to 20, and 2.1 percent had 21 or more. The 477 parent <u>manufacturing</u> corporations had 1451 actions instituted against them, 93.4 percent of all actions. No violations were recorded for 37.1 percent. There was an average of 3.0 cases per manufacturing corporation, with an average of 4.8 for the 300 corporations with at least one action. In Chapter VIII the economic characteristics of those corporations which had violations and those which did not will be analyzed.

E. Primary Violations of Parent Manufacturing Corporations

Of all actions instituted against the 477 parent manufacturing corporations, 535 (36.9 percent) were manufacturing type violations, 496 (34.2 percent) were environmental, 178 (12.3 percent) were labor, 125 (8.6 percent) were administrative violations, 63 (4.3 percent) were trade violations, 41 (2.8 percent) were financial, and 13 (0.9 percent) were other types. The mean number of cases for corporations with at least one violation of the type indicated was 4.5 manufacturing violations, 3.8 environmental, 1.6 labor, 1.5 financial, 1.4 administrative and 1.1 unfair trade violations.

Table 5 (Text) shows that about 3 out of 10 manufacturing corporations had one or more environmental or manufacturing type cases brought against them. One-fourth were charged with violations of labor regulations, two of ten had one or more administrative cases initiated, and 1 of 10 had one or more trade actions. Financial cases were initiated against 27 corporations (5.6 percent). Between 10 and 15 percent of the corporations had one case within all violation types, except financial violations where 4.0 percent had one violation. One corporation had 54 environmental cases, one had 49 manufacturing cases, 8 labor actions were begun against one corporation, one corporation had 6 administrative cases, one had 4 financial cases and one had 3 trade cases.

There were 217 manufacturing corporations (45.5 percent) which had from 1 to 4 cases filed against them, 14.9 percent had 5 to 20, and 2.5 percent had 21 or more. Eighty-three corporations (17.3 percent) had between 1 and 4 administrative violations, and 0.6 percent had from 5 to 20. There were from 1 to 4 environmental actions against 21.3 percent, 5.3 percent had from 5 to 20, and 0.4 percent had 21 or more. There were 22.8 percent with from 1 to 4 labor cases, and 0.6 percent with from 5 to 20. From 1 to 4 manufacturing type cases were instituted against 18.9 percent, 4.8 percent had between 5 and 20, and 1.0 percent had 21 or more. There were 56 companies (11.7 percent) with from 1 to 3 trade violations. The class interval distribution for primary violations by non-manufacturing parent corporations can be found in Table 1 (Appendix J).

TABLE 5

TOTAL INITIATED ACTIONS FOR CORPORATIONS BY PRIMARY VIOLATION

	1						Pa	rents	(582)) ₁ . ^{1.11}												Pare	ent Ma	inu£a	cturir	ıg (47	77)					
Violation Type				Tet	al					Se	riou	s/Mo	dera	te						Tot	a1					S	ierio	ous/}	luder	ate		
•//-	0	1	2	3	4	5	6-20	21+	0	1	2	3	4	5	6-20	21+	0	1	2	.3	4	5	6-20	21+	0	1	2	3	4	5	6-20	21+
Administrative	483 83.97,	72 12.4	15 2.6	1 0.2	3 0.5	2 0.3	1	0	546 93.9	30 5.1	6 1.0	0	0	0	0	0	391 82.1	64 13.4	15 3.1	1 0.2	3 0.6	2 0.4	1 0.2	0	447 93.7	24 5.0	6 1.3	0	0	0	0	6
Environmental	452 77.77	59 10.1	26 4.5	6 1.0	12 2.1	6 1.0	19 3.3	2 0.3	545 93.6	25 4.3	5 1.4	4 0.7	0	0	0	0	348 73.0	58 12.1	26 15.4	6 1.3	12 2.5	6 1.3	19 4.0	2 0.4	440 92.3	25 5.2	8 1.7	4 0.8	0	0	0	, c
Financial	549 94.3%	24 4.1	4	4	1 0.2	0	0	0	552 94.6	22 3.8	4 0.7	3 0.5	1 0,2	0	0	0	450 94.4	19 4.0	3	4 0.8	1 0.2	0	0	0	452 94.8	17 3.6	4 0.8	3 0.6	1 0.2	0	0	1
Labor	444 76.3%	94 16.1	26 4.5	7	7	3 0.5	10.2	0	450 77.4	92 15.8	25 4.3	6 1.0	6 1.0	2 0.3	1 0.2	0	365 76.6	75 15.	22 4.6	7 1.5	5 1.0	2 0.4	1 0.2	0	371 77.8	73 15.3	21 4.4	6 1.3	4 0.8	1 0.2	1	C
Manufacturing	446 76.5%	67 11.5	23 4.0	10 1.7	7	5 0.9	19 3.3	5 0.9	476 81.9	58 10.0	16 2.7	13 2.2	3 0.5	3 0.5	10 1.7	3 0.5	359 75.3	57 11.9	19 4.0	7 1.5	7 1.5	5 1.0	18 3.8	5 1.0	383 80.4	50 10.5	13 2.7	12 2.5	3 0.6	3 0.6	10 2.1	0.6
Trade	517 88.87,	58 10.0	6 1.0	1 0.2	0	0	0	0	517 88.8	60 10.3	5 0.9	0	0	0	0	0	421 88.3	50 10.5	5 51.0	1 0.2	0	0	0	Ò	421 88.3	51 10.7	5 1.(0	0	Ű	0	0
Total	232 39.97	130	74	36	21	15	62 10.6	12 2.1	317 54.5	130 22.3	52 8.9	28 4.8	19 3.3	13 2.2	19 3.3	4 0.7	177 37.1	100 21.0	63 13.2	35 7.3	19 4.0	13 2.7	58 12.2	12 2.5	255 53.5	102 21.4	44 9.2	26 5,4	18 3.8	12 2.5	16 3.4	4

F. Measuring Association

Measures of association summarize the joint distribution of two variables in a single number. They refer to the degree to which values or categories of one variable can be statistically inferred from the values or categories of another; that is, their tendency to vary or not vary together.

The most basic information required for selecting the appropriate measure of association to apply to data is the level of measurement used to assign a number to the observed phenomenon. In this study two different levels of measurement were used: nominal and ordinal. In nominal-level measurement each number is a distinct category; it serves only as a label or name for the category. No assumption of order is made; examples would be sex, place of birth, or, as in this study, type of violation or primary industry. Ordinal-level measurement is appro-priate when all of the categories can be ranked according to some criterion. Each category then has a unique position relative to the other categories. No assumption is made of how much difference there is between categories; thus order is the sole mathematical property of this level. Examples would be social class or size of corporation labeled as small, medium or large. There is no necessity to order categories even when possible. Instead, they may be treated as nominal categories, although this procedure does not take advantage of the information gained by ordering. Interval-level measurement has the additional property of a known distance between categories in terms of fixed or equal units. There is no assumption of a zero point on the scale, although most interval scales do have a zero point, as in age. Differences between categories can be discussed with interval level data. The measures of association used in this study were tau, to summarize nominal level data, and gamma, to summarize ordinal level data.

<u>Tau</u>: Of several types of Tau, Goodman and Kruskal's Tau was the measure most often employed. It relates to nominal-level variables. Its numeric value can be interpreted as the proportional reduction in errors made in predicting the category of the dependent variable when knowledge of its joint distribution with categories of the independent variable is considered. Tau varies from 0.0 to +1.0. A value of zero indicates no reduction in error, whereas a value of 1.0 indicates complete prediction of the dependent categories by taking the independent variable into account.

<u>Gamma</u>: Gamma relates two ordinal-level variables. It measures predictability of order on one variable from order on the other. Its numerical value is the proportionate reduction in error in predicting rank order of the dependent variable based on knowledge of ranking on the independent variable. Gamma can range from -1.0 to +1.0, with the sign indicating an overall positive or negative relationship between ranks. That is, there is a negative relationship when phenomena tend to rank high on one variable and low on the other, and vice versa. A Tau can be computed that relates the two variables, but it would not take advantage of the ordering information.

The use of Tau is different from a correlation since there is a generally agreed on value at which a correlation shows a minor, moderate or high level of association. In evaluating the strength of an assoG. Types of Violations

The remaining analysis of violations in this chapter is based on all the cases against the corporations that were initiated or had a sanction imposed during 1975 or 1976, except where otherwise indicated. The previous analysis was limited to cases initiated during 1975 or 1976. As indicated previously, some instances of corporate illegality involve more than one violation (multiple violations). Table 6 (Text) indicates the degree of distortion involved by using only the primary violation rather than analyzing all five violations. The overall distortion generated by this method of analysis is rather small, given the size of the base. A total of 2262 cases involving 2876 violations of all types (federal, state and local) was recorded for all the corporations. Only 305 cases (13.5 percent) had more than one violation in the case. In 249 (81.6 percent) of the cases the second violation fell in the same Level I category as the primary violation.²

Of all cases, 106 (4.7 percent) had at least two labor violations, 56 (2.5 percent) had more than one manufacturing type violation, 53 (2.3 percent) had multiple trade violations, 15 (0.7 percent) contained two financial violations, 14 (0.6 percent) had more than one environmental violation, and 5 (0.2 percent) had multiple administrative violations. Administrative violations were coupled with manufacturing type violations in 20 (0.9 percent) of the cases, with environmental violations in 19 (0.8 percent), with financial violations in 9 (0.4 percent), with trade violations in 4 (0.2 percent), and with labor violations in 3 (0.1 percent). There was one case that involved both a trade and a financial violation.

There was a total of 300 third, fourth or fifth violations, or 10.4 percent of all violations. Of total violations, 132 (4.6 percent) were labor violations, 61 (2.1 percent) manufacturing type violations, 36 (1.3 percent) trade violations, 31 (1.1 percent) administrative violations, 28 (1.0 percent) financial violations, and 12 (0.4 percent) environmental violations.

1 [continued] ciation from no relationship to a strong relationship the relative size of the appropriate statistic was used as a criterion. For example, Tau ranged in the data from 0.0 to .986. Generally, a Tau of over 0.6 indicated a strong association, a Tau of 0.3 to 0.6 was considered moderate, and a Tau of .05 to 0.3 was deemed to be only a slight association. Further, percentage difference between cells was employed as an additional judgmental criterion. (See Appendix I for measures of association for this analysis and Blalock, H.M., Jr., Social Statistics (second edition), New York: McGraw-Hill Book Company [1972] for additional discussion of above measures of association.)

² Most of the bias which does occur involves administrative violations. Of the 36 instances where a primary administrative violation was recorded with a second violation, 31 (86.1 percent) had a different second violation type. Of the 29 instances where an administrative violation was recorded second, 24 (82.8 percent) had a different primary violation. This represents 98.3 percent of the cases where the primary and secondary violations were not of the same type.

TABLE 6

PRIMARY VIOLATION TYPE BY SECOND VIOLATION TYPE

		Primary Violation											
Second Violation	Adminis- trative	Environ- mental	Financial	Labor	Manufac- turing	Trade	Total						
Administrative	1.6%	2.6%	2.0%	0.0%	3.3%	0.0%	9.5% (N = 29)						
Environmental	3.6	4.6	0.0	0.0	0.0	0.0	8.2% (25)						
Financial	1.0	0.0	4.9	0.0	0.0	0,3	6.2% (19)						
Labor	1.0	0.0	0.0	34.8	0.0	0.0	35.8% (109)						
Manufacturing	3,3	0.0	0.0	0.0	18.3	0.0	21.6% (66)						
Trade	1.3	0.0	0.0	0.0	0.0	17.4	18.7% (57)						
TOTAL	11.8% (N = 36)	7.2% (22)	6.9% (21)	34.8% (106)	21.6% (66)	17.7% (54)	100.0% (N = 305)						

H. Primary Industry and Violation Type

Of all federal actions against parent corporations, 602 (32.3 percent) were for manufacturing type violations, 527 (28.3 percent) were related to environmental violations, 319 (17.1 percent) were labor, 183 (9.8 percent) were unfair trade, 147 (7.9 percent) were administrative, 69 (3.7 percent) were financial, and 16 (0.9 percent) were other varieties of violations. Of the 1863 violations, 1725 (92.6 percent) were by the manufacturing industry, 108 (5.8 percent) by the retail industry, 17 (0.9 percent) by the wholesale industry and 13 (0.7 percent) by the service industry. Overall, there was a slight association between industry type and type of violation, as measured by tau (tau = .047) (see Table 2, Appendix J). Among the non-manufacturing corporations, labor violations accounted for 15.2 percent. For the 167 violations by the 101 <u>subsidiary</u> corporations, the association was somewhat stronger. Labor violations constituted more than 60 percent of the cases against retail and service subsidiary corporations, while they made up 21 (14.9 percent) of the manufacturing industry's violations by subsidiaries.

I. Parent and Subsidiary Violations

A total of 1866 cases were recorded against the 542 <u>manufacturing</u> corporations; 615 (33.0 percent) were manufacturing violations, 565 (30.3 percent) were environmental, 287 (15.4 percent) were labor, 170 (9.1 percent) were unfair trade, 152 (8.1 percent) were administrative, and 63 (3.4 percent) were financial violations. Very little difference was observed between parent and subsidiary manufacturing corporations (tau = .044) in terms of their violations. Table 3 (Appendix J) indicates a slight tendency for parent corporations to violate environmental, financial, labor and trade laws more than subsidiary corporations. Conversely, subsidiaries tend to violate administrative and manufacturing regulations slightly more. For the 141 <u>nonmanufacturing</u> corporations there was a slightly greater differentiation between parents and subsidiaries. The parents' greater tendency to violate financial and trade violations remained, but subsidiaries tended to violate labor laws to a greater degree than parents.

Only slight differences were noted between parent and subsidiary manufacturing corporations when categories of corporate size were compared. Corporate size categories, as measured by annual net sales, were small (\$300-499 million), medium (\$500-999 million) and large (\$1 billion and over). The study found a 20.6 percent difference in manufacturing type violations by medium manufacturing corporations. There was a 10 to 20 percent difference in administrative, environmental and manufacturing violations by small manufacturing corporations. All other percentage differences were less than 10 percent.

J. Seriousness of Violation

The 760 serious and moderate violations constituted 48.9 percent of all violations. They were charged against 265 (45.6 percent) of all parent corporations, an average of 2.9 for corporations with at least one serious or moderate violation. Of these violations, 348 (45.8 percent) were manufacturing, 201 (26.5 percent) were labor, 70 (9.2 percent) were unfair trade, 53 (7.0 percent) were environmental, 43 (5.6 percent) were financial, 42 (5.5 percent) were administrative, and 3 (0.4 percent) were other types. The mean number of cases for corporations with at least one violation of the type indicated was 3.3 manufacturing actions, 1.5 labor violations, 1.4 environmental, 1.4 financial, 1.2 administrative, and 1.1 trade violations. Table 5 (Text) shows that 45.5 percent of the parent corporations had one or more serious or moderate actions instituted against them. Approximately one-fifth had at least one serious or moderate labor or manufacturing case and, of the other violation types, one-teath of the companies had one or more serious or moderate violations.

There were 229 parent corporations (39.3 percent) with from 1 to 4 serious or moderate cases begun against them, 32 (5.5 percent) had from 5 to 20, and 4 (0.7 percent) had 21 or more. There were 36 firms (6.1 percent) which had 1 or 2 (maximum) serious or moderate administrative cases. There were 37 companies (6.4 percent) which had 1 to 3 serious or moderate environmental violations. From 1 to 4 serious or moderate financial violations were found for 30 corporations (5.2 percent). There were 129 companies (22.1 percent) with 1 to 4 serious or moderate labor actions, and 3 (0.5 percent) had from 5 to 20. Between 1 and 4 serious or moderate manufacturing cases were found for 90 firms (15.4 percent), 13 (2.6 percent) had from 5 to 20, and 3 corporations (0.5 percent) had 21 or more. There were 65 com-panies (11.2 percent) with 1 or 2 serious or moderate trade violations. One corporation had 34 serious or moderate manufacturing violations, one 7 labor violations, and one 4 financial violations. Four corporations had 4 environmental violations, six had 2 administrative cases, and five had 2 serious or moderately serious trade violations.

There were 682 serious or moderate violations by parent <u>manufacturing</u> corporations constituting 47.0 percent of all their violations. Serious or moderate violation cases were initiated against 222 (46.5 percent) of these corporations. There was an average of 3.1 for those corporations with at least one serious or moderate violation. Conversely, 255 manufacturing corporations (53.5 percent) did not have a serious or moderate violation filed against them. About 80 percent did not have a serious or moderate violation of labor or manufacturing laws. Approximately 90 percent did not seriously or moderately violate the other types of regulations.

Of all serious and moderate violations by parent manufacturing corporations, 331 (48.5 percent) were manufacturing violations, 161 (23.6 percent) were labor, 61 (8.9 percent) were unfair trade, 53 (7.8 percent) were environmental in nature, 38 (5.6 percent) were financial, 36 (5.3 percent) were administrative violations, and 2 (0.3 percent) were of other types. The mean for these corporations with at least one serious or moderate violation of the type indicated was 3.5 manufacturing violations, 1.5 labor, 1.5 financial, 1.4 environmental, 1.2 administrative and 1.1 unfair trade. The maximum number of serious and moderate manufacturing violations by a corporation was 34, one had 7 labor violations, one had 4 financial violations. Six corporations had 2 administrative violations each, 4 had three environmental, and 5 had two unfair trade cases.

There were 190 parent <u>manufacturing</u> corporations (39.8 percent) with from 1 to 4 serious or moderate violations, 28 (5.9 percent) had from 5 to 20, and 4 (0.8 percent) had 21 or more. There were 30 (6.3 percent) with 1 or 2 serious or moderate administrative violations. Between 1 and 3 serious or moderate environmental cases were found for 37 firms (7.7 percent). Between 1 and 4 serious or moderate financial violations were recorded for 25 companies (5.2 percent). There were from 1 to 4 serious or moderate labor actions against 104 corporations (21.8 percent), and 2 firms (0.4 percent) had between 5 and 20. From 1 to 4 serious or moderate manufacturing violations were found for 78 companies (16.3 percent), 13 (2.7 percent) had from 5 to 20, and 3 firms (0.6 perent) had 21 or more. There were 56 corporations (11.7 percent) with 1 or 2 serious or moderate trade violations.

Using a larger sample, the degree of seriousness was determined for 1467 cases which were instituted or had a sanction imposed in 1975 or 1976 against parent <u>manufacturing</u> corporations. Of these, 38.0 percent were of minor seriousness, 33.9 percent were moderately serious, and 28.1 percent were serious. A moderate association (tau =.423) was found between the violation type and seriousness of violation. Table 7 (Text) shows that 72.5 percent of the trade violations by manufacturing corporations were serious in nature. Manufacturing type violations were serious in 20.1 percent of the cases. Violations were moderate in 52.9 percent of the labor cases, and in only 10.4 percent of the administrative actions. Violations were minor in 80.4 percent of the environmental cases and in 54.0 percent of the administrative cases.

K. Size of Corporation and Type of Violation

There was a total of 1853 cases where actions were instituted or sanctions imposed against all parent corporations in 1975 and 1976. Large corporations had a greater proportion of the violations than their percentage in the sample would indicate. Small corporations had 9.6 percent against them, 19.1 percent were against the mediumsize corporations, and 71.3 percent were against the large corporations. Of the 582 parent corporations, 168 (28.9 percent) were small, 172 (29.5 percent) were medium, and 242 (41.6 percent) were large.

Only a slight association (tau = .129) was found between categories of size and type of action instituted. Comparing across the categories of size, Table 4 (Appendix J) shows that large corporations ranked first in environmental and financial violations and last in administrative, labor, manufacturing, and trade violations, as a percentage of all their violations. Medium corporations were first in manufacturing and last in financial and environmental violations, and small corporations were first in administrative, labor and trade violations. Small corporations were not last in any violation type.

The leading type of violation by size category was environmental for large corporations (34.1 percent), manufacturing for medium corporations (45.3 percent), and manufacturing for small corporations (33.7 percent).

Of the 1012 serious or moderate violations, which comprised 54.6 percent of the total number of violations by parent corporations, 104 (10.3 percent) were committed by small corporations, 226 (22.3 percent) were by medium corporations, and 682 (67.4 percent) involved large corporations. Again, a slight association (tau = 156) between size and violation was observed. As a percentage of their total violations, large corporations had the most administrative, environmental and financial violations, and the least manufacturing violations.

TABLE 7

VIOLATION TYPE BY SERIOUSNESS OF VIOLATION FOR PARENT MANUFACTURING CORPORATIONS

				Violat	ion Type			
Seriousness of Violation	Total	Adminis- trative	Environ- mental	Financial	Labor	Manufac- turing	Trade	Other
Serious	28.1% (N = 413)	25.6%	4.2%	64.3%	39.8%	20.1%	72.5%	100.0%
Moderate	33,9% (497)	10.4	15.4	26.8	52.9	43.4	27.5	0.0
Minor	38.0% (557)	64.0	80.4	8.9	7.3	36.5	0.0	0.0
Total	100.0% (N = 1467)	100.0% (125)	100.0% (312)	100.0% (56)	100.0% (259)	100.0% (553)	100.0% (160)	100.0% (2)
Unknown	(N = 258)	(13)	(214)	(3)	(7)	(8)	(2)	(11)

100

Medium corporations were first in manufacturing violations and last in environmental, financial, labor and trade violations, while small corporations had the most labor and trade violations and the least administrative violations.

For large corporations, 230 (33.7 percent) of their serious or moderate violations were manufacturing cases, and only 40 (5.9 percent) were administrative. Medium corporations had 107 (47.4 percent) manufacturing violations. For small corporations, 37 (35.6 percent) were manufacturing actions.

L. Violation Type and Parent Manufacturing Corporations

A total of 1716 actions were instituted or imposed against parent manufacturing corporations. Of them, 172 (10.0 percent) were against small corporations, 316 (18.4 percent) involved medium corporations, and 1228 (71.6 percent) were against large corporations. Of these 477 corporations, 145 (30.5 percent) were small, 130 (27.2 percent) were medium, and 202 (42.3 percent) were large.

The slight association (tau = .133) between size and violation type, as well as the general pattern of distribution of type of violation across size categories, was also the case for parent manufacturing corporations. As a percentage of their total violations, large corporations ranked first in environmental and financial violations and last in administrative, labor, manufacturing, and trade violations. Medium corporations were first in administrative and manufacturing violations, while having the least environmental and financial cases instituted agianst them. Small corporations were first in labor and trade violations.

The largest percentage of cases in each size category was environmental (36.7 percent) for large manufacturing corporations; for medium corporations 45.6 percent were manufacturing, and manufacturing (34.3 percent) for small corporations.

There were 905 serious and moderate violations by manufacturing corporations which constituted 52.7 percent of the total violations by parent manufacturing corporations. Small corporations accounted for 99 (10.9 percent) of these violations, medium corporations had 200 (22.1 percent) and large corporations had 606 (67.0 percent) of them.

As a percentage of their total serious and moderate violations, large corporations had the most administrative, environmental and financial violations, while having the least labor and manufacturing cases brought against them. Medium corporations were highest for manufacturing cases and lowest for environmental, financial and trade violations. Small corporations were first in labor and trade violations and last in administrative cases.

Of the serious or moderate violations by large manufacturing corporations, 216 (35.6 percent) were manufacturing cases and only 35 (5.8 percent) were administrative violations. For medium corporations, 99 (49.5 percent) were manufacturing actions. For small corporations, 36 (36.4 percent) were manufacturing. There were 137 cases against the 105 parent <u>non-manufacturing</u> corporations. Although these corporations made up 18.0 percent of the parent sample, they accounted for only 7.4 percent of the cases. The number of cases was too small to make any analysis by type of violation, seriousness or corporation size.

M. Size of Corporation and Seriousness of Violation

Cases of known seriousness amounted to 1460 against parent manufacturing corporations.³ Of them, 408 (28.0 percent) were serious, 497 (34.0 percent) were moderate, and 555 (38.0 percent) were minor. Table 8 (Text) shows clearly that large corporations commit the most violations, 71.3 percent of all violations, 72.1 percent of the serious and 62.8 percent of the moderate. Although small corporations had 9.7 percent of all the violations, they had only 7.6 percent of the minor violations. Medium corporations had 19.0 percent of all violations but had one-fourth of all moderate violations.

Size of corporation has a slight negative association (gamma = -.12) with seriousness of violation. Table 5 (Appendix J) indicates that, as a percentage of their total violations, small corporations ranked first in serious violations, while medium corporations ranked last. For moderate violations, medium corporations were first and large corporations were last. For minor violations, large corporations were first and medium corporations were last. There was an average of 0.9 violations by each small corporation, 2.1 by each medium company and 5.1 by each large corporation. For serious and moderate violations, large firms averaged 3.0, medium firms averaged 1.5 and small companies averaged 0.7.

N. Industry and Violation Type

Many corporations are huge conglomerates with annual sales that often total in the billions of dollars and that are derived from a number of product lines. Although these corporations may have a "main line" of business, they derive significant portions of their income from activities quite remote from their chief products. For example, ITT owns the Sheraton Hotel corporation as well as business concerns in a number of other fields, while the Hertz Corporation, which ranks first in car rental and leasing, is owned by RCA, a company generally associated with electronics and broadcasting. Consequently, the researcher desirous of studying violations by type of industry faces classification problems (see also Chapter VIII).

Using the 1976 Fortune industrial classification, the manufacturing corporate sample was divided into industry types. Of 445 parent manufacturing corporations 56 (12.6 percent) were in the food industry, 44 (9.9 percent) in industrial and farm equipment, 35 (7.9 percent) in chemicals, 30 (6.8 percent) in metal manufacturing, 28 (6.3 percent) in petroleum refining, 28 (6.3 percent) in electronics and appliances, 24 (5.4 percent) in paper, fiber and wood products, 23 (5.2 percent) in metal products, 19 (4.3 percent) in motor vehicles, 17 (3.8 percent) in drugs, 14 (3.2 percent) in mining and crude

³ Seven cases were excluded from this total because the charge was against a corporate officer only, not against the corporation.

TABLE 8

		Size of Corporation (Net Sales)								
Seriousness of Violation	Total	<u>Small</u> \$300-499 Million	<u>Medium</u> \$500-999 Million	Large \$1 Billion and up						
Total.	100.0% (N = 1460)	9.7% (141)	19.0% (277)	71.3% (1042)						
Serious	100.0% (408)	10.0	17.9	72.1						
Moderate	100.0% (497)	11.7	25.5	62.8						
Minor	100.0% (555)	7.6	13.9	78.5						

SIZE OF CORPORATION BY SERIOUSNESS OF VIOLATION FOR PARENT MANUFACTURING CORPORATIONS

oil production, 13 (2.9 percent) in aerospace, 10 (2.3 percent) in apparel, 8 (1.8 percent) in beverages and 96 (21.5 percent) in other industry types.⁴

A total of 1428 actions were instituted against these companies in 1975 and 1976, an average of 3.2 per firm. A moderate association (tau = .445) was found between industry type and type of primary violation. Table 9 (Text) shows the number and percent of violations by industry type. An additional reason for combining serious and moderate violations was the large number of types of industry analyzed. The oil refining industry committed 1 out of every 5 violations, or 1 out of every 10 serious and moderate violations. Corporations in this industry had nearly two-thirds of all serious and moderate financial violations. They had almost half of the environmental violations, and over one-third of the serious and moderate environmental violations. They accounted for almost 1 out of every 7 serious or moderate trade and administrative violations.

The motor vehicle industry was responsible for 1 out of every 6 violations, or 1 out of every 5 serious or moderate violations. It had one-third of the total and serious or moderate manufacturing violations. One of every 10 total and serious or moderate labor violations was committed by these companies, as was 1 of every 8 trade violations.

The drug industry accounted for 1 out of every 10 violations, or 1 of 8 serious or moderate violations. These firms had one-fifth of the total and serious or moderate manufacturing cases, and 1 out of every 7 total and serious or moderate administrative violations.

Table 6 (Appendix J) shows the total and number of serious and moderate violations by each industry. It also shows the ratio of violations to relative industry size. The motor vehicle industry had 3.9 times its share of total violations; 5.0 times its share of serious or moderate violations. The oil refining industry had 3.2 times its share of total violations; 1.7 times for serious or moderate violations. The drug industry had 2.5 times its share of total violations; 3.2 times for serious or moderate violations. Due to time limitations, the size of corporations within each industry was not controlled.

Within each violation type, it was found that the oil refining industry accounted for 9.7 times its share of financial violations; 9.6 times more for serious or moderate financial violations. It had 7.3 times more environmental violations than its relative size would indicate; 5.7 times more for serious or moderate environmental violations. It had 2.5 times its share of trade violations; 2.1 times more serious or moderate trade violations.

The motor vehicle industry had 7.7 times its share of total and serious or moderate manufacturing violations. It had 3.8 times more

^{*} The motor vehicle industry includes more than the 4 major auto manufacturers. It includes all manufacturers of auto parts and non-auto motor vehicles.

TABLE 9

INDUSTRY TYPE BY PRIMARY VIOLATION TYPE

							PRI	MARY VIOI	ATION	TYPE 1					
INDUSTRY TYPE		Tot	tal	Admin	nis- tive	Envin	con- cal	Finar	ncial	Lat	por	Manut	lac- Ing	Tra	ide
		Viola- tions	Per- cent												
MINING AND	T	17	1.2	1	0.8	10	2.0	0	0.0	1	0.6	2	0.4	3	4.8
OIL PRODUCTION	S/M	8	1.2	1	2.9	1	1.9	0	0.0	1	0.6	2	0.6	3	4.9
	T	96	6.7	4	3.3	11	2.2	5	12.3	12	6.7	54	10.5	7	11.0
rood	S/M	49	7.4	2	5.9	3	5.7	5	13.2	12	7.5	20	6.3	7	11.5
	T	4	0.3	0	0.0	0	0.0	1	2.4	2	1.1	0	0.0	1	1.6
APPAREL	S/M	3	0.5	0	0.0	0	0.0	Q	0.0	2	1.2	0	0.0	1	1.6
PAPER FIRED MOOD	T	81	5.7	3	2.4	50	10.1	0	0.0	15	8.3	1	0.2	10	15.9
TATER, FIBER, WOOD	\$/M	28	4.2	2	5.9	3	5.7	0	0.0	12	7.5	1	0.3	10	16.4
CUENTCAT	T	115	8.1	13	10.6	55	11.1	1	2.4	15	8.3	21	4.1	7	11.0
CHEMICAL	S/M	49	7.4	3	8.8	12	22.6	1	2.6	10	6.2	16	5.0	7 (11.5
OTI FEFTNINC	T	289	20.1	6	4.9	229	46.2	25	61.1	9	5.1	8	1.6	10	15.9
OIL ALTINING	S/M	70	10.4	5	14.7	19	35.8	23	60.5	9	5.6	4	1.3	8	13.1
METAL	T	88	6.2	8	6.5	71	14.3	0	0.0	4	2.3	3	0.6	2	3.2
MANUFACTURING	S/M	13	2.0	3	8.8	3	5.7	0	0.0	2	1.2	3	0.9	2	3.3
METAL PRODUCTS	T	28	2.0	8	6.5	5	1.0	0	0.0	9	5.1	4	0.8	2	3.3
	S/M	13	2.0	0	0.0	0	0.0	0	0.0	7	4.4	4	1.3	2	3.3

¹ Thirteen "other" violations were excluded from the non-total columns of this table. This includes 2 serious or moderate "other" violations.

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TABLE 9 (continued)

INDUSTRY TYPE		PRIMARY VIOLATION TYPE													
		Total		Adminis- trative		Environ- mental		Financial		Labor		Manufac- turing		Trade	
		Viola- tions	Per- cent	Viola- tions	Per- cent	Viola- tions	Per- cent	Viola- tions	Per- cent	Viola- tions	Per- cent	Viola- tions	Per- cent	Viola- tions	Per- cent
BEVERAGES	T	11	0.8	0	0.0	1	0.2	1 - 1	2.4	4	2.3	4	0.8	1	1.6
	S/M	7	1.1	0	0.0	0	0.0	1	2.6	4	2.5	1	0.3	1	1.6
ELECTRONIC AND APPLIANCES	T	65	4.6	12	9.8	5	1.0	1	2.4	30	16.9	12	2.3	5	7.9
	S/M	49	7.4	1	2.9	2	3.8	1	2.6	28	17.4	12	3.8	5	8.2
MOTOR VEHICLES	T	238	16.7	20	16.3	19	3.8	0	0.0	20	11.2	171	33.3	8	12.7
	S/M	142	21.2	3	8.8	7.	13.1	0	0.0	19	11.8	105	33.0	8	13.1
AEROSPACE	T	18	1.3	1	0.8	1	0.2	1	2.4	6	3.4	7	1.4	2	3.2
	S/M	16	2.4	1	2.9	• 0	0.0	1	2.6	6	3.7	6	1.9	2	3.3
DRUGŜ	T	134	9.4	18	14.6	0	0.0	0	0.0	6	3.4	109	21.1	0	0.0
	S/M	81	12.0	5	14.6	0	0.0	0	0.0	6	3.7	70	22.0	0	0.0
INDUSTRY AND FARM EQUIPMENT	T	70	4.9	11	8.9	8	1.6	0	0.0	11	6.2	37	7.2	3	4.8
	S/M	42	6.3	0	0.0	3	5.7	0	0.0	10	6.2	26	8.2	3	4.9
OTHER	T	174	12.2	18	14.6	31	6.3	6	14.6	34	19,1	81	15.7	2	3.2
	S/M	97	14.5	8	23.4	0	0.0	6	15.9	33	20.5	48	15.1	2	3.3
TOTAL	T	1428	100.0%	123	100.0%	496	100.0%	41	100.0%	178	100.0%	514	100.07	63	100.0%
	S/M	667	100.0%	34	100.0%	53	100.0%	38	100.0%	161	100.0%	318	100.0%	61	100.0%

administrative violations than expected by its relative size in the sample; 2.0 times for serious or moderate administrative violations. It had 3.0 times its share of total and serious or moderate trade violations. It also had 2.6 times more labor violations than expected; 3.1 times for serious or moderate labor violations. The drug industry had 5.6 times its share of manufacturing violations; 5.8 times for serious or moderate violations. It had 3.9 times more total and serious or moderate administrative violations than expected under a "no difference" hypothesis.

An analysis of violations at the second level of the code showed that 20 (90.9 percent) of the financial transaction violations and 214 (70.6 percent) of the water pollution violations were attributed to the oil refining industry. The motor vehicle industry had 171 (47.6 percent) of the manufacturing hazardous products violations. The drug industry accounted for 109 (21.2 percent) of all violations for manufacturing hazardous or non-hazardous products. The food industry had 3 (23.1 percent) of the financial disclosure violations and 54 (10.5 percent) of the manufacturing hazardous or non-hazardous products violations.

Table 7 (Appendix J) indicates the number of corporations identified as belonging to an industry type; the number of firms in an industry which had at least one action instituted, for all cases and for only serious or moderate cases; the percent of violating firms in an industry; and the distribution of the number of firms having a specified number of actions instituted. It shows that all 17 drug corporations violated the law at least once in 1975 and 1976; and 15 (88.2 percent) had at least 1 serious or moderate violation. Two drug companies had 21 or more violations. The motor vehicle industry had 18 (94.7 percent) of its 19 firms with at least one violation; 17 (89.5 percent) had one or more serious or moderate violation. Four motor vehicle companies had 21 or more violations. The oil refining industry had 22 (78.6 percent) of its 28 companies violate the law at least once; 20 (71.4 percent) had one or more serious or moderate violation.

0. Primary Industry and Seriousness of Violation

Primary industry type is slightly associated (tau = .077) with seriousness of violation. Table 8 (Appendix J) shows that 28.1 perpent of the violations by manufacturing corporations were serious and one-half (7) of the wholesale industry's violations were serious. Actions against the retail industry were for serious violations in 42.3 percent of the cases.

There were 149 actions against the 101 <u>subsidiary</u> corporations, which was 8.5 percent of all cases. These corporations made up 14.8 percent of the total sample. Of their violations, 37 (24.8 percent) were serious, 69 (46.3 percent) were moderate, and 43 (28.9 percent) were minor. Manufacturing subsidiaries engaged in 124 (83.2 percent) of these violations.

P. Summary of Initiated Actions

The world of the giant corporations does not necessarily require illegal behavior in order to compete successfully. The fact that 40 percent of the corporations in this study did not have a legal action instituted against them during a two-year period by 24 federal agencies attests to this conclusion. On the other hand, more than 60 percent had at least one enforcement action initiated against them in the period. An average of 4.8 actions were taken against the 300 parent manufacturing corporations that violated the law at least once. Moreover, a single instance of illegal corporate behavior, unlike "garden variety" crime, often involves millions of dollars and can affect the lives of thousands of citizens. This study found that almost onehalf of the parent manufacturing corporations had one or more serious or moderate violation; and these firms had an average of 3.1 such violations.

The study found that more than 40 percent of the manufacturing corporations engaged in repeated violations. About one-fourth had two or more serious or moderate violations. Further, 83 firms (17.4 percent) had 5 or more violations; 32 corporations (6.7 percent) had 5 or more serious or moderate violations. One parent corporation had 62 actions initiated against it.

Over three-fourths of all actions were in the manufacturing, environmental and labor areas. About one-fourth of the corporations violated these regulations at least once. Illegal corporate behavior was found least often in the financial and trade areas, but even here 5 to 10 percent of the corporations did violate.

Large corporations had a greater proportion of the violations than their share in the sample would indicate. Over 70 percent of the actions were against them but they made up less than one-half of all corporations; and they had more than two-thirds of all serious or moderate violations. Each large parent manufacturing corporation averaged 5.1 violations and 3.0 serious or moderate violations. They most often violate environmental and manufacturing regulations.

The motor vehicle, drug and oil refining industries accounted for almost one-half of all violations, and 4 out of every 10 serious or moderate violations. About 90 percent of the firms in these industries violated the law at least once, and 80 percent had one or more serious or moderate violation.

Little difference was found between parent and subsidiary corporations in the distribution of their initiated actions. Violation type and seriousness of violation were slightly related to primary industry type and size of corporation; violation type was moderately associated with seriousness. The nature of the associational measures used in this chapter does not allow confident statements to be made as to prediction of violations. Chapter VIII will look at the economic characteristics of the corporations as they relate to corporate violations of law.

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CHAPTER VII

ENFORCEMENT ACTIONS AGAINST CORPORATIONS

The discussion that follows describes the analysis of enforcement actions or sanctions taken by the federal government against 582 large corporations, including 477 manufacturing, during 1975 and 1976.

A. Diversity of Enforcement Actions

As with corporate violations, the great diversity of enforcement actions necessitated the construction of an extensive four-level code to represent increasing specificity of the sanctions. It followed the same pattern as used with the violations data, information on up to five enforcement actions in a single case was coded. For each of the five enforcement actions, information was gathered as to which case it referred to, whether it was a detail of a single violation or a separate sanction, the status (imposed, proposed or prosecution terminated), whether the corporation had consented to it, the level of enforcement of the sanction (court or administrative and criminal, civil or administrative), and whether it was against the corporation, the officer or both. Several factors complicated the coding scheme: (1) Although the unit of analysis was the violation, sometimes more than one enforcement action was brought in response to a single violation, and (2) While each case could involve multiple sanctions, one enforcement action (for example a consent order) could involve numerous conditions or requirements. The relation of the sanction to the violation was analyzed in order to be certain the case involved multiple sanctions. Repeated follow-up contacts often had to be made with the various agencies in order to ascertain whether an enforcement action was considered a separate sanction or as an aspect of one violation.

Since most of the analyses were intended to focus on the primary sanction (the most severe sanction or in some cases the first one encountered on the data card), a hierarchy was set up to determine, in those instances where multiple sanctions or details were involved, which sanction should be coded as the primary or most important sanction. No attempt was made to determine seriousness of sanction on a case by case basis, as had been done for violations, but an attempt was made to assure that the most severe action would be represented as the primary sanction. Unlike ord, mary crime, no precedent existed for ranking sanctions. The following guidelines were followed:

- (1) Court imposed sanctions were considered more severe than administrative actions.
- (2) Criminal cases took precedence over civil cases, and administrative cases were the least serious.
- (3) A sanction that would result in monetary loss to the corporation either by being required to make amends for past actions (for example by reimbursing customers or paying back-wages), being required to expend capital (for example, for pollution control equipment) or payment of fines and civil penalties or

damages was more serious than a sanction that did not directly affect the corporation's balance sheets.

- (4) An action against the corporation was given precedence over one against an officer because of the larger scope of the action.
- (5) An imposed sanction was more severe than a proposed sanction regardless of type.

Seven major types of enforcement actions were devised in the code for this research: monetary penalties, orders (unilateral, consent and not elsewhere classified), actions enjoined, nonmonetary penalties against officers, warnings, other santions and unspecified detail.

1. <u>Monetary penalties</u>. Criminal fines (against both the corporation and officer[s]), damages (double, treble and punitive) and civil penalties against both the corporation and officers fall into this category. The data often did not present the amount of monetary penalty in a concise manner; in some cases the total amount would be specified but if multiple officers or both officers and the corporation were involved, it was impossible to know which portion applied to which officer or to the corporation. At other times, no amount at all was provided.

2. Orders. There are three different types of orders, each comprising a separate code Level I, but some of the analyses combine them in one category. Unilateral orders are those imposed directly from the agency or court and do not involve any consent on the part of the corporation. Consent orders (decrees or agreements) involve discussion between the corporation and the agency or court. The corporation agrees to carry out the stipulations of the order, but does not admit guilt. If the conditions are not met, however, the company is in contempt if the order comes from the court. The category of "orders not elsewhere classified" includes those orders for which it was not possible to determine if they were consented to or not. Each of these three code Level I's contained details that were classified as having either a retroactive or a future effect. The retroactive effect means that the action called for is remedial in nature and that it is intended to correct the injury levied by the violation. Although monetary compensation (refunds, credits, replacements, damages, reimbursements) is included in this category, an actual outlay of money is not the only action considered to be remedial in nature. Divestiture, seizure and destruction of products, cleaning up pollution, corrective advertising and recalls, clearing of employees' records, reinstating discharged employees and setting aside of a union election are retroactive in effect.

Most future effect orders require the corporation to cease and desist from continuing their illegal activities in the future. Requirements to notify both governmental and non-governmental groups, to make capital investments to reduce pollution, to make information available, to modify sales policy, to come into compliance, to take affirmative action and to prevent future violations are all considered to have a future effect - they are not remedial in nature. It should be noted that there are some areas of administrative law where the question of what constitutes a "remedial" order is not definite; for example, the FTC which, like so many agencies, is largely limited by statute and case decisions to issuing orders which have only a "remedial" as opposed to a "punitive" effect, has successfully asserted in court that corrective advertising is a remedy which is essentially "remedial" in nature. If it were unable to carry this legal burden, the remedy would not be allowed by the courts in the absence of a specific statutory grant of authority to the agency.¹ It is with orders that details occur most often; one order may state numerous requirements but it is only one actual order coming from the agency or the court.

3. <u>Nonmonetary penalties against officers</u>. This category includes incarceration, suspended sentences, suspension from corporate activity, probation and civil contempt. As with monetary penalties, the length of the sentence and the number of officers involved were at times not clear.

4. <u>Actions enjoined</u>. Injunctions are issued by the courts; they are used to halt quickly an illegal practice. Violations of Securities and Exchange Act provisions often result in injunctions, as do discriminatory labor practices and illegal economic actions (such as practices that tend to fix and/or raise prices or suppress price competition, allocation schemes and conspiratorial practices), environmental pollution and illegal political contributions. Violations of a consent order can be followed by an injunction, as can distribution of adulterated/contaminated/mislabeled products. Proposed acquisitions can be enjoined, and officers can be enjoined from being officers of any public corporation. Plants can be shut down or production halted quickly by the use of an injunction.

5. <u>Warnings</u>. The administratively-imposed enforcement actions are far less severe than a criminal or a civil action, and are often the first step taken by an agency to bring about compliance. The Environmental Protection Agency (EPA) issues Notices of Violation (NOVs) for air and water pollution, and they are considered to be "details" if they are subsequently followed by an order to cease and desist. Regulatory letters requesting that corrective action be taken are issued by the Food and Drug Administration, and copies of this correspondence were obtained directly from the agency.

Recalls were the most widely used action in cases involving the National Highway Traffic Safety Administration (NHTSA), the Consumer Product Safety Commission (CPSC) and the Food and Drug Administration (FDA). In both the CPSC and the FDA, as is discussed below, it was clear that these actions should be considered enforcement actions, although the company usually initiated the recalls. The decision to consider most "voluntary recalls" as enforcement actions was reached only after careful and lengthy consideration. A basic reason for this decision came from discussions with enforcement personnel of the agency dealing with recalls who indicated that "voluntary recalls" were generally the result of government "arm-twisting," concern for adverse publicity, or possible consumer suits if the recall were ordered by

The distinction between remedial and punitive is discussed in Thain, Gerald J., "Corrective Advertising: Theory and Cases" in 19 <u>New York Law Forum</u>, page 1, at pages 20-21 (1973). The major Supreme Court case setting forth this distinction and specifically prohibiting the FTC (and, by analogy, agencies with powers similar to it or drawn from similar statutes) from utilizing "punitive" remedies is <u>FTC v. Ruberoid Co.</u>, 343 U.S. 470, 473 (1952). the government. In the following discussion of each agency, more specific reasons will be indicated.

The CPSC requires notification by the manufacturer if it is discovered that the product is defective or that it fails to comply with an applicable consumer product safety standard. CPSC may, in the case of imminent hazards, file an action in a district court to seize and condemn the product. It may also request the court to impose on any manufacturer, distributor or retailer whatever equitable remedy may be necessary to protect the public, including recall, repair, replacement or refund. All but one of the initiated actions for 1975-1976, most of which were recorded from the Law Services, were handled administratively. Although the corporation notified the agency of the violation, these actions were not considered voluntary because the agency sends a foliow-up letter of advice - a formal administrative warning to remedy the situation. Corrective action plans are submitted to the CPSC for approval, giving the agency the authority to supervise the remedy of the hazard. In cases where there is a lack of confidence that the company will comply with the plan, a binding consent agreement may result. A list of all actions instituted was sent to the Directorate for Compliance and Enforcement of CPSC asking for designation of which actions involved court-ordered recalls; none of them were handled by civil procedures.

As in activities by the CPSC, when a recall is necessary the firm notifies the FDA and subsequently receives an information letter (warning) stating that the agency will be following up the recall and that the information will go into the <u>Enforcement Report</u>. Conversations with agency enforcement officials indicate that the sending of the letter is almost routine once the company has reported the recall, so for purposes of this research it is considered an administrative enforcement action. The FDA was able to indicate which recall actions were initiated by the company and which were ordered by the agency commissioner (unilateral orders). The <u>Enforcement Report</u> designates whether the action was "voluntary" or commissioner-ordered.

For NHTSA, recalls occur under four circumstances: (1) "voluntary recalls" occur when the company discovers the defect and recalls the product, with no formal action from NHTSA (warning); (2) non-compliance recalls (unilateral orders) take place when NHTSA ascertains that the company is not carrying out a "voluntary" recall campaign in an acceptable manner and sends a letter warning the company to comply; (3) if the company still refuses to come into compliance, the agency goes to court to enforce the recall order; and (4) NHTSA can discover the defect itself and issue an administrative order to recall (unilateral order). NHTSA can also levy civil penalties both in conjunction with a non-compliance recall or administrative order to recall and by itself for a violation of the Federal Motor Vehicle Safety Standards (FMVSS).

As with the CPSC, NHTSA was asked to identify which recalls involved ϵ court action. The agency also was able to designate by recall identification number which were "voluntary" - that is, received no formal action from NHTSA - and which resulted from non-compliance with their voluntary recalls. For the two year period, only one corporation in this sample was involved in an actual administrative order to recall and four were non-compliance orders to recall. Thus nearly all of the activity involving the NHTSA is in the form of companyinitiated recalls. Unlike the CPSC and FDA, NHTSA <u>does not</u> send out a formal letter subsequent to notification by the company that a recall is underway. For purposes of this research, however, these "voluntary" recalls were still considered as enforcement actions. If these actions were not included, the data for automobile manufacturers would be grossly underrepresented. A violation has, after all, taken place regardless of who discovered it, and it is merely a technicality in agency procedures that differentiates the activity taking place from that of the CPSC and FDA (i.e., no follow-u.) letter is sent to the firm by the NHTSA). In addition, the NHTSA does publish annually the Motor Vehicle <u>Safety Defect Recall Campaigns</u>, containing detailed individual case reports on all defects that could have been subject to government action and regardless of whether the recall was voluntary or not.

6. Other sanctions. This category includes those which could not be easily classified in any other category. Those represented were preliminary injunctions, putting the company on probation, requiring a change in management or director structure, debarment from future contracts (facility made ineligible for federal subsidies/contracts/grants), corporation must contribute goods to charity in lieu of a fine, and license suspension.

7. <u>Unspecified detail</u>. For some of the violations data the sources used did not provide information on what sanctions had been imposed or proposed.

It was impossible to follow up all enforcement actions taken during 1975 and 1976 to discover whether or not the action was affirmed or dismissed after appeal to an administrative board or court or other change in action. Some enforcement cases may take months or even years beyond the time period of this study to reach a final decision. Actually, most enforcement cases do not appear to be reversed; moreover, there was a degree of balance since those enforcement actions taken in early 1975 were for cases originallybrought before this period and some cases in late 1976 would subsequently go to appeal. However, the number of initiated and completed enforcement actions cannot balance out because of pending cases. This situation with corporate cases is no different from ordinary crime. One is simply making a study in a cross-section in time. In most research on ordinary crime, one does not know what was the eventual or final outcome in a study of arrests, prosecutions or convictions.

B. Victim of Corporate Violation

For each of the initiated actions, an attempt was made to identify which segment of society was the most directly affected by the violation. The following "victim" code was developed:

(1) <u>Consumer</u> (quality of product/safety): The consumer, with regard to safety and health hazards resulting from use of the product, was the victim in cases which were responded to most often by the Consumer Product Safety Commission, the Food and Drug Administration and the National Highway Traffic Safety Administration.

- (2) <u>Consumer</u> (economic power): Credit violations, misrepresentation in advertising and sales and such financial violations as sales terms in transactions which involved the consumer were likely to affect the economic power of the consumer.
- (3) The <u>economic system</u> was affected most directly in unfair trade practices and most financial violations except those related to consumer purchases.
- (4) <u>Environmental</u> violations (air and water pollution and spills) most directly affected the physical environment as a victim.
- (5) The <u>labor force</u> was the victim in violations which involved the <u>Occupational</u> Safety and Health Administration, Equal Employment Opportunity Commission, National Labor Relations Board, and the Wage and Hour Division.
- (6) The government was designated as the victim for those violations of administrative orders and financial violations involving tax fraud.

C. Analysis of Enforcement Actions

The decision to bring an administrative, civil or criminal action in response to a corporate violation is influenced by many legal and extralegal considerations. The government cannot bring a criminal action against each corporation that may deserve such action. Not only is there insufficient prosecutory manpower and time, but the nature of the corporation and the regulatory process make such an action difficult to initiate. Enforcement officials are hard-pressed to penetrate the corporate structure to determine responsibility. With no welldefined patterns with which to work, generally each case must be worked out on an individual basis. In addition, if a criminal case is to be developed adequately, thousands of corpoate documents must often be examined and accurate testimony gathered as to the chain of events. Generally, little cooperation can be expected from the corporation. A Presidential Crime Commission has pointed out that complex instances of corporate crime may require a year or more to investigate (President's Commission on Law Enforcement and Administration of Justice, 1967:106). Moreover, regulatory agencies have the power to issue administrative subpoenas for documents that may "reasonably" come under their jurisdiction, but the government is often in the position of not knowing that certain essential materials exist. The government is usually dependent upon the record systems of the corporation and its ability (or willingness) to furnish needed information. Delay, if not avoidance, is common.

From conversations with various federal officials a composite picture can be put together of some of the criteria generally employed in decisions to bring a criminal action, when legally available, against a corporation. These factors include:

- (1) The degree of loss to the public
- (2) The level of complicity by high corporate managers
- (3) Duration of violation
- (4) Frequency of the violation by the corporation

- (5) Evidence of intent to violate
- (6) Evidence of extortion, as in bribery cases
- (7) Degree of notoriety engendered by the media
- (8) Precedent in law
- (9) History of previous serious violations by the corporation
- (10) Deterrence potential
- (11) The degree of cooperation evinced by the corporation

When these criteria are not sufficiently involved, then civil actions may be undertaken. Civil actions, such as injunctions or damage actions, are particulary useful:

- (1) Injunctions: to stop an ongoing, not a past, violation of an extensive nature that would be much delayed if a criminal action or a civil damage action were initiated.
- (2) When the violation is recent and likely to be repeated unless an injunction is quickly obtained.
- (3) In cases where the statute of limitations for criminal action is running out, a civil damage suit may more rapidly accomplish an objective.

If the above conditions are not fulfilled, then an administrative action becomes more likely.

A total of 1554 federal enforcement actions were imposed against the 582 parent corporations in 1975 and 1976. At least one sanction was imposed against 371 corporations (63.7 percent). Conversely, 211 (36.3 percent) had no actions completed against them. This was an average of 2.7 per corporation, and an average of 4.2 for those corporations with at least one sanction imposed on them. A maximum of 65 enforcement actions were taken against one corporation.

For the 683 corporations (parents and subsidiaries), 415 (60.8 percent) had at least one enforcement action. One or more sanctions were imposed on 356 (65.7 percent) of the 542 manufacturing corporations and on 59 (41.8 percent) of the 141 non-manufacturing companies. Enforcement actions were taken against 321 (67.3 percent) of the 477 parent manufacturing firms and against 50 (47.6 percent) of the 105 parent non-manufacturing firms. Sanctions were imposed on 35 (53.8 percent) of the 65 subsidiary manufacturing corporations.

1. <u>Sanctions (up to five) for parent corporations</u>. A total of 1641 imposed sanctions in 1975 and 1976 were involved in the 1554 enforcement actions: 367 (22.4 percent) monetary penalties, 302 (18.4 percent) unilateral orders (i.e., orders imposed without the corporation's consent), 23 (1.4 percent) injunctions, 218 (13.3 percent) consent orders (i.e., orders imposed with the consent of the corporation), 16 (1.0 percent) orders not elsewhere classified, 22 (1.3 percent) nonmonetary penalties against officers, 672 (40.1 percent) warnings, and 21 (1.3 percent) other sanction types. The mean number of sanctions was 2.8 per corporation, an average of 4.4 for those with at least one sanction. The mean number of monetary penalties was 3.3 for those 111 corporations with at least one. The average for unilateral orders was 1.6 for the 185 with at least one. Injunctions averaged 1.1 for the 21 with one or more. The mean for consent orders was 1.4 for the 161 with at least one. Nonmonetary penalties against officers averaged 1.4 for the 16 corporations with one or more. And the mean for warnings was 3.6 for the 185 which had at least one issued against them.

Table 10 (Text) shows the class interval distribution for the number of corporations with a particular number of sanctions of the major types. Although 211 corporations received no sanctions at all, the number of corporations with no sanctions of a particular type ranged from 397 (68.2 percent) for warnings and unilateral orders to 561 (96.4 percent) for injunctions. Generally, three out of ten corporations received at least one consent order, unilateral order or warning; two of ten had one or more monetary penalty assessed; and one out of ten had at least one injunction or nonmonetary penalty against an officer imposed. A maximum of 50 warnings was given to one corporation; one firm received 44 monetary penalties; 11 unilateral orders were imposed on one company, 4 corporations received 4 consent orders each, 2 injunctions each were imposed against 2 firms, and 6 companies twice had nonmonetary penalties imposed on their officers.

Table 11 (Text) shows the number of sanctions (up to five) against parent corporations in the three levels of the code. It also indicates the number of corporations that had received a particular sanction and the mean number of sanctions per corporation which had one or more sanctions of that type imposed.

2. <u>Sanctions (up to five) for parent manufacturing corporations</u>. The 477 parent manufacturing corporations had 1529 sanctions imposed, involving 1446 cases. This was 93.2 percent of all sanctions, with these corporations constituting 81.9 percent of the sample. There were 642 warnings (42.0 percent), 358 monetary penalties (23.4 percent), 260 unilateral orders (17.0 percent), 198 consent orders (12.9 percent), 20 instances of nonmonetary penalties against officers (1.3 percent), 19 injunctions (1.2 percent), 18 other sanction types (1.2 percent), and 14 orders not elsewhere classified (0.9 percent).

The mean number of sanctions per corporation was 4.8 for the 321 parent manufacturing corporations with at least one sanction. Warnings averaged 3.9 for the 166 companies which had at least one. Monetary penalties had a mean of 3.4 for the 104 firms with one or more. There was an average of 1.6 unilateral orders for the 160 with at least one. Consent orders average 1.4 for the 144 with one or more. Nonmonetary penalties averaged 1.4 for the 14 corporations which had that sanction imposed on them at least once. Injunctions averaged 1.1 for the 18 companies which had one or more imposed.

There were 156 parent manufacturing corporations (32.7 percent) that had never had a sanction of any type issued against them. Table 10 (Text) shows that approximately 3 out of 10 had at least one warning, unilateral order, or consent order imposed upon them. Two of ten had one or more monetary penalty assessed, and 1 of 10 received at least one injunction or nonmonetary penalty against their officers.

CORPORATION BY NUMBER AND TYPE OF SANCTION

(Up to Five Sanctions)

Sanction				Pare	nts (582)				Pa	irent	Manuf	actu	ing ((477)	
Туре	0	1	2	3	4	5	6-20	21+	0	1	2	3	4	5	6-20	21+
Monetary Penalty	471 80.9%	53 9.1	26 4.5	6 1.0	9 1.5	4 0.7	12 2.1	10.2	373 78.2	48 10.1	24 5.0	6 1,3	9 1.9	4 0.8	12 2.5	1 0.2
Unilateral Order	397 68.2%	123 21.2	38 6.5	10 1.7	7 1.2	3 0.5	4	0	317 66.6	108 22.6	33 6.9	7 1.5	5 1.0	3 0.6	4 0.8	0
Consent Order	421 72.3%	122 21.0	23 4.3	10 1.7	.4 0.7	0	0	0	333 69.9	107 22.4	24 5.0	9 1.9	4 0.8	0	0	0
Injunction	561 96.4%	19 3.3	2 0.3	0	0	0	0	0	459 96.2	17 3.6	1 0.2	0	0	0	0	0
Nonmonetary Penalty Against Officer	566 97.3%	10 1.7	6 1.0	0	0	0	0	0	463 97.0	8 1.7	6 1.3	Q	0	0	0	0
Warning	397 68.2%	99 17.0	30 5.2	9 1.5	10 1.7	11 1.9	21 3.6	5 0.9	311 65.2	86 18.0	26 5.5	8 1.7	10 2.1	11 2.3	20 4.2	5 1.0
Total	211 36.3%	141	83 14.3	33 5.7	19 3.3	16 2.7	66 11.3	13 2,2	156 32.7	109 22.9	77	31 6.5	17 3.6	13 2.7	61 12.8	13 2.7

NUMBER OF SANCTIONS IN CODE LEVELS I-III AND NUMBER OF PARENT CORPORATIONS AND PARENT MANUFACTURING CORPORATIONS WITH SANCTIONS IMPOSED (All Five Fields)

SANCTION TYPE	Total Number of Corporations (582)	Number of Sanctions	Mean	Percentage of Sanctions	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Sanctions	Mean	Percentage of Sanctions
LEVEL I								
Unspecified Detail	1	1	1.0	0.1		1	1.0	0.1
Monetary Penalties	111	367	3.3	22.4	104	358	3.4	23.5
Unilateral Orders	185	302	1.6	18.4	160	260	1.6	17.1
Orders Not Elsewhere Classified	14	16	1.1	1.0	12	14	1.2	0.9
Action Enjoined	21	23	1.1	1.4	18	19	1.1	1.2
Consent Orders	. 161	218	1.4	13.2	144	198	1.4	12.9
Non-monetary Penalties Against Officers	16	22	1.4	1.3	14	20	1.4	1.3
Warnings	185	672	3.6	41.0	166	642	3.9	42.0
Other Sanctions	17	20	1.2	1.2	15	17	1.1	1.1
LEVEL 11								
Unspecified Detail	14	16	1.1	1.0	13	15	1.2	1.0
Civil Penalty	88	309	3.5	18.9	85	306	3.6	19.9
Criminal Fines	34	58	1.7	3.5	30	52	1.7	3.4
Retroactive Effect	94	132	1.4	8.0	75	107	1.4	7.0
Future Effect	237	389	1.6	23.6	213	351	1.6	22.9
Future Violations of Pertinent Securities Exchange Act Provisions	13	15	1.2	0.9	11	12	1.1	0.8
Illegal Economic Actions	2	2	1.0	0.1	2	2	1.0	0.1
Future Violations	4	1	1.0	0.1	1	i	1.0	0.1

SANCTION TYPE	Total Number of Corporations (582)	Number of Sanctions	Mean	Percentage Of Sanctions	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Sanctions	Mean	Percentage Of Sanctions
LEVEL II (continued)								
Distributing Adulterated/ Contaminated/Mislabeled Products	2	2	1.0	0.1	1	1	1.0	0.1
Proposed Acquisition/ Merger	1		1.0	0.1	1	1	1.0	0.1
Cease Plant Operations, Shut Down Plant Until Brought into Compliance, Production Halt		1	1.0	0.1			1.0	0 i
Incarceration (Total cor- porate officers as unit)	5	5	1.0	0.3	5	5	1.0	0.3
Suspended Sentence	7	7	1.0	0.4	6	6	1.0	0.4
Probation	10	10	1.0	0.6	9	9	1.0	0.6
Civil Contempt	2	2	1.0	0.1	1	1	1.0	0.1
Notice of Violation (EPA)	65	112	1.7	6.8	64	111	1.7	7.1
Regulatory Letters Re- questing Corrective Action (FDA)	38	90	2.4	5.5	34	85	2.5	5.5
Warning Letter	1	1	1.0	0.1	1	1	1.0	0.1
Information Letter (FDA Recalls/Corrective Programs)	71	193	2.7	11.7	62	179	2.9	11.7
CPSC/State Agency Recall Request/Warning to Re- call or Institute a Corrective Action Plan (Letter of Advice)	30	36	1.2	2.2	24	28	1.2	1.8
NHTSA Voluntary Recall	26	240	9.2	14.6	24	238	9.9	15.5

SANCTION TYPE	Total Number of Corporations (582)	Number of Sanctions	Mean	Percentage Of Sanctions	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Sanctions	Mean	Percentage of Sanctions
LEVEL II (continued)								
Preliminary/Temporary Injunctions	2	2	1.0	0.1	1		1.0	0.1
Company on Probation	1	1	1,0	0.1	1	1	1.0	0,1
Change in Management or Director Structure	5	5	1.0	0,3	5	5	1,0	0.3
Debarrment from Future Contracts, Facility Made Ineligible for Federal Subsidies/Grants/Con- tracts	1		1.0	0.1	1	1	1.0	0.1
Corporation to Contrib- ute Goods to Charity in Lieu of Fine	3	3	1.0	0.2	2	2	1.0	0.1
Citation Affirmed (No Penalty Assessed)	6	6	1.0	0.4	6	6	1.0	0.6
License Suspension (Temporary)	1	1	1.0	0.1	1	1	1,0	0,1
LEVEL III								
Unspecified Detail	168	466	2.8	28.4	152	437	2.9	28,5
Against Corporation Only	111	344	3.1	21.0	105	339	3.2	22,2
Against Officers Only RETROACTIVE EFFECT	21	21	1,0	1,4	19	19	1,0	1,2
Monetary Compensation	46	53	1.2	3.3	35	42	1.2	2.7
Divestiture	14	14	1.0	0.9	12	12	1.0	0,8
Other Remedial Actions	81	329	4,1	20.0	68	311	4,6	20.1
Order Setting Aside Union Election (NLRB)	1	1	1.0	0.1	1	1	1.0	0.1

SANCTION TYPE	Total Number of Corporations (582)	Number of Sanctions	Mean	Percentage Of Sanctions	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Sanctions	Mean	Percentage Of Sanctions
LEVEL III (continued)								
RETROACTIVE EFFECT (contd) Reinstitution of Past Arrangement	3	4	1,3	0.2	3	4	1.3	0.3
Merger Agreements Termi- nated by Companies		1	1.0	0,1		1	1,0	0,1
FUTURE EFFECT								
Cease and Desist	126	167	1.3	10,2	108	137	1.3	8,8
Court Enforcement of Order to Cease and Desist	6	6	1.0	0.4	6	6	1.0	0.4
Notification (Non- governmental)	15	15	1.0	0.9	15	15	1.0	1.0
Ban on Similar Acqui- sition without Ap- proval	1	1	1.0	0.1	1	1	1.0	0.1
Make Capital Investment to Abate Pollution	4	7	1.8	0.4	4	7	1.7	0.5
Order to Recognize and Bargain with Union	1	1	1.0	0.1	1	1	1.0	0.1
Sales Policy Modifica- tion	1	1	1.0	0.1		1	1,0	0.1
Sale Item Requirements	1	1	1.0	0.1	0	0	0.0	0.0
Reporting Provisions	3	3	1.0	0.2	2	2	1.0	0,1
Allocation Schemes	1	1	1.0	0.1	1	1	1.0	0,1
Exclusive Accounts		1	1.0	0.1	1	1	1.0	0.1
Make Tests		1	1.0	0.1	1	1	1.0	0.1
Order to Show Cause	44	57	1,3	3,5	43	56	1.3	3.6

SANCTION TYPE	Total Number of Corporations (582)	Number of Sanctions	Mean	Percentage Of Sanctions	Total Number of <u>Manufacturing</u> Corporations (477)	Number of Sanctions	Mean	Percentage Of Sanctions
LEVEL III (continued)								
FUTURE EFFECT (continued)								
Grder to Come Into Compliance	46	58	1.3	3.5	43	, 55	1.3	. 3.6
Make Data Available	5	5	1.0	0.3	1	1	1.0	0.1
Antifraud Provisions	1	1 23	1.0	0.1	1	1	1.0	0.1
Miscellaneous	1	1	1.0	0.1	1	1	1.0	0.1
Administrative Re- quirements	1	1	1.0	0.1	I	1 .	1.0	0.1
Prohibit Sale of Assets without Governmental Approval	i		1.0	0.1	1	1	1.0	0.1
Prohibit Interlocking Directorates	10	10	1.0	0.1	10	10	1.0	0.7
Order to Comply with Earlier Agency Order	1	1	1.0	0.1	1	1	1.0	0.1
Barring Consummation of Proposed Merger Agree- ment		1.	1.0	0.1	0	0	0.0	0.0
Antifraud Reporting and Proxy Provisions	5	5	1.0	0.1	3 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 -	3	1.0	0,2
Payments	1	1	1.0	0.1	1	1	1.0	0.1
Implement Procedures to Comply with Order or Prevent Future Viola- tions	51	61	1.2	3.6	49	59	1.2	3.8

One had 50 warnings, one firm had 44 monetary penalties, and one corporation had 11 unilateral orders; one corporation had 2 injunctions imposed. There were 4 companies that received 4 consent orders each; and 6 firms twice had nonmonetary penalties imposed on their officers. The class interval distribution for all sanctions against non-manufacturing parent corporations can be found in Table 9 (Appendix J).

3. <u>Sanctions against corporations with ten or more actions in-</u> <u>stituted</u>. The 38 parent manufacturing corporations, out of a total of 477, which had 10 or more actions instituted against them accounted for 740 (48.2 percent) of all sanctions when a maximum of five was considered. There was a mean of 19.5 sanctions per corporation. A total of 220 monetary penalties (61.5 percent of all such sanctions) was assessed against 29 of these firms, an average of 7.6 per corporation. There were 382 warnings (59.5 percent of all warnings) recorded against 31 of the firms, a mean of 12.3 per corporation. On code Level II, it was found that 27 firms had a total of 210 civil penalties or twothirds (68.6 percent) of all such penalties, an average of 7.8 for each of the corporations.

Rather than analyzing all sanctions up to five, the remaining analysis of enforcement actions will be based on one sanction only - the primary sanction - except where otherwise indicated. Primary sanction is defined as the most severe sanction or the first one encountered on the data card. The terms "sanction" and "enforcement action" will be used synonymously. Nonmonetary penalties against officers were never recorded as the primary sanction because the sanction against the corporation was always considered primary.

4. Enforcement actions (primary sanctions) for parent corporations. Of the 1554 federal enforcement actions completed in 1975 and 1976 against parent corporations, 669 (43.0 percent) were warnings, 344 (22.1 percent) were monetary penalties, 296 (19.0 percent) were unilateral orders, 198 (12.7 percent) were consent orders, 23 (1.5 percent) were injunctions, 11 (0.7 percent) were other types of orders, and 13 (0.8 percent) were other types of sanctions.

As mentioned previously, there was an average of 2.7 sanctions per corporation, and 4.2 for the 371 parent corporations with at least one sanction imposed on them. The mean for the corporations with at least one of the type indicated was 3.6 for warnings (185 corporations), 3.1 monetary penalties (111 corporations), 1.6 unilateral orders (183 corporations), 1.3 consent orders (154 corporations), and 1.1 injunctions (21 corporations).

Table 12 (Text) shows that approximately 3 out of 10 corporations had at least one warning, unilateral order or consent order. Two out of ten had at least one monetary penalty and 1 out of 10 received one or more injunctions. One of ten was assessed a single monetary penalty. One corporation had 50 warnings, one had 44 monetary penalties, and one had 10 unilateral orders. Two corporations had two injunctions each.

5. <u>Enforcement actions (primary sanction) against parent manufac-</u> <u>turing corporations</u>. There were 1446 enforcement actions taken against parent manufacturing corporations. Of these, 639 (44.2 percent) were warnings, 338 (23.4 percent) were monetary penalties, 254 (17.6 percent)

ENFORCEMENT ACTIONS AGAINST CORPORATIONS BY NUMBER AND TYPE OF SANCTION (Primary Sanction Only)

			сан. 30-е				Pat	ents	(582)										iste offen Hereite			Pare	ent Ma	inufa	ccurir	ng (47	7)	<u>.</u>				
Sanction				Tota	1					Se	riou	s/Mo	dera	te						Tot	a1					S	erio	us/M	eder	are		
type	0	1	2	3	4	5	б - 20	21+	0	1	2	3	4	5	6-20	21+	0	1	2	3	4	5	6-20	21+	0	1	2	3	4	5	6-20	21+
Monetary Penalty	471	66	15	6	9	2	12	1	510	47	17	6	1	0	1	0	373	59	15	6	9	2	12	1	410	42	17	6	1	0	1	0
	81.0%	11.3	2.6	1.0	1.5	0.3	2.1	0.2	87.6	8.1	2.9	1.0	0.2		0.2	ļ	78.2	12.4	3.1	1.3	1.9	0.4	2.5	0.2	85.9	8.8	3.6	1.3	0.2	<u> </u>	0.2	1
Unilateral Order	399	123	36	11	6	3	4	0	469	76	24	7	4	1	1	0	319	108	31	7	5	3	4	0	385	65	19	3	3	1	1	0
	68.67	21.1	6.2	2 1.9	1.0	0.5	0.7	1	80.5	13.1	4.1	1.2	0.7	0.2	0.2		67.0	22.6	6.5	1.5	1.0	0.6	0.8		80.8	13.6	4.0	0.6	0.6	0.2	0.2	
Consent Order	428 73.6%	121 20.8	24 4.	7	2	0	0	0	457 78.6	105 18.0	17 2.9	2 0.2	1 0.2	0	0	0	338 70.9	108 22.6	23 4.8	6 1.3	2 0.4	0	0	0	367 77.0	92 19.3	15 3.1	2 0.4	1 0.2	0	0	0
Injunction	561 96.4%	19 3.2	2	0	0	0	0	0	561 96.4	20 3.4	10.2	0	0	0	0	0	459 96.2	17 3.6	1 0.2	0	0	0	0	0	459 96.2	17	1	0	0	0	O	0
Warning	397 68.2%	100 17.2	29 5.(9	10	11 1.9	21 3.6	5 0.9	489 84.1	.47 .8.1	16 2.7	11 1.9	3 0.5	3	11 1.9	2 0.3	311 65.3	87 18.2	25 5.2	8 1.7	10 2.1	11 2.3	20 4.2	5 140	393 82.5	40 8.4	14 2.9	11 2.3	3 0.6	3 0.6	11 2,3	2
Total	211 36.37	143 24.5	86 14 .	33 5.7	14 2.	20 3.4	64 11.	11	288 49,3	157	55 9.5	23 4.0	18 3.1	15 2.6	23 4.0	3 0.5	156 32.7	111 23.3	79 16.	31 6.5	13 2.7	17 3.6	59 12,4	11 2.3	225 47.2	128 26.8	53 11.1	18 3.8	16 3.4	12 2.5	22 4.6	3

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were unilateral orders, 180 (12.4 percent) were consent orders, 19 (1.3 percent) were injunctions, and 16 (1.1 percent) were other types of sanctions.

The mean number of enforcement actions was 3.0 per corporation, or an average of 4.5 for the 321 companies which had at least one. The average for firms with at least one of the indicated type was: 3.8 warnings for 166 corporations, 3.2 monetary penalties (104 firms), 1.6 unilateral orders (158), 1.3 consent orders (139), and 1.1 injunctions (18 firms).

Table 12 (Text) also shows that about one-third of the corporations had at least one warning, unilateral order or consent order. Two of ten had at least one monetary penalty assessed against them, and one of ten had one or more injunctions imposed. One out of ten had a monetary penalty assessed. One corporation had 50 warnings, one had 44 monetary penalties, one had 10 unilateral orders, one had 4 consent orders, and one had 2 injunctions. The class interval distribution for parent non-manufacturing firms can be found in Table 9 (Appendix J).

Types of enforcement actions. There may be multiple viola-6. tions in a single case; enforcement acticns may also involve multiple sanctions being imposed on a corporation. The primary sanction, as defined previously, is that action against the corporation which is determined to be the most severe and that contains details not considered to be separate sanctions. Instances did occur, however, in which multiple sarctions were imposed by the agencies or courts. Since the bulk of the analysis focuses on the primary sanction (and more specifically on code Level I of that primary sanction), it is necessary to see how much distortion exists by thus limiting the analysis. Table 13 (Text) indicates that there is little distortion. In only 66 cases (4.2 percent) was there more than one sanction. Except in two combinations no other combination of primary and secondary sanctions amounted to more than 5 percent of the total number of cases involving multiple sanctions.

When more than one sanction is imposed in a case, the enforcement level (criminal, civil or administrative) is not necessarily the same. By analyzing only the primary sanction, a distortion may occur in the relationship between the level of enforcement of the sanctions, but on the whole this was not a great problem in this study. Table 14 (Text) shows that of the 66 cases involving multiple sanctions, 27 (40.9 percent) had criminal sanctions recorded as the two most severe actions. Administratively-imposed civil sanctions were accompanied by administratively-imposed administrative sanctions in 16 cases (24.3 percent), and two court-imposed civil sanctions were recorded as the two most severe actions in 13 cases (19.7 percent). No other combination of the first two sanction types constituted more than 10 percent of the cases involving multiple sanctions.

7. Victim and sanction type. The victim of illegal corporate behavior was defined as that category (consumers, environment, etc. that was the most directly harmed by the violation (cf. pages 113-114). Table 10 (Appendix J) shows that, of the 1446 sanctions imposed on parent <u>manufacturing</u> corporations, 639 (44.2 percent) were warnings, 356 (24.6 percent) were future effect orders (including injunctions)that is, those orders that affect the future behavior of the corpora-





PRIMARY SANCTION TYPE BY SECOND SANCTION TYPE RECORDED

			Pri	mary Sanctic	м Туре		
Secondary Sanction Type lonetary enalties inilateral Orders orders orders orders lassified insent orders lassified insent orders lassified inficers lonmonetary enalties gainst officers larnings	Monetary Penalty	Unilateral Order	Injunction	Consent Order	Nonmonetary Penalty Against Officer	Prosecution Terminated	Total
Monetary Penalties	36.3%	9.0	0.0	0.0	0.0	0.0	36.3% (N = 24)
Uniläteral Orders	6.1	1.5	0.0	0.0	1.5	0.0	9.1% (6)
Orders Not Elsewhere Classified	6.1	0.0	0.0	0.0	0.0	0,0	6.1% (4)
Consent Orders	30.3	0.0	1.5	0.0	0.0	0.0	31.8% (21)
Nonmonetary Penalties Against Officers	1.5	0.0	0.0	0.0	0.0	0.0	1.5% (1)
Warnings	0.0	1.5	0.0	3.1	0.0	0.0	4.6% (3)
Other	3.0	1.6	0.0	4.5	0.0	0.0	9.1% (6)
Frosecution Terminated	6.0	0.0	0.0	0.0	0.0	1.5	1.5% (1)
Total	83.3% (N = 55)	4.6%	1.5%	7.6% (5)	15% (1)	145% (¥)	100.0% (N = 66)

ENFORCEMENT LEVEL OF PRIMARY SANCTION BY ENFORCEMENT LEVEL OF SECONDARY SANCTION

Enforcement	Er	forcemen	nt Level of Priman	ry Sanction	
Secondary Sanction	Court/ Criminal	Court/ Civil	Administrative/ Civil	Administrative/ Administrative	Total
Court/Criminal	40.9%	0.0%	0.0%	0.0%	40.9% (N = 27)
Court/Civil	3.0	19.7	0.0	9.0	22.7% (15)
Administrative/ Administrative	0.0	1.5	24.3	9.1	34.9% (23)
Voluntary Recall	0.0	0.0	1.5	0.0	1.5% (1)
Total	43.9% (N = 29)	21.2% (14)	25.8% (17)	9.1% (6)	100.0% (N = 66)

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tion rather than those that tend to make up for past actions; 304 (21.0 percent) were civil penalties, 102 (7.0 percent) were retroactive orders (orders tending to be remedial in nature), and 34 (2.4 percent) were criminal fines.

There were 561 violations (38.8 percent) which directly harmed the consumer (quality or safety),35 (2.4 percent) damaged the consumer economic power, 457 (31.6 percent) which harmed the environment, 160 (11.1 percent) affected the labor force, 118 (8.2 percent) were harmful to the economic system and 115 (7.9 percent) affected the administration of government.

A moderate association (tau = .458) was found between the victim and the type of sanction imposed. Generally, violations that directly affected the economy tended to receive the most severe sanctions (criminal fines and retroactive orders). Violations affecting product quality to the consumer most often received a warning, the least severe sanction.

Comparing across categories of sanction type, criminal fines were used in 24 (20.4 percent) of the cases that harmed the economic system; they were never used in cases affecting the labor force. Civil monetary penalties were imposed in 236 (51.7 percent) of the environmental cases, but were used in only 2 actions (1.7 percent) of those affecting the economic system. Retroactive orders were issued in 11 cases (31.4 percent) of those harming the economic power of the consumer; they were issued in only 2 actions (0.4 percent) of those harmful to the environment. Future effect orders were imposed in 22 (62.8 percent) of the actions which affected the consumers' economic power; they were used in only 4 cases (0.7 percent) of those which concerned product quality. Warnings were issued in 499 (89.0 percent) of the actions affecting product quality but were never issued in those which concerned the economic system or the consumers' economic power.

The same general pattern holds when only the 714 serious and moderate violations by parent <u>manufacturing</u> corporations are considered. However, no warnings were issued in serious or moderate cases which concerned the environment; instead, civil monetary penalties tended to be imposed. Furthermore, for serious or moderate violations affecting the government, future effect orders were employed less often, while retroactive orders, civil penalties and criminal fines were used more often.

8. <u>Size of corporation and sanction type</u>. Large corporations receive more sanctions than their proportion in the sample would indicate. Of the 1554 enforcement actions taken against the parent corporations, 150 (9.6 percent) were against small, 310 (19.9 percent) were against medium and 1094 (70.4 percent) were against large corporations. The parent firms were made up of 28.8 percent small, 29.5 percent medium and 41.7 percent large corporations.

A small association (tau = .213) was found between size of corporation and type of sanction imposed. Large corporations had a greater percentage (28.1) of their total sanctions in monetary penalties than either small or medium firms (7.4 and 8.4 percent respectively) while having a smaller proportion in warnings and orders. Medium corporations had a larger percentage of the warnings and injunctions than

their counterparts. Small corporations had the greatest proportion of orders but the smallest of monetary penalties and injunctions (see Table 11, Appendix J). Of the 307 monetary penalties against large parent corporations, 281 (91.5 percent) were civil penalties, 19 (73.1 percent) of the 26 monetary sanctions against medium corporations were civil in nature and 7 (63.6 percent) of the 11 against small corporations were civil penalties. The same general pattern was observed for parent manufacturing corporations.

When only the 790 serious and moderate violations by parent corporations were considered, large corporations had the largest percentage of monetary penalties and the smallest percentage of warnings imposed across all size categories. Medium size firms had a greater proportion of warnings and injunctions than small or large companies, but a smaller proportion of the orders. The small companies had the greatest percentage of orders but the lowest proportion of injunctions and monetary penalties. The same pattern held for parent <u>manufacturing</u> corporations when only their serious and moderate violations were considered. There was no definite pattern for parent <u>non-manufacturing</u> corporations.

9. Parent and subsidiary corporations and their sanctions. There were 1715 federal sanctions imposed against the corporations; 1554 (90.6 percent) were against parents and 161 (9.4 percent) were against subsidiary corporations. There is not much difference (tau = .084) between these corporate types in terms of the sanctions they receive (see Table 12, Appendix J). It was found that parents are slightly more likely than subsidiaries to have orders imposed, and subsidiaries are slightly more likely to receive warnings. Further, all 23 injunctions were against parent corporations.

The same general pattern exists for <u>manufacturing</u> corporations. However, when broken down by size it was found that medium size manufacturing parent corporations are more likely to receive a warning than similar subsidiaries. Medium size <u>subsidiaries</u> are more likely to have a monetary penalty assessed, and there was no difference in likelihood of having an order imposed. Small manufacturing parents are more apt to have an order issued, and similar subsidiaries are more likely to have a monetary penalty imposed. There was little variation in penalties for all size categories of <u>non-manufacturing</u> corporations.

Industry type and enforcement actions. There was a total 10. of 1430 enforcementactions taken in 1975 and 1976 against the 445 parent manufacturing corporations classified by Fortune industry type, an average of 3.2 per corporation. A moderate (ssociation (tau = .416) was found between industry type and sanction type. Table 15 (Text) shows the number and percentage of enforcement actions accounted for by various industry types. The oil refining industry had 248 (17.3 percent) sanctions imposed on it during 1975 and 1976; 56 (8.0 percent) of the sanctions in serious and moderate cases. It had over one-half of the monetary penalties assessed; and 1 out of 5 monetary penalties in serious and moderate cases. The motor vehicle industry accounted for 1 out of every 6 sanctions; 1 out of every 5 in serious and moderate cases. These corporations also received 1 out of every 4 warnings; 1 out of every 3 warnings issued for serious and moderate The drug industry had 1 out of 10 sanctions imposed on violations.

INDUSTRY TYPE BY SANCTION TYPE

							PRIMA	RY SANCT	ION TYPE	- M			
INDUSTRY TYPE		Tot	cal	Mone Pen	tary alty	Uni O	lateral rder	Cons Ord	lent ler	Wat	rning	Injund	tion
		Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent
MINING AND OIL	T	16	1.1	7	2.1	3	1.2	4	2.2	1	0.2	1	5.6
PRODUCTION	S/M	7	1.0	1	1.0	2	1.5	3	2.3	0	0.0	1	5.6
FOOD	T	106	7.4	12	3.6	24	9.5	17	9.5	50	8.1	l	5.6
	S/M	60	8.6	10	9.7	18	13.5	14	10.6	15	5.0	1	5.6
APPAREL	T	4	0.3	1	0.3	0	0.0	2	1.1	0	0.0	0	0.0
	S/M	4	0.6	1	1.0	• 0	0.0	2	3.5	0	0.0	0	0.0
PAPER. FIBER.	T	95	6.6	27	8.0	23	9.1	15	8.4	28	4.1	0	0.0
WOOD	S/M	35	5.0	22	21.4	7	5.3	4	3.1	1	0.3	0	0.0
CHEMICAL	T	110	7.7	25	7.4	13	5.2	25	14.0	44	7.1	O	0.0
	S/M	55	7.9	13	12.6	4	3.0	21	16.0	15	5.0	0	0.0
OIL REFINING	T	248	17.3	192	57.0	25	9.9	14	7.8	11	1.8	4	22,2
	S/M	56	8.0	23	22.3	16	12.0	9	6.9	3	1.9	4	22.2
METAL MANU-	T	98	6.9	27	8.0	18	7.1	19	10.6	32	5.2	1	5.6
FACTURING	S/M	25	3.6	8	7.8	5	3.8	8	6.1	3	1.0	1	5.6
METAL PRODUCTS	T	35	2.5	4	1.2	16	6.4	7	3.9	6	1.0	1	5.6
	S/M	18	2.6	3	2.9	• 4	3.0	6	4.6	4	1.3	1	5.6

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TABLE 15 (continued) INDUSTRY TYPE BY SANCTION TYPE

							PRIMA	RY SANCT	ION TYPE*				
INDUSTRY TYPE			[otal	Mone Pen	etary alty	Unil: Or	ateral der	Cons Ord	ent er	War	ning	Injun	ction
		Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent	Sanc- tions	Percent
ELECTRONIC &	T	57	4.0	3	0.9	27	10.7	10	5.6	12	1.9	2	11.1
APPLIANCES	S/M	40	5.7	1	1.0	16	12.0	8	6.1	12	4.0	2	11.1
MOTOR VEHICLES	T	227	15.9	14	4.2	34	13.5	8	4.5	170	27.5	0	0.0
	S/M	131	18.8	7	6.8	16	12.0	8	6.1	100	33.2	Ö	0.0
	T	26	1.8	1	0.3	5	2.0	11	6.2	7	1.1	2	11.1
AEROSPACE	S/M	24	3.4	1	1.0	4	3.0	11	8.4	6	2.0	2	11.1
DBUCE	T	138	9.7	2	0.6	8	3.2	6	3.4	121	19.6	0	0.0
DKUGS	S/M	85	12.2	1	1.0	6	4.5	6	4.6	72	23.9	0	0.0
INDUSTRY & FARM	T	67	4.7	5	1.5	14	5.6	7	3.9	41	6.6	° 0	0.0
EQUIPMENT	S/M	39	5.6	3	2.9	5	3.8	6	4.6	25	8.3	0	0.0
	- T	8	0.6	0	0.0	1	0.4	2	1.1	-4	0.6	0	0.0
BEVERAGES	S/M	4	0.6	0	0.0	1	0.8	2	1.5	0	0.0	0	0.0
	T	195	13.5	17	4.9	41	16.2	32	17.8	94	15.2	6	33.3
UTHER	S/M	115	16.4	9	8.6	29	21.8	23	17.5	45	15.0	б	33.3
	T	1,430	100.0%	337	100.0%	252	100.0%	179	100.0%	621	100.0%	18	100.0%
TOTAL	S/M	698	100.0%	103	100.0%	133	100.0%	131	100.0%	301	100.0%	18	100.0%

Twenty-three sanctions of miscellaneous types were excluded from the non-total columns of this table.

it; 1 out of 8 for serious or moderate violations. It received 1 out of every 5 warnings for all violations and for all serious and moder-

Table 13 (Appendix J) shows the number of the total sanctions and sanctions for serious and moderate violations. It also shows the ratio of sanctions relative to industry size. A ratio of 1.0 means than an industry received as many sanctions of a particular type as was commensurate with the relative number of corporations which that industry contributed to the sample. A ratio of greater than 1.0 means that the industry received more than its share of a sanction type. The table indicates the motor vehicle industry had 3.7 times more sanctions against them than expected under the "no difference" hypothesis; 4.4 times more in serious and moderate violations. The oil refining industry received 2.8 times more; 1.3 times more for serious and moderate violations. The drug industry had 2.5 times more sanctions; 3.2 times more in serious and moderate cases. All other industry types had approximately their share or less of all sanctions imposed.

The motor vehicle industry had 6.4 times more warnings than would be expected by its proportion of the sample; 7.7 times more for those warnings issued in serious and moderate cases. It received 3.1 times more unilateral orders; 2.8 times more in serious and moderate cases. These corporations received their proportionate share of monetary penalties and consent orders for all violations; and about 1.5 times more of these sanctions in their serious and moderate violations. The oil refining industry was assessed 9.0 times more monetary penalties than its relative size indicates; 3.5 times more in serious and moderate cases. It had less than its share of warnings. The drug industry had 5.1 times more warnings; 6.3 times more for those warnings issued in serious and moderate cases. It had about its share of unilateral and consent orders, and less than its share of monetary penalties.

11. Violation type and sanction type. A moderate relationship (tau = .356) was found between violation type and imposed sanction type. Table 16 (Text) indicates that each violation type is accompanied by a typical sanction type. Orders were imposed in a majority of administrative, financial, labor and trade violations. A monetary penalty was typical in environmental violations, and a warning was usually issued in manufacturing cases. Injunctions were issued in 25.0 percent of the financial actions, but were never imposed in environmental cases. Future effect orders were used in 120 (63.5 percent) of the labor violations, in 83 (61.0 percent) of the trade violations, and 67 (54.5 percent) of the administrative violations. The same general pattern was true of the 1446 sanctions against parent manufacturing corporations.

When only the 790 serious or moderate violations by parent corporation were considered, it was found that all violation types except financial and administrative had a single sanction type imposed in a majority of the cases. Orders were issued in 75 to 90 percent of the 133 trade and 170 labor violations. Warnings were used in 314 (84.4 percent) of the 372 manufacturing cases; and a monetary penalty was assessed in 32 (78.0 percent) of the 41 serious or moderate environmental violations. An order was used in 18 (47.7

VIOLATION TYPE BY SANCTION TYPE FOR PARENT CORPORATIONS

Sanction Type nspecified and ther arnings				Viola	tion Type			
Sanction Type	Total	Adminis- trative	Environ- mental	Financial	Labor	Manufac- turing	- Trade 2.9% 0.7 75.7 1.5 19:2 100.0% (136)	Other
Unspecified and Other	0.8% (N = 13)	0.0%	0.0%	2.1%	3.7%	0.2%	2.9%	0.0%
Warnings	43.1% (669)	26.8	24.1	0.0	0.0	87.7	0.7	0.0
Orders	32.5% (505)	55.3	24.1	54.2	79.9	7.8	75.7	0.0
Injunction	1.5% (23)	4.1	0.0	25.0	0.5	0.5	1.5	0.0
Monetary Penalty	22.1% (344)	13.8	51.8	18.7	15.9	3.8	19:2	100.0
Total	[0.0%] [N = 1554]	100.07 (123)	100.0% (457)	100.0% (48)	100.0%	100.0% (598)	100.0% (136)	100.0% (4)

percent) of the 38 financial cases, and in 11 (30.6 percent) of the 36 administrative cases. There were also 11 administrative violations in which a monetary penalty was assessed. Of the 22 injunctions entered, 11 (50.0 percent) were in financial cases.

The same pattern holds for the 714 serious or moderate violations by parent <u>manufacturing</u> corporations. For example, warnings were issued in 258 (92.5 percent) of the 279 hazardous products violations. Orders were issued in 100 percent of the 28 labor discrimination violations, and in 41 (95.3 percent) of the 43 trade abuse cases. Monetary penalties were assessed in 11 (37.9 percent) of the 29 administrative cases.

Table 17 (Text) shows that 525 (78.5 percent) of the 669 warnings were issued in manufacturing violations, 237 (68.5 percent) of the 344 monetary penalties were imposed in environmental cases, and 12 (52.2 percent) of the 23 injunctions were in financial cases. Orders were entered in all violation types, with 151 (29.9 percent) of them in labor cases; only 26 (5.1 percent) of the 505 orders were in financial cases.

12. Violation type and level of enforcement of sanction. Of the 1217 enforcement actions taken against parent manufacturing corporations for violations of known seriousness, 1045 (85.9 percent) were administrative actions, 133 (10.9 percent) were civil actions, and 39 (3.2 percent) were criminal sanctions.

A strong relationship (tau) was found between violation type and level of enforcement. Although the plurality of all violation types are sanctioned on the administrative level, violations affecting the economy are most likely to receive criminal sanctions. Table 18 (Text) shows that 530 (96.4 percent) of the 550 manufacturing violations were disposed of at the administrative level, whereas 49 (41.5 percent) of the 118 trade violations were handled solely at the agency level. Trade violations had civil sanctions imposed in 37.3 percent of the cases while only 16 (2.9 percent) of the manufacturing violations received such a sanction. Criminal actions were completed against 25 (21.2 percent) of the trade violations and against 5 (13.5 percent) of the financial violations. The criminal sanction was imposed in only 4 (0.7 percent) of the manufacturing violations and was never used in a labor violation.

When only the 714 serious or moderate violations by parent <u>manu-facturing</u> corporations were considered, a similar pattern was found. For example, 329 (94.3 percent) of the 349 serious or moderate manu-facturing violations involved administrative sanctions. On the other hand, 5 (14.7 percent) of the 34 serious or moderate financial violations had a criminal sanction imposed. However, 17 (42.5 percent) of the 40 known serious or moderate environmental violations received a civil sanction, and 21 (52.5 percent) had administrative sanctions imposed.

13. Seriousness of violation and sanctions against parent corporations. There were 790 serious and moderate cases against parent corporations in which an enforcement action was taken in 1975 and 1976; they account for 50.7 percent of all their cases. There were 322 (40.8 percent) warnings, 173 (21.9 percent) unilateral orders, 149

VIOLATION TYPE BY IMPOSED SANCTION TYPE FOR PARENT CORPORATIONS

	Violation Type							
Sanction Type	Adminis- trative	Environ- mental	Financial	Labor	Manufac- turing	Trade	Other	Total
Total	8.0% (123)	29.3% (457)	3.1% (48)	12.1% (188)	38.5% (598)	8.7% (136)	0.3% (4)	100.0% (N = 1554)
Warnings	4.9	16.4	. 0.0	0.0	78.5	0.2	0.0	100,0% (669)
Orders	13.5	21.8	5.1	29.9	9,3	20.4	0.0	100.0% (505)
Injunctions	21.7	0.0	52.2	4.4	13.0	8.7	0.0	100.0% (23)
Monetary Penalty	4.9	68.5	2.6	8.7	6.6	7.5	1.2	100.0% (344)
Other and Unspecified	0.0	0.0	7.7	53.8	7.7	30.8	0.0	100.0% _(13)

VIOLATION TYPE BY ENFORCEMENT LEVEL OF SANCTION

Enforcement Level of Imposed Sanction		Violation Type							
	Total	Adminis- trative	Environ- mental	Financial	Labor	Manufac- turing	Trade	Other	
Criminal	3.2% (N = 39)	2.8%	0.8%	13.5%	0.0%	0.7%	21.2%	0.0%	
Civil	10.9% (133)	11.1	7.0	24.3	22.0	2.9	37.3	0.0	
Administrative	85.9% (1045)	86.1	92:2	62.2	78.0	96.4	41.5	100.0	
Total	100.0% (N = 1217)	100.0% (108)	100.0% (244)	100.0% (37)	100.0% (159)	100.0% (550)	100.0%	100.0%	

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(18.9 percent) consent orders, 109 (13.8 percent) monetary penalties, 22 (2.8 percent) injunctions, and 15 (1.8 percent) other types. The means for serious and moderate violations per corporation with at least one of the indicated types were 3.5 for warnings (93 firms), 1.5 for unilateral orders (113 companies), 1.2 consent orders (125 corporations), 1.5 monetary penalties (72 companies) and 1.0 injunctions (21 firms).

Table 12 (Text) also shows that 2 out of 10 corporations had at least one warning, consent order, or unilateral order imposed on them for a serious or moderate violation. One of ten were assessed at least one monetary penalty. One corporation had 33 warnings issued to it for serious or moderate violations of law, one firm had 8 unilateral orders, 1 company had 6 monetary penalties, 1 had 4 consent orders, and 1 had 2 injunctions.

14. <u>Seriousness of violation and sanctions against parent</u> <u>manufacturing corporations</u>. The serious or moderate cases against parent manufacturing corporations account for 49.2 percent of all their cases. There were 311 warnings (43.6 percent), 136 unilateral orders (19.0 percent), 132 consent orders (18.5 percent), 104 monetary penalties (14.6 percent), 19 injunctions (2.7 percent), and 12 of other types of sanctions. The averages for those firms with at least one of the indicated type were 3.7 warnings (84 companies), 1.6 monetary penalties (67 firms), 1.5 unilateral orders (92), 1.2 consent orders (110), and 1.1 injunctions (18).

Table 12 (Text) also indicates that approximately 2 out of 10 corporations had at least one warning, consent order, unilateral order or monetary penalty imposed on them for a serious or moderate violation. All of the maximum counts for parent corporations applied to manufacturing firms. The class interval distribution for enforcement actions against parent non-manufacturing corporations for serious or moderate violations can be found in Table 9 (Appendix J).

15. <u>Seriousness of violation and level of enforcement of sanction</u>. A strong relationship (tau = .701) was found between the seriousness of a violation and the level of enforcement of sanction imposed against it. Although the majority of cases were handled at the administrative level, there was a tendency for the more serious violations to be dealt with at the civil or criminal levels. Table 19 (Text) indicates that 37 (94.9 percent) of the 39 criminal actions against parent manufacturing corporations were for serious violations and 81 (60.9 percent) of the 133 civil proceedings dealt with serious illegalities. On the other hand, 505 (48.3 percent) of the 1045 administrative actions involved minor infractions. No criminal or civil sanctions were imposed for minor violations.

Table 14 (Appendix J) shows 37 (11.8 percent) of the 313 serious violations received a criminal sanction. Only 2 (0.5 percent) of the 399 moderate infractions had a criminal sanction imposed. Civil sanctions were imposed in 81 (25.9 percent) of the serious cases, and in 52 (13.0 percent) of the moderate cases. Administrative penalties were imposed in 195 (62.3 percent) of the serious violations, in 345 (86.5 percent) of the moderate cases and in all of the minor infractions.

Enforcement	Seriou				
Sanction	Serious	Moderate	Minor	Total	
Total	25.7% (N = 313)	32.8% (399)	41.5% (505)	100.0% (N = 1217)	
Criminal	94.9	5.1	0.0	100.0% (39)	
Civil	60.9	39.1	0.0	100.0% (133)	
Administrative	18.7	33.0	48.3	100.0% (1045)	

SERIOUSNESS OF VIOLATION BY ENFORCEMENT LEVEL OF SANCTION FOR PARENT MANUFACTURING CORPORATIONS

16. <u>Seriousness of violation and sanction type</u>. There were 1319 sanctions imposed against parent corporations in cases where seriousness was known; 356 of them (27.0 percent) were in serious cases, 434 (32.9 percent) were for moderate violations, and 529 (40.1 percent) were for minor infractions. A small relationship (tau = .291) was seen between the seriousness of the violation and the type of sanction imposed. The tendency was to use orders in serious cases, warnings in moderat- cases, and either warnings or monetary penalties in minor violations. Table 20 (Text) indicates that the proportion of warnings ranged from 52.8 percent of the moderate violations to 26.1 percent of the serious violations. Orders were issued in 50.3 percent of the serious cases and in 12.9 percent of the minor infractions. Injunctions were used in 6.2 percent of the serious violations but were not issued in moderate or minor cases. Monetary penalties were assessed in 42.7 percent of the minor violations and in 12.4 percent of the moderate cases.

The same general pattern held for the 477 parent <u>manufacturing</u> corporations. When the 353 orders against these corporations were considered separately, it was found that 130 (77.8 percent) of the 167 issued in serious cases had a future effect only, 65 (52.8 percent) of the 123 imposed in moderate cases were future effect orders, and 58 (92.0 percent) of the 63 issued for minor violations were of that nature.

Parent <u>non-manufacturing</u> corporations had a different pattern. Orders were issued in the majority of the serious and moderate violations, and warnings were used in most minor cases. Compared to manufacturing corporations, there was a tendency to use orders rather than warnings for moderate infractions, and to use more warnings than monetary penalties for minor violations.

17. Level of enforcement action and sanction type. Of the sanctions against parent corporations 44 (2.8 percent) were criminal penalties, 161 (10.4 percent) were civil sanctions, and 1349 (86.8 percent) were administrative enforcement actions. A small association (tau = .163) was found between the level of enforcement action and the sanction type. There was a tendency for criminal sanctions to be fines, civil sanctions to be orders, and administrative actions to be fines, civil sanctions to be orders, and administrative actions to be warnings. Table 15 (Appendix J) shows that 39 (88.6 percent) of the criminal sanctions were monetary penalties, 116 (72.1 percent) of the civil actions were orders, and 669 (49.6 percent) of the administrative sanctions were warnings.

18. Length of time involved in completion of actions. Criminal cases average about 1 year from indictment to conviction, civil actions average about 2 years, and administrative cases take about 4 months to complete. Table 16 (Appendix J) shows that civil proceedings involving monetary damages for serious violations take the longest time to complete, about two and one-half years. This may be due, in part, to the fact that the most damaging sanctions are available in this form. In addition, there was a positive relationship between seriousness and duration of proceedings. Minor cases take about 1 month, moderate infractions take 6 months, and serious violations take about 13 months. The mean for all cases was 6.7 months.

19. <u>Monetary penalties against corporations</u>. Since corporations cannot be imprisoned, the most severe penalties available, other than

SERIOUSNESS OF VIOLATION BY SANCTION TYPE FOR PARENT CORPORATIONS

		Seri			
Sanction Type	Total	Serious	Moderate	Minor	Unknown
Other and Unspecified	1.1% (N = 14)	1.7%	0.5%	1.1%	0.0% (N = 0)
Warnings	41.8% (551)	26.1	52.8	43.3	48.9% (115)
Orders	30.0% (396)	50.3	34.3	12.9	45.8% (109)
Injunction	1.7% (22)	6.2	0.0	0.0	0.4% (1)
Monetary Penalty	25.5% (336)	15.7	12.4	42.7	4.2% (10)
Total	100.0% (N = 1319)	100.0% (356)	100.0% (434)	100.0% (529)	100.0% (N = 235)



imprisonment of the officers, are civil monetary penalties and criminal fines. Monetary penalties as large as several million dollars are becoming more common either by statute or by the courts. Some agencies have a statutory minimum which sometimes relate to "daily" violations as opposed to being a single sum which may be imposed for a continuing violation. The FTC, for example, has the statutory authority to obtain, if a court approves, civil penalties of not more than \$10,000 <u>a day</u> for each violation. In the case of an advertisement disseminated on national television, in a routine advertising campaign, the <u>potential</u> recovery is the actual recovery, of course, may be considerably smaller. During the last few years substantial fines involving several million dollars have been levied against auto manufacturers for falsification of data on pollution control standards. The EPA, for example, fined the Ford Motor Company \$7 million in 1973.

In this study, there were 328 monetary penalties of a known amount against parent manufacturing corporations. They ranged from a low of \$25 to a maximum of \$23,000,000. There were 275 (83.8 percent) of \$5,000 or less, 14 (4.3 percent) between \$5,001 and \$10,000; 24 (7.3 percent) between \$10,001 and \$50,000; 12 (3.7 percent) between \$50,001 and \$1,000,000; and 3 (0.9 percent) over a million dollars. For large corporations, there were 293 monetary penalties; 86.5 per-cent were for up to \$5,000; 4.1 percent between \$5,001 and \$10,000; 5.8 percent between \$10,001 and \$50,000; 3.5 percent between \$50,001 and \$1,000,009 and only 1 (0.3 percent) was for over one million dollars. There were 22 monetary penalties against medium-sized corporations: 68.3 percent were for up to \$5,000; 27.2 percent between \$5,001 and \$50,000, and only 1 (4.5 percent) was over one million. Small corpor-ations had 13 monetary penalties: 53.8 percent up to \$5,000; 23.1 percent between \$5,001 and \$50,000; 15.4 percent between \$50,001 and \$1,000,000 and 1 (7.7 percent) for over one million. There were 53 monetary penalties over \$5,000 against parent manufacturing firms. Of these, 71.7 percent were for \$50,000 or less; 18.9 percent were for \$100,000 or more. There were 40 monetary penalties over \$5,000 against large corporations; 72.5 percent for \$50,000 or less, and 15.0 percent for \$100,000 or more. There were only 7 monetary penalties over \$5,000 against medium corporations; all but one was for \$50,000 or less. There were 6 penalties over \$5,000 against small corporations, onehalf for \$50,000 or less, and one-half for \$100,000 or more.

To some corporations, however, fines are simply the cost of doing business, provided that they are not financially hurt or their prestige damaged by the adverse publicity. With respect to the fines imposed in the heavy electrical equipment conspiracy during the 1960s, Geis has stated that the \$437,500 fine against General Electric was equivalent to a parking fine for many citizens (Geis, 1973: 196). In addition, most fines are still limited by statute to a maximum of between \$5,000 and \$50,000. The effects of small fines as a penal sanction are minimal since they tend to gain more financially from the offense than has been paid.

See Kintner and Smith, "The Emergence of the FTC as a Formidable Consumer Protection Agency," 26 Mercer Law Review 651 (1975), 20. Size of corporation and amount of monetary penalty. Of the monetary penalties of a known amount assessed against parent manufacturing corporations, 4.0 percent were against small corporations, 6.7 percent were against medium corporations, and 89.3 percent were against large corporations. Overall, monetary penalties of a known amount were assessed in 22.7 percent of the cases. Monetary penalties were used in 8.9 percent of the cases against small corporations, in 7.8 percent of those against medium firms and in 29.0 percent of those against large corporations.

Large corporations generally receive smaller monetary penalties. The overall median penalty was \$1,000. The median for large corporations was \$1,000; for medium corporations \$1,690, and for small firms \$750. A moderate negative association (gamma = -.44) was found between size of a corporation and the amount of the monetary penalty imposed. Although 83.8 percent of the penalties were for \$5,000 or less, Table 21 (Text) shows that 86.5 percent of those against large corporations were in this category. Eleven (3.8 percent) penalties against large corporations exceeded \$50,000, while 23.1 percent of those against small corporations were that large.

When minor violations were removed, however, the relationship was reduced to a slight negative association (gamma = -.08). For the 105 serious or moderate cases with a known penalty, corporation size seemed to make little difference in the amount of monetary penalty imposed. The strength of the general relationship was dependent on the fact that most monetary penalties were assessed for minor violations, and almost all of those (95.5 percent) were for \$5,000 or less.

21. Sanction type and level of enforcement of sanction. Of the enforcement actions against parent manufacturing corporations, 12.0 percent were imposed by courts of law, and 88.0 percent were enforced by administrative agencies. There was a slight association (tau = .093) between the type of sanctioning agency and the sanction type. Table 17 (Appendix J) shows that 42.8 percent of the court-imposed sanctions were consent orders, while 8.3 percent of agency actions were consent orders.

When only the 714 serious or moderate violations were considered, a somewhat stronger relationship (tau = .172) was found. Although the general pattern held, the percentage difference between the two levels was greater. For instance, courts imposed a monetary penalty in 31.4 percent of their 172 cases, while agencies assessed a monetary sanction in 8.9 percent of their 542 cases.

22. Level of enforcement and effect of order. There were 440 orders imposed upon parent <u>manufacturing</u> corporations by courts or agencies for which the effect of the order was known; 21.6 percent were by courts and 78.4 percent were by regulatory agencies. The orders had a retroactive effect in 23.2 percent of the cases, and a future effect in 76.8 percent.

A moderate association (tau = .396) was found between the judicial or administrative nature of the sanctioning institution and the effect of the orders issued. Orders by administrative agencies show a greater tendency to have a future effect, while court orders show no preference for either effect. Table 18 (Appendix J) indicates that 84.1 percent

SIZE OF CORPORATION BY AMOUNT OF MONETARY PENALTY AGAINST // PARENT MANUFACTURING CORPORATIONS

		Size of Corporation (Net Sales)				
Amount of Monetary Penalty Against Corporation	Total	<u>Small</u> \$300-499 Million	<u>Međium</u> \$500-999 Million	<u>Large</u> \$1 Billion and up		
Up to \$5000	83.8% (N = 275)	53.8%	68.3%	86.5%		
\$ 5,001-10,000	4.3% (14)	0.0	9.1	4.1		
\$10,001-15,000	0.3% (1)	0.0	0.0	0.3		
\$15,001-20,000	0.3% (1)	0.0	0.0	0.3		
\$20,001-25,000	0.9% (3)	0.0	0.0	1.0		
\$25,001-30,000	0.9% (3)	0.0	0.0	1.0		
\$30,001-35,000	0.3% (1)	0.0	0.0			
\$35,001-40,000	0.3% (1)	0.0	4.5	0.0		
\$40,001-45,000	0.3% (1)	7.7	0.0	0.0		
\$45,001-50,000	4.0% (13)	15.4	13.6	°2.7		
\$50,001 and up	4.6%	23.1	4.5	3.8		
Total	100.0% (N = 328)	100.0%	100.0%	100.0% (293)		
of the agency orders had a future effect, but 50.5 percent of the court orders had that effect.

For the 272 serious and moderate cases where an order was issued, 94 (34.6 percent) were by courts and 178 (65.4 percent) were by agencies. There was a retroactive effect in 95 (34.9 percent) and a future effect only in 177 (65.1 percent). Again, the preference of agencies was for a future effect (73.0 percent of their orders), and courts showed no tendency. The unilateral orders showed the same pattern for both total violations and serious and moderate only.

23. <u>Consent agreements and orders</u>. Actions such as injunctions, treble damage claims, or criminal actions are likely to be timeconsuming; there may be a lapse of a year or more before any court action is completed, in antitrust cases it may be even several years. When very large corporations are involved this can be a lengthy process. In addition, when a referral is made to the Department of Justice, the agency loses "credit" for the action, which may affect an agency's enforcement budget requests. As a result, the consent agreement becomes an important tool of the regulatory process.

In a consent agreement the corporation reaches an understanding with the government agency not to violate the regulation or the regulations again; in the case of a consent decree this is ratified by the court. In either case the defendant neither admits nor denies his guilt for past actions, and this precludes class actions or civil suits on such a basis against the corporation. The consent decree is generally a negotiated action in which corporate counsel tries to see that as many facts in the case as may prove embarassing are kept from the public. This gives the government additional bargaining power to rectify the illegal activities that are charged.

The reason for the non-admission of guilt is to protect the corporation from a civil suit in which the admission of guilt would make it unnecessary for there to be any trial of factual issues. In other words, without such cause, a company which entered into a consent decree concerning an antitrust violation could have an action for treble damages brought against it which it would be unable to defend on the grounds that it had already admitted its guilt. As a result, attorneys for companies historically utilize the non-admission of guilt as one of the trade-offs for entering into an immediate order. There is a possibility that a company may be in a position equivalent to contempt of an administrative order even without issuance of an order from a court (i.e., violation of an order, whether obtained by consent or by other administrative processes, of some agencies may result in civil penalties being assessed [usually after a trial on factual issues before a federal court] against the corporation even though the order had never been adopted by a court). An order may become final simply because the time for appeal has passed and the essential validity of that order is not changed by the fact that it has not received court review. The action which would be taken to obtain civil penalties for violation of an administrative order (whether obtained by consent or by administrative action which was not reviewed by the courts) would be the same as that taken to obtain civil penalties for a violation of an order reviewed and enforced by the courts, at least for many agencies.

A problem with consent agreements is that, depending on the agency, they are frequently not followed up to find out if the terms imposed are being met. An agency generally has so many new cases to deal with that only when the violation of the agreement or decree turns up routinely in another violation does it learn that the corporation is not carrying out its agreement. This is time-consuming, although if it is successful the corporation or its officers can be held in contempt of court.

The courts are, in general, extremely reluctant, however, to engage in the process required to find a company or an individual in contempt of a court order.³ Moreover, the outcome of these contempt proceedings will not necessarily result in a stiff sanction being imposed against the corporate offenders. The U.S. Supreme Court (Cheff <u>v. Schnackenberg</u> 384 U.S. 373 [1966]) indicated that it would be improper for a Court of Appeals to impose a sentence of more than 6 months imprisonment for criminal contempt of an order of the Court of Appeals directing compliance with a cease and desist order of the FTC, unless the defendants were given a jury trial. Decisions such as these limit the utility of court contempt orders as being truly meaningful weapons against corporate offenders. The imposition of civil penalties or their equivalent is more common for corporate violators of outstanding orders, and it is not normal for the amounts assessed under this procedure to be very large insofar as corporate finances are concerned.

In ordinary crime there may be plea bargaining to a reduced charge or sentence, but there is nothing comparable to a consent agreement. If there were, a "hard-core felon, who has just defrauded the public of several million dollars, is only too ready to sign a consent agreement and enjoy his gains in peace" (Bequai, 1977: 10).

Consent and effect of sanction. The consent of the corpora-24. tion, that is whether the corporation did or did not consent to the imposition of the sanction, influences the nature of the actions required by an order. The relationship between consent and whether the sanction had a retroactive or future effect was found to be moderate (tau = .486) in strength. Although most orders have a future effect (76.8 percent), Table 19 (Appendix J) shows that parent manufacturing corporations are more likely to consent to a remedial order than not to consent to one. This may be an artifact of the data set employed or, because of their concern with their public image and their relations with regulatory bodies, corporations may feel that by consenting to restitution a more negative impression may be precluded. On the other hand, by contesting a future effect order, its effect on the long-term operations of the corporation may be minimized. Future effect orders usually contain more than a cease and desist provision, but the additional actions required may be minimal. For example, the coporation simply may have to notify the government of its future intentions in a particular area.

From conversation with Gerald J. Thain, University of Wisconsin Law School, Madison, Wisconsin.

For the orders imposed by a court, it was found that corporations were more likely to consent to a future effect order and to contest a remedial order. Of the 72 orders consented to, 38 (52.8 percent) had only a future effect while 9 (45.0 percent) of the 20 orders not consented to had that effect. On the other hand, in the case of orders issued by an administrative agency, corporations were more likely to consent to a remedial order than to contest one, and more likely to contest a future effect order. In serious or moderate cases the general pattern held; however, the order was more likely to be retroactive in these cases than for minor violations. Administrative orders had a future effect in 130 (73.9 percent) of the serious and moderate cases, but were of that effect in 58 (93.5 percent) of the minor cases. The strength of the general relationship lies in the fact that most orders were imposed by administrative agencies where a remedial order was more likely to be consented to.

25. Type of order and effect of order. Of the orders imposed on parent manufacturing corporations, 180 (40.9 percent) were consent orders and 253 (57.5 percent) were unilateral orders. A moderate association (tau = .477) was found between type of order and whether it primarily had a retroactive or future effect. Consent orders were more likely than unilateral orders to have a retroactive effect. Table 20 (Appendix J) shows that 29.6 percent of the consent orders were remedial and 18.6 percent of the unilateral orders tended to restore past conditions.

For the orders issued in serious or moderate cases, 131 (48.3 percent) were consent orders and 135 (49.8 percent) were unilateral orders. The same general pattern of effect also held for these cases. Whereas 53 (40.5 percent) of the consent orders were retroactive, unilateral orders were remedial in 41 (30.4 percent) of the cases where they were imposed. No consent orders were issued for minor violations, and only 5 (8.1 percent) of the unilateral orders imposed in minor cases were retroactive.

For parent <u>non-manufacturing</u> corporations a different pattern was found. Unilateral orders were retroactive in 12 (29.3 percent) of their 41 instances, but 12 (66.7 percent) of the 18 consent orders were remedial in nature.

26. Consent orders and their effects. Likewise, with reference to the 180 consent orders, the courts generally do not show a tendency to favor retroactive or future effect orders whereas the administrative agencies tend to use future effect orders (see Table 21, Appendix J). More than 80 percent of the consent orders issued by regulatory agencies against parent <u>manufacturing</u> corporations had their effect only on future corporate operations. In contrast, 35 (47.3 percent) of the consent orders imposed by the courts tended to restore the conditions existing prior to the violation. Since neither courts nor administrative agencies issued consent orders in minor cases, the overall pattern for consent orders was confined to serious and moderate violations.

27. <u>Repeated enforcement actions</u>. In ordinary crime the rates of recidivism (relapse into prior criminal habits after punishment) vary from 25 to as high as 60 percent. How do these rates compare in the field of corporate sanctions? In his study of the 70 largest non-financial corporations, Sutherland found a high rate of recidivism (Sutherland, 1949). He studied sanctions imposed during the life of each corporation, an average of 45 years, and he found the average corporation had decisions against them (i.e., had an enforcement action taken against them) 14 times. Sutherland found that 97.1 percent were recidivists in the sense of having had two or more adverse decisions against them. The corporations had an average of four criminal convictions. Sutherland wrote that "in many states four convictions are defined as 'habitual criminal'" (Sutherland, 1949: 25). In restraint of trade there was an average of 5.1 decisions; one-half to three-fourths of them engage in such practices so continuously that they may be properly called "habitual criminals" (Sutherland, 1949: 61). In fact, Sutherland's conclusion about large corporations was that "none of the official procedures used on businessmen for violations of law has been very effective in rehabilitating them or in deterring other businessmen from similar behavior" (Sutherland, 1949: 218).

Unfortunately, a direct answer to the question of recidivism is impossible in this study, since it covered only a two-year period and data on recidivism were so inadequate that it would either have been impossible to obtain from available government records or too time-consuming to check out. Corporations with repeated sanctions, however, were studied. Of the parent corporations, 228 (39.2 percent) had two or more enforcement actions completed against them in 1975 and 1976. Moreover, some of the corporations had many more than two sanctions. In fact, there were 95 companies (16.3 percent) that had 5 or more enforcement actions (see Table 12, Text). There were 137 parent corporations (23.5 percent) with two or more sanctions in serious or moderate cases; and 41 (7.0 percent) had 5 or more serious or moderate actions completed against them.

Of the parent <u>manufacturing</u> corporations, 210 (44.0 percent) had two or more actions completed against them. There were 87 (18.2 percent) with 5 or more. For serious and moderate actions, there were 124 firms (26.0 percent) with two or more, and 37 (7.8 percent) with 5 or more. The 582 parent corporations in this study, over only a two-year period, were subject to an average of 2.7 completed enforcement actions. If one could extend the number of sanctions over the average equivalent time period used by Sutherland, this would far exceed his average of 14 sanctions.

D. Summary of Enforcement Actions

Over 60 percent of the corporations in this study had at least one enforcement action completed against them in 1975 and 1976. The average for those with one or more was 4.2 actions. There were twice as many warnings used as compared to any other sanction type, with an average of 3.6 warnings for those corporations with at least one. Monetary penalties and orders were used many times more often than injunctions and, generally, corporations were not subjected to the full force of the legally possible sanctions when they violated the law. Corporate actions that directly harm the economy were more likely to receive the greater penalties, while those affecting consumer product quality were responded to with the least severe sanctions. Although over 85 percent of all sanctions were administrative in nature, those harming the economy were most likely to receive criminal penalties. Large corporations received more sanctions than their proportion in the sample would indicate. They had about 70 percent of all sanctions, and tended to be assessed a monetary penalty. Small and medium firms tended to more often receive warnings and orders. The oil refining, motor vehicle and drug industries accounted for approximately 4 out of every 10 sanctions for all cases and for serious and moderate cases as well. They had 3 times more actions than their size in the sample indicates and they had 2.7 times more actions for serious and moderate cases.

Each type of violation has a typical sanction type associated with it, with level of enforcement strongly related to seriousness of violation and violation type. The court or agency nature of the enforcing institution was slightly related to sanction type, and moderately related to whether an order had a retroactive or future effect. Generally, orders by administrative agencies tend to be future in effect and court orders show no preference.

The average time to complete a case was 6.7 months. Civil cases took the longest (two and one-half years) and administrative cases took about 4 months. Serious cases took approximately 1 year and minor cases about 1 month.

Monetary penalties, although at times extremely large, tend to be in the \$1000 range. Less than 1 percent were over \$1 million, while over 80 percent were for \$5000 or less. When those for \$5000 or less were removed from consideration, there were still only about one-fifth that were over \$100,000. Because of the fact that large corporations are more often assessed a monetary penalty for their minor violations, there is a general negative relationship between corporate size and amount of monetary penalty.

Corporations were most likely to consent to a future effect court order and to a retroactive administrative order. Consent agreements were more likely than unilateral orders to have a retroactive effect. Of the consent agreements, administrative agencies tended to use future effect sanctions, and courts generally did not show a preference.

In terms of repeated sanctions within a two-year period, more than one-third of the parent corporations and more than two-fifths of the parent manufacturing corporations had two or more enforcement actions completed against them. About one-fourth had two or more for serious or moderate violations. Moreover, one out of every six corporations had 5 or more sanctions imposed, and one out of every 13 had 5 or more sanctions in serious or moderate cases.

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CHAPTER VIII

PREDICTING CORPORATE VIOLATIONS

In analyzing the distribution of types of violations across industries, the previous chapters began to suggest an issue of great importance to both policymakers and researchers: the question of the conditions conducive to the commission of illegal corporate acts. The present chapter directly addresses this question in an attempt to isolate a set or sets of factors predictive of corporate illegalities. The successful identification of such factors would serve both theoretical and practical purposes. In terms of theory, a distinct contribution would be made toward the understanding of the causal -- or criminogenic -- forces both internal and external to the firm. In turn, such advances could suggest policy directions for government regulators, from structural and legal remedies directed at particular segments of the economy to realignment of enforcement resources in response to particularly problematic areas.

Relatively few studies have investigated the correlates of corporate crime, and these have generally concentrated on a large single area of illegal behavior: unfair trade practices, largely antitrust violations (see Chapter IX). Furthermore, most of these studies have been limited to the analysis of only a few of the potentially predictive characteristics of industries and firms, such as profitability and economic concentration (the proportion of the value of shipments in a particular line of business which is produced by the four largest firms in that business).

This research attempts to remedy in part both of these deficiencies in the study of corporate violations. First, the analysis in this chapter seeks to identify predictive variables for several violation types separately, as well as for all violation types collectively. To the extent that the same set of predictors applies to all types of violation, it can be argued that the concept of corporate illegalities is a unitary one, and that the illegal behavior can be explained within a single causal framework. If different sets of predictors are found to apply to different violation types, then the concept is very likely multidimensional and may require the elaboration of either a broader, more complicated theoretical structure or of differentiated structures.

Second, this research investigates a broad range of industryand firm-level characteristics which may relate to the commission of illegal corporate acts. Besides examining the factors and hypotheses assessed in previous work on corporate criminality, the present study analyzes a number of measures of firm financial strain shown in the finance literature to predict such indicators of corporate failure as poor credit standing and bankruptcy (cf. Sorensen, 1975; Altman, 1968; Horrigan, 1966). The assumption being investigated with these variables is that the commission of illegal acts is an attempt to alleviate the pressure generated by poor and declining financial indicators.

A. Previous Research

As indicated above, what research exists in the area of corporate crime has been largely direcaed at antitrust violations. This small corpus of research has, however, identified some factors which may be expected to be related to other sorts of business violations.

It is generally accepted that most corporate crime arises from various financial considerations, in particular the pressure for sales and profitability. Staw and Szwajkowski's (1975) data suggest that poor financial performance is an inducement for a range of trade violations, including price discrimination, tying arrangements, refusal to deal, reciprocity, price-fixing, allocation of markets and monopoly. Similarly, Asch and Seneca (1976) found that poor profit performances by firms increased the probability of illegal collusive behavior, though Perez (1978) found that profitability was not significantly related to antitrust and other trade practice violations. This latter finding must be seriously qualified, though, in that Perez measured profitability near the end of the 17-year period for which he collected violations data. Lane (1953), on the other hand, found that firm economic decline (as indicated by number of employees over time) is associated with the commission of unfair trade practices in New England's shoe industry. However, he did not find a negative relationship between performance and violations of the labor relations laws.

Obviously, to argue a causal relationship proceeding from financial performance to illegal behavior, one should measure performance for a period prior to the occurrence of the violation. Though Asch and Seneca (1976) measure performance and violations concurrently, and discuss the difficulties involved in determining the direction of causality, they suggest that the "profit performance produces behavior" explanation is more plausible given their analyses. It is reasonable to suggest, however, that the relation may be bilateral; that is, poor performance leads to illegal activity leads to improved (or maintained) performance levels. Presumably, the latter outcome is the goal of many corporate violations.

Financial considerations are also involved in a variety of other types of corporate violations, such as income and import tax infractions, failure to adopt mandatory pollution controls, the marketing of products known by the firm to be unsafe and injurious, domestic kickbacks and bribery. However, little or no research has been done in these areas, and it is not known whether (and in what situations) unfavorable financial performances or more general competitive pressures for all firms to gain larger market shares and profits are the better explanatory factors for violations. Finally, it should be noted that financial considerations are less likely to be related to such technical infractions as those relating to federal and state reporting requirements, certain minor rules on occupational safety, and equal opportunity laws.

A number of studies have investigated the effects of market structure and other industry and firm characteristics on illegal corporate behavior. By market structure is meant the interfirm organization of the market, that is, the relation of sellers to buyers and of sellers to each other. Concentration ratios provide a structural measure, describing the number and size distribution of sellers in the market.

Hypotheses derived from the tradition of neoclassical economics argue for a chain of causation stemming from market structure to business conduct to economic and financial performance. "Thus," writes Riedel (1968: 78), "if there were few sellers in a market (structure), then these firms would recognize their mutual fate and restrict output to increase prices (conduct) and the result would be restricted output, high prices, and excess profits (performance)." Investigations of such hypotheses have resulted in varied conclusions. Burton (1966) and Riedel (1968), in their respective studies of antitrust violations, both found that firms in industries in the intermediate range of concentration have the greatest number of penalized infractions. Burton concluded that the finding was consistent with economic theory. While all firms wish to keep prices above the competitive level, he maintained, firms in highly concentrated industries are able to do so in noncollusive ways (eg., price leadership), while firms in unconcentrated industries are too numerous to generate an effective conspiracy. The companies in the middle ranges of concentration, on the other hand, have both the incentive and the ability (with fewer firms) to establish collusive interfirm agreements.

Other studies have produced contrary findings. Hay and Kelley (1974), for example, in their survey of 62 explicit horizontal price-fixing cases instituted by the Department of Justice during the period 1963-1972, found that conspiracies are more likely to arise when the degree of industrial concentration is high, the product homogeneous, and the number of conspirators is small. In their study of the automobile industry, Leonard and Weber (1970) also found high concentration (as well as inelastic demand) to be associated with price-fixing, and argue that the tremendous power of the concentrated auto industry is responsible for the "coercion" or "conditioning" of such franchisee violations as shoddy and unnecessary repairs (cf., also Farberman, 1975). Asch and Seneca (1976), on the other hand, found concentration to be positively related to collusive behavior in consumer goods industries and negatively related in producer goods industries, while Posner's (1970) study of antitrust enforcement during the 1890-1969 period found no significant relationship between concentration and antitrust activity.

¹ One reason suggested for the differences with Burton's study involves the specificity of measurement of concentration; whereas Burton used SIC four-digit product codes^{*} to designate markets, Hay and Kelley argued that these broad categories seriously underestimate the levels of concentration in the more specific markets in which the products are sold. The latter authors, therefore, used concentration ratios for the more narrow product markets.

The Standard Industrial Classification (SIC) system is used by economists and others to identify the various industries as determined by the products produced. The system is designed to allow for different levels of specificity depending on the amount of information available. The SIC codes range from two to seven digits, each subsequent digit reflecting more precise information on the type of product. Finally, a few studies have investigated the effects of other structural measures on illegal corporate behavior. Both Asch and Seneca (1976) and Perez (1978) found firm size to be positively associated with the commission of antitrust violations, the latter author finding size to account for most of the explained variance in the crime status of firms. Lane (1953), on the other hand, found no consistent relationship between size and violation across industries and types of violation. His data did indicate, however, that smaller firms in the metals and metal products industry were found more often than larger firms to violate the Fair Labor Standards Act and Public Contracts Act, while larger firms in the New England shoe industry violated trade practice laws (misrepresentation) more frequently. Other variables found to be associated with corporate illegalities are firm diversification, joint ventures, interlocking corporate affiliations and firm longevity (Perez, 1978), and advertising intensity (Asch and Seneca, 1976).

B. Hypotheses

Borrowing from the research described above, and adding certain exploratory considerations, we have posited several hypotheses for investigation. The hypotheses, listed below, are accompanied by notes of explanation.

- I. Corporations with relatively poor financial performances are more likely to be involved in illegal activities. As already noted, a number of studies have found poor performance to be related to trade practice violations. While such violations may be engaged in to improve sales and profits, it is also reasonable to expect weaker firms to engage in other types of violation (eg., pollution, labor and manufacturing violations) in order to cut costs.
- II. <u>Companies with greater market power are likely to commit fewer violations</u>. Market power means the relative ability of the firm to control market conditions (eg., prices, entry barriers) rather than being merely reactive to them. Such power has been indicated by concentration ratios for the industries in which a firm operates, and the percent of its markets controlled by the company. Firms in highly concentrated industries are insulated from competitive pressures and the negative consequences of short-term crises upon long-term profitability (Randall and Newman, 1978: 6). Thus, because the firm market power confers greater flexibility in pricing and marketing decisions, thereby allowing firms to more easily pass costs on to consumers, it is to be expected that such firms will less frequently 2 commit cost-cutting violations of the types noted above.
- III. Firms more diversified, in terms of their involvement in various industries, will engage in a greater number of

It had been planned to analyze the effects of market power on antitrust and other unfair trade practice violations; however, too few of such cases were initiated during 1975-1976 to permit an adequate statistical analysis (see Chapter IX). <u>illegal acts</u>. While diversification is a business strategy often designed to insulate firms from the negative effects of cyclical profit performances in single lines of business, it will not reduce the pressure on the various lines of business to produce favorable financial reports. Indeed, intrafirm competition for corporate resources and prestige may intensify such pressure. Finally, firms involved in varied industries may be exposed to more areas of regulation than nondiversified firms, and therefore represent more probable violators.

- IV. Corporate violations will be more common in industries <u>experiencing less favorable financial performances</u>. This hypothesis is taken from Staw and Szwajkowski (1975), whose data suggest that poor industry-wide performances indicate negative conditions affecting the industry (eg., poor demand, shortages of raw materials, widespread strikes, etc.), and may lead to corporate violations as an attempt to improve the firms' positions.
 - V. <u>Firms with a higher proportion of their capital invested</u> <u>abroad will have fewer violations than companies operating</u> <u>primarily in the U.S.</u> It is reasonable to assume that part of the rationale for engaging in foreign business operations has often been the desire to avoid certain U.S. regulation. Indeed, firms have not uncommonly used the threat of relocation when confronted with regulatory demands (see page 51). One advantage of operating abroad, for example, has often been lower wage rates free from U.S. wage regulations and union pressures. Thus, not only are companies with large foreign investments simply less exposed to U.S. regulation, but the "regulatory savings" experienced abroad may financially enable the firms to better comply at home.
- VI. <u>Firms experiencing slower growth rates than other firms will</u> <u>be involved in a greater number of violations</u>. A major motivating force -- and sign of success -- in American private enterprise is firm growth. The growth rate indicates the success of the firm in its various businesses, and indicates successful management of a firm's resources. The effect of growth rate on illegal behavior will be examined both for firms and for industries.
- VII. Firm size is positively associated with the commission of illegal corporate acts. As noted in the previous section, this result has been found in other research. It has been suggested (Randall and Newman, 1978) that large firm size insulates the corporation from the negative effects of legal sanctions; in addition, larger firms can afford better defense counsel. Thus, laws and regulations can be expected to have less deterrent effect among large businesses, and such firms' cost-benefit analyses may therefore favor violation as a corporate strategy.

Firms characterized by relatively high reliance on manpower (labor intensive firms) as opposed to equipment (capital

VIII.

<u>intensiveness</u>) will engage in more labor violations than <u>capital intensive firms</u>. The more important labor-related costs are to a firm, the more likely the company is to attempt to keep those costs down, and hence the higher likelihood that the firm engages in violations of the various labor laws.

C. Research Design

1. <u>Data sources</u>. Information on firm and industry characteristics was obtained from several sources. The major portion of firmlevel data was obtained from the COMPUSTAT service of Investors Management Science, Inc., made available by the School of Business at the University of Wisconsin--Madison. The service provides computer readable data tapes containing both financial and structural information (for distinction, see below) for several thousand industrial and non-industrial parent companies over a period of 10 to 20 years. For the 22 corporations in the sample for which COMPUSTAT data were not available, the required information was assembled from the Moody's series of manuals, the corporations' annual reports to the Securities and Exchange Commission (Form 10-K), and Fortune magazine, with care taken to assure the comparability of definitions of the various indicators.

Data on firms' sales broken down by individual lines of business, used to calculate a measure of a company's level of diversification and other variables, were purchased from Economic Information Systems, Inc. (EIS). These data were available for all but 10 of the sample parent corporations. Finally, information on the levels of concentration in the various manufacturing industries was taken from the 1972 Census of Manufacturers issued by the U.S. Bureau of the Census.

Industry-level financial and structural data were calculated from the firm-level data of those companies whose primary business is in the particular industry. To delineate industries for this purpose, we have used the broader two-digit SIC classification rather than the more specific four-digit divisions, in order to avoid having many industrial categories with too few firms assigned to them to calculate meaningful industrial averages. Following Fortune magazine's lead in its annual calculation of industry medians, we did not calculate industry-level data for two-digit industries with fewer than, four corporations assigned to them.

2. Independent variables.

a. <u>Financial and structural measures</u>. Financial ratios are indicators of the economic viability of a firm in its markets. As indicated above, they are <u>performance measures</u> which indicate the <u>degree of success</u> or failure of businesses for a specified period of time. (For discussions of various ratios and their utility, see Kieso and Weygandt, 1974: Chapter 25, and Rossell and Frasure, 1974.) Structural variables, on the other hand, measure characteristics of

The EIS lines of business data and the concentration ratio data are both based on four-digit Standard Industrial Classification (SIC) codes. firms and industries which relate to the <u>nature of the business</u> involved: size of firm or average firm size in the industry, the degree of concentration (as defined above) in the industry, the relative capital versus labor intensiveness of various industries, and the like. The intent of this chapter is to determine which of these firm and industry characteristics best predict the extent of participation in illegal corporate behavior.

b. Firm level financial data. According to Altman (1968: 590), "The detection of company operating and financial difficulties is a subject which has been particularly susceptible to financial ratio analysis." These ratio indicators of firm success are the measures generally looked to by management in assessing corporate performance and in making tactical choices. They are also relied upon by investment analysts and finance capitalists in making their decisions concerning better versus poorer investment risks, decisions of great importance to management teams. Given the link between past performance and future strategy, and the competitive pressure to generate successful performance, the investigation of financial ratios is appropriate to the study of forces which may compel illegal corporate behavior.⁴

Ratio indicators of financial performance are numerous, and may be classified into several categories relating to various aspects of corporate performance, such as liquidity, profitability, efficiency and debt leverage. By borrowing from previous work designed to determine the most effective ratio predictors of firm failure (as indicated by bankruptcy), the many available performance ratios may be reduced to a manageable list for the investigation of illegal behavior, another potential indicator of business failure.

Both Altman (1968) and Sorensen (1975) used multivariate analyses to determine which combination of ratios best predicts whether a firm will be bankrupt. Each found a different set of five variables which together maximized the prediction of bankruptcy, only one variable common to both studies (thus the two sets contained a total of nine measures of firm performance). Of the nine measures, three are profit ratios, two are indicators of firm efficiency in generating sales, one is a measure of liquidity, and the other three involve retained earnings, total debt of the firm and an equity-to-debt ratio. For purposes of parsimony in the present research, three ratios were selected for use in the analyses. These are:

- (1) <u>Net Income/Total Assets</u> (Sorensen) -- This ratio measures <u>profitability</u>, which is "frequently used as the ultimate test of management effectiveness" (Kieso and Weygandt, 1974: 1016). The return on tapital measure takes into account how many times the firm's assets "turned over"
- ⁴ It is recognized that accounting data pose comparability problems across firms and over time, due to such factors as the variation in calculations which are permitted under "generally accepted accounting principles" and the effects of inflation on the measures (cf., Kieso and Weygandt, 1974: 1028 ff.). However, we have hopefully minimized the difficulties by relying on a data source (COMPUSTAT) which attempts to calculate figures uniformly. Furthermore, not only are such data commonly used in financial studies, but one investigation (Sorensen, 1975) found the accounting data to better predict bankruptcy than market data presumably free of accounting biases and distortions.

during a given time period to produce the profit.

- (2) Working Capital/Total Assets (Altman) -- Frequently found in studies of corporate problems, this ratio measures net liquid assets of the firm relative to the total capitalization. Working capital is defined as the difference between current assets and current liabilities; the measure explicitly considers <u>liquidity</u> and size characteristics of the firm. Altman notes that a firm experiencing consistent operating losses will ordinarily have shrinking current assets in relation to total assets.
- (3) <u>Sales/Total Assets</u> (Altman) -- A standard financial ratio, this capital-turnover measure indicates the sales generating ability of the firm's assets. The <u>efficiency</u> ratio is one measure of management's capability in dealing with competitive conditions, a factor conceptual in dealing with regard to forces which could compel illegal corporate behavior. The level of a firm's performance at any given time on this ratio is heavily affected by the nature of the industry in which the firm operates. Due to differing capital and technology requirements, firms in certain industries need greater assets to generate sales comparable to those of firms in other industries. Thus, <u>level</u> of performance on this measure (for example, indicated by five-year mean scores as in the present research) does not provide a meaningful comparison for firms in different industries. However, the five-year <u>trend</u> in efficiency can be considered a relevant measure of firm performance inasmuch as improving efficiency ratios are sought by firms in all industries.

That the three indicators measure different facets of firm performance is indicated by the low correlations between the five-year means (1971-1975) for the ratios among the manufacturing firms⁵ studied:

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Data for the financial measures were extracted for the five-year period 1971-1975. For each ratio (except efficiency, as noted above), two indicators are calculated: the trend over the period which

- ⁵ Note that whereas mining was combined with manufacturing in the previous analyses, it is excluded from these analyses because key data used herein are not available for mining firms, i.e., concentration ratios. Thus, the sample size for these analyses is 461 rather than 477, reflecting the loss of 16 mining companies.
- ⁶ The trends are indicated by the slopes of the regression lines generated by regressing, for example, profitability on year. Unstandardized b's are used to indicate the trends.

captures improvement or decline in performance and the five-year mean which indicates the absolute average level of performance over the period. Thus, it will be possible to examine the relative importance of levels versus trends in the prediction of illegal corporate behavior.

c. Firm level structural data. As indicated in a previous section, the single most studied structural characteristic is market concentration which, while a characteristic of industries, is also used as an indicator of a firm's market power. For purposes of this research, we investigate two measures of firm market power. The first, is the average concentration ratio across all manufacturing industries in which the firm operates, weighted by the relative importance of each industry to the firm based on its sales in each four-digit SIC line-of-business. Thus:

(4) <u>Concentration Ratio_{wtd} = $\sum_{i} \frac{\text{Sales}_{i}}{\text{Total Manufacturing Sales}} \times C.R._{i}$ </u>

where each i equals a four-digit manufacturing line of business in which the firm has sales and C.R., is the fourfirm concentration ratio for the ith line of business.

The second measure of market power makes use of the market share data obtained from EIS. Market share is the percent of total sales in a four-digit SIC industry which a company controls. More informational than market share alone, however, is a measure relating share to the industry's concentration ratio, found by Mueller (1969: 32) to be a strong predictor of price and profit data. The measure indicates the relative dominance of firms, showing the size of the firm relative to the four largest companies in the industry. Again, it is this market dominance which dictates the level of flexibility in and control over its environment a firm may exhibit. The measure, again weighted for relative importance of the various industries to the firm, is defined as follows:

Concentration ratio data for nationwide markets are available only for manufacturing industries (SIC types 20-39) through the Census of Manufacturers. Thus we are unable to include the weighted ratio for those non-manufacturing lines of business in which a diversified company may operate, such as real estate or wholesaling. This is not a serious limitation for firms which are primarily engaged in manufacturing, and such are the focus of this investigation.

An additional advantage of this combined measure is that it is less highly correlated with concentration than is market share alone. Both the combined measure and concentration have been found to have independent effects on price and profit measures (Mueller, 1969).

(5) <u>Relative Dominance</u> = $\frac{\sum_{i \text{ Total Manufacturing Sales}}^{\text{Sales}_{i}} \times \% \text{ M.S.}_{i}}{\sum_{i \text{ Total Manufacturing Sales}} \times C.R.}$

ġ.

where each i equals a four-digit manufacturing line of business in which the firm has sales, % M.S._i is percent of industry sales a company accounts for in the ith line of business, and C.F._i is the four-firm concentration ratio for the ith line of business.

It will be noted that, as this measure relies on concentration ratios, it is also limited to manufacturing firms and their manufacturing lines of business.

A measure of firm diversification, indicating how involved companies are in different lines of business, is taken from Berry (1971). His measure is defined as follows:

(6) <u>Diversification</u> = $1 - \sum_{i=1}^{P} p_{i^2}$ where P is the ratio of the

firm's sales in the ith industry to the firm's total nonforeign sales. By subtracting the sum from one, an index is obtained which increases with diversification rather than decreasing. The index scores range between zero and one.

Using this formula, diversification scores will be computed for both four-digit and two-digit SIC industry types. The most predictive score, as indicated by its association (zero-order correlation) with the dependent measures, will be used for further analyses.

Other structural variables to be investigated are:

- (7) Percent Foreign Sales -- An estimate of sales generated by foreign subsidiaries, this measure will be used as an indicator of relative foreign investment.
- (8) <u>Assets per Employee</u> -- A measure of relative labor intensiveness of the firm.
- (9) Firm Size -- We have available three different measures of firm size (sales, assets, number of employees). As these are all highly intercorrelated, any one will suffice as the measure of size. We will therefore use the five-year mean for assets as our indicator of absolute size.
- (10) <u>Firm Growth</u> -- This measure will be indicated by the fiveyear trend for firm assets.

d. <u>Industry level data</u>. As indicated earlier in this chapter, industry level financial and structural data were calculated from firm level data for two-digit SIC manufacturing industries. Industry trends and means were calculated only for those industry groupings with four or more firms.⁹ Industry-level counterparts were calculated for all of the financial variables examined at the firm level. In addition, industry structural variables were computed for average firm size, average firm growth, average labor intensiveness, and average percent foreign sales.

The intent in the analysis is to assess the relative importance of industry versus firm-level variables. Are violations induced by conditions that characterize the industry generally, as Staw and Szwajkowski's (1975) analysis suggests, or is individual firm performance more closely associated with illegal behavior? By examining both sets of characteristics simultaneously, we will be able to investigate the relative utility of each set in predicting violations.

The reader should be cautioned that the assignment of firms to industry categories, and the subsequent calculation of industry-level measures based on these assignments, is compromised by the high degree of diversification that characterizes many of these large firms. Thus, relationships involving industry characteristics should be generally considered only suggestive. Such imprecision is unavoidable in a project of such broad scope as the present research. Hopefully, subsequent studies of smaller scope will be able to develop more accurate measures of industry effects.

3. Dependent variables. A number of indicators of illegal corporate behavior have been developed for these analyses. As in other sections of the report, both total rates and specific types of violation will be investigated; within types separate measures will be analyzed for rates of serious and moderate violations as well as for total violations.

Violation indexes are based on the number of legal actions initiated against the particular firm in 1975 and 1976 by the federal government, with two qualifying considerations. First, violations known to have occurred in 1973 or before are excluded from the counts. This was done in order to preserve the logic of prediction: in order to examine the effects of financial performance on violations, the 1971-1975 period chosen for analysis needs to precede the occasion of violation. Second, types of violations which are confined to specific industries have been excluded. Most importantly, this exclusion involves manufacturing violations, which are tied to consumer goods industries such as drugs, food and automobiles, and oil spills under the jurisdiction of the U.S. Coast Guard, as these

For the firms on the Fortune 500 list for 1975, the assignments of firms to industries followed Fortune's designations, with some translations necessary to have all manufacturing companies assigned to SIC categories 20-39. (Fortune expands the number of manufacturing categories; the translations involved recoding into the broader SIC categories.) For most firms listed in <u>Business Week</u> (and not in <u>Fortune</u>), primary industry was determined by examination of firms' sales breakdown by line of business as reported in the companies' annual reports and Forms 10-K. Where such information was vague or unavailable, the 1977 EIS data for lines-ofbusiness were consulted and the assignment made.

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are concentrated among petroleum industry firms and selected other companies which transport petroleum products in U.S. waters.¹⁰ The These violation types are eliminated because much of the variation in their occurrence is dependent on whether firms operate in the industries affected by regulation. For example, a jewelry manufacturer cannot produce unsafe automobiles, while clothing manufacturers are highly unlikely to be involved in oil spills. Therefore, we limit the analysis of overall violation rates to those types of violation common to all industries. The alternative of trying to control for firm participation in specific (at least to the four-digit SIC level) violation-prone industries was not feasible given the broad scope of this research, the high level of business diversification within firms, and the uncertainty as to the vulnerability of specific industries to such "specialized" violations. Finally, in this connection it should be noted that generally the analyses of violations examine the range of non-violators to multiple violators. However, because manufacturing violations are industry-specific, firms which have at least one violation are analyzed. This criterion was implemented to provide a simple control for firm exposure to regulation in this area. The consequence of this control is that the analyses of manufacturing violations address a somewhat different question than the other analyses; i.e., what best explains the differences in violation rates among violators, as opposed to analyses which also, include the differences between violators and nonviolators.

Violations scores for firms are calculated in terms of number per 100 million sales to control for the effects of sheer size on illegal behavior.¹² That is, if for no other reason than their

¹⁰ Manufacturing violations as a specific type of infraction are investigated separately. In addition to manufacturing and spill violations, a number of smaller categories of violations were removed, most of these violations being specific to the oil, food and drug industries; e.g., failure to register with the Food and Drug Administration and violation of transaction regulations in the oil and gas industry.

Il Ideally, it would have been possible to examine the data three different ways, each addressing different issues: (1) The differences between non-violators and violators, regardless of number of violations; (2) The differences among violators only, involving the investigation of different rates of infraction among firms; and (3) The differences between non-violators and violators, considering the full range of violation rates as is done for all but manufacturing violations in the present chapter. However, neither time nor resources permitted such intensive investigation.

¹² It will be noted that this early decision to scale violations to size as measured by sales differs from the use of mean assets as the independent measure of size. Sales and assets are virtually interchangeable as measures of size, however, given the high correlation between them. Among manufacturing firms in the present research, the correlation between mean assets (for the five-year period 1971-1975) and mean sales for all firms is .931, and for industries is .922. greater activity and legal exposure, large firms may be expected to engage in more illegal behavior than small firms. If large firms also enjoy greater insulation from government deterrent efforts as hypothesized, then they may have more violations than dictated by size differentials (i.e., exposure) alone. Thus, firm size will serve as an independent variable as well as a control measure.¹³ This method may be criticized, however, because it can mask the fact that large corporations on average commit more violations than smaller firms, and account for a disproportionate share of illegal corporate behavior (see Chapter VI). Therefore Tables 22, 23, and 24 (Appendix J) report results for the same sets of equations analyzed here, but with total violations as the dependent variable, i.e. not controlled for size. These tables will be referred to periodically in the text.

4. <u>Sequence of analysis</u>. The investigation will proceed in a number of steps. First, parallel series of regression analyses will be undertaken to determine which financial variables -- at both the firm and industry levels -- are significantly related to illegal behavior, both for overall violation scores and for specific violation types.¹⁴ Second, the effects of firm- and industry-level measures of structure will be similarly analyzed. Finally, financial and structural measures will be combined to examine their concerted effects on illegal corporate behavior.

¹³ This dual use of size does not result in the optimum separation of effects (i.e., exposure vs. greater legal insulation) which is desired. By controlling for size in the dependent variable, however, any residual positive effect of size (as an independent variable) suggests that the insulation argument has merit. The finding of no relationship, though, between size and the dependent variable cannot be read as disproving the argument at the present stage of research.

14 Three methodological notes are in order. First, a backward/ forward stepwise technique was used for the regression analyses. With this technique, all variables first enter the equation and their relationships with illegal behavior assessed. Then variables are removed one at a ime, the most weakly associated leaving first, until only variables significant at the .05 level or better remain. If, after these removals have been completed, any of the excluded variables would now satisfy the significance criterion if allowed to reenter the equation in combination with the variables remaining, the variable is put back into the equation. Thus, the procedure permits the efficient identification of factors which bear a statistically significant relationship with violations. Second, three categories of violation type are not reported in these analyses because the number of violating firms was too small; measures of serious and moderate administrative violations, total financial violations and serious and moderate financial violations all had seven or fewer violating firms. Third, for four violation types (total violations, total environmental violations, total manufacturing violations and serious/ moderate manufacturing violations), the range of violation rates was truncated by shifting firms with highly deviant violation scores (outliers) to values closer to the distribution of scores for the great majority of firms. No more than three firms were

D. Financial Performance and Corporate Violations¹⁵

Table 22 (Text) reports both the initial and the final equations involving relationships between financial performance and violations. Concentrating on the final equations, a few general conclusions may be drawn. First, 14 of the 18 significant coefficients are in the predicted direction; that is, as indicated by the negative signs, relatively poor performance is associated with higher proportionate (to size) violations. Second, the significant five-year trend indicators almost unanimously support the hypothesis: ten of the 11 significant coefficients (including all five of the firm-level coefficients) are negative, suggesting that relatively poor financial performance over time is conducive to illegal behavior. In contrast, three of the seven significant mean coefficients contradict the hypothesis, indicating that firms with higher performance scores on these variables tend to be involved in more proportionate violations. However, it is reasonable to argue that from management's viewpoint, the trends for performance are the more salient factors in planning, and therefore carry more weight than levels of performance (as indicated by the five-year means) compared to other firms. Thus, the findings for trends in particular largely support the hypotheses linking poor performance to higher rates of violation.

Third, in general the coefficients are relatively small, and the percentage of variation in violation scores explained by differential performance is small, ranging from two to seven percent. Two possible explanations present themselves. One, the result is real; among the large firms being investigated here financial performance -though related to illegal behavior -- is hardly determinative of that behavior. Two, performance is in fact more strongly associated with violations, but the relationship is hidden by the level of aggregation used here. That is, the relationship could prove to be stronger if it were possible to link performance and violation in the specific line of business in which the infraction occurred. Given the broad scope of this study, the general unavailability of reliable performance measures for individual lines of business and the high levels of diversification of many large firms, such tests were not feasible in the present research. Thus, based on the empirical results, it is tentatively concluded that performance is only slightly associated with violations of law.

¹⁴ [continued] so recoded in any category, and their new values were assigned such that the shifted firms still had the highest violation scores. In all cases, the shifted firms constituted less than five percent of violating firms. The reassignments were undertaken to prevent these highly deviant firms from unduly influencing the nature and strength of any associations between violations and the independent measures. This technique was also used to truncate the firm-level measure of trend in efficiency.

¹⁵ For correlation matrices (one each for the dependent measuresviolations-proportioned to size and not proportioned to size; i.e., the raw violation counts), see Tables 25 and 26 (Appendix J).

TABLE 22

FINANCIAL PERFORMANCE AND CORPORATE VIOLATIONS¹ (Number of violations per \$100 million sales)



dependent variable	4150 LEN	P timester	atter ctores	the test	ET ELEVIER OF	Toduers Trant	EN WEEN HEAT	Industry treat	Topost and the	Transfer inter	Variational Variational
<u>Tetal</u> Initial Equation	06 (-1.20)	.07 (1.17)	07 (-1.26)	.03 (.56)	-,10 (-2.08) ^b	-,10 (-1.91) ^c	20 (-3.12) ^{\$}	21 (-3.23) [#]	.01 (.12)	.05 (.91)	$6 (F_{10,434} = 4.04)^2$
Final Equation						12 ^b (-2.56)	17 ⁴ (-3.01)	24 ⁴ (-4.40)			$6 (P_{3,441} = 10.70)$
<u>Total (S/M)</u> ² Initial Equation	07 (-1.36)	.05 (.79)	07 (-1.21)	.03 (.62)	10 (-2.11) ^b	.01	04 (68)	05 (81)	13 (-2.34) ^b	.04 (.83)	2 (F _{10,434} = 1.91) ¹
Final Equation					09 (-1.99) ^b			1	14 (-2.90) [*]		2 (F _{2,442} = 6.39) ^a
<u>Administrative</u> Initial Equation	.01	.18 (2.98) ⁸	03 (52)	.04 (.78)	00 (10)	09 (-1.71) ^c	13 (-2.05) ^b	09 (-1.33)	06 (-1.12)	.02 (.46)	3 $(F_{10,434} = 2.47)^4$
Final Equation		.16 (3.43) ⁸				13 (-2.84) [#]					3 (F _{2,442} = 8.76) ^a
<u>Environmental</u> Initial Equation	02 (46)	09 (-1.55)	02 (36)	.02 (.35)	08 (-1.58)	08 (-1.41)	17 (-2.61) [#]	22 (-3.29) [#]	.14 (2.63) ⁶	.04 (.83)	6 (F _{10,434} = 4.08) [*]
Final Equation							24 (-4.39) ^a	20 (-3.65) [#]	.14 (2.82) [*]		6 (F _{3,441} = 10.23) ⁴
Environmental (S/M) Inicial Equation	01 (17)	05 (74)	01 (16)	.07 (1.32)	16 (-3.31) ⁸	.04 (.65)	01 (09)	05 (76)	.03 (.50)	.10 ^c (1.80)	1 (F _{10,434} = 1.66)
Final Equation					14 (-2.97) [#]						2 (F _{1,443} = 8.84) ^a

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TABLE 22 (continued)

DEPENDENT VARIABLE	Firm the state	ey heater	ELECTIC CON	Electrony Property Pr	that the state	Transer total	transcriptica	TRANSFEL CTER	Leave to the state of the state	Industry Interna	Jersen Jersen
<u>Labor</u> Initial Equation	05 (99)	.09 (1.55)	07 (-1.24)	02 (44)	05 (-1.12)	04 (77)	09 (-1.37)	10 (-1.43)	09 (-1,77) ^c	.02 (.38)	3 $(F_{10,434} = 2.40)^8$
Final Equation			11 (-2.35) ^b						-,13 (-2.81) ⁴		3 (F _{2,442} = 7.52) ⁴
<u>Labor (S/M)</u> Initial Equation	04 (86)	.08 (1.40)	08 (-1.42)	-,02 (32)	03 (72)	05 (~ .92)	06 (88)	07 (-1.03)	13 (-2.38) ^b	.01 (4 (\$ _{10,434} = 2.66) ^a
Final Equation			11 (-2.42) ^b						16 (-3.51) ^a		4 $(P_{2,442} = 10.15)^{a}$
<u>Manufacturing</u> Initial Equation	21 (-1.91) ^c	.21 (1.93) ^c	16 (-1.34)	17 (-1.49)	12 (-1.34)	.29 (2.26) ^b	07 (59)	08 (60)	-,14 (=1.11)	,25 (1.78) ^c	10 (F _{10,104} = 2.27) ^b
Final Equation		.20 (2.17) ^b		21 (-2.29) ^b							7 $(F_{2,112} = 5.25)^{a}$
<u>Manufacturing (S/M)</u> ³ Initial Equation	18 (-1.47)	.26 (2.07) ^b	15 (-1.08)	10 (75)	13 (-1.25)	.29 (2.00) ^b	04 (24)	03 (- ,17)	08 (54)	.19 (1,28)	7 (F _{10,81} ~ 1.71) ^c
Final Equation		.26 (2.57) ^b									6 (P _{1,50} - 6.61) ^b

¹ For each equation, figures in the top row are standardized regression coefficients; figures in parentheses are the t-statistics. Superscripts indicate level of statistical significance: a = .01; b = .05; c = .10. The percent of variance explained is corrected for degrees of freedom, and is accompanied by the F-ratio for the equation.

² S/M indicates that only serious and moderate violations are being analyzed.

³ Only violating firms considered in analyses of manufacturing violations.

Finally, ten of the 18 significant coefficients indicate industry-level effects, and nine of the ten support the hypothesis that firms in more poorly performing industries will have more proportionate violations.

Turning to consideration of the individual violations measures,¹⁶ the results indicate that total violations (first row) are significantly related to relatively poor <u>industry</u> financial performance as indicated by mean profitability, mean liquidity and efficiency trend. Regarding the initial equation for total proportionate violations, only four of the 10 coefficients are positive, and these are the smallest and least significant coefficients in the equation. For the measure of total proportionate violations which includes only serious and moderate infractions,¹⁷ two different financial measures are found to be significantly related to violations. Again, however, both are associated with illegal behavior in the predicted direction: poor financial performance is correlated with higher proportionate violations. Clearly, though, the effects are small and explain only two percent of the total variation in violation scores.

For administrative violations, the results are mixed, indicating that (in terms of significant effects) firms in industries with poorer profit <u>levels</u> tend to have more proportionate violations, while firms with higher average performance on the liquidity measure have more infractions.

Some interesting patterns emerge in the consideration of environmental violations, infractions of air and water pollution regulations. This is an area of regulation in which large capital expenditures have often been required in order to achieve compliance with the stricter federal environmental requirements of the 1970s. Thus, for pollution control poor financial performance may be expected to be more strongly related to business violations of the law. Indeed, some industries over the past several years have argued that federal environmental laws impose financial requirements too harsh for firms to implement in the time frame specified. Considering the final equation for total environmental violations (row four), it is

¹⁶ It is not the intent here to develop any particularized financial analyses of the different relationships each measure has with violations. Here and throughout, the concern is with general patterns, with the question whether or not positive or negative performance is generally associated with illegal corporate behavior.

¹⁷ Total serious and moderate violations are disproportionately labor violations due to the exclusion of manufacturing violations from the totals (due to their "specialized" nature), and to the fact that many environmental violations could not be classified as to seriousness, and so were left out of the serious and moderate count. Despite this problem, results for serious and moderate violations are presented because the dependent variable also contains other violation types; however, the similarity of this variable to the measure of labor violations suggests that it has relatively little independent value.

found that only industry-level measures bear a significant relationship to violations. One trend and one mean indicator show the predicted relationship with illegal behavior, while the five-year trend in profitability has a contradictory relationship with infractions. Thus, while firms in industries with poorer mean liquidity and poorer efficiency trends tend to commit more proportionate environmental infractions, other things being equal firms in industries enjoying more favorable profit trends appear to commit more offenses. The results obtained when financial and structural measures are combined (Table 24, Text), however, indicate that for proportionate violations the finding for profit may be a statistical artifact, inasmuch as industry profit trend is not significantly related to the dependent variable. For total environmentalviolations scores uncontrolled for size (Table 24, Appdenix J), though, positive industry profit trend is again associated with greater violations. Taken together, these results remain somewhat anomalous, but suggest a possible contradiction of industry complaints that environmental regulations are often too costly to implement. It is to be noted, however, that the profit-violations relationship is slight, though significant. Further research is needed to clarify such relationships.

For serious and moderate environmental infractions, only the trend for firm liquidity is associated with proportionate violations, and in the predicted direction. Findings for this dependent variable must be considered tentative, however, because a large number of environmental offenses could not be classified as to their degree of seriousness.

There is little difference either in the initial or final equations between the analysis of all labor violations and only serious and moderate infractions of labor-related laws. For both violations measures, the final equations indicate that firms with poorer efficiency trends and in industries with poorer profit trends tend to have more proportionate labor violations. (For labor violation scores not proportioned to size [Table 22, Appendix J] the results are very similar, differing only in the addition of firm mean liquidity as a significant performance measure which also supports the financial strain hypothesis.) In addition, only two of the ten coefficients in the initial equations carry signs which contradict the hypotheses. Thus, these results provide support for the postulated relationship between poor performance and corporate violations. Again, however, the relationships are slight and the equations explain little of the total variation in violation scores.

Finally, the findings for manufacturing violations indicate mixed results. The significant coefficients all pertain to firmlevel measures, and for total manufacturing violations indicate that firms with poorer profit trends tend to have more proportionate violations, but that regardless of trend performance, firms with a higher level of performance (as indicated by mean liquidity) tend to have more infractions. In addition, considering only serious and moderate manufacturing violations, only the coefficient for mean firm liquidity is significant, and in the direction opposite that predicted. Thus, these findings indicate no clear interpretation regarding the effects of financial performance on proportionate manufacturing violations. More intensive investigation of such relationships is needed to clarify the nature of these effects. In general, the analyses of the effects of performance tend to support the hypothesized relation between financial strain and involvement in illegal behavior. Most of the coefficients -especially those for trend measures -- indicate that poor performance leads to greater numbers of violations, whether the latter are measured in relation to the size of the firm or as simply total scores uncontrolled for size. Contradicting results were, however, found especially for proportionate environmental and manufacturing violations. Finally, it was noted that the largest significant coefficients are moderate in size, while many are relatively small. The equations explained only a small portion of violation rates, indicating clearly that other factors are involved in explaining the illegal behavior of corporations.

E. Economic Structure and Corporate Violations

Table 23 (Text) reports the results of analyses relating selected aspects of firm and industry structure to illegal corporate behavior, measured in terms of violations per unit size of the firm. Table 23 (Appendix J) reports the parallel equations for the dependent measures as simple counts of violations, independent of firm size. An overview of the findings reveals mixed results in terms of the original hypotheses.

With regard to the independent variable firm size, Table 23 (Appendix J) shows that larger firms tend to commit more total violations of all types, a finding congruent with the violations data tabulated in Chapter VI, and with the hypothesis specified in the present chapter. This is the single most consistent finding in the regression analyses. However, when violations are considered in terms of number per unit size, as in Table 23 (Text), firm size is found to have no additional effects for all but one type of violation, and for manufacturing violations is relatively strongly related in the direction opposite that predicted. That is, the results indicate that, generally, large firms do not have more violations, the results show that while larger firms have more <u>total</u> violations, they have fewer infractions per unit of size than do smaller firms. 18

18

One possible counter-interpretation of this latter, markedly different result (when compared with other violation types) is that the relationship is largely spurious, having been derived from the fact that manufacturing violations combine the large auto firms with relatively few yearly recalls (though often of vast numbers of their products), with the smaller drug industry firms which may have several recalls per year of smaller numbers of items. To investigate such a possibility, the analyses were re-run, this time with the introduction of industry control variables which would act to parcel out such industry effects. If the counter-interpretation were correct, then the negative effects of size would be markedly reduced if not eliminated. However, such was not the case. With industry controls included, the regression coefficients for size were -.38 for all manufacturing violations and -.33 for serious and moderate violations (both significant at the .02 level). Thus, the findings remained essentially unaltered.

TABLE 23

STRUCTURE AND CORPORATE VIOLATIONS¹ (Number of violations per \$100 million sales)

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<u>Tetal</u> Initial Equation	07 (- 1.06)	01 (15)	06 (-1.15)	-,05 (-1.17)	.08 (1.46)	.08 (1.41)	09 (-1.47)	.14 (1.39)	06 (61)	05 (61)	10 (-1.05)	4 (F _{11,412} = 2.78) ^a
Final Equation		<u>1</u>					12 (-2.46) ^b	.23 (2.96) ^a	19 (-2.84) ⁸		18 (-2.95) ^a	4 $(F_{4,419} = 5.29)^{a}$
Tetal (S/M) ² Initial Equation	04 (63)	02 (20)	.00 (.05)	05 (-1.16)	.05 (.88)	.05 (.87)	07 (-1.18)	.18 (1.74) ^c	20 (-1.83) ^c	.01 (.14)	.01 (.08)	3 $(F_{11,412} = 2.02)^{b}$
Final Equation								.21 (3.26) ^a	25 (-3.78) ⁸ .			$3 (F_{2,421} = 7.57)^{4}$
<u>Ad-inistrative</u> Initial Equation	06 (80)	03 (36)	05 (85)	05 (85)	.67	.00	08 (-1.31)	.08 (73)	13 (-1.25)	10 (-1.17)	.15	4 $(F_{11,412} = 2.60)^{a}$
Final Equation							12 (-2.49) ^b		14 (-2.71) ⁸	15 (-2.29) ^b	.20 (3.07) ⁸	5 $(F_{4,419} = 6.01)^a$
<u>Environmental</u> Initial Equacion	91 (09)	.06 (.71)	04 (68)	02 (39)	.01 (.11)	.09 (1.54)	05 (76)	.01 (.09)	.12 (1.17)	.U0 (=04)	27 (-2.82) ⁸	5 $(F_{11,412} = 3.15)^a$
Final Equition									.15 (3.02) ^a		27 (-5.31) ^a	6 $(F_{2,421} = 14.72)^a$
Environantal (S/M) Initial Equation	.03 (.42)	.06 (.74)	.10 (1.75) ^c	03 (56)	06 (-1.05)	00 (02)	10 (-1.58)	.04 (.40)	08 (78)	.06 (.73)	11 (-1.06)	0 (F _{11,412} = .94)
Fina: Equation												

TABLE 23 (continued)

DEPENDENT VARIABLE	ettes	C LOB	altin antes or	utin proportisa	esteller gesteller	coton est corcept	schot selectory	FOR THE TO	Heat Trainer	y care Nove	Crowth C	oportes ters ustance net
<u>Labor</u> Initial Equation Final Equation	04 (57)	09 (-1.15)	02 (35)	04 (73)	.09 (1.59)	.04 (.66)	04 (70)	.17 (1.61) .22 (3.31) ⁸	-,14 (-1.31) -,28 (-4,28) [±]	03 (41)	.01	4 $(F_{11,412} = 2.47)^{a}$ 4 $(F_{2,421} = 9.29)^{a}$
<u>Labor (S/M)</u> Initial Equation Final Equation	04 (51)	07 (92)	.00 (08)	06 (-1.01)	.09 (1.60)	.05 (.79)	03 (55)	.15 (1.46) .23 (3.57) ⁴	17 (-1.59) 31 (-4.74) ^a	06 (70)	.06 (58)	4 $(F_{11,412} = 2.78)^{a}$ 5 $(F_{2,421} = 11.33)^{a}$
Manufacturing 3 Initial Equation Final Equation	35 (-2.68) ^a 30 (-3.21) ^a	32 (-2.26) ^b 37 (-2.80) ^a	.25 (2.66) ^a .26 (3.06) ^a	02 (- ,24)	.03 (.31)	02 (19)	03 (33)	.26 (1.40)	.21 (1.08) .37 (2.92) ^a	.08 (48)	08 (47)	24 $(F_{11,96} = 3.99)^{a}$ 26 $(F_{4,103} = 10.20)^{a}$
<u>Matuficturing (S/M)</u> Initial Equation Final Equation	34 (-2.26) ^b 31 (-2.86) ^a	43 (-2.05) ^b 47 (-2.41) ^b	.23 (2.18) ^b .24 (2.57) ^b	.00 (.00)	.08 (.68)	.01 (.05)	.00 (.01)	,12 (.62)	.41 (1.70) ^c .51 (2.78) ⁸	.08 (.42)	01 (07)	25 $(F_{11,74} = 3.57)^{a}$ 30 $(F_{4,81} = 9.91)^{a}$

For each equation, figures in the top row are standardized regression coefficients; figures in parentheses are the t-statistics Superscripts indicate level of statistical significance: a = .01; b = .05; c = .10. The percent of variance explained is corrected for degrees of freedom, and is accompanied by the F-ratio for the equation.

 2 S/M indicates that only serious and moderate violations are being analyzed.

³ Only violating firms considered in analyses of manufacturing violations.

Thus, these findings suggest that large firms have more violations as a simple result of greater production of regulated goods (i.e., greater "vulnerability" to regulation), but that smaller firms on average maintain poorer quality control than do large firms, and therefore have more proportionate manufacturing violations.

The findings for mean firm size in the industry¹⁹ reported in Table 23 (Text) provide more support for the hypothesized relation between size and illegal behavior. For total violations (rows one and two) and labor violations, the findings show that in industries of larger average firm size, companies tend to violate the law more frequently (in proportion to size) than do those in "smaller" industries.

These findings suggest interesting possibilities. They indicate that the general conditions of the industry may set the tone for normative patterns of behavior, independent of an individual firm's position on various dimensions of structure. When examined in preliminary regressions analyzing only firm-level structural variables.²⁰ individual firm size did not have the predicted relationships with violations. The effects of average firm size in the industry on total and labor violations suggests that the context in which firms operate may condition the stance taken toward illegal behavior. That is, small firm A, in an industry in which firms are generally larger and perhaps given to legal risk-taking, may also take risks as part of a normative response. Small firm B, on the other hand, operating in an industry characterized by small firms with less legal protection, may take few such risks, in keeping with general behavior in the industry. This phenomenon would then result in little or no relation between violations and firm size, but in a significant relationship between average firm size in an industry and corporate violations, as found here for total proportionate violations and labor violations. The finding is supported by the results in Table 23 (Appendix J), which show that for total and labor violations not proportioned to size (i.e., the raw violation counts), industry size effects are significant regardless of individual firm size.²¹ This result does not pertain to other violation types, suggesting that the relationship is violation-specific. Interestingly, "industry size" is found to be unrelated to manufacturing violations, for which individual firm size is a significant predictor. To the extent that the central issue here is one of quality control, as suggested earlier, it appears that such control is not subject to any industry-wide normative patterns, but is instead a firm-specific concern. However, more research in this area is necessary to corroborate such findings. Given the methodological problems concerning such issues as firm diversification and the measurement of industry characteristics generally, future work will hopefully generate improvements on the measurements to which this research has of necessity been limited.

¹⁹ This variable suggests the size of the capital-on-average needed to do business in the particular industry.

²⁰ Not reported here for purposes of parsimony.

²¹ Net of firm effects.

Contrary to the general prediction, firm growth was found to be related to only one type of violation, again manufacturing, and again in a direction opposite that hypothesized. With regard to this violation type, an interpretation similar to that applied to firm size presents itself. That is, a firm in a period of relatively rapid growth, in which it is expanding operations and acquiring assets, may be expected to have greater difficulties maintaining quality control due to an extended range and quantity of output. It may also be the case that more stable firms adopt a strategy revolving around high quality production, while growth-oriented firms are more conscious of expanding markets and increasing sales, and therefore less attentive to issues of quality control. Industry growth was also found to be related to only one type of violation -administrative violations -- but in the predicted direction. Firms in industries with relatively higher growth rates tend to have fewer administrative violations.

As previously indicated, the ratio assets per employee is a measure of relative labor intensiveness, and it has been predicted that greater labor intensiveness will be associated with more laborrelated violations as firms make efforts to contain costs. Preliminary firm-level results and Table 23 (Text) provide support for the hypothesis. In the preliminary findings, it was found that more labor intensive firms tend to have more proportionate labor violations. The regression coefficients though significant, were only -.14 for both all labor violations and serious and moderate labor violations; this suggests that for the large firms studied here, firms national and multinational in scope, labor relations have been generally standardized in the interaction between the major unions and big business. It is conceivable that the hypothesized effect would be found to be more marked if smaller firms were included in the analyses.

When firm and industry effects are combined, it is found that only the industry-level measure of labor intensiveness is significantly related to labor violations. The result indicates that firms in more labor-intensive industries tend to have more labor-related violations, whether measured in proportion to size (Table 23, Text) or in terms of total violation counts, not calculated per unit size (Table 23, Appendix J). This result is likely to be less an indicator of contextual effects, as postulated for mean firm size in an industry, than of the fact that firms of a given level of labor intensiveness are more likely to cluster together in the same industries. The correlation between the firm- and industry-level measures of labor intensiveness is .759.

Table 23 (Text) further indicates that firms in industries marked by greater labor intensiveness tend to have more total proportionate violations, as well as more administrative violations. For total and administrative violations, it may be that labor competes more vigorously for corporate attention and resources in less capital intensive firms, resulting in increases in violations in other areas. The fact that firms in more labor intensive industries tend to commit fewer pollution violations is somewhat anomalous, though it may be that some of the worst polluting industries have high capital requirements and may therefore be relatively more capital intensive that some nonpolluting industries. For manufacturing violations, an interesting result is found. As indicated in Table 23 (Text), the firm and industry measures of labor intensiveness are highly significant, though neither had been when examined in separate equations. The combined equations indicate that firms in less labor intensive industries commit more manufacturing violations, but that net of these industry effects, more labor intensive firms violate more frequently. This result is unclear as to interpretation. More research will be needed to clarify such findings.²²

It has been hypothesized that firms with a higher proportion of their assets in foreign countries will have fewer violations of law, both because they are thus relatively less subjected to regulation and because they may be able to apply any "regulatory savings" or other profit gains toward increased compliance at home. The results in Table 23 (Text) indicate support for the hypotheses only in the case of total proportionate violations and total proportionate environmental violations. For these two types, the findings show that firms in industries characterized by a higher average proportion of foreign sales²³ tend to have fewer total and environmental violations.²⁴ However, the industry-level measure is positively associated with administrative violations, indicating that firms in industries with more assets abroad commit more proportionate administrative violations. No such relationship appeared in the preliminary firm-level analyses, and the finding contradicts the general hypothesis. No clear interpretation for this result presents itself.

The results for firm diversification²⁵ do not support the hypothesis suggesting that more diversified firms will be involved in more violations of law. Diversification is significantly related to none of the violation variables, whether measured in relation to unit size (Table 23, Text) or as simply total violations (Table 23, Appendix J). Thus it appears that diversification does not generate the suggested strain among various lines of business competing for corporate resources.

- ²² Statistical tests for the problem of multicollinearity proved negative. Thus, the finding appears not to be a statistical artifact.
- ²³ It will be recalled that the measures used are based on estimated sales of firms' foreign subsidiaries.
- ²⁴ These findings should be considered entirely preliminary at the present stage of research. Different industries have reasons other than "regulatory pressures" for doing business abroad, such as the availability of natural resources. Also, in the case of pollution violations, a number of foreign countries also maintain relatively strong control regulations. Thus, much more information is needed to ascertain the nature of the relationship between foreign investment and domestic illegal behavior.
- ²⁵ The measure of diversification selected for the regression analyses used diversification over two-digit industries within manufacturing lines of business only, as this measure was in general most highly correlated (zero-order correlations) with the violations measures.

The last two measures to be considered are the two indicators of firm market strength: weighted average concentration ratio (an indicator of market power) and relative firm dominance (weighted average market share divided by market power as defined in this paragraph). It has been hypothesized that firms with more market power will be less likely to commit violations than firms with less power. The results in Table 23 (Text) indicate that only relative firm dominance produces significant relationships with proportionate violations, and only with regard to total proportionate violations and proportionate administrative violations. In these two cases, firms with greater market strength tend to have fewer proportionate violations. However, the effects are small, further suggesting that relative firm dominance is not a potent predictor of illegal corporate behavior. It may be, though, that the level of aggregation necessarily used in this research confounds the results. Ideally, one would be able to measure relative dominance in the industry in which violations occur, clearly a very difficult task and well beyond the scope of the present study.

One additional finding should be noted with regard to market power. Looking at initial equations in Table 23 (Text), it is found that the two intended measures of market strength generally carry opposite signs. The result is even more marked in the analyses of violations not proportioned to size (Table 23, Appendix J), in which concentration is significantly and positively related to administrative and manufacturing violations. Here, firms in more concentrated industries tend to have more violations, contradicting the hypothesis. Relative firm dominance and concentration thus appear to be tapping different phenomena. One plausible explanation of the differences in the two measures is that concentration ratios, while used in past research as proxies for firm market power, are more precisely industry characteristics and do not adequately measure the power of individual firms. Relative firm dominance, on the other hand, is a measure of the individual firm's position relative to the top four firms in its markets, and therefore a more logical measure of market power.

One possible explanation for the results is that firms in more concentrated industries, which often enjoy higher profits than those in less concentrated industries (Weiss, 1970), have the resources with which to protect themselves against legal difficulties, and therefore are generally more willing to take risks in their attempts to improve their own market positions. Market leaders, on the other hand, regardless of the level of concentration, show a slight tendency to commit fewer violations, perhaps reflecting the security of position with its financial advantages, and therefore less need for engaging in marginal behavior. In any event, more refined analyses will be needed to further assess the effects of market power on illegal corporate behavior, an important issue in terms of formulating public policy with regard to the control of corporate behavior.

Finally, it should be noted that no structural measures are found to be significantly associated with serious and moderate violations. This result may be due at least in part to the inability to define the seriousness of many environmental violations.

F. Structure, Performance and Corporate Offenses

Table 24 (Text) reports prediction equations in which both structural and financial measures are included. The results indicate that different combinations of the independent variables are useful in predicting different types of corporate offenses, suggesting that corporate crime is a multidimensional concept requiring the elaboration of a broad theoretical framework. In addition, the findings indicate that for all violation types, a parsimonious subset of independent measures does most of the predictive work available in such measures. The maximum number of variables significantly related to any measure of offenses is five, and for all types the combined equations maximize the proportion of variation explained. It is clear, however, that these variables explain relatively little of the total variation in violations rates, except in the case of manufacturing violations. Some reasons for this finding will be suggested at the end of this chapter. The parsimony found, nonetheless, indicates that the measures in the final equation, in their combination, more than adequately replace other variables significant in the "partial" analyses.

For total violations, it is found that four of the five significant measures are performance indicators, and three of these are industry-level variables. Furthermore, all of the signs are in the predicted direction: firms in more poorly performing industries -- and more poorly performing firms generally -- tend to violate the law more frequently. In addition, as hypothesized, firms with more overseas business also tend to commit fewer violations.

Total serious and moderate violations and labor violations may be considered together, given the similarity of results for the three relevant equations. (Again, it is to be remembered that total serious and moderate violations is comprised largely of labor violations, due to considerations noted earlier.) In all three equations, mean size of firm in the industry is positively and significantly related to proportionate violations, indicating that firms in industries characterized by relatively large investments violate more frequently. In addition, the results for the three equations show that firms in industries with higher degrees of labor intensiveness tend to be involved in more violations. The only difference in the final equations is that firm financial strain (as indicated by the five-year trend for liquidity) is related to total serious and moderate violations, in keeping with the hypothesis, while no financial measures are significantly associated with labor violations when combined with structural variables.

The equation for administrative violations shows the firm and industrymeasures of mean liquidity to be significantly related to violations, but in opposite directions, one supporting and one contradicting the general hypotheses involving financial strain. These findings do support a contextual interfectively, however, suggesting that regardless of a firm's financial position (as indicated by liquidity), if it is in an industry characterized by relatively poor performance it will tend to violate more. In addition, the results indicate that firms with greater market power (relative firm dominance) commit fewer administrative violations, in

1 TABLE 24 STRUCTURE, PERFORMANCE AND CORPORATE VIOLATIONS

(Number of violations per \$100 million sales)

DEPENDENT VARIABLE	FMP	FML	FTE	PTP	FTL ,	IMP	IML	ITE	ITP	ITL	FŞ
<u>Total</u> Initial Equation Final Equation	.01 (.14)	.02 (.36)	10 (-1.76) ^c	.01 (,26)	12 $(-2.42)^{b}$ 10 $(-2.23)^{b}$	17 (77) 11 (-2.15) ^b	18 (-1.67) ^c 17 (-3.01) ^a	17 $(-1.92)^{c}$ 23 $(-4.14)^{a}$	02 (23)	.05 (.72)	07 (9)
Total (S/M) ² Initial Equation	04	01 (12)	07 (-1.15)	.02	10 (-1.91) ^c	.26	01 (12)	.04	06 (73)	.05	06
Final Equation					10 (2.07) ^b						
Administrative Initial Equation	.10 (1.60)	.09	05 (88)	.04	.01	38 (-1.74) ^c	18 (-1.68) ^c	04 (46)	.02	05 (73)	02 (3
Final Equation		.14 (2.42) ^b					27 (-3.75) ^a		-		
Environmental Initial Equation	02 (40)	04 (56)	05 (79)	.01	12 (-2.36) ^b	25 (-1,15)	-,14 (-1,32)	27 (-3.10) ⁴	01 (13)	.07	00
%inal Equation					10 (-2.19) ^b		20 (-3.37) ^a	17 (-2.85) ^a			
<u>Environmental (S/M)</u> Initial Equation	04 (60)	04	.01	.08	15 (-2.85) ^a	.17	04 (31)	02 (27)	.04	.03	.01
Final Equation					14 (-2.95) ^a						
Labor Initial Equation	.00 (.04)	.03 (.49)	08 (-1.37)	04 (68)	06 (-1.14)	.14 (.64)	04 (33)	91 (11)	05 (61)	.03 (.46)	05 (6
Final Equation											
Labor (S/M) Initial Equation	00 (03)	.04 (.50)	09 (-1.48)	03 (55)	03 (66)	.14 (.62)	01 (07)	.01 (.16)	08 (-1,02)	.01 (.23)	04 (5
Final Equation											
3 <u>Manufacturing</u> Initial Equation	27 (-2.12) ^b	.08 (.63)	09 (73)	12 (~1.09)	13 (-1,35)	17 (27)	.48 (1.96) ^c	06 (32)	08 (39)	.11 (.71)	34 (-2.4
Final Equation											30
<mark>Manufacturing (S/M)</mark> Initial Equation	21 (~1.35)	.06	03 (18)	01 (09)	17 (-1.54)	.03 (.05)	.33 (1.19)	-,02 (10)	.09	.11	36
Final Equation					25 (-2.68) ^a						39 (-3.6

explained is corrected for degrees of freedom, and is accompanied by the F-ratio for the equation.

2.

A/E	FG	PPS	DVRS	CONC	RFD	IMFS	IMA/E	IG	IPFS	Variance Explained
.02 (,25)	11 (-1.88) ^c	09 (-1.58)	.02 (.33)	.06 (.98)	08 (-1.34)	,02 (.17)	92 (13)	.13 (.56)	05 (46)	7 $(F_{21,402} = 2.48)^{a}$
		11 (-2.28) ^b								8 (F _{5,418} = 7.98) ⁴
01 (08)	01 (24)	05 (96)	.06 (1,04)	.05 (.82)	05 (80)	.17 (1.22)	17 (-1.09)	23 (95)	.02 (.20)	2 (F _{21,402} = 1.42)
						.21 (3.24) ^a	25 (-3.80) ^a			$4 (F_{3,420} = 6.51)^4$
00 (04)	08 (-1.39)	08 (-1.44)	.02 (.39)	00 (04)	11 (-1.81) ^c	04 (31)	-,20 (-1,29)	.29 (1.21)	.18 (1.49)	6 (F _{21,402} = 2.23) ^e
					11 (-2.30) ^b		29 (-3.90) ^a		.14 (2.54) ^b	7 (F _{5,418} = 6.99) ^a
.07 (.82)	06 (-1.06)	04 (72)	06 (-1.08)	.06 (1.00)	03 (50)	09 (70)	,22 (1.42)	.27 (1.13)	24 (-2.04) ^b	9 $(F_{21,402} = 2.89)^{8}$
.12 (1.99) ^b									-,23 (-4.81) [#]	⁹ (F _{5,418} = 9.85) ⁴
.03 (.40)	.10 (1.57)	02 (37)	04 (75)	.01 (.12)	06 (94)	.08 (.58)	16 (98)	08 (32)	08 (61)	1 (F _{21,402} = 1.18)
										2 $(F_{1,422} = 8.69)^{a}$
05 (65)	06 (94)	04 (78)	.08	.03	04 (60)	.13	08 (49)	19 (76)	.04	$3 (F_{21,402} = 1.58)^{c}$
						.22 (3.31) ⁸	-,28 (-4.28) ⁸			4 (F _{2,421} =9.29) ^a
03 (42)	03 (46)	06 (-1.02)	.08 (1,35)	.03	03 (55)	.10 (.75)	08 (49)	21 (85)	.06 (.53)	4 $(F_{21_{4}402} = 1.75)^{b}$
						.23 (3.57) ^a	31 (-4.74) ^a			$5 (F_{2,421} = 11.33)^8$
25 (-1.60)	.22 (1.94) ^c	02 (17)	.04 (.32)	09 (69)	.09 . (.75)	.54 (1.82) ^c	.51 (1.40)	.22 (.31)	41 (-1.59)	25 (F _{21,86} = 2.72) ^a
37 (-2.80) ^a	.26 (3.06) ⁸						.37 (2.92) ⁸			26 (F _{4,103} = 10.20) ^a
41 (-1.51)	.23 (1.51)	.01 (.10)	.08 (,59)	06 (42)	.11 (.85)	.48 (1.61)	.44 (1.11)	.06 (.07)	21 (78)	24 $(F_{21,64} = 2.28)^{a}$
55 (-2.84) ^a							,62 (3,45) ⁸			30 $(F_{4,81} = 10.11)^{a}$

² S/M indicates that only serious and moderate violations are being analyzed.
 ³ Only violating firms considered in analyses of manufacturing violations.

keeping with the hypothesis. However, this effect is small, and is the only significant relationship found for this measure of market strength. Finally, firms in industries which are more labor intensive tend to have more proportionate violations of this type, while those in industries with greater proportions of foreign sales tend to have more infractions, contrary to the hypothesis.

For the analysis of total proportionate environmental violations, the final equation indicates that three financial measures are all associated with offenses in the predicted direction: poor performance is correlated with increased violations.²⁶ In addition, the strongest association is with the measure for average industry foreign business, and indicates that firms in industries characterized by relatively greater foreign investment commit fewer pollution violations, in keeping with the general hypothesis.²⁷ For serious plus moderate environmental violations, only one firm performance measure proves to be significant (and in the predicted direction), the result identical to that of the analyses which combined financial measures (Table 22, Text). Again, this relatively meager result is likely due at least in part to the fact that many environmental violations could not be classified as to seriousness.

Finally, the combined equations for manufacturing violations again show the predictive power of structural measures in analyzing this violation type. Particularly for total proportionate manufacturing violations it will be noted that the structural variables do virtually all of the predictive work.

G. Conclusions

The various analyses of financial and economic factors produced mixed findings in terms of the original hypotheses. While the financial results have produced some contradictions, financial strain leading to increased violations receives general -- if not complete -- support, especially for the measures of five-year trends in performance. The measures of firm and industry structure variously act as predicted for some violation types, contradict the hypotheses for others, and prove irrelevant to violations in many cases. Some characteristics of industries -- apart from individual firm characteristics -- may be related to normative patterns of behavior which are significant in the study and analysis of corporate illegalities. More intricate analyses of these data mighc help to explain the interrelationships between the various independent variables, and between these and offense measures.

The results indicate that, except for manufacturing violations, the measures of firm and industry characteristics were not strong predictors of corporate violations. This was not an unexpected result. Clearly something else has to be added. A more satisfactory hypothesis is that economic factors operate largely in a "corporate

²⁶ As previously indicated, the results for total environmental violations (not measured per unit size) in Table 24 (Appendix J), show that the financial measures bear contradictory relationships to this dependent variable.

²⁷ However, see caveat in footnote 24, page 173.

environment" that is conducive to unethical and illegal practices (see Chapter I). Second, the violation measures, even when specified as to types, are still relatively broad types; in addition, the independent measures were defined at the firm and industry levels, rather than at the product line level where they may well have more predictive power.
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CHAPTER IX

1.1

CORPORATE ANTITRUST VIOLATIONS

Most of the research on corporate crime has been focused on antitrust behavior, which has generally been defined as business violations of the rules of competition in the marketplace. It is hardly surprising that antitrust has garnered the lion's share of research attention in view of the key role of competition in the American economy, both factually and ideologically. Effective competition, it is claimed, produces a variety of socially valued outcomes, including lower prices, better products, greater innovation, and the most efficient allocation of the economy's resources. In the same vein, it is generally agreed that the alternative, monopoly either with or without government regulation, is deficient in these areas. Although active competition may well be socially desired from the standpoint of the economy as a whole, individual businessmen may regard it as threatening to the firm's stability and growth. It is in these situations that antitrust violations are most likely to occur.

The Sherman Act, the first federal antitrust legislation, was passed in 1890 and is still the principal statute in this area. It makes criminal "every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade" in either interstate or foreign commerce, as well as monopolizing or attempting to monopolize any product markets. This Act made illegal such activities as price-fixing, market divisions by competitors, fixing resale prices and restricting resale territories. Violations were misdemeanors and were punishable by a maximum fine of \$5,000, imprisonment up to a year, or both. In addition, persons injured by antitrust violations could sue for three times the actual damages suffered.

The Clayton Act of 1914 prohibited any stock acquisition by a firm where the effect "may be substantially to lessen competition," certain interlocking directorates, and price discrimination and sales conditioned on the buyer ceasing to deal with the seller's competitors. But the legislation contained a major loophole in relating only to stock acquisitions, thereby allowing disquieting corporate growth to continue through <u>asset</u> acquisitions, which began to multiply. By the late 1940s, this continuing concentration of business resources had again generated congressional concern, over not only its economic but also its political and social effects.

The Clayton Act was amended by the Celler-Kefauver Act of 1950, which changed the original Section 7 to prohibit the corporate requisition of either the stock or assets of another firm "where in any line of commerce in any section of the country, the effect of such acquisition may be substantially to lessen competition, or to tend to create a monopoly." It is noteworthy that the Section's language does not require the government to prove an actual lessening of competition, but only that the effect of an acquisition or merger may be to "substantially" lessen competition in the future. The law thus recognized that in the long run, individual firms' market behavior tends to be controlled by the structure of their markets (Ewing, 1978: 6).

Finally, two additional pieces of legislation contribute significantly to the federal government's antitrust potential. First. the Federal Trade Commission Act, passed in 1914, makes unfair methods of competition illegal and seeks to stem unfair and deceptive practices. The FTC has both administrative and civil remedies at its disposal in challenging violations of the antitrust laws or such unfair practices as false and misleading advertising. The agency does not have the ability to file cases directly in the appropriate court against offending corporations and must refer them to the Justice Department as with criminal cases for prosecution. Second, the Robinson-Patman Act of 1936 amended Section 2 of the Clayton Act to prevent sellers from discriminating in price between various buyers. The intent of the law is to prevent sellers from favoring important (often large) buyers with lower prices, as such price discrimination would thus give the favored clients an artificial (and hence unfair) competitive advantage over the other buyers in the same market. "Ultimately, the intent of the Act is to maintain prices at a competitive level and free of manipulation and interference by nonmarket forces" (Bequai, 1978: 100).

A. New Directions in Antitrust Policy

As administered historically, the antitrust laws have generally been used to prosecute the more blatant and clear-cut violations like price-fixing, tying arrangements (conditioning the sale of one product on the purchase of another), division of markets by competitors, false advertising, and vertical and horizontal mergers that clearly threaten In its attempts to maintain competitive markets, for competition. example, the government in its Sherman Act cases has relied on its ability to prove conscious and covert collusion on the part of the firms involved. With the increasing concentration of the American economy and the growth of oligopolies (in which a few firms dominate an industry), however, these tactics and other conventional enforcement strategies have often proved ineffectual against such phenomena as parallel pricing decisions by firms in concentrated industries. It has long been recognized that prices in certain highly concentrated industries do not respond to market forces as predicted by classical economic models (Business Week, June 2, 1975: 44); noncompetitive prices in these circumstances may often be due to the structural characteristics of the industry which allow monopoly-like price and output coordination without the need for blatant collusion.

As a result of increasing concern about these conditions, the government in recent years has begun to look into its legal options. For more than a year, the Antitrust Division of the Justice Department has been investigating the problems associated with "shared monopolies," such as price leadership (in which all firms in an industry follow the pricing decisions of the leading firm), price signaling through publication of price lists in the media, and such other barriers to competition as the control of key raw materials and massive advertising expenditures. Antitrust officials plan to initiate the first of a series of court challenges to "shared monopolies" in 1979, reportedly a high priority item on Attorney General Griffin Bell's agenda (The Wall Street Journal, November 11, 1977, p. 1; December 4, 1978, p. 14). Meanwhile, the FTC initiated a landmark case in 1972 against the breakfast cereal industry alleging that the four leading companies had engaged in a series of "actions or inactions" over a period of at least 30 years which were designed to maintain a monopoly. The four firms -- Kellogg, General Mills, General Foods and Quaker Oats -- controlled 91 percent of the market in 1970. In this case, which is still at trial (and from which Quaker Oats was subsequently dropped as a defendant), the FTC has made two novel antitrust allegations: one, that the companies sought to stifle rival firms by introducing a "profusion" of about 150 brands of cereal between 1950 and 1970; two, that the firms further created barriers to competition by artificially differentiating the basically similar cereals "by emphasizing and exaggerating trivial variations such as color and shape" through advertising directed particularly at children (The Wall Street Journal, February 22, 1978, p. 6). The Justice Department has also used innovative antitrust theory to challenge major conglomerate mergers, which have greatly increased in recent years.

It is clear that violations of the nation's antitrust laws are In the past two years, The Wall Street Journal has reported common. on criminal, civil and administrative prosecutions in a wide variety of industries, including paper goods, electrical wiring, apparel, resins used to make paint, citrus fruit, computers, beer, plywood, armored car services, photography, and toilet seats. In the paper industry alone, which is generally considered to be highly competitive, 36 firms -- including leading paper and paper products companies -were found to have fixed prices for products ranging from bags for consumer products to labels and folding cartons in three major federal cases prosecuted in the mid-1970s. In addition, as of mid-1978 more than 100 price-fixing suits filed by the federal government, the states and private firms were still pending against paper industry firms, antitrust violations continuing in spite of a string of successful prosecutions against the industry dating back to before the 1930s. Antitrust enforcement officials are concerned that if price collusion is widespread and continuous in an otherwise competitive industry, it may be at least as prevalent in less competitive industries (<u>The Wall Street Journal</u>, May 4, 1978). Corporate executives themselves indicate that price-fixing is widespread. A survey of major corporation presidents conducted by the Nader Study Group found that nearly 60 percent of those responding (100) agreed that "many ... price-fix" (Nader and Green, 1972: 17).

B. Extent of Violation in 1975-1976

In the present research, substantial antitrust and trade violations were found among the parent firms in the sample. During the two-year period, the federal government initiated new legal actions alleging 63 cases¹ of trade violation against 56 of the 477

Note that a "case of violation" as herein used does <u>not</u> correspond to individual legal actions brought by the federal government. A legal action may charge several firms with a conspiracy. For present purposes, a case of violation is counted each time a firm is charged in a legal action. Thus, if four firms are charged in a conspiracy action brought by the Justice Department, four cases of the violation are counted. The unit of analysis, then, is the firm-case. parent manufacturing firms, or 11.7 percent of such companies.² Five of the firms had two new cases brought against them, while one had three cases initiated against it. Twenty-three of the firms, or 41 percent of firms charged with trade violations, had price-fixing suits brought against them, one firm being charged in two separate cases involving price-fixing. In addition, 13 firms had merger suits brought against them, eight were charged with misrepresentation in the sale of goods (one firm charged with two separate violations), and seven corporations were charged with maintaining illegal director interlocks. Other violations included a tying agreement, maintaining resale conditions and monopolization.

Among the 105 non-manufacturing parent firms, nine (8.6 percent) had 10 federal antitrust or trade cases initiated against them during 1975-1976, one firm having had two against it. Three firms were charged with price-fixing and three with misrepresentation (one firm charged in two separate cases of violation). One firm was charged with price discrimination, one with illegal merger, and one with restraining trade by chilling competition.

More indicative of the general extent of antitrust and trade violations is the datum that among the 477 manufacturing firms that make up this research, corporations were involved in 161 firm-cases in which legal actions were initiated and/or successfully prosecuted by the federal government in 1975-1976, or one case per every three corporations. Of these cases, 118 were successfully prosecuted by the federal government during the two-year period, or one case per every four corporations. Actions in three cases of violation were initiated and subsequently terminated in 1975-1976 in favor of the firm, while actions were initiated in 40 cases and still pending at the end of 1976.

C. Factors in Antitrust Violations

In business circles, it is often agreed that pressure on profits is a primary motivation for engaging in antitrust violations. Interviews done by <u>Business Week</u> (June 2, 1975, p. 42) with scores of corporate executives suggest that price-fixing is more prevalent and more overt in periods of recession coupled with inflation, when profits are squeezed hardest. Demands for various levels of profit are

² Data as to trade practice infractions reported in this chapter refer to the primary charge involved in the case. Thus, for example, four additional firms were charged with "secondary" trade violations, so that a total of 60 firms were charged with such violations during 1975-1976. However, in these four cases the trade violations were not the primary focus of the case (eg. an FDA drug case in which misrepresentation on the label was coded as a second violation). The data which follow therefore pertain to those cases in which the major emphasis is on such violations.

³ Note that parallel civil and criminal cases for the same violation pattern are <u>not</u> counted as two separate cases against a firm; the unit of analysis herein is the instance of violation charged by the federal government. Thus, parallel cases alleging the same set of facts counts as a single case of violation against a firm. communicated down the hierarchy of corporate management, and these pressures may leave subordinates believing that they have no choice but to violate the antitrust laws, even though top management may not dictate it explicitly.

In addition to these direct financial causes, there are also what might be called "facilitating causes" of antitrust violations that interact with financial motivation. One of them is the tenor and level of enforcement.

The ebb and flow of price-fixing indicates the relation between extrinsic conditions and illegal acts. When the market behaved in a satisfactory manner or when enforcement seemed threatening, the conspiracies stopped. When market conditions deteriorated while corporate pressures for achieving attractive profit and loss statements remained constant and the enforcement activity remained weak, the price-fixing agreements flourished (Carey, 1978: 377-378).

Another facilitating factor often discussed is market concentration. A number of studies have found antitrust conspiracies to be more prevalent in industries with medium to high degrees of concentration. In unconcentrated industries, where competing firms are numerous, companies may not be able to organize and police effective conspiracies (Burton, 1966; Riedel, 1968; Hay and Kelley, 1974). Another study (Posner, 1970), however, found no significant relationship between concentration and antitrust violations.

It was intended in this research to present a multivariate analysis of the relationships between several hypothesized causal and facilitative factors and antitrust violations. Unfortunately, the number of parent manufacturing firms charged with antitrust and trade violations in cases initiated during 1975 and 1976 numbered only 28, too few to permit such an analysis.

A recent study of the antitrust and unfair trade practice violations of the 1000 largest industrial firms in the United States during the period 1960-1976 does, however, present multivariate analyses of potentially causal factors (Perez, 1978). Included in the definition of violations are price-fixing and bid-rigging conspiracies, misrepresentation and deceptive practices (fraud), monopolization, resale price maintenance, price discrimination, below-cost selling, promotional allowances, tying and exclusive dealings, allocation of jobs, market, and sales among competitors, 4 joint ventures, interlocking directorates, and vertical conspiracies. Among other findings, Perez's results indicate that firms engaging in such violations tend to be larger, more diversified, older, to operate in more concentrated markets, to engage in more joint ventures

⁴ These are the same types of violation designated as trade violations in the present study.

⁵ That is, the relationships found are statistically significant at the .001 level.

with other corporations, and to have more links to other firms as indicated by the number of other corporations on whose boards a firm's directors also sit. The findings as to firm size, diversification and concentration are generally congruent with those of previous studies (with some exception, see Chapter 8)⁶ and with the relationships hypothesized in the present research. Joint ventures and interdirectorate links were analyzed to test the importance of intercorporate ties to illegal behavior, an attempt to examine Sutherland's (1949) emphasis on a firm's associations in the learning of corporate attitudes favorable to or unfavorable to law violation. However, the measure of interdirectorate affiliations -- on which Perez relies in subsequent analyses -- does not permit the determination of the ratio of corporate associations favorable to those unfavorable to violation, central to Sutherland's hypothesis. The finding for joint ventures, which Perez presents as affiliations which violate the law, provides some support for the theory, but the fact that illegal director interlocks between competing corporations was not found to be significantly related to corporate crime does not support the hypothesis (though neither does this result refute the theory). The evidence on this point, then, is inconclusive.

When the six significant variables were considered together in a multivariate (regression) framework, it was found that firm size accounted for most of the predictive power in the set, explaining 22.8 percent of the variance in the dependent variable (illegal behavior). Only a measure of diversification (as indicated by the number of four-digit SIC industries in which a firm operates) made a statistically significant (.004 level) contribution to the total explained variance, increasing it to 23.4 percent.

Perez (1978: 121) also found a number of variables to be unrelated to antitrust and unfair trade practice violations. These were profitability, interlocking directorates, diversification as measured by the range covered by a firm's four-digit SIC industries, trend in monopolization (indicated by change in market concentration in a firm's primary industry), differential annual ranks (a measure of a corporation's performance relative to those of other firms), and family control as represented by membership on the board of directors. The finding as to profitability⁷ is contrary to the hypothesis of the present study; as noted in Chapter 8, however, this finding is seriously qualified by the measurement of profitability near the end of the 17-year period for which violations data were collected.

Finally, Perez analyzed specific types of unfair trade violations, with results similar to those for the measure of total antitrust and trade infractions. For misrepresentation of goods and other fraudulent trade practices, six variables were found to be positively and

^o It should be noted that the dependent measure here includes all of the above illegal behaviors; previous research findings as to the effects of market concentration on violations have analyzed criminal conspiracies more specifically (see Chapter 8).

⁷ Profitability was measured as the change in profits between 1972 and 1973, divided by 1972 profit.

significantly (.001 level) related to violations: firm size, diversification (number of SIC codes), market concentration, merger activity, joint ventures and interdirectorate affiliations. In the case of criminal price-fixing and bid-rigging conspiracies, size, diversification (number of SIC codes), joint ventures, interdirectorate affiliations, and firm age were positively related to corporate crime. Market concentration, on the other hand, was found to be unrelated to the commission of these violations.⁸ For triable mergers, the same five measures were positively and significantly related to illegal behavior. For all three violation types, Perez found that firm size accounted for most of the explained variance.9 Thus, these results indicate that in general the larger, more diversified firms tend to be involved in more antitrust and trade practice violations. Perez concludes by presenting statistical models which argue that the firm characteristics of size, age, diversification and intercorporate ties have direct effects on corporate crime, while market structure as measured by concentration ratios positively affects involvement in corporate crime largely indirectly through structure's effects on size and intercorporate ties, depending on the particular model under consideration.

D. Federal Enforcement of Antitrust Laws

In recent years, much criticism has been directed at federal antitrust enforcement, particularly charging weak and ineffectual efforts. The charges have encompassed all phases of enforcement -from the structure of the laws, through their interpretation and application by the judiciary, to sentencing outcomes. Among the more prominent and documented criticisms are the following:

- Antitrust enforcement has been susceptible to political influence at a number of points in the process, hindering rational, effective and equitable application of the laws.
- (2) Antitrust has not been effective in stemming the growth of oligopolies and concentration of capital in the American economy.
- (3) The structure of the enforcement apparatus impedes effective control and deterrence.
- (4) The Antitrust Division historically has filed relatively few criminal cases, thus weakening the deterrent effect of the law.

⁸ Market concentration was measured only for the firm's primary manufacturing function (Perez, 1978: 84). The relationship between this measure and the market in which the conspiracy occurs is thus problematic.

For misrepresentation, size explained 27.9 percent of the variance; the addition of other variables significant in a multivariate context raised the explained variance to 30.4 percent. The comparable figures for triable merger activity are 28.8 percent and 29.3 percent, and for criminal conspiracies 24 percent and 25 percent. (5) Even when cases are won by the government, antitrust convictions have typically resulted in weak penalties that lack deterrent impact.

Leniency toward corporate officials has been marked by the low frequency of jail sentences imposed and served for antitrust viola-Through the years, most sentences imposed under the Sherman tions. Act have been suspended, with the individuals being placed on probation. During the first 50 years of the Act (to 1940), jail sentences were imposed on businessmen in only 13 cases; in addition, from 1940 to 1961 jail sentences ranging from 30 to 90 days were imposed on only 20 businessmen (Flynn, 1967: 1305). In only three cases between 1890 and 1970, however, did businessmen actually go to jail for a criminal antitrust violation (Nader and Green, 1972: 18). Indeed, during the period 1890 to 1970, only 19 individuals actually went to jail for pure antitrust violations, for a total time of 28 months (Sims, 1978: 11). As of the mid-1960s, the historical data suggested that the smaller the firm, the easier it had been to impose criminal penalties on responsible officers. Attempts to impose sanctions on officers of large corporations had generally failed, especially when individuals and the firm were tried together; often the defendant officers and even the juries have shifted the responsibility for the violation to the corporation (Flynn, 1967: 1305-1306). Another impediment to incarceration as an enforcement option has been judicial attitudes toward jailing businessmen, often cited as pillars of their communities. When asked in a questionnaire why so few convicted Sherman Act violators ever serve jail terms, typical replies of district court judges were "recidivism is unlikely," "violators are not hardened criminals," "defendants are victims of economic forces," and "not clear in corporate case that guilty ones are in court" (Nader and Green, 1972: 18).

There are indications, however, of some changes in the sentencing patterns for antitrust cases. In December, 1974 Congress recognized the inadequacy of the criminal antitrust penalties, passing legislation to change the status of the violations from misdemeanors to felonies, increase the maximum corporate fine to \$1 million and raise the maximum officer penalties to \$100,000 in fines and three years in prison. In addition, Justice Department data indicate that imposed penalties are in fact increasing (Sims, 1978: 7-11). For example, in the period from December, 1974 to November of 1976, in misdemeanor cases (prosecuted under the old penalty provisions) 98 individuals were sentenced. Only seven of them, or just over seven percent, received actual jail terms, averaging 41 days each. By comparison, in misdemeanor cases since November, 1976 (through March, 1978), at which time the Justice Department began to press for stiffer penalties, 17 of 76 sentenced individuals (22 percent) were given actual jail terms averaging just over 71 days each. In felony cases through March, 1978, 15 of 21 sentenced individuals (71 percent) have been given actual terms averaging 192 days each. Fines have also increased dramatically. In cases prosecuted as misdemeanors since December, 1974, corporate fines averaged \$23,172, while in felony antitrust cases since the enactment of the new legislation, 41 corporate defendants have received average fines of \$134,537 through March, 1978, a six-fold increase.

It is difficult to predict the long-range effects of these developments, however, as the very severity of available antitrust penalties may hamper some cases in court. In particular, it has been argued that with more severe prison terms now possible, the burden of proof in criminal cases has become heavier for the government (Kennedy, 1978). Some federal judges have hinted in fact that they intend to require more proof in judging felony antitrust cases than they were when they heard misdemeanor cases. In a 1977 decision, for example, federal district judge Charles Joiner of Detroit suggested that standards of proof in felony cases need to be reexamined and strengthened and that, indeed, the Sherman Antitrust Act may be too vague to use successfully for criminal cases. In addition, faced with the stiffer penalties, defendants in price-fixing cases have been hiring more highly skilled criminal lawyers to defend them, thereby making the government's task considerably more difficult (The Wall Street Journal, October 14, 1977, p. 20).

1. Use of sanctions, 1975-1976.¹⁰ As noted in an earlier section, 118 federal cases of antitrust and trade violation against parent manufacturing corporations were successfully prosecuted during the twoyear period examined. In terms of penalties levied against corporate entities, 49 (41.5 percent) firm-cases involved administrative remedies such as the FTC's orders to cease and desist, to divest assets, etc.; 44 cases (37 percent) involved civil remedies (largely orders) and 25 cases (21 percent) were responded to with criminal sanctions. Of the 118 cases involving imposed sanctions, 74 (62.7 percent) involved such illegal competitor arrangements as price-fixing, mergers and interlocking directorates. Twenty-two of the 25 criminal 11 cases involved the imposition of fines for these illegal arrangements, largely price-fixing cases. Indeed, 24 of the 25 criminal cases involved such charges of illegal competitor arrangements, indicating that the criminal sanction has largely been reserved for such blatant challenges to competition in the marketplace. The average corporate fine in the 22 instances was \$48,182.

In terms of the general types of federal sanctions imposed, in 91 of the 118 cases, or 77 percent, civil and administrative orders to comply were issued, many of which were of the cease and desist variety while only 18 imposed major remedial sanctions (eg., divestiture). The other major type of sanction used was monetary penalties, issued in 23 cases (19.5 percent). One such case involved a civil penalty, while the other 22 were criminal fines, as indicated above. In two cases, injunctions were issued, while the sanctions were not specified in two other cases.

2. <u>Officer penalties, 1975-1976</u>. Among the 477 parent manufacturing firms and across all violation types, there were only 21 sanctioned cases of violation in which corporate officials were

- ¹⁰ As with violations, the discussion of sanction types involves the primary sanction; thus, if both a criminal fine and civil order were issued, for purposes of this discussion only the fine is counted.
- ¹¹ In two cases, the penalty involved donations to charities in lieu of a fine; in one case, the penalty could not be ascertained.

criminally convicted. Not surprisingly, 19 of these cases involved the classical antitrust violations in which the government has concentrated its efforts to demonstrate executive intent: price+fixing (17 cases) and bid-rigging (2 cases).¹² (In addition, in five firmcases officials were named in non-criminal legal actions involving illegal director interlocks.) Of the 19 criminal antitrust cases of violation, 10 were firms in which one corporate official was penalized, four companies had two officers penalized, one had three officers, two had four officers, one had seven, and one firm had eight officials penalized. Ten of the 19 firms were charged in a single legal action involving a price-fixing conspiracy in the folding carton industry.

In all 19 cases of violation, criminal fines were imposed on officers, while in only five were officers incarcerated¹³ (all five firms charged in the same legal action -- the folding carton conspiracy). In five cases individuals received suspended sentences, while in 11 probation was imposed. Thus, these data confirm the relative infrequency of imprisonment as a sanction in corporate crime, even when criminal intent and conspiracy are demonstrated in court. In addition, for the 45 officers fined in the 19 cases of violation, the average penalty imposed was only \$9769, while the nine corporate officials sentenced to confinement were given terms averaging six days (not including suspended portions of the sentences). Including the 36 officers not incarcerated, the average time to be served was one and one-quarter days for all individuals convicted of antitrust crimes in these cases. The average length of probation time was just under 10 months (9.7) for the 26 officials given probation, or just over five and one-half months if averaged over all 45 officers convicted. These data indicate, therefore, that serious criminal sanctions tended to be infrequently imposed on corporate officials, at least through the end of 1976, and that when defendants were taken to court, they could generally expect a modest fine and probation, at worst.

E. Conclusions

Antitrust policy and enforcement are currently experiencing a period of difficult challenges and new opportunities. Recent legislation has increased the penalties available to enforcement officials, and regulatory agencies are beginning to tackle the hard problems of increasing concentration in the economy. Historically, antitrust has failed to stem growing firm market power in many industries, with the

¹² These figures include a single case in which an executive was charged and convicted alone; the firm was not charged in the action. All other cases involved the convictions of both officers and their firms.

¹³ Note the totals in this paragraph will sum to more than 19 because multiple sanctions are often issued to officers, such as a fine and probation.

¹⁴ In four additional cases, sentences were imposed in which portions were suspended and the rest served in confinement.

result that prices are often relatively free from the discipline of competitive forces. Also, there have been no indications that such blatant criminal offenses as price-fixing are on the decline. The next decade will be critical for antitrust enforcement. First, the federal government's inclination and ability to successfully implement the more stringent enforcement penalties available will be determined, as will -- hopefully -- their deterrent effect. The results of this study indicate that as of the end of 1976, sanctions imposed against responsible corporate officials remained relatively minor. More recent Department of Justice data indicate a trend toward the issuing of harsher penalties. However, it is too early to predict what effects the more serious sanctions available will have on the attitudes of judges and juries toward their use, and toward criteria for proof. Second, the outcome of recent government concern with such structural conditions as shared monopoly is yet to be determined. New legislation may be needed to control growing concentration and problems such as parallel pricing and excessive profits. In any event, the burden on antitrust enforcement will in all probability only increase. The future structure and operation of the American economy will be heavily influenced by the direction and tenor of antitrust policy.

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CHAPTER X

ILLEGAL CORPORATE PAYMENTS

Nothing has so tarnished the image of corporations within recent years as has the public revelation of the widespread violations of law in the form of corporate illegal payments to attain certain corporate objectives. For the most part, these exposures developed from the Watergate investigations of the 1970s. The federal government's SEC disclosure drive on questionable domestic and foreign payments revealed that up until 1978 at least \$1 billion had been paid illegally by many of the Fortune 500 largest industrial corporations (The Wall Street Journal, June 28, 1978). These payments have included kickbacks, foreign payoffs, and illegal political contributions. Kickbacks and foreign payoffs have had a long history in a wide variety of fields; corporate contributions to political figures have been a longestablished practice, but only recently have certain contributions become illegal. All of them are practiced for the purpose of influencing corporate objectives: to obtain advantages over competitors, to avoid harrassment, and either to influence or support a political party in this country or abroad.

Examined together, these payments are forms of bribery, either for the purpose of selling a commodity or influencing decisions. Foreign payoffs, for example, represent another form of kickbacks; they are paid to government officials to influence certain decisions, usually by these same officials, to purchase a specific corporation's commodity rather than that of a competitor. This is similar to domestic kickbacks, but here the purchasing agents of the business concern, generally private, make decisions for the corporation. Political contributions to a specific party serve similar purposes.

These improper payments first came under close government scrutiny beginning about 1973 following the disclosures of political contributions by the Special Watergate Prosecutor when the Securities and Exchange Commission (SEC) ruled that any use of a corporation's funds for illegal and undisclosed purposes are of significance to shareholders. In 1974, then, the SEC began to look into the manner in which federal securities laws might have been violated. In their investigation they discovered that a large number of corporate financial records had been falsified in order to hide the source of corporate funds, along with the disbursement of "slush funds" not handled in the normal financial accountability system (Kugel and Gruenberg, 1977: 45). These practices reflected on the honesty and reliability of corporate accounting and thus represented threats to the system of full disclosure of information which the securities laws were designed to insure in order to protect public investors. The primary interest of such disclosure is to guarantee that investors and stockholders receive accurate information on which to make informed investment decisions, to assess the effectiveness of management, and to make sure that certain corrective measures are taken by management to curb any improper practices.

The most disturbing disclosure about illegal payments was that in

a large number of cases "corporate management had knowledge of, approval of, or participated in the questionable and illegal activities" (Securities and Exchange Commission, 1976: 41). A tally was made from SEC data, where the information was available, on the involvement of management in 58 corporations (Table 25, Text). Top management of 26 corporations had knowledge of the illegal activities; in 17 they appeared to have had no knowledge, and it was not clear in 15 if top management was involved or not. Of the 26 reporting involvement, all or some of the board of directors of eight corporations had knowledge about the illegal payments.

A. Domestic Kickbacks

Much of the wide publicity given foreign payoffs has failed to recognize fully the similarities between them and kickbacks as a form of doing business in the United States. "Domestic bribes and kickbacks paid by one American company to another, although long recognized as a serious problem, are coming under new scrutiny as a result of disclosures of similar payoffs overseas" (Jensen, 1976: 1). Domestic kickbacks are extensive according to a <u>New York Times</u> survey of businessmen, lawyers, investigators, and accountants; they occur in a wide range of industries at retail, wholesale, and manufacturing levels (<u>The New York</u> Times, March 16, 1976: 1).

The common corporate and general business practice is to give kickbacks in the form of money to a purchaser in order to make the sale. This bribery is illegal in certain areas as, for example, in the sale of alcohol products; it is also generally illegal because it is concealed from stockholders or illegally deducted from income tax reports. <u>Bona fide</u> discounts are properly recorded; kickbacks are concealed from government agencies through false invoices, bills of lading, and accounting entries. They may constitute fraud under the IRS code, unfair competition as defined by FTC, restraint of trade as defined by the Sherman Antitrust Act, and, if not disclosed, violations of the SEC regulations since true income and expenses are concealed from the stockholder or stock purchaser.

Bribes range as high as \$100,000, and a large number of kickbacks appear to fall in the \$25,000 to \$50,000 range. Payments take several forms, such as contributing money to a recipient's favorite charity, to the surreptitious deposits of thousands of dollars in a secret bank account or a phony consulting company set up solely to receive them. Individuals are more likely to be prosecuted for these offenses than corporations.

B. Foreign Payoffs

Another form of bribery is the system of paying off foreign officials and government, a question that involves a number of ethical issues in regard to its propriety. One example is the effect it has on American foreign relations, a serious and far-reaching consequence. For example, Lockheed's payment of \$90,000 to Japanese Prime Minister Tanaka and a much larger sum (probably \$1 million) to Prince Bernhard of the Netherlands resulted in the criminal prosecution of the former and nearly brought down the royal house of Orange in the latter country. Foreign payoffs have been illegal since 1976 when the Foreign Corrupt Practices Act was passed. Prior to its becoming illegal, it had been

TABLE 25

KNOWLEDGE OF BOARD OF DIRECTORS AND TOP MANAGEMENT OF 56 CORPORATIONS' INVOLVEMENT IN ILLEGAL FOREIGN AND DOMESTIC PAYMENTS*

<u>Total</u> <u>Managemen</u> t	Top Management and Board of Directors	Board of Directors	Officers (some of whom were Board Members)	Corporate Officers (including some of Top Management)	Directors and Officers	Represen- tative of <u>Management</u>
YES 26 15	4	2	1		1	2
NU 17 9	2	4				
Not Clear Whether Involved or Not 15 15						

*Prepared from <u>Report of the Securities and Exchange Commission on Questionable and Illegal Practices</u>, submitted to the Committee on Banking, Housing and Urban Affairs, United States Senate, May, 1976, Washington, D.C.: U.S. Government Printing Office, Exhibit A.

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illegal not to disclose such payments properly in financial reports submitted to the SEC and IRS. Although they had been the general practice for many years, corporate bribery to obtain business was made illegal in 1977, with jail terms up to five years (compared to three years for antitrust violations), and a fine up to \$10,000.

By August 1976, 136 of Fortune's 500 largest corporations had made disclosure of millions of dollars of domestic and illegal payments overseas. Of them, 32 had made foreign payments of over \$1 million each, and four corporations as high as \$20 million or more. Lockheed made the largest overseas contributions, \$250,750,000, with Exxon second, \$77,761,000. The revelations continued to come in years later. For example, the SEC in 1979 accused McDonnell Douglas of \$15.6 million in payoffs to various foreign officials. Some large corporations were "clean"; IBM, for example, whose sales total in the billions, was able to discover improper payments of only \$53,000 over a seven-year period, and there appears to have been relatively little involvement of General Electric and Kodak.

International payoffs are made directly or indirectly (Kugel and Gruenberg, 1977: 16-19). The direct method is simple; it involves direct payoffs of bribes to an influential person, but the risk of discovery is great. Indirect clandestine payments are more common; they involve banks, subsidiaries, dummy corporations, and sales agents.

The most common method of channelling foreign payoffs is through the sales agent. Many multinational corporations find it too expensive as well as unnecessary to establish an office in each country in which they operate; they use instead sales agents who often are well established in a particular country. These sales agents are able to facilitate marketing arrangements which are maintained with provisions for special favors; they also know channels through which payoffs can flow. Grumman Corporation, for example, used sales agents to negotiate its deals in Iran. One Grumman executive, according to internal company correspondence, described one agent as a "bagman," and his partner described himself to Grumman officials simply as an "errand boy" for military higher-ups in Tehran. These two sales agents were paid \$2.9 million in 1975 by Grumman, after the Shah's air force had ordered 80 Grumman Fl4 Tomcat fighter planes (Landauer, 1978).

In one four-year period, Iran signed orders for U.S. arms costing \$10 billion, incentive enough to generate bribes disguised as sales commissions. During that period, Textron's Bell Helicopter division and at least six other U.S. suppliers funnelled fees to Air Taxi Company, the Tehran sales agency that was owned in part by the late General Khatemi. The Air Taxi manager, A. H. Zanganeh, handled commissions from American companies as if he hadn't heard of the Shah's anticorruption campaign (Landauer, 1978).

'In payment for the sale of aircraft, Rockwell International on one occasion had deposited \$574,612 to Air Taxi's account at First National Bank and Trust Company in Oklahoma City; from that account Mr. Zanganeh had drawn a check for \$260,000 payable to General Khatemi" (Landauer, 1978). Payoffs are often made through a dummy corporation. This method was used by Northrop Corporation in Switzerland to pay some \$30 million in commissions and to bribe government officials and agents in the Netherlands, Iran, France, the Federal German Republic, Saudi Arabia, Brazil, Malaysia, and Taiwan. Through such means commissions were channelled to influential foreigners who then helped the corporation sell airplanes. The parent corporation pays the dummy corporation the sales commissions, and the latter then passes it on to independent agents. With this a rangement the corporation can claim it does not know to whom the payments are made and thus cannot be directly linked to them.

C. Corporate Payoffs and the Market Situation

An economist has contended that corporate bribery is neither an aberration nor a special problem of morality, or even of business ethics.

Rather, it is a manifestation of two more general and interrelated problems: the concentrated market and political power of large corporations in the context of a democratic society and the conflicts posed by large numbers of significant transnational actors in a world of nation states (Kobrin, 1976: 106).

The internal organization of a corporation may reflect the wish to facilitate low-level corruption, with executives delegating responsibilities and thus avoiding close monitoring, thus creating a general atmosphere in which corruption can exist or even flourish (Rose-Ackerman, 1978: 191). Of the 32 industries that spent more than \$1 billion in improper overseas payments, half were in aircraft, oil, food, and drugs. Seven were in drugs, which was the most common. From one study of this concentration it was concluded that it was due in part to varying market conditions (Kugel and Gruenberg, 1977:47-48). In the aircraft industry the lack of their own sales forces within the host country generally necessitates the employment of foreign sales agents by the multinational corporations, and since these sales agents are independent contractors who operate for the most part outside the control of the corporations their large sales commissions, warranted by the multimillion-dollar purchase price for aircraft, is likewise outside of their control (Kugel and Gruenberg, 1977: 62). Special problems exist in such extractive industries like oil in the maintenance of a profitable relationship with the host country. Particularly in the developing countries the multinational corporation has the initial bargaining power on its side, as it is being wooed to invest tremendous sums of capital within the country. As the installations are completed, however, a shift results in the bargaining power. The fre-quent foreign payoffs in the drug industry involve two situations. It is not unusual for drug companies to deal with government officials in arranging purchases of their products, in view of the general worldwide programs for marketing that most drug companies have, along with the fact the governments in most of the developing countries and some of the West European countries are in control of most of the country's health activities.

D. Evaluation of Improper Foreign Payments

The arguments against multinational corporation payoffs are that

they conceal an accurate financial picture of the corporation, endanger the credibility of the corporation, endanger foreign relations and the image of this American image, jeopardize the internal operations of the corporation and do not necessarily improve the national economic picture.

- (1) The prospective investor or stockholder, as well as the government, does not have an accurate financial picture of the corporation.
- (2) These practices can be concealed only through various devious means or through improper accounting procedures, both of which endanger the credibility of corporations.
- (3) Through the bribery of foreign officials such payoffs endanger the relations with other governments and the American image among the general population.
- (4) They endanger the internal operations of the corporation itself. As explained by Gabriel (1977: 50):

In abiding or abetting corruption of public officials, a company gradually corrupts itself. No organization can remain for long in a state of moral schizophrenia, violating legal or ethical norms abroad while seeking to maintain its institutional integrity at home. In time, the lower standards accepted as the way of life abroad will corrupt standards of corporate life at home.

(5) Sorensen (1976: 729) maintains that there

...was no gain to our country's balance of payments or economy when U.S. companies paid bribes to win a contract that would otherwise have gone to another U.S. company. On the contrary, the added cost of these improper contracts to the host country further weakened the market for other U.S. exporters. The fact that some American companies have succeeded in these countries without the payment of bribes is an indication that U.S. exports will not suffer all that severely from an end to such payments. Those governments desirous of obtaining U.S. technology and quality will unquestionably learn to buy our goods without any special inducement.

E. Illegal Political Contributions

Since 1972 corporations have been prohibited from making direct contributions to candidates seeking election to federal offices. Corporate campaign contributions have generally been given for economic reasons: to secure bureaucratic favors and to influence policy decisions that will result in increases in corporate profits. They are also given to prevent certain legislation from being passed on decisions that might result in a decrease in corporate profits.

The Watergate investigations revealed extensive illegal contributions to the Nixon campaign fund by U.S. corporations. More than 300 corporations were eventually involved, some of them having contributed illegally large sums of money as late as 1976. Seventeen corporations pleaded guilty and were fined (generally \$5,000 or less), as were some eighteen officials of different corporations (fined \$2,000 or less). Although many corporations and executives were convicted during the two years following, there should obviously have been far more prosecutions. Jaworski has pointed out that this was difficult since the statute (18 U.S.C. 610) requires that the recipient either knew of the corporate source of political contribution or received such money in "reckless disregard" of whether the source was a corporation or not.

The experience of our investigations demonstrated the virtual impossibility of proving such knowledge by the recipient. The corporate officials making the contribution, not surprisingly, did not tell the recipient that the money was corporate. Customarily, the contributions were delivered 'from your friends at X Co.' (Jaworski, 1977: 314).

As contrasted with foreign payoffs, there is no question about the issues and consequences of corporate political contributions. Many illegal campaign contributions have involved a great deal of deception; for example, Swiss bank accounts have been used, or money has been taken from overseas subsidiaries in sealed envelopes carried by special messengers and brought into the country illegally. In order to avoid the possibility that the public will learn about the contributions, transfer pricing was used, resulting in what has been characterized as "money-laundering through foreign subsidiaries and Swiss bank accounts...a lesson in corporate wheeling and dealing (Newsweek, November 26, 1978: 34). Gulf Oil Corporation "laundered" millions of dollars in illegal contributions through a subsidiary in the Bahamas (<u>The Wall Street Journal</u>, November 14, 1977). This money had been brought in illegally and distributed to various candidates, primarily President Nixon.

F. Corporate Illegalities and the Accounting Profession

Public corporations are required by the federal securities laws to report accurate financial information. These reports have often been revealed to have been falsified so that illegal domestic and foreign payments, frauds, price-fixing, and other violations have been concealed from the public and the government. In its 1976 special report to the Senate on questionable illegal and foreign payments and practices, the Securities and Exchange Commission stated:

The almost universal characteristic of the cases reviewed to date by the Commission has been the apparent frustration of our system of corporate accountability which has been designed to assure that there is a proper accounting of the use of corporate funds and that documents filed with the Commission and circulated to shareholders do not omit or misrepresent material facts. Millions of dollars of funds have been inaccurately recorded in corporate books and records to facilitate the making of questionable payments. Such falsification of records has been known to corporate employees and often to top management, but often has been concealed from outside auditors and counsel and outside directors (Securities and Exchange Commission, 1976: a).

Many cases of improper or illegal foreign payments that have been

examined by the SEC have involved both inadequate and improper corporate books and records that have concealed questionable payments from independent auditors as well as from some or all of the top management and the board of directors. The maintenance of funds outside the normal accountability system was also involved in some cases for similar purposes. Falsifications or inadequate records were found to be deliberate in some cases, representing careful attempts of some corporate executive or members of boards of directors to hide their activities from other company officers, members of the board, and the auditors. Such defects in the corporate accountability system had in many instances been instituted at lower levels of the corporate hierarchy.

It is the responsibility, in the maintenance of all records, of the independent accountant to certify that the corporate financial statements have been presented according to generally accepted accounting principles.

Accountants are not free to close their eyes to facts that come to their attention, and in order properly to satisfy their obligations, they must be reasonably sure that corporate books and records are free from defects that might compromise the validity of these statements (Securities and Exchange Commission, 1976: 49).

As one example, the Commission specifically noted the manner in which Lockheed's illegal payments had been concealed:

Among other things, it was alleged that the defendants disguised these secret payments on Lockheed's books and records by utilizing, or causing to be utilized, false accounting entries, cash and "bearer" drafts payable directly to foreign government officials, nominees and conduits for payments to government officials and other artifices and schemes. As a result of their activities, at least \$750,000 was not expended for the purpose indicated on the books and records of Lockheed and its subsidiaries and was deposited instead in a secret Swiss bank account, and an additional \$25 million was expended in secret payments to foreign officials. In addition, the Commission alleged that over \$200 million was disbursed to consultants and commission agents without adequate records and controls to insure that the services were actually rendered. The practices were alleged to have resulted in the filing of inaccurate financial statements with the Commission with respect to the income, cost and expenses of the company (Securities and Exchange Commission, 1976: B-23).

Until quite recently there has been little emphasis on the responsibility of the auditor other than for detecting accounting errors and irregularities; most have felt they were not responsible for detecting the illegal acts committed by corporate clients. The traditional position of the American Institute of Certified Public Accountants (AICPA) has been that "the normal audit arrangement is not designed to detect fraud and cannot be relied upon to do so" (Baron et al., 1977: 56). Normally the audit is assumed to be conducted in an atmosphere of honesty and complete integrity. In making any examination, however, an independent auditor is not always aware that there may have been fraud and that if the fraud is sufficiently material it might affect his opinion of the financial statements (SAS, No. 1, Section 110.05).

Difficulties remain, however, in the auditor's ability to determine the legality or the illegality of an act. Several limitations are typically cited by the profession: (1) The scope of professional competence is limited; the determination of legality is the function of an attorney, not an auditor. (2) The illegal act may have arisen from a situation not associated with the financial aspects of the organization being audited and thus difficult if not impossible for the auditor to determine, as for example, in the realm of occupational, health, and safety regulations and truth-in-lending rules. (3) Some acts may be borderline cases in which legality is questionable, as for example, when a client pays fees to a foreign official to act as a sales agent without knowing if this official is sharing the fee illegally with others (Solomon, 1977: 53). (4) The client might possibly have covered up all traces of an illegal act so that an auditor will not discover it in the course of a normal routine examination.

In the past five years much publicity has been given to the role of accountants and auditors in the concealment of corporate crime. As a result, the accounting profession has been re-examining its standards and its codes of conduct in relation to corporate violations. In 1979 the AICPA proposed that in quarterly financial reports of publicly-held corporations, the corporation counsel, rather than the auditor, would indicate if he were "aware of any material modifications" that should be made in the interim financial data to confrom with generally accepted accounting principles (<u>The Wall Street Journal</u>, January 2, 1979). There has even been some demand for federal legislation to ensure that the accounting profession adequately carries out its obligations to the financial community and to the public.

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CHAPTER XI

CORPORATE EXECUTIVES AND CRIMINAL LIABILITY

Rarely are corporate executives held personally accountable for the actions of the corporations under their control. In this research study, for example, it was found that in 1.5 percent of all enforcement actions a corporate officer was convicted for failure to carry out his legal responsibilities to the corporation. Of 56 executives, 91 percent were convicted of federal antitrust violations, 5 percent of financial or tax violations and 4 percent in violation of the federal pure food and drug laws.

In many ways the ethical and legal problems of a corporation result from the modern corporate structure that separates ownership from management. The typical corporation is a multi-unit enterprise administered by a group of salaried and top managers with the board of directors exercising little direct power other than to dismiss management; in general, management recommendations are rubber stamped. Corporate managers have considerable autonomy, therefore, over decisions regarding production, investment, pricing and marketing as long as profits result from their decisions. For these duties executives are rewarded with salary increases, bonuses, promotions, and perks; they are penalized by demotion or dismissal. Management often, therefore, feels under considerable pressure to compromise personal ethics in order to achieve corporate goals. Badly performing firms are more likely to dismiss their executive officers, as was shown in a study that found that one in ten of the top 300 industrial corporations in 1965 alone was in the process of removing its executive officer (Soref and James, 1978: 15). The profits criterion conditioned all executive dismissal decisions, and this criterion was backed up by positive sanctions of increased salary or stock options for a favorable executive profit performance.

The delegation of responsibility and unwritten orders often serve to isolate top management from the legal consequences of their policy decisions. The complex structural relationships of large corporations make it difficult, if not impossible, to disentangle delegated authority, managerial discretion, and ultimate responsibility. By tending to fix blame on middle-managers, criminal codes reflect an individualistic bias that obscures the organizational nature of corporate violations. Upper-level management may be left unscathed for actions to which they are at least contributing, if not causative, elements. The research study revealed this bias; of the 73 charged executives whose management level was recorded, 55 percent were in the middle-manager positions, 25 percent at the vice-presidential level, and the remaining 20 percent at the highest level -- executive vice-president, president, or chairman of the board. Such a distribution will, of course, vary according to the nature of the violation. Stock manipulations and briberry of high-level officials would most frequently occur in the hands of top management, while pollution or contamination violations would be more directly attributable to lower-level managers.

A. The Use of the Criminal Sanction

The basis of criminal liability is that a criminal sanctions may be imposed only upon the commission of a prohibited act, accompanied by a culpable intent. A penal sanction is predicated upon the conduct of the accused individual; and vicarious criminal liability is dismissed, The criminal sanction may be imposed for the acts of an executive in a corporation only when there has been "authorization. procurement, incitation of moral encouragement, or ... knowledge plus acquiescence" (Sayre, 1930: 702). A plea of ignorance by corporate executives is based on the argument that they cannot be held criminally accountable for acts they did not authorize nor about which they have no specific knowledge. The corporate environment fosters this defense in that lower-level personnel "know what the boss wants" and operate to preserve the "denial option." Although an executive's mental state is culpable if he has sufficient knowledge of his surrounding environment to forsee that his actions are likely to have proscribed consequences, it is often difficult to determine what would constitute sufficient knowledge.

Not all corporate executives may be held responsible for the criminal acts of the corporation. The range of potentially liable persons is narrowed to those who have a responsible share in furthering the criminal transaction. The question of who in the corporation holds such a responsible relation to the proscribed acts was addressed in the recent case of <u>United States v. Park</u> (421 U. S. 658, 1975). The Court held:

The Government established a <u>prima</u> <u>facie</u> case when it introduces evidence sufficient to warrant a finding by the trier of facts that the defendant had, by reason of his position in the corporation, responsibility and authority either to prevent in the first instance, or promptly to correct, the violation complained of, and that he failed to do so. The failure thus to fulfil the duty imposed by the interaction of the corporate agent's authority and the statute furnishes a sufficient causal link (421 U. S. at pp. 673-674).

For the most part, measures directed at key corporate personnel are going to be invoked, if at all, only for the most blatant cases, not necessarily those with the most adverse total impact upon society. Several issues are involved. First, some actions of corporate executives are more apt than others to be regarded as particularly criminal in nature, particularly bribery of officials, price-fixing, and the manufacture and shipment of harmful products. On the other hand, actions related to defective products or actions or products that adversely affect the environment are not likely to lead to a criminal penalty. Second, the use of the criminal sanction against corporate officers is limited by the fact that they are usually community leaders with excellent educational backgrounds and high social status. Third, the argument is often presented that corporate executives should not be subjected to criminal sanctions for violating legal standards because they are responsible for advances in industry that have continuously raised the living standards and the caliber of life in our society. Fourth, the difficulties involved in investigations leading to criminal prosecution have been, and remain, blased in favor

of the corporate offender.

Legal difficulties are also encountered in the criminal prosecution of executives. First of all, it is not easy to specify legal responsibility due to the division of tasks within a corporation and criminal liability cannot be determined without solid proof of actual knowledge of the violation. Second, corporate violations are usually far more complex than conventional crimes. Antitrust violations, for example, generally necessitate high-order economic statistical data, as well as proof of a written or unwritten conspiracy among individuals. Third, the effects of the violations are extremely diffuse in nature, such as antitrust conspiracies, pollution, and substandard foods or drugs.

An important element of the criminal law that helps to explain the leniency with which corporate executive offenders are treated is the availability of the nolo contendere plea. In this plea the offender does not contest the charges; it is comparable, however, to a guilty plea for purposes of criminal sentencing. Nolo contendere usually results from plea bargaining between the government and the corporate defendant, and there are the usual advantages of pleading guilty to fewer or lesser offenses, the nature of the plea entered, reducing possible penalties, and saving time and money. Unlike bargaining with the "normal criminal," however, the executive offender generally has more time, financial support, political power, and prestige than is usually available to the prosecution. A further major advantage of the nolo plea for corporate defendants is that it cannot be offered as evidence of legal guilt in civil actions, where damage awards can be massive as compared to criminal fines. Other advantages of this plea for corporate executive defendants are: (1) they usually receive a lighter sentence because they aid the court in avoiding administrative tie-ups; (2) in spite of its power to impose full criminal penalties, the court is less likely to assess them in the absence of full litigation of the facts and circumstances surrounding the violation; and (3) it is believed that less social stigma is attached to a nolo plea than to a guilty finding or plea.

B. The Imprisonment of Corporate Executives

The government's response to corporate violations cannot be compared to its response to ordinary crime. Generally penalties imposed on top corporate management are quite lenient, particularly if one looks at them in relation to the gravity of the offenses committed, as compared to the penalties imposed on ordinary offenders. Few members of corporate management ever go to prison even if convicted; generally they are placed on probation. While one can argue, however, that first offenders in property cases frequently are given probation, they are much more likely to have had a juvenile record and to appear in court again. Corporate executives generally have no prior juvenile record and are unlikely to become involved in a criminal case again. Probation is often viewed as a slap on the wrist, and monetary penalties are meaningless to corporate executives. In the words of one federal judge: "My experience at the bar was that one jail sentence was worth 100 consent decrees and that fines are meaningless because the defendant in the end is always reimbursed by the proceeds of his wrongdoing or by his company down the line" (Bureau of National Affairs, 1976: 14). If they do go to prison, it is almost always for a very short period of time. In this study, for example, of the 56 federally convicted executives of all 683 corporations, 62.5 percent received probation, 21.4 percent had their sentences suspended, and 28.6 percent were incarcerated. Almost all (96.4 percent) had a criminal fine imposed. Those convicted of price conspiracies and income tax violations were most frequently given more severe sentences. The average prison sentence for all those convicted, whether or not they went to prison and regardless of the offense, averaged 2.8 days. There were 10 officers who had their prison sentences suspended.

A total of 16 officers of 582 corporations were sentenced to a total of 594 days imprisonment (not suspended sentences); 360 days (60.6 percent) were accounted for by two officers who received six months each in one case. Of the remaining 234 days, one officer received a 60-day sentence, another was sentenced to 45 days, and another received 30 days. The average for all imprisoned executives was 37.1 days; excluding the two six-month sentences the remaining 14 averaged 16.7 days; and excluding the 60, 45 and 30-day sentences the remaining eleven averaged 9.0 days. The 14 executives who received 60 days or less were all involved in the folding carton price-fixing conspiracy. The other case involved tax fraud. The sentences were often suspended after some part of them was served.

Problems of modest sentence following criminal conviction of corporate executives may lie with the statutes and the judges, but there are other difficulties in securing a prison sentence. Businessmen may have sought legal advice as to how to circumvent the law even before they committed the offense, and this advice may be cited as evidence of good faith in avoiding any violation of law. Businessmen defendants in criminal cases also hire lawyers known for their skills in defending their clients, presenting arguments about the health problem of the client, his previous clear record, and the unlikely event of his becoming a recidivist, all of which should warrant a light sentence. These legal experts are able to cite many precedents where a businessman charged with similar behavior had not been punished for it. Skilled corporate counsel seek, furthermore, to restrict the evidence presented in court in an attempt to conceal other offenses; plea bargaining by a corporation in a violation may, in fact, be used to avoid naming individual members of corporate management so that they will not even be tried.

Under the traditional penal model, the principal goal of punishment is rehabilitation. With this view, many judges believe that little is accomplished by sending a corporate executive to prison since the mere badge or smear of his conviction will suffice to rehabilitate him. Although the idea of rehabilitation may be inappropriate for corporate offenders, the primary purpose of the penal sanction for executives is deterrence. Although the 1974 amendment to the Antitrust Act or the Sherman Act, for example, increased the maximum jail sentence to three years, it did nothing about establishing a mandatory minimum sentence; judges are not required to impose some sort of jail sentence on convicted corporate executives.

Due to the problems entailed in the imposition of a prison sentence on prestigious corporate executives, some judges have resorted to imposing sentences of the performance by them of socially useful

activities. Although these sentences are not formally recognized forms of criminal sanction, many judges believe that "there are lots of things you can do that aren't in the law books" (Bureau of National Affairs, 1976: 10). For the purposes of restitution, and institling a greater sense of ethics and social responsibility, corporate offenders have been ordered to give speeches about their violations to business and civic groups and to work in programs designed to aid the These alternatives are rarely offered to the ordinary offender poor. in the United States, although they are offered in England (Clinard and Meier, 1979: 277). After being convicted of a conspiracy to evade \$12.3 million in federal corporate excise taxes, the chairman of the board of Fruehauf, for example, was assigned to work 25 hours a week for five months and 10 hours a week for a year in an agricultural school that he founded. The corporate president was assigned 40 hours a week in a drug addiction treatment center for five months and 8 hours a week for one additional year. When asked why he reduced the original six-month prison sentence, the federal judge replied: "It's a policy we have adopted in certain cases involving certain types of defendants to assign them to perform community service" (The Wall Street Journal, January 4, 1979).

Such sentences have been attacked on the grounds that they represent simply another cost of doing business. One U.S. antitrust Cattorney involved in a case in which a community service sentence was imposed had this to say: "They have brought it off successfully. They managed to get caught, but their grateful corporations have managed to come in with this proposal and saved them from jail. And we think it is inappropriate, at the very least" (Bureau of National Affairs, 1976: Although defended on the grounds that it forced the executive to 10). acknowledge his crime in front of his peers, which engenders humiliation, the community service alternative has been denied because it transforms "a criminal into a luncheon circuit speaker" with the potential of enabling the offense to be regarded as a mere technical violation rather than as a crime. In fact, in one case the executive sentenced to this form of "punishment" used his speeches to defend his actions rather than as a confession of wrongdoing in a serious antitrust violation.

No pattern seems to have evolved from what happens to corporate executives after they have been charged with serious law violations or have been convicted of them. In general, however, most of them are allowed to retain lucrative retirement benefits, while others may have their salaries reduced temporarily. Some are kept in the firm for some time, or at least until the case is finally resolved, largely for public relations purposes. An ordinary criminal offender is almost never retained in his position after he has been found guilty or even charged with an offense. The Board of Directors of Fruehauf Corporation, manufacturers of truck trailers and cargo containers, did not dismiss the former chairman and the former president of the corporation when they were indicted and later convicted and put on probation in 1979 for conspiracy to evade \$12.3 million in federal excise taxes between 1956 and 1965 (the corporation was fined \$10,000).

Sometimes financial settlements after dismissal are particularly large. The chief executive officer of Gulf Oil Corporation was forced to resign after it was revealed that he had been particularly involved in illegal domestic payments (Securities and Exchange Commission, 1975). He was awarded the same retirement benefits, however, that he would have received without resignation. He took a payment in lump sum of \$1.6 million, but he continued on a reduced yearly pension, from \$244,000 to \$48,000.

There is evidence that convicted corporate executives who are dismissed from their positions and who do not retire are hired by other corporations. In the price conspiracy case of the 1960s, for example, one convicted offender who was fired from his \$125,000 a year position ith General Electric, was employed immediately on release from prison by another corporation at a salary of about \$70,000. Or sometimes executives are given other positions in the same corporation.

Such maneuvers would not be possible under the proposed revision of the Federal Criminal Code. Provisions of this code would disqualify corporate executives from exercising their functions for a period of two years following a conviction. A similar control provision has also been proposed by Ralph Nader's Center for the Study of Responsive Law which has recommended that any member of management who has been convicted of a crime related to his corporate position should be forced to resign and disqualified from exercising similar duties within the corporation for a period not to exceed five years. This disqualification, it is argued, represents one form of punishment. In view of the fact that these executives only rarely receive minimum sentences, if they receive any at all, they should at least be restricted from returning to some measure of control over the great resources and the powers commanded by their corporate positions.

It is impossible to discover if convicted corporate management executives do commit subsequent offenses. Only a small number are convicted, and the convictions have occurred in recent years, for the most part. A later study should be made to follow up these convictions and cover a long-term period. Although conviction may be a traumatic experience for the executive as a person, the question remains open if it reforms him or if it only makes him more careful. For most executives, corporate pressures for personal success would probably continue unchanged even after a conviction. Nevertheless, criminal penalties often appear to have had a substantial impact, and the criminal label can have considerable consequences for the individual corporate offender's conception of himself. The corporate electrical industry conspirators refused to permit their families to visit them during their imprisonment, slightly less than a month, because of a sense of shame, guilt, and injured pride. One convicted price-fixer stated: "They would never get me to do it again... I would starve before I would do it again, ... because of what I have been through and what I have done to my family" (Hearings Before the Subcommittee on Antitrust and Monopoly of the Senate Committee of the Judiciary, 87th Congress, 2d Sess., 1961: 17067). Another convicted price-fixer recalled:

First let me comment on the impact of the sentence on me, personally. The stigma of conviction had a strong impact on me and it has not died away with the termination of my sentence and probation...The consequences of the publicity on me and my family in our social business relationships was beyond anything I had expected. I'm

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determined never to be exposed to such a risk again through any of my own actions (Bureau of National Affairs, 1976: 15).

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CHAPTER XII

CONTROLLING CORPORATE CRIME

This study has found that approximately two-thirds of large corporations violated the law, some of them many times. Serious and moderate violations were extensive. These violations are more likely to occur in some types of industries than in others. These conclusions are supported by data from other studies, Law Service reports, government reports, congressional hearings, and by numerous news articles appearing the <u>The Wall Street Journal</u> and in various trade journals. The measures to deal with corporate crime, however, are quite distinct from measures used for ordinary or even white collar crime.

The control of corporate crime/ can follow three approaches. It can be examined in terms of changing corporate attitudes or structures, it can be viewed as requiring the strong intervention of the political state through forced changes in corporate structure and effective legal measures to deter or punish, or it can be seen as needing effec-tive consumer and public pressures. The first approach can imply the development of stronger business ethics and corporate organization reforms. Government control of corporations, on the other hand, can mean federal corporate chartering, deconcentration and divestiture, larger and more effective enforcement staffs, more severe penalties, the wider use of publicity as a sanction, and, as a last resort, nation-Third, consumer pressures can be exerted through selective alization, buying, consumer boycotts, and the establishment of large consumer cooperatives. Along with all these possible measures there is the obvious need for improved information on corporate crime.

A. Development of Stronger Business Ethics

In any field ethics is a discipline that deals with what is good and bad, what is right and wrong, and the principles of what constitutes a moral duty or an obligation. Ethics in business stresses the evaluation of truth and justice in all spheres of business activities -- advertising, public relations, the handling of communications, social responsibility, consumer relations, corporate behavior abroad, and even the question of the rightness of the power of corporate size (Walton, 1977: 6). Often only a small step separates an ethical from an unethical act and, similarly, an unethical tactic from an actual violation of law.

Many corporate practices formerly considered simply unethical have now become illegal and thus subject to punishment. They include such practices of tax evalsion as false inventory values; unfair labor practices involving union rights, minimum wage regulations, specific working conditions, and overtime; violations of safety regulations related to occupation safety and health; the fixing of prices to stabilize them on the market and to eliminate competition; food and drug law violations; air and water pollution that violate government standards; violations of regulations established to conserve energy;
submission of false information for the sale of securities; false advertising; and illegal rebates.

Many types of ethical violations exist today in business, all of them closely linked to corporate crime: misrepresentation in advertising; deceptive packaging; the lack of social responsibility in television programs and, particularly, commercials; the sale of harmful and unsafe products; the sale of virtually worthless products; restricting development and built-in obsolescence; polluting the environment; kickbacks and payoffs; unethical influences on government; unethical competitive practices; personal gain for management; unethical treatment of workers; and the victimization of local communities where plants are located for the benefit of the corporation.

Businesses, and particularly large corporations, commonly complain that most government regulations are largely unnecessary. One could agree readily with this complaint if assurances could be given that the basic ingredient of strong ethical principles guided the conduct of corporate business (Walton, 1977; and Silk and Vogel, 1976). It is inherently dangerous to believe that when certain corporate behavior is not prohibited by law it can be considered permissible, regardless of the consequences. Individuals are not supposed to operate on this basis, and it is even more dangerous to society when applied to corporations. In the past few years numerous laws against pollution have been passed due to great citizen pressures to protect society from businesses that pollute. But the question has been raised as to why the businesses failed to regulate themselves without government intervention when it was realized that it was wrong for businesses to pollute. Corporations should at least manifest enough concern about the effects their products might have on consumers that when illnesses or injuries do occur they will take corrective steps and at the same time notify government agencies of these possibilities rather than to deny them or to cover up the apparent risks. Recently the pressures of consumer and other citizen interests, as well as the government, have forced a rising concern for the ethics and social responsibility of their operations.

When policy decisions that involve ethical questions as well as their consequences within a corporation are raised, who should be involved? All of the directors? The executive committee? The audit committee of the board? The corporate general counsel? These persons are but a few of those within the organization who must decide the ethical questions for the corporation. Unfortunately, the interpretations of normative ambiguity have fallen on other professions, not management alone. Corporate lawyers increasingly interpret conduct to escape ethical considerations through noting and acting upon legal loopheles; accountants and auditors are often willing to close their professional eyes to an inaccurate financial disclosure. As corporations increasingly employ specialists like accountants and lawyers to advise corporate managers about how much they may get away with, this very specialization may contribute to law violations.

The conduct of corporate business engenders moral anxiety in the public mind. Distrust of corporations and a general anti-business sentiment have developed from an aversion to big corporations generally, consumerism, environmentalism, and antagonism to excessive profits and monopolistic control, what has become known as the "big rip-off." Yet in the long run reliance cannot be placed exclusively on the development of government regulations, with its concommitant legal force, to straighten out unethical practices and the lack of social responsibility among large corporations. Both management itself and the schools of business administration must show more concern with the issue of ethical standards of business conduct.

The inculcation of ethical principles forms the very basis of all crime prevention and control, whether ordinary, white collar or corporate. Deterrence affects only the small proportion of those who rationally choose to avoid "pain" by not violating the law. Any attempt to reorganize corporate structures (or to institute federal chartering for corporations) must inevitably rely upon a broad compliance with the law. Persons in the corporate realm, whether management or boards of directors, must recognize that the very nature of laws that regulate antitrust, pollution, unfair labor practices, product safety, occupational health and safety, taxes, and other areas represent a compelling force for compliance.

The development of stronger business ethics must come first from the individual corporation and second from corporate business codes and more effective trade associations and related organizations. Some degree of stigma and censure must be directed at the violators of business ethical codes. Schools of business administration could more effectively instill realistic business ethics in their graduates. The self-policing of corporate behavior must be the fundamental prop on which government regulation rests. A House of Representatives Select Committee on Crime observed that no government regulation can be as effective as the careful monitoring of its own sales by private enterprise. Manufacturers must also realize the dangerousness of their products when abused and thus they "have a duty to the public to see that these products are put to their intended legitimate use" (quoted in Stone, 1975: 118).

B. Corporate Organizational Reform

Some experts in the area of corporate violations are skeptical of how successful legal means can be in achieving corporate compliance; the nature of the available legal means makes deterrence largely ineffective against the corporations. These experts feel that remedial actions such as monetary payments or fines do not seriously hurt a large corporation and that imprisonment, the traditional method of controlling human behavior, is impossible except for some corporation officers. The entire regulatory process is too complex to be successful.

If such a position is adopted, the major alternative appears to be some type of corporate organizational reform that would more effectively prevent violations. Corporations are run by a professional management appointed by a board of directors elected by the stockholders. Although in theory the stockholders exercise control over the corporation's affairs, in practice the board usually becomes a self-perpetuating body whose recommendations, including new board member nominations, are routinely ratified by the stockholders. Little can be expected of the shareholders as they are a largely anonymous body that must deal with a group of strangers in management and on the boards of directors.

If corporate reform is to succeed, it is essential to focus more directly on the processes of the corporate decision making structure. It is unwise to rely on traditional legal strategies since they gen erally do not alter the internal institutional structure, without which "the corporation is not likely to 'go straight' in the future" (Stone, 1975: 120). A number of changes in corporate structure have been suggested, particularly by Stone, changes that hopefully would make law violations less likely (Stone, 1975; also see Stone / 1977). They include, primarily, a more effective role for the board of direc-tors and the appointment of public directors by government. At present generally no clear functions of corporate boards of directors are specified; they have frequently been charged as being merely rubber stamps for management decisions and recommendations. Their functional relationship and responsibility to actual corporate operations must be clarified and established. If this is done the board of directors would be responsible not only for the corporate financial position and stockholder dividends but also for the public interest, which would include preventing illegal activities to increase profits. If this is to be accomplished, the interlocking of board memberships with other related corporations should obviously be prevented in order to assure that the board membership retains a personally disinterested financial position. Boards of directors should have independent staffs of their own to gather necessary information on corporate operations and to check on the claims of corporate executives and management generally.

Increasingly persons from outside the business world are being selected to represent the public, primarily as a result of outside pressures. At present, public directors generally hold token memberships on most boards. The selection of these public members by the board itself, however, is not likely to result in serious questioning of management's activities. In order to counteract this tendency it has been proposed that general public directors be nominated for the larger corporations by a Federal Corporation Commission. The appointment of public board members is not far removed from the growing practice of putting a union representative on the board. In the Federal German Republic, for example, large corporations are now required to have labor representatives on their boards, and for some time Sweden has had worker-directors for all companies that employ at least a hundred persons.

Stone has proposed that general public directors should constitute 10 percent of its directors for every billion dollars of sales or assets, whichever is greater (Stone, 1975: 158). Due to their knowledge of corporate operations, these members probably would be semi-retired business executives or academics, but they could be chosen to represent various constituents such as the public at large or consumers, suppliers, or workers. Such public board members would represent the public and consumer concerns and ascertain that the corporation is complying with the law. They would assist and maintain corporate public responsibility through probing into and being generally vigilant about corporate operations. They would help monitor the internal management system to discover, for example, any faulty workmanship and report it to the board, conduct impartial studies of the effects, for example, of corporation-made detergents on the environment or of the safety of an auto, tire, or toy, As goverment employees themselves they would serve as a liason with government agencies on needed legislation or to establish standards.

Finally, they might possibly serve as an ombudsman for plant employees. They would be paid, it has been recommended, at the highest level of the Civil Service scale; they would have a small staff, and would maintain an office at the corporation's place of business where they would be expected to spend at least half their time on the corporation's affairs.

C. Federal Corporate Chartering

A somewhat related but still different approach is the requirement that all large corporations be federally chartered and consequently subject to the control provisions of such a charter. Corporations are chartered under the laws of the various states, not under federal law. Over the years most large corporations were incorporated in the small state of Delaware where the laws were very permissive and the state lacked strong enforcement resources as well as the will to use them. By 1960 a third of the top 600 industrial corporations were chartered in Delaware, including one-half of the top 100 U.S. industrial corporations and one-third of all the corporations listed on the New York Stock Exchange.

Corporation chartering is a business. States like Delaware find attractive the income from the corporate fees and the corporate taxes that are levied. State chartering has many limitations in addition to the generally favorable management terms offered competitively. States create corporations which market products byeond state borders nationally and internationally. State governments largely fail to discover antisocial and illegal acts of corporation against stockholders and consumers. In fact, the revision of New Jersey's business code in 1968 stated that "it is clear that the major protections to investors, creditors, employees, customers, and the general public have come, and must continue to come, from federal legislation and not from state corporation acts" (Israels, 1969).

It is obvious that since the states cannot effectively accomplish this mandate against the large corporations, one alternative is for the federal government to take over the chartering.

Some form of federal chartering should become law before the end of the decade. The present system of state chartering is simply too insulting to public-policy intelligence to remain inviolate. It is perhaps quaint but certainly foolish to assume that Delaware exerts any impact on the giant firms it charters, which market not statewide, not nationwide, but worldwide. Only the federal government has the authority (though not yet the conviction) to be able to hold our largest corporations accountable to more than the fiction of their state charters (buthans and Hodgetts, 1976: 512).

Today the best known specific proposals for federal chartering are those of Ralph Nader's Corporate Accountability Research Group (Nader, Green and Seligman, 1976; Nader, 1973: 85-90). Under these proposals federal chartering would be required of any industrial retailing or transportation corporation engaged in interstate commerce if annual domestic sales were \$250 million or more, or if there were at least 10,000 employees. Specifically, federal chartering, it is maintained, would result in greater social responsibility, increased accountability, and wider disclosure. It would also make possible more effective regulation of corporations by various federal agencies, both in prevention and enforcement.

To support all of these provisions there would be graduated penalties for violations, depending upon their nature and frequency. Penalties could range from absolute fines to fines as a percentage of sales, management reorganization and executive suspensions, public trusteeship, or the dissolution of the corporate charter, the most severe penalty and perhaps somewhat unrealistic for most corporations.

Obviously corporate chartering alone would not in itself necessarily offer a solution to all corporate law violations; it would offer simply a better situation for accountability. The provisions of the charter would still have to be enforced by government agencies. Yet, the more uniform framework of a federal charter might offer greater coordination than is now provided by the SEC, the FTC, and other agencies that try independently to regulate illegal activities and secure disclosure, often without adequate legal weapons.

D. Deconcentration and Divestiture

The extensive evidence that has been presented in this study should leave little doubt of the immensity and the corresponding power of the large corporations. Few of them operate exclusively in a single product line; rather, they have extended holdings and operations in diverse fields. In some areas so great is the concentration of a few corporations that they can virtually control prices, thus leading to frequent antitrust and other suits. Concentration is particularly evidenced in the areas of oil, iron and steel, motor vehicles, electrical machinery and equipment, computers and communications. Many are multinationals that operate globally with substantial profits from foreign sales, the legality of which is difficult to supervise.

The size and the complex interrelationships of large corporations make it extremely onerous for government agencies to exercise any effective social control, or even to compete with them on an equal basis, as for example in investigations and litigation. Some government suits have involved millions of pages of testimony and documents, thousands of exhibits, and hundreds of witnesses. Conglomerates are able to maintain a high degree of corporate secrecy since their consolidated financial statements give overall data, and the data for the subsidiaries are only occasionally given in spite of a recent court decision that requires that these data be furnished to the FTC. This thwarts the shareholders' abilities to assess the performance of individual firms and thus makes extremely arduous any enforcement efforts of the government agencies. Consequently, a partial solution would be to break up the power of the large corporations by forcing them to deconcentrate and to divest themselves of certain product lines or subsidiaries.

On the grounds that large mergers are unproductive and that it is difficult to prosecute the violations of law, Senator Kennedy in 1979 introduced an anti-conglomerate bill. Under its provisions, corporations with \$2.5 billion in sales or \$2 billion in assets would be prohibited from merging no matter how distant their lines of commerce. Corporations with \$350 million in sales or \$200 million in assets would have to prove that any proposed merger would yield increased efficiencies.

Legislation has been introduced to break up or divest major "integrated" oil corporations of their control over the entire oil market. Such legislation would prohibit producers of crude oil from owning refineries or transmission pipelines (Press Associates, Inc., 1976: 135). Likewise, a bill has been proposed to prohibit "horizontal" ownership by oil firms of other energy resources, a proposal that would forbid corporations which produce or refine oil or natural gas from "owning any interest in the coal, oil shale, uranium, nuclear reactor, geothermal steam (produced by natural hot springs under the ground) or solar energy business" (Congressional Digest, 1976: '135).

E. Larger and More Effective Enforcement Staffs

The evidence shows that regulatory agencies, either at the federal or state level, do not have adequate resources to deal with either white collar or corporate crime. The detection, investigation, and prosecution of corporate crime is time-consuming; since it is organizational crime it cannot in any way be compared to ordinary crime. Evidence is secured only with great difficulty and the scope of a corporate trial tests the skills of legal counsel on both sides. An individual antitrust case, as in the case of IBM and AT&T, for example, may take as much as ten years to carry through to completion. Government lawyers, either in administrative or legal plea bargaining or in actual trial, face tremendous defensive power, particularly in the number and caliber of corporate legal counsel, both in-house and outside counsel. In a given trial the annual salary of one corporate defense lawyer may exceed that of four or five government attorneys; the age and experience may be twice or more that of a government prosecutor.

Federal regulatory agencies and the Department of Justice, as well as departments at the state level, should have greatly increased enforcement budgets with which to employ additional investigators and lawyers. Also greatly needed are adequate specialized technical personnel such as accountants, engineers, and laboratory technicians to deal with the investigation of corporate crime. It will not be easy to secure sufficient additional personnel for the enforcement of corporate regulations. Powerful opposition will come from business and conservative members of Congress. In addition, the inflationary pressures of the late 1970s have resulted in taxpayer pressures for budget reductions and strong opposition to the expansion of government operations for any purpose.

F. More Severe Penalties

It has generally been conceded among knowledgable persons that penalties for corporate offenses are far too lenient, as shown in this study. Administrative actions such as warnings and consent agreements are used too often. Civil and criminal actions are infrequently utilized, and monetary penalties, frequently because of statutory limitations, are often ludicrous in terms of the corporations' assets, sales and profits. Although executive responsibility and consequent criminal prosecutions are increasing, the number prosecuted is still small and many of them are nolle prossed. In most cases of conviction, the offender is put on probation. Some persons, however, take the position that increased penalties are no solution because regardless of the size of the monetary penalties, they can be absorbed readily; also it is so hard to convict management that, on either score, there is little deterrence. Consequently, Stone proposes changes in corporate structure as an alternative (Stone, 1975). Others would link increased penalties to federal corporate chartering (Nader, 1973).

Assuming that penalties offer some deterrence if they are strong enough, what changes might be adopted? Among the possibilities that appear to be feasible are:

- (1) Consent decrees should be strengthened so that they call for substantial remedial actions.
- (2) With few exceptions if the corporation has previously been involved in a similar offense, new cases of violation would involve administrative monetary payment or the filing of civil or criminal litigation.
- (3) Where fines are fixed by statute, they would be increased to a minimum of \$100,000 and a maximum of \$1 million, but even these large sums can be absorbed by big corporations. Preferable would be a fine assessed in terms of the nature of the violation and in proportion to the assets or annual sales of the corporation. The latter is something like the "day fine" that has been proposed for individuals in ordinary crime or instances in which the fine would be set according to their income.
- (4) More adequate would be fines that are levied by the day, as in the case of the EPA criminal fine of \$25,000 each day a corporation is in violation and \$50,000 if there have been previous convictions.
- (5) More extensive prosecution of corporate officials should take place. Criminal penalties against white collar offenders and corporate executives should be more widely used because it appears that the higher the social scale, the greater the effect (Edelhertz, 1970: 59). If convicted, a mandatory sentence of four months, or possibly in particularly flagrant cases a minimum sentence of eighteen months, should be levied. Probation could not be given except for extreme circumstances. The use of community service instead of imprisonment would be prohibited by law except in unusual circumstances.
- (6) Indemnification of convicted corporate officers by their corporations would be prevented by federal legislation which would preempt state laws permitting it.
- (7) Any management official who is convicted of criminally violating his corporate responsibilities would be deprived of assuming similar management positions within his corporation or exercising such duties in any other corporation for a period of three years.

(8) By legislation nearly all corporate civil or criminal convictions shall be publicized at the expense of the firm. Major administrative decisions, particularly in the area of false advertising, shall also be publicized by the corporation.

Rather than penalizing corporations, the federal government might well inaugurate a program for rewarding those corporations who had not been found in violation of the law. This might be accomplished through preference in government contracts, tax breaks, or by giving such corporations some recognition, such as a symbol of compliance which could be used in their advertising. Those executives of corporations with a record of non-violation might be invited to a Washington conference where they could discuss what measures they used to achieve compliance.

G. Publicitiy as a Sanction

Media publicity can be either informal or formal. Informal publicity is that ordinarily carried in the media as news items. In formal publicity the corporation is required as a part of an enforcement action to give the media an advertisement or other statement of acknowledgement of a violation and the corrective measures being taken. Conversations with numerous federal and state enforcement officials revealed that possible publicity about law violations in the mass media is probably the most feared consequence of sanctions imposed on corporations. In fact, on this assumption government agencies are frequently able to obtain an informal solution or a consent agreement or decree to a violation with little effort. This may involve remedial action, with either retroactive or future remedial provisions. Corporations generally do not wish to risk the publicity certain to arise from a prolonged court case or the imposition of a civil or criminal penalty that might, as a result of publicity, come to the attention of prominent segments of the public or to the public as a whole. Corporations usually feel it is better to make a deal becaise if the case goes to trial it will become more widely known to the public, as well as to competitors, and become embarrassing to the corporation image. Corporations who violate the law fear newspaper publicity or television . coverage.

Publicity about sanctions has many advantages (Fisse, 1971). Presmuably it increases the deterrent effects of the sanction. Second, it may be useful in warning prospective buyers of such things as deceptive advertising, defects in products, and of general consumer fraud practices. Third, publicity tends to inform the public about the actual operation of regulatory controls and enables the public to see more clearly the underlying purpose of the controls in the face of corporate defenses.

Studies have indicated that a relatively small number of violations, as well as enforcement actions that involve corporations, are publicized in the general media. If there is publicity, it is most likely to appear on the financial pages of the newspapers, that section of the paper that is seldom read by the general public. The paucity of media coverage of business crimes has been well illustrated by the press reaction to the well-known electrical equipment pricefixing case of 1961. One survey of newspapers that included 15 percent of the U.S. market found that only 16 percent of them gave firstpage coverage to the story on the day after the indicted corporations admitted their guilt; in no paper was the story given more than a single column headline (Yale Law Journal, 1961: 288-289). The story was given less than a column of print on an inside page in another 11 percent; 43 percent gave less than half a column on an inside page; and another 30 percent had no reference of any kind to the story. After the corporations had been convicted and several corporate executives imprisoned, another survey was carried out of 30 newspapers, covering 20 percent of all papers sold throughout the country. Forty-five percent of them did not carry the story on the front page. Even with these unpracedented sentences of jail terms for a number of executives, the newspaper stories often failed to mention the guilt of the convicted corporations, although they usually mentioned the sentenced executives, the references to them being phrased in terms of crime and criminal convictions. More neutral terms such as "suits" and "penalties" were used to refer to the corporations, rather than "criminal conviction"; in this particular case press coverage would not seriously harm the corporation's public image, nor would it diminish corporation The executives 'convictions often served as convenient scapesales. goats.

Most of the numerous articles concerning corporate violations and enforcement actions that are reported in The Wall Street Journal rarely appear in the general news media, and if they do are more likely to be in the business or financial section of the newspaper or magazine. In coverse fashion, The Wall Street Journal seldom covers cases of ordinary crime other than some reporting of organized crime; these cases gener-ally are related to business. A study was made of The Wall Street Journal, using a 13 issue representative sample of the year 1977-1978 and 82 articles to measure news space devoted to the reporting of corporate illegalities. There were an estimated 1,066 articles involving corporations in which a legal action was instituted, a sanction imposed, a recall campaign begun, pending legal actions, investigations, dismissals and settlements, regulations, competitor antitrust suits, editorials and labor violations. Stockholder, competitor non-antitrust, and contract dispute suits were excluded. Of these 1,066 articles, 213 were related to those 582 parent corporations and 101 subsidiaries included in the sample used in this research.

Publicity can also constitute a formal action, a sanction in itself (Fisse, 1971). This is an effective and practical means of deterrence which is offered through the use of formal publicity methods, such as mass media advertisements (e.g. corrective advertising), setting out the details of a corporation's illegal conduct, compulsory notification to the shareholders and to others by means of an annual report, and even a temporary ban on corporate advertising (see Thain, 1973; and Pitofsky, 1977). The proposed new Federal Criminal Code (Sec. 2005) states that a court may order a convicted corporation to

give notice and explanation to such corrections, in such form as the court may approve to the class of persons or to the section of the public affected or financially interested in the subject matter of the offense, by mail, by advertising in designated areas or through designated media or by other appropriate means. Corrective advertising, which requires corporate offenders to inform the public of false past advertising, has been used particularly during the 1970s by the FTC, as well as by the FDA and other agencies. Such corrective advertisements forced the makers of products like STP Motor Oil and Listerine to run a series of nationwide advertisements admitting their transgressions.¹ Such negative publicity following sanctions might deter corporations from violating the law by more directly hurting their sales.

H. Public Ownership

Public ownership, or nationalization, is one alternative means of socially controlling certain large corporations, possibly the means of last resort. Galbraith points out that private stockholders have little say in management in any enterprise, as they are run by management. "This has come to be well understood in many countries with the consequence that public ownership has been reconciled with extensive operational autonomy and marked commercial success" (Galbraith, 1974: 14). Few persons recognize the fact that the federal government is one of the largest business concerns in the United States, controlling national forests, operating huge dams including the Hoover Dam, engaging in flood control, operating the TVA, one of the largest utilities in the country, and owning and operating buildings and such huge operations as NASA. The military forces are enormous establishments run and operated by the government. The American public fails to realize that nearly all utilities, electricity and telephones are government-operated in every major country in the world except the United States, the Federal Republic of Germany, and Spain. Likewise, all foreign railroads and major airlines, except Swissair, are publicly owned, including one of the two main Canadian rail lines. The French government produces the Renault auto, and the Italian government owns the Alfa Romeo auto company and the Agip stations that sell most of the retail gasoline in the country. The Austrian steel industry is government-owned. With few exceptions in the large democracies, radio and television are pub-licly owned and administered by a board, much as is National Educational Television in the United States. Ultimately the Swiss Watch industry depends for its efficiency on the largly publicly owned firm that manufactures the watch movements, an important component of any watch (Galbraith, 1974: 14).

These examples from foreign countries are only a few instances of government ownership in other democracies. As a viable alternative in the context of corporate crime control, public ownership or nationalization should be considered only for those large industries that have become oligopolies with little or no competition, and socially irresponsible both to national interests and those of the consumer. Henry Simons, a leading economist and advocate of the free enterprise system in the United States, has stated, for example, that government should directly own and operate those few industries where competition cannot be made to function effectively (Simons, 1948).

¹ For the FTC order on Listerine see Warner-Lambert Company, 86 FTC 1398 (1975), Affirmed 562 F. 26 749 (D.C. C/R 1977).

I. Consumer Pressures

There is an implicit assumption in the notion of social responsibility that the "good behavior" of corporations will be recognized by the consumer and rewarded in the marketplace; conversely it is implicit that irresponsibility and illegal behavior will result in decreased patronage, even consumer boycott. Were this the case consumer pressure, through the withdrawal of patronage, could be an effective tool in the control of illegal corporate behavior. Unfortunately, this relatively simple measure of social control appears not to be effec-In the first place, it assumes that persons who will withdraw tive. patronage know that a corporation has been engaging in either irresponsible or illegal activities. If the consumer does not even know that a given corporation's product is injurious or unsafe, how could he or she be expected to know that the corporation is violating antitrust laws or polluting the environment? The news media, the press, the television, or the radio simply do not furnish the public the type of prominent display of information on corporate crime and ethics as they do on ordinary crime.

Second, the relation of social irresponsibility and illegality to a corporation is complicated by the existence of multiple component firms. Most persons do not know that Greyhound Corporation owns Armour meatpacking company.

Third, when cognizant of the reputation of the corporation and constantly pressured by favorable corporation advertising to purchase a product, the consumer is not likely to relate the personal failure to purchase a product to the possible control of the corporation. Without some form of organized boycott, as the effective ones of the 1970s against Gallo Wine Company and Farrah Corporation for antiunion activities, the consumer generally regards his or her individual withdrawal of a small amount of patronage as totally ineffective.

Consumer pressure might be expected through the increased development of large cooperatives. Large merchandising cooperatives are common in Canada and in Europe, particularly in Sweden and Switzerland. In fact in highly capitalist Switzerland, Migros, a cooperative which is the largest merchandising corporation in the country, controls an enormous part of retail trade. Cooperatives are associated with ethical responsibility of business. They also have an indirect influence in being able to dictate the quality standards of the products they purchase and sell. The cooperative movement offers an alternative method of controlling corporate crime; at the same time they make it possible to sell cheaper products of higher quality to the consumer. Cooperatives also offer a more active control by the consumer over management decisions than is provided the shareholders in large corporations.

J. Improvement of Corporate Crime Information

Each of the regulatory agencies and the U.S. Department of Justice publish summary statistics on their enforcement operations. These data are largely valueless for the study of corporate crime, however, as no distinction is made in the statistics for actions against corporations. No centralized federal enforcement statistics are available on enforcement actions instituted or completed against corporations in the United States; this lack of data so hampers enforcement that one would wish for something on corporations even roughly equivalent to the <u>Uniform</u> <u>Crime Reports</u> on ordinary crimes in spite of its severe limitations. This lack of corporate crime statistics affects the effectiveness of agency operations; it also affects the ability to do research in the field of corporate crime. If the present research study had relied simply on government agency information, it could not have been conducted. Even the U.S. Department of Justice has centralized individual information on only a part of the federal corporate cases that move through the courts. The <u>Federal Reporter</u>, in which are published federal court cases, is probably no more than 60 percent complete, as federal judges send in only those cases they wish to send, generally cases that tend to involve novel legal questions.

Some agencies have extremely deficient enforcement statistics, but even the data they do have on corporate crime is not always readily. available. Even under the Freedom of Information Act, some agencies will not, or cannot by law, furnish certain data. Generally, adequate enforcement data are not yet available on computers, but federal agencies appear to be moving in this direction. When the data are computerized, they are often in a form which is extremely difficult to use. The NLRB has about 40,000 enforcement entries a year on computers, but they may be listed only by case docket number, not by name. Innumerable hours of work would be needed to find the names of selected corporations; for this reason, it was impossible to include anything but court cases in the research. Much important agency information must be obtained by a time-consuming search of their records. The most difficult problem, however, is that some agency enforcement records are maintained in as many as 90 agency area offices, each of which would have to be visited to collect data. Where the records are kept in eight or ten agency regional offices, the situation is almost as difficult. Where enforcement records are maintained at the district or regional levels, generally the only cases that reach Washington are a few in need of clearance and a few selected cases.

From these examples it is evident that many agencies in the federal government with headquarters in Washington cannot even know what actions are outstanding against a large corporation, except through a laborious procedure. It is virtually impossible, moreover, for most of these agency headquarters to be able to determine the previous history of corporation violations of agency regulations, in other words the degree of corporate recidivism.

Of equal importance is for an agency to know the extent to which a given corporation has violated other agency regulations. The knowledge that the corporation has been in violation of several agencies' regulations or, on the other hand, to learn that the corporation had no other record of violations might have a significant bearing on the selection of a particular enforcement action. It might be possible, in some cases, for agencies to answer requests after considerable delay but this could largely be only in case of contemporary action; any historical data would be unobtainable.

The discussion here has been limited to initiated or completed actions against corporations that are roughly equivalent to prosecution and subsequent conviction or acquittal. If one were to obtain data equivalent to crimes known to the police, it would be necessary to have statistics on consumer complaints, competitors and others, as well as the results of investigations conducted by agencies to determine if corporations were actually in violation. Arrests might be the equivalent to many agency investigations. For almost all agencies it is virtually impossible to obtain statistics at the level of complaints and investigations; this information is held largely at the district office level, and the records at this level are extremely poor. Much of the case information is not systematically recorded, as for example, the telephone complaints. Some cases are investigated and settled by the investigator on the spot. In general, agencies object to the release of information on complaints and investigations that are underway against a corporation. The lowest level of public information is where something is initiated or an action completed. It is, therefore, almost impossible to trace the procedural development in cases statistically and to conclude on what basis the cases are selected for enforcement action.

Adequate corporate crime statistics would involve the collection of all enforcement data on actions in the 50 states, the District of Columbia, Guam, and Puerto Rico. The federal government makes no centralized collection of state and municipal administration and litigation cases against corporations except in some antitrust and some other court cases. This type of data is essential for obtaining a complete picture of corporate crime.

Finally, and most important in terms of present needs, are longitudinal studies of corporate crime. There is no way at present to study trends in this area, and trend analyses are essential to estimate changes in the extent and nature of corporate crime over time and to evaluate the effectiveness of control methods, including various types of sanctions. Within the past five years, corporate penalties have been increased in many federal and state agencies; without baseline statistics it is not possible to evaluate their deterrent effects.

It is inconceivable that centralized data are unavailable on the illegal behavior of each of our giant corporations, controlling as each does tremendous economic power of large segments of the economy as well as the well-being of millions of consumers. Greater knowledge about violations by large corporations as a group, and for individual corporations, is vital both for the prevention and the control of corporate crime. The following improvements should be _ide:

- (1) The collection of corporate crime data should be provided by a special unit within the proposed Bureau of Justice Statistics, U.S. Department of Justice, recommended to replace statistics now gathered by the FBI and the Department of Justice. This data collection would be limited to the 1,000 largest corporations; other white collar crimes would be handled separately.
- (2) Individual enforcement reports should be submitted by federal regulatory agencies and the Department of Justice on special forms; they would include complaints, investigations, and all actions initiated, pending, completed, or recommended.
- (3) These data would be compiled and analyzed annually by corporation size and industry type, and by the types of violations and enforcement action. An annual report on <u>Corporate Viola-</u> tions would be issued.

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- (4) All complaints and actions taken by state and local governments should also be reported, tabulated together and separately. This should not be a burden for them as states and local governments do not deal extensively with large corporations.
- (5) With the use of similar procedures utilized in this study, a sample of corporations could be followed longitudinally to determine the effectiveness of sanctions, among other things.

The following existing models are important in any possible improvement of corporate statistics:

- (1) The corporate crime statistics developed jointly by the New South Wales Bureau of Crime Statistics and Research and the New South Wales Corporate Affairs Commission in 1975 under the direction of Adam Sutton.² The New South Wales Project has specifically designed reporting forms, methods of data collection, computer analysis, and tables for corporate crime statistics. Data from investigations throughout all stages of the enforcement process are covered; they are analyzed by type of company, assets, complainant, violation and enforcement actions. The reports are not restricted to the large corporations; this would need to be done in a country the size of the United States, certainly at the beginning.
- (2) Although not limited to large corporations, the most complete enforcement data collected by any agency are those on spills by the Environmental Protection Division of the Coast Guard. Their computer print-outs cover practically every conceivable aspect of a corporate violation, including data on the violation and the enforcement process. The computer print-outs of the EPA and some of their regions, such as New York, also probably contain more information on enforcement cases than most other federal regulatory agencies.
- (3) A model program for recording consumer complaints and subsequent enforcement actions was put into operation in the California Department of Consumer Complaints early in 1978. These data are used for planning, budgeting and informational purposes. Modeled after Wisconsin's program of recording complaints, but far more extensive, the plan is eventually to put on computers a data bank of most known complaints in California, as well as the outcome of each complaint.
- K. Corporate Crime Research

Research studies are needed if corporate crime is to be effectively

² Research Report No. 4, "Company Investigations, 1975-1977." Department of the Attorney General and of Justice, New South Wales Bureau of Crime Statistics and Research. For a discussion of white collar crime data, containing only limited reference to corporate and particularly large corporate crime, see David Seidman, "Some Preliminary Notes on Social Indicators of White Collar Crime," LEAA-sponsored paper, Mimeo, 1975.

controlled. Substantial funds should be appropriated to support not only research on white collar crime in general, but specifically corporate crime. Both of these areas of criminality have had only limited funds for research, nothing to compare with the research support that has been given to the study of ordinary crimes. Each year there are hundreds of research studies being carried out on conventional crimes, while only a few are being conducted in the area of white collar and corporate crime. This study represents the only comprehensive study being done on corporate crime in the United States in the latter area. This research on corporate crime, although extremely difficult and complex, is essential. Studies in this particular area involve such complex organizational structures that the costs of research grants must be substantially higher than studies in the area of ordinary crime. The support of only three studies such as the one reported here would cost at least \$1 million and probably more.

In view of the very limited research that has been done in the field of corproate crime, innumerable topics remain completely unexplored. Among the research topics suggested are:

- (1) A representative sample of large corporations should be followed in terms of actions initiated against them and enforcement actions completed. With the use of procedures similar to those utilized in this study, a sample of corporations could be followed longitudinally to determine the effectiveness of the sanctions, among other things.
- (2) The most extensive studies made up to this point have been related to antitrust violations. We need studies of violations of laws that deal with other important areas, such as environmental pollution, consumer product safety, occupational safety and health, food and drugs, as well as equal opportunities in employment.
- (3) Studies of the enforcement process should be made, beginning with the complaints and investigations through the choice of the particular corporate sanctions.
- (4) The effectiveness of certain sanctions should be analyzed, and this should be accompanied by the extensiveness of corporate recidivism.
- (5) Along with Brudies of those corporations who violate the laws, studies are also needed of those that do not or who seldom violate government regulations. In our study, for example, 232 large corporations had no federal enforcement action instituted against them during the two-year period studied.
- (6) The relation of corporate decision making to violations is a complex area that should be studied. This would involve confidential interviews with corporate executives, not with reference to their own corprations but about the general situation.
- (7) Some corporations have many violations. The culture of the corporation and the internal pressures for violation should be studied.
- (8) Studies should be made of violations by subsidiaries and the relation of these subsidiaries to the parent corporation.

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APPENDIX A

FUNCTIONS OF FEDERAL REGULATORY AGENCIES USED IN THE RESEARCH

DEPARTMENT OF AGRICULTURE

<u>Agriculture Marketing Agreement Act</u>. Programs under this Act help to establish and maintain orderly marketing conditions for certain commodities and their products, such as milk, fruits, vegetables, tobacco, nuts, and hops. The programs are concerned with regulating the flow to market of many highly perishable commodities. Through orderly marketing, adjusting the supply to demand, and avoiding unreasonable fluctuations during the marketing season, the income of producers is increased by normal market forces and consumer interests are protected through quality and quantity control.

<u>Packers and Stockyards Administration</u>. The agency assists in the maintenance of free competitive practices in the marketing of livestock, meat and poultry as well as meat and poultry products. It sets out rules for fair business practices and free, open, competitive markets. The agency supervises the marketing operations of livestock, administers the Truth-in-Lending Act, posts public markets, bonds market agencies, packers and dealers, reviews proposed rates and tariffs, audits books, and evaluates services and facilities provided at public markets.

Perishable Agriculture Commodities Service. This agency program regulates fair trading and business practices in the fruits and vegetables industry. It is industry-sponsored, industry-financed and administered by the Agriculture Marketing Service. PACS's basic purpose is to protect all those who deal in produce, including growers as well as dealers, brokers, commission merchants and shippers. While it does not specify terms of marketing contracts, it requires that all those subject to the Act honor their contracts, pay debts and avoid misbranding and misrepresentation.

ARMY CORPS OF ENGINEERS

The Civil Works Program is the nation's major federal water resources development activity and involves engineering works such as major dams, reservoirs, levees, harbors, waterways, locks and many other types of structures. These works provide flood protection for cities and major river valleys, reduce the cost of transportation, supply water for municipal and industrial use, generate hydroelectric power, provide recreational opportunities for vast numbers of people, regulate the rivers for many purposes including the improvement of water quality and the enhancement of fish and wildlife and protect the shores of the oceans and lakes.

CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

The purpose of the CPSC is to protect the public against unreasonable risks of injury from consumer products; to assist consumers to evaluate the comparative safety of consumer products; to develop uniform safety standards for consumer products and minimize conflicting state and local regulations; and to promote research and investigation into the causes and prevention of product-related deaths, illnesses and injuries.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

The purpose of the EPA is to protect and enhance our environment today and for future generations to the fullest extent possible under the laws enacted by Congress. The agency's mission is to control and abate pollution in the areas of air, water, solid waste, pesticides, noise and radiation.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

The purposes of the EEOC are to end discrimination based on race, color, religion, sex or national origin in hiring, promotion, firing, wages, testing, training, apprenticeship and all other conditions of employment and to promote voluntary action programs by employers, unions, and community organizations to make equal employment opportunity an actuality.

FEDERAL ENERGY ADMINISTRATION (FEA)

The purpose of the FEA is to ensure that the supply of energy available to the United States will continue to be sufficient to meet our total energy demand. FEA also assures that in the case of energy shortages, priority needs for energy are met and the burden of the shortages is borne with equity. The FEA is also responsible for the reevaluation of all existing allocation and pricing regulations; the development of conservation and rationing contingency plans; the development of product allocation and price decontrol plans; the design, implementation, and operational effectiveness of the national energy programs to assure the lawful and equitable distribution of crude oil and petroleum products, and to preserve the competitive viability of the independent sectors of the petroleum industry.

FEDERAL POWER COMMISSION (FPC)

The Federal Power Commission regulates the interstate aspects of the electric power and natural gas industries, in order to assure that consumers have adequate supplies of gas and electricity at the lowest reasonable rates. The FPC issues permits and licenses for nonfederal hydroelectric power projects; issues certificates for interstate gas sales and construction and operation of interstate pipeline facilities; conducts continuing investigations of the electric power and natural gas pipeline industries and their relationships to national programs and objectives, including conservation and efficient utilization of resources; requires maximum protection of the environment in the construction of new projects consistent with the nation's needs for adequate and reliable electric power and natural gas services; and allocates resources consistent with the public interest. The commission also regulates some securities, mergers, consolidations and acquisitions of electric utilities, as well as their accounting.

FEDERAL TRADE COMMISSION (FTC)

The basic objective of the FTC is the maintenance of strongly competitive enterprise, to prevent the free enterprise system from being stifled, substantially lessened or fettered by monopoly or restraints on trade, or corrupted by unfair or deceptive trade practices. The FTC is charged with keeping competition both free and fair, with preventing general trade restraints such as price-fixing agreements, boycotts, illegal combinations of competitors and other unfair methods of competition. The commission also works to prevent the dissemination of false or deceptive advertisements and discrimination in price, and regulates packaging and labeling of certain consumer commodities.

FOOD AND DRUG ADMINISTRATION (FDA)

The FDA's activities are directed toward protecting the health of the nation against impure and unsafe goods, drugs and cosmetics, and other potential hazards. The agency inspects and regulates biological products, the safety effectiveness and labeling of all drugs for human use; conducts research designed to improve the detection, prevention and control of contamination of food products, as well as surveilling food products; and carries out programs for radiological health, veterinary medicine and toxicological research.

DEPARTMENT OF THE INTERIOR

The Department of the Interior has responsibility for most nationally owned public lands and natural resources. This includes fostering the wisest use of the land and water resources, protecting the fish and wildlife, preserving the environmental and cultural values of national parks and historical places, and providing for the enjoyment of life through outdoor recreation. The Department also has a major responsibility for American Indian reservation communities and for people who live in Island Terriroties under U.S. administration.

DEPARTMENT OF JUSTICE

Antitrust Division. The principle function of the division is enforcement of the federal antitrust laws, which involves investigating possible antitrust violations, conducting grand jury proceedings, preparing and trying antitrust cases, prosecuting appeals, and negotiating and enforcing final judgments. <u>Criminal Division</u>. The Criminal Division is responsible for the enforcement of all federal criminal laws except those specifically assigned to the Antitrust, Civil Rights and Tax Divisions, and a few other specialized criminal statutes. The division supervises the enforcement of approximately 900 federal statutes and assists U.S. attorneys in the field in criminal matters and litigation.

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs. The Office of Federal Contract Compliance Programs is responsible for establishing policies and goals and providing leadership and coordination of the government's program to achieve non-discrimination in employment by government contractors and subcontractors and in federally assisted construction programs; administering programs to assure affirmative action by government contractors to employ and advance in employment Vietnam era veterans and handicapped workers.

<u>Wage and Hour Division</u>. The division is responsible for planning, directing and administering programs dealing with a variety of federal labor legislation. These programs are designed to increase and protect low-wage incomes; eliminate discriminatory employment based on sex and age; prevent curtailment of employment and earnings for students, trainees, and handicapped workers; minimize losses of income and job rights caused by indebtedness; and safeguard the health and welfare of workers by discouraging excessively long hours or work.

Occupational Safety and Health Administration (OSHA). OSHA is concerned with providing safe and healthful working conditions for both the employer and the employee. It adjudicates cases forwarded to it by the Department of Labor when disagreements arise over the results of safety and health inspections performed by the department.

NATIONAL LABOR RELATIONS BOARD (NLRB)

The National Labor Relations Board administers the nation's laws relating to labor relations. The board is vested with the power to safeguard employees' rights to organize, to determine through elections whether workers want unions as their bargaining representatives, and to prevent and remedy unfair labor practices.

SECURITIES AND EXCHANGE COMMISSION (SEC)

The SEC provides the fullest possible disclosure to the investing public and protects the interests of the public and investors against malpractices in the securities and financial markets.

NUCLEAR REGULATORY COMMISSION (NRC)

The NRC licenses and regulates the uses of nuclear energy to protect the public health and safety and the environment. Its purpose is to assure that the civilian uses of nuclear materials and facilities are conducted in a manner consistent with the public health and safety, environmental quality, national security and the antitrust laws. It accomplishes this by issuing licenses to persons and companies to build and operate nuclear reactors and to own and use nuclear materials. The NRC makes rules and sets standards for these types of licenses. The NRC also inspects the activities of the persons and companies licensed to ensure that they do not violate the safety rules of the commission.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration (NHTSA). The NHTSA implements motor vehicle safety programs, issues safety standards for vehicles and motor vehicle equipment, develops and promulgates mandatory automotive fuel economy standards, enforces compliance with established standards by assessing penalties or allowing credits to manufacturers failing to meet or exceeding the average fuel economy standards.

U.S. Coast Guard, Environmental Protection Division. This division is responsible for the prevention, detection, containment, recovery and mitigation of pollution caused by spills of oil and other hazardous polluting substances into or upon the navigable waters of the U.S. and adjoining shorelines and waters of the contiguous zone.

DEPARTMENT OF THE TREASURY

Internal Revenue Service (IRS). The IRS is responsible for administering and enforcing the internal revenue laws, except those relating to alcohol, tobacco, firearms, and explosives. Basic IRS activities include providing taxpayer services and education; determination, assessment and collection of internal revenue taxes.

<u>U.S. Customs Service</u>. The Customs Service collects the revenue from imports and enforces customs and related laws. Customs is responsible for properly assessing and collecting customs duties, exise taxes, fees, and penalties due on imported merchandise; interdicting and seizing contraband, including narcotics and illegal drugs; processing persons, carriers, cargo, and mail into and out of the United States; and administering certain navigation laws.

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APPENDIX B

INTERVIEW QUESTIONS

FEDERAL AND STATE ENFORCEMENT OFFICIALS

- 1a. Kinds of violations and enforcement actions taken. What kinds of actions are taken more than others?
- 1b. Problems of enforcing actions against corporations.
- 2. How do they come to the attention of the agency?
- 3. Why is a corporation selected for more serious action? When do they get criminal sanctions? Why are some selected for informal actions? What proportion of all sanctions are informal? Why do corporations comply?
- 4. What is the relation to federal counterpart:
 - a. Lines of demarcation
 - b. Problems of jurisdiction
 - c. Why does state proceed rather than federal or vice versa?
 - d. Are there any policies?
 - e. Are relations with federal agencies satisfactory?
- 5. Has the agency enforcement budget increased in the last five years? Has the staff increased? What are the figures?
- 6. Are the staff and technical skills sufficient for enforcement? (Problems of litigation if referred to attorney general)
- 7. How much is enforcement influenced by possible movement out of the state by the corporation? Do they ever close ther plant?

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FEDERAL AND STATE AGENCY OFFICIALS INTERVIEWED

FEDERAL

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APPENDIX D

CORPORATIONS IN SAMPLE

ACF Industries AMAX Incorporated AMF Incorporated AMP incorporated ARA Services A-T-O Incorporated Abbott Laboracortes Addressograph Multigraph Corp. Air Products & Chemicals, Inc. Airco, Incorporated Akzona, Incorporated Albertson's Incorporated Alco Standard Corporation Alexander & Baldwin, Inc. Allegheny Ludlum Industries, Inc. Allied Chemical Corporation Allied Stores Corporation Allied Supermarkets, Inc. Allis-Chalmers Corporation Aluminum Co. of America (Alcoa) Amerada Hess Corporation American Bakeries Company American Beef Packers, Inc. American Brands, Incorporated American Broadcasting Cos., Inc. American Can Company American Cyanamid Company American Hoist & Derrick Co. American Home Products Corp. American Hospital Supply Corp. American Motors Corporation American Petrofina Incorporated American Standard Incorporated American Stores Company Amfac, Incorporated

Amstar Corporation Amsted Industries, Incorporated Amtel, Incorporated Anchor Hocking Corporation Anderson, Clayton & Company Anheuser-Busch Incorporated Archer Daniels Midland Company Arden Mayfair, Incorporated

Armco Steel Corporation Armstrong Cork Arvin Industries, Incorporated Asarco Incorporated Ashland Oil, Incorporated Associated Dry Goods Corporation Atlantic Richfield Company Avco Corporation Avnet Avon Products Incorporated and the strength

Babcock & Wilcox Company Battle International Ball Corporation Bausch & Lomb Incorporated Baxter Laboratories, Inc. Beatrice Foods Company Becton, Dickinson & Company Belco Petroleum Corporation Bell & Howell Company Bemis Company, Incorporated Bendix Corporation Bergen Brunswig Corporation Bethlehem Steel Corporation Black & Decker Manufacturing Co,

Blount Incorporated Blue Bell, Incorporated Eluebird Boeing Company Boise Cascade Corporation Borden, Incorporated Borg-Warner Corporation Borman's Incorporated Briggs & Stratton Corporation Bristol-Myers Company Brockway Glass Company, Inc. Brown Group Brunswick Corporation Bucyrus-Erie Corporation Budd Company Burlington Industries, Inc. Burroughs Corporation

CBS, Incorporated CPC International, Incorporated Cabot Corporation Cameron Iron Works, Incorporated Campbell Soup Campbell Taggart, Incorporated Cannon Mills Company Carborundum Company Carnation Company Carrier Corporation Carter Hawley Hale Stores, Inc. Castle & Cooke, Incorporated Caterpillar Tracktor Company Celanese Corporation Central Soya Company, Inc. Cessna Aircraft Company Champion International Corp. Champion Spark Piug Company

Charter Company Chemetron Corporation Chesebrough-Pond's Inc. Chicago Bridge & Iron Company Chromalloy American Corporation Chysler Corporation Cincinnati Milacron Incorporated Cities Service Company

Clark Equipment Company Clark Oil & Refining Corp. Clorox Company Cluett, Peabody & Company, Inc. Coca-Cola Company Colgate-Palmolive Company Collins & Aikman Corporation Colonial Stores Incorporated Colt Industries Incorporated Columbia Pictures Industries Combustion Engineering Inc. Commercial Metals Company ConAgra Incorporated Cone Mills Corporation Congoleum Corporation Consolidated Foods Corporation Continental Can Company, Inc. Continental Oil Company Control Data Corporation Cook Industries, Inc. Cooper Industries, Inc. Coors, Adolph Company Corning Glass Works Crane Company Crown Central Petroleum Corp. Crown Cork & Seal Company, Inc. Crown Zellerbach Corporation

Cummins Engine Company, Inc. Curtiss-Wright Corporation Cutler-Hammer, Incorporated Cyclops Corporation Cyprus Mines Corporation

Dan River Incorporated Dana Corporation Daniel International Corp. Dart Industries Dayco Corporation Dayton-Hudson Corporation Deere & Company Del Monte Corporation Denny's, Incorporated Diamond International Corp. Diamond Shamrock Corporation Di Giorgio Corporation Digital Equipment Corporation Dillingham Corporation Dillon Companies, Incorporated Donnelly, R.R. & Sons Company Dover Corporation Dow Chemical Company Dravo Corporation Dresser Industries Dun & Bradstreet Companies, Inc. Du Pont, E.I. de Nemours & Co.

Eagle-Picher Industries, Inc. Eastern Gas & Fuel Associates Eastman Kodak Company Eaton Corporation Eckerd, Jack Corporation Economics Laboratory, Inc. Edison Brothers Stores, Inc. Eltra Corporation Emerson Electric Company Emhart Corporation Engelhard Minerals & Chemicals Corp. Envirotech Corporation Esmark, Incorporated Ethyl Corporation Evans Products Company Ex-Cell-O Corporation Exxon Corporation

FMC Corporation Fairmont Foods Company Fed-Mart Corporation Federal Company Federal-Mogul Corporation Federal Paper Board Company, Inc. Federated Department Stores, Inc. Ferro Corporation Fieldcrest Mills, Incorporated" Firestone Tire & Rubber Company First National Stores Incorporated Fischbach & Moore, Incorporated Fisher Foods, Incorporated Fleetwood Enterprises, Inc. Fleming Companies, Incorporated Flickinger, S.M. Company, Inc. Flintkote Company Fluor Corporation Food Fair Stores, Incorporated Ford Motor Company Foremost-McKesson, Incorporated Foster Wheller Corporation Foxboro Company Fruehauf Corporation Fuqua Industries, Incorporated

GAF Corporation GATX Corporation Gamble-Skogmo, Incorporated Gannett Company, Incorporated Gardner-Denver Company General Cable Corporation General Cigar Co., Inc. (Culbro) General Dynamics Corporation General Electric Company General Foods Corporation General Host Corporation General Instrument Corporation General Mills Incorporated General Motors Corporation General Refractories Company General Signal Corporation General Tire & Rubber Company Genesco Incorporated Genuine Parts Company Georgia-Pacific Corporation Gerber Products Company Getty Oil Company Giant Food Incorporated Gillette Company Goodrich, B.F. Company Goodyear Tire & Rubber Company Gould Incorporated Grace, W.R. and Company Grainger, W.W., Incorporated Grand Union Company Great Atlantic & Pacific Tea Co. Inc. Great Northern Nekoosa Corp. Great Western United Corp. Green Giant Company Greyhound Corporation Grumman Corporation

Gulf Oil Corporation Gulf Resources & Chemical Corp. Gulf & Western Industries, Inc.

Halliburton Company Hammermill Paper Company Handy & Harman Hanes Corporation Hanna Mining Company Harnischfeger Corporation Harris Corporation Harsco Corporation Hart Schaffner & Marx Heinz, H.J. Company Hercules Incorporated Hershey Foods Corporation Heublein Incorporated Hewlett-Packard Company Hilton Hotels Hobart Corporation Hoerner Waldorf Corporation Holiday Inns, Incorporated Honeywell Incorporated Hoover Company Hormel, George A. and Company Hospital Corporation of America Howard Johnson Company Hughes Tool Company Hyster Company

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IC Industries, Incorporated

Idle Wild Foods Ingersoll-Rand Company Inland Container Corporation Inland Steel Company Inmont Corporation Insilco Corporation Interco Incorporated Interlake Incorporated International Business Machines International Harvester Company International Minerals & Chemical Corporation International Multifoods Corp. International Paper Company International Systems & Controls Corporation International Telephone & Telegraph Corporation

Iowa Beef Processors, Inc.

Jewel Companies, Incorporated Johns-Manville Corporation Johnson & Johnson Jonathan Logan Incorporated Joy Manufacturing Company

Kaiser Aluminum & Chemical Corp. Kaiser Industries Corporation Kaiser Steel Corporation Kane-Miller Corporation Kellogg Company Kellwood Company Kennecott Copper Corporation Kerr-McGee Corporation Kewanee Industries Inc. Keystone Consolidated Industries, Inc. Kidde, Walter & Company, Inc. Kimberly-Clark Corporation Knight-Ridder Newspapers Inc. Koerhring Company Koppers Company, Incorporated Kraftco Corporation Kresge, S.S. Co. (K-Mart Corp) Kroger Company

LTV Corporation (Ling-Temco-Vought) Lear Siegler, Incorporated Levi Strauss & Company Libbey-Owens-Ford Company Liggett & Myers Incorporated Lilly, Eli & Company Litton Industries, Incorporated Lockheed Aircraft Corporation Lone Star Industries, Incorporated Long's Drug Stores, Incorporated Louisiana-Pacific Corporation Lowenstein, M. & Sons, Inc. Lowe's Companies, Incorporated Lubrizol Corporation Lucky Stores Incorporated Lykes-Youngstown Corporation

MAPCO Incorporated MBPXL Corporation MCA Incorporated Macmillan, Incorporated Macy, R.H. & Company, Incorporated Malone & Hyde, Incorporated Marathon Oil Company Marriott Corporation Marshall Field and Company Martin Marietta Corporation Masco Corporation Masonite Corporation Mattel Incorporated May Department Stores Company McDermott, J. Ray and Company McDonald's Corporation McDonnell Douglas Corporation McGraw-Edison Company McGraw-Hill, Incorporated McKee, Arthur G. & Company McLouth Steel Corporation Mead Corporation Melville Shoe Corporation Mercantile Stores Company, Inc. Merck and Company, Incorporated Midland-Ross Corporation Miles Laboratories, Inc. Minnesota Mining & Mfg. Company Mobil Oil Corporation (Mobil) Mohasco Corporation Monfort of Colorado, Inc. Monsanto Company Morrison-Knudsen Company, Inc. Morton-Norwich Products, Inc. Motorola, Incorporated Murphy, G.C. Company Murphy Oil Corporation

NCR Corporation NL Industries, Incorporated NVF Company Nabisco Incorporated Nalco Chemical Company Nashua Corporation National Can Corporation National Distillers & Chemical Corp. National Gypsum Company National Service Industries, Inc. National Steel Corporation New York Times Company Newmont Mining Corporation Norris Industries, Incorporated North American Philips Corporation Northrop Corporation Northrop Corporation Northwest Industries, Incorporated Northwestern Steel & Wire Company Norton Company Norton Simon, Incorporated

Occidental Petroleum Corporation Ogden Corporation Oil Shale (Tosco) Olin Corporation Oscar Mayer & Company Outboard Marine Corporation Owens-Corning Fiberglas Corp. Owens-Illinois, Incorporated

PFG Industries, Incorporated Pabst Brewing Company Paccar, Incorporated Parker-Hannifin Corporation Parsons, Ralph M. Company Peabody-Galion Corporation (Peabody International Corporation) Peavey Company Penney, J.C. Company, Incorporated Pennwalt Corporation Pennzoil Company Pepsi Company, Incorporated Perkin-Elmer Corporation
Pet Incorporated Petrolane, Incorporated Pfizer Incorporated Phelps Dodge Corporation Philip Morris, Incorporated Phillips Petroleum Company Phillips-Van Heusen Corporation Pillsbury Corporation Pitney-Bowes, Incorporated Pittston Company Pneumo Corporation Polaroid Corporation Potlatch Corporation Procter & Gamble Company Pueblo International Inc. Pullman Incorporated Furex Corporation

Quaker Oats Company Questor Corporation

RCA Corporation Ralston Purina Company Rapid-American Corporation Rath Packing Company Raytheon Company Reichhold Chemicals Incorporated Reliance Electric Company Republic Steel Corporation Reserve Oil & Gas Company Revco, D.S., Incorporated Revere Copper & Brass, Inc. Revlon, Incorporated Rexnord, Incorporated Rexnord, Incorporated Reynolds, R.J. Industries, Inc. Reynolds Metals Company Richardson-Merrell Incorporated Rite Aid Corporation Robertson, H.H. Company Rockwell International Corporation Rohm & Haas Company Rohr Industries, Inc. Roper Corporation

SAGA Corporation SCM Corporation St. Joe Minerals Corporation St. Regis Paper Company Safeway Stores Incorporated Santa Fe International Savannah Foods & Industries, Inc. Saxon Industries, Incorporated Schering-Plough Corporation Schlitz, Joseph Brewing Company Scoa Industries, Incorporated Scot Lad Foods, Incorporated Scott Paper Company Scovill Manufacturing Company Scrivner, Incorporated Seaboard Allied Milling Corp. Seagram, Joseph E. & Sons, Inc. Searle, G.D. & Company Sears, Roebuck & Company Servomation Corporation Shell Oil Company Sheller-Globe Corporation Sherwin-Williams Company Signal Companies, Inc. Signode Corporation Simmons Company Singer Company Skaggs Companies, Incorporated

Smith, A.O. Corporation SmithKline Corporation Southland Corporation Southwest Forest Industries. Inc. Spencer Foods Incorporated Sperry & Hutchinson Company Sperry Rand Corporation Spring Mills, Incorporated Square D Company Squibb Corporation Staley, A.E. Manufacturing Co. Standard Brands Incorporated Standard Oil Company of California Standard Oil Company of Indiana Standard Oil Company of Ohio Stanley Works Stauffer Chemical Company Sterling Drug Incorporated Stevens, J.P. & Company, Inc. Stokely-Van Camp, Incorporated Stop & Shop Companies, Inc. Studebaker-Worthington, Inc. SuCrest Corporation (Ingredient Technology) Sun Oil Company Sunbeam Corporation Sundstrand Corporation Super Food Services, Inc. Super Value Stores, Inc. Supermarkets General Company Superior Oil Company Sybron Corporation Sysco Corporation

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TRW Incorporated Talley Industries, Incorporated Tandy Corporation Tecumseh Products Company Tektronix. Incorporated Teledyne, Incorporated Tenneco Incorporated Tesoro Petroleum Corporation Texaco Incorporated Texas Instruments Incorporated Texasgulf Incorporated Textron Incorporated Thickol Corporation Thriftimart, Incorporated Thrifty Drug Stores Company, Inc. Time. Incorporated Times Mirror Company Timken Company Trane Company Trans Union Corporation

Twentieth Century-Fox Film Corp.

UV Industries, Incorporated Union Camp Corporation Union Carbide Corporation Union Oil Company of California Uniroyal Incorporated United Brands Company United Merchants & Manufacturers, Inc. United Refining Company United Technologies Corporation U.S. Gypsum Company U.S. Industries, Incorporated U.S. Shoe Corporation U.S. Steel Corporation Univer Corporation Universal Leaf Tobacco Co., Inc. Upjohn Company Utah International, Inc.

VF Corporation Varian Associates Vornado Incorporated Vulcan Materials Company

Waldbaum, Incorporated Walgreen Company Wallace Murray Corporation Walt Disney Productions Walter, Jim Investors Ward Foods, Incorporated Warnaco Incorporated Warner Communications Inc. Warner-Lambert Company Washington Post Company Wean United Incorporated Weis Markets, Incorporated West Point-Pepperell, Inc. Westinghouse Electric Corp. Westmoreland Coal Company Westvaco Corporation Wetterau, Incorporated Weyerhaeuser Company Wheelabrator-Frye Incorporated Wheeling-Pittsburgh Steel Corp. Whirlpool Corporation White Consolidated Industries, Inc. White Motor Corporation Whittaker Corporation Wickes Corporation Willamette Industries, Inc.

Williams Companies Winn-Dixie Stores, Inc. Witco Chemical Corporation Woolworth, F.W. Company Wrigley, Wm. Jr. Company

Xerox Corporation

Zale Corporation Zapata Corporation Zayre Corporation Zenith Radio Corporation

APPENDIX E

SUBSIDIARIES IN SAMPLE

ABEX Corporation (IC Industries)

Admiral Corporation (Rockwell International Corp.)

Aerojet-General Corporation (General Tire & Rubber Co.)

Agrico Chemical Company (Williams Companies)

Alpha Beta Company (American Stores)

AM General Corporation (American Motors Corporation)

American Independent Oil Company (R.J. Reynolds Industries, Inc.)

American Motors Sales Corporation (American Motors Corporation)

American Optical Corporation (Warner Lambert)

American Petrofina Co. of Texas (American Petrofina Inc.)

Aminoil USA Incorporated (R.J. Reynolds Industries, Inc.)

Amoco Oil Company (Standard Oil of Indiana)

Appliance Buyers Credit Corp. (Whirlpool)

Armour and Company (Greyhound Corporation)

Associates First Capital Corp. (Gulf & Western Industries)

Avco Financial Services Inc. (Avco Corporation)

Badger Company (Raytheon Company)

Brown & Root Inc. (Halliburton Company)

Burger King Corporation (Pillsbury Company)

CF and I Steel Corporation (Crane Company) Cannon Mills Incorporated (Cannon Mills Company)

Celotex Corporation (Jim Walter Corporation)

Central INV Corporation (Dillon Companies, Inc.)

Charmin Paper Products, Inc. (Procter & Gamble Company)

Charter Oil Company (Charter Company)

Chevron Oil Company (Standard Oil of California)

Chrysler Financial Corporation (Chrysler Corporation)

Clairol Incorporated (Bristol-Myers)

Collier Carbon & Chemical Corp. (Union Oil Company of California)

Commercial Credit Company (Control Data Corporation)

Consolidation Coal Company (Continental 011 Company)

Container Corporation of America (Mobil Corporation)

Creole Petroleum Corporation (Exxon)

Douglas Oil of California (Continental Oil Company)

Eastman Chemical Products Inc. (Eastman Kodak Company)

Essex Group Incorporated (United Technologies Corp.)

Estech Incorporated (Esmark, Incorporated)

Fed-Mart Stores Incorporated (Fed-Mart Corporation)

Fiber Industries Incorporated (Celanese Corporation)

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Ford Motor Credit Company (Ford Motor Company)

- Frito-Lay Incorporated (Pepsi Company)
- Garrett Corporation (Signal Companies, Inc.)
- General Coal Company (Westmoreland Coal)
- General Electric Credit Corp. (General Electric)
- General Motors Acceptance Corp. (General Motors)
- Getty Oil Co. Eastern Operations (Getty Oil Company)
- Great Western Sugar Company, Inc. (Great Western United Corp.)
- Greyhound Lines Incorporated (Greyhound Corporation)
- Hertz Corporation (RCA)
- Honeywell Information Systems (Honeywell)
- Hooker Chemical and Plastics Corp. (Occidental Petroleum)
- Hooker Chemical Corporation (Occidental Petroleum)
- Hunt-Wesson Foods, Inc. (Norton Simon Incorporated)
- International Standard Electric (IT & T)
- Island Creek Coal Incorporated (Occidental Petroleum)
- ITT Continental Baking Company (IT & T)
- ITT Grinnell Corporation (IT & T)
- ITT Rayonier Company (IT & T)

Jeep Corporation (American Motors)

- Jones & Laughlin Industries (LTV Corporation)
- Jones & Laughlin Steel Corp. (LTV Corporation)
- K-Mart Enterprises (S.S. Kresge)
- Kelsey-Hayes Company (Fruehauf Corporation)
- Kendall Company (Colgate-Palmolive)
- Kinney Shoe Corporation (F.W. Woolworth)
- Lion Oil Company (Oil Shale Corp. [Tosco])
- Litton Systems Incorporated (Litton Industries)
- Lummus Company, Inc. (Combustion Engineering)
- Mack Trucks Incorporated (Signal Company, Incorporated)
- Marcor (Mobil Corporation)
- Massey A T Coal Company, Inc. (St. Joe Minerals Corporation)
- Miller Brewing Company (Philip Morris)
- Montgomery Ward & Company, Inc. (Mobil Corporation)
- Morrell, John & Company, Inc. (United Brands Company)
- National Broadcasting Company (RCA)
- NCC Food Corporation (National Can Corporation)
- Newport News Shipbuilding (Tenneco Inc.)
- Osco Drug Inc. (Jewel Companies, Inc.)
- Packaging Corporation of America (Tenneco Corporation)
- Parke-Davis and Company (Warner Lambert)

Youngstown Sheet and Tube Company (Lykes Corporation)

Peabody Coal Company (Kennecott Copper Corporation)

Pepsi-Cola Metropolitan Bottling (Pepsi Company, Inc.)

- Permian Corporation (Occidental Petroleum Corp.)
- Red Owl Stores, Incorporated (Gamble-Skogmo, Incorporated)

Reynolds, R.J. Tobacco Company (Reynolds, R.J. Industries, Inc.)

Schenley Industries, Incorporated (Rapid-American Corporation)

Sears Roebuck Acceptance Corp. (Sears Roebuck and Company)

Sheraton Corporation (IT & T)

Squibb, E R and Sons, Inc. (Squibb Corporation)

Sunshine Biscuits (American Brands Incorporated)

Swift and Company (Esmark, Incorporated)

Tenneco Chemicals Incorporated (Tenneco Incorporated)

Tenneco Corporation (Tenneco Incorporated)

Tenneco Oil Company (Tenneco Incorporated)

Triangle Refineries Incorporated (Kerr-McGee Corporation)

U.S. Lines Incorporated (Kidde, Walter and Company)

U O P Incorporated (Signal Companies, Inc.)

Utah Development Company (Utah International Inc.)

Vickers Energy Corporation (Esmark, Incorporated)

Vought Corporation (LTV Corporation)

APPENDIX F

NUMBER OF ACTIONS INSTITUTED BY FEDERAL AGENCIES IN 1975 AND 1976

		تعبيبيني والمست	All Corpo	ration	S				Par	ents			` <u> </u>		Subsid	liaries		
AGENCY	Tot	a1 🛷	Ma <u>fact</u>	nu- uring	Non- factu	manu- ring	Tot	a1	Ma fact	inu- uring	Non- fact	-manu- uring	Tot	:a1	Ma fact	nu- uring	Non-manu- facturing	
	Total	S/M	Tota1	S/M	Total	S/M	Total	s/M	Total	s/M	Total	S/M	Total	S/M	Total	S/M	Total	S/M
Department of	4	3	3	3	1	0	2	1	1	1	1	0	2	2	2	2	0	0
Agriculture	0.2%	0.4	0.2	0.4	0.7	0.0	0.1	0.1	0.1	0.1	1.0	0.0	1.3	2.1	1.7	3.0	0.0	0.0
Consumer Product	41	35	32	29	9	6	38	32	29	26	9	6	3	3	3	3	0	0
Safety Commission	2.4%	4.1	2.0	3.9	6.4	5.7	2.4	4.2	2.0	3.8	8.8	7.7	1.9	3.2	2,5	4.5	0.0	0.0
Environmental	291	60 [*]	287	60	4	0	271	54	268	54	3	0	20	6	19	6	1	0.0
Protection Agency	17.0%	7.0	18.3	8.0	2.8	0.0	17.4	7.1	18.5	7.9	2.9	0.0	12.6	6.4	15.8	9.0	2.6	
Equal Employment	110	110	90	90	20	20	103	103	87	87	16	16	7	7	3	3	4	4
Opportunity Commission	6.4%	12.9	5.7	12.0	14.2	19.0	6.6	13.6	6.0	12.8	15.7	20.5	4.4	7.4	2.5	4.5	10.3	14.8
Federal Trade	48	48	34	34	14	14	42	42	33	33	9	9	6	6	1	1	5	5
Commission	2.8%	5.6	2.2	4.5	9.9	13.3	2.7	5.5	2.3	4.8	8.8	11.5	3.8	6,4	0.8	1,5	12.8	18.5
Food and Drug	343	186	302	166	41	20	306	167	279	155	27	12	37	19	23	11	14	8
Administration	20.0%	21.8	19.2	22.2	29,1	19.0	19.7	22.0	19.2	22.7	26.5	15.4	23.3	20.2	19.2	16,4	35.9	29.6
Department of	48	46	43	41	5	5	43	41	39	37	4	-4	5	5	4	4	1	1
Justice	2.8	5.4	2.7	5.5	3.5	4.8	2.8	5.4	2.7	5.4	3.9	5.1	3.1	5.3	3.3	6.0	2.6	3.7
Occupational Safety and Health Adminis- tration	25 1.57	8 0.9	23 1.5	8 1.1	2 1.4	0 0.0	23 1.5	8 1,0	23 1.6	8 1.2	0 0.0	0 0.0	2 1.3	0 0.0	0 0.0	0 0 ₉ 0	2 5.1	0 0.0
National Labor	105	103	75	73	30	30	93	91	70	68	23	23	12	12	5	5	7	7
Relations Board	6.17	12.1	4.8	9.7	21.3	28.6	6.0	12.0	4.8	10.0	22.5	29.5	7.5	12.8	4.2	7.5	17.9	25.9
Securities and	20	19	16	16	4 2.8	3	20	19	16	16	4	3	0	0	0	0	0	0
Exchange Commission	1.27	2.2	1.0	2.1		2.9	1.3	2.5	1.1	2.3	3.9	3.8	0.0	0.0	0.0	0.0	0.0	0.0
U.S. Coast Guard	287 16.87	17	285 18.1	17 2.3	2 1.4	00.0	264 17.0	12 1.6	264 18.2	12 1.8	0	0 0.0	23 14.5	5 5.3	21 17.5	5 7.5	2 5.1	0 0.0
National Highway Traffic Safety Administration	286 16.7%	181 21.2	282 17.9	178 23.8	4 2.8	3 2.9	251 16.2	155 20.4	250 17.2	154 22.6	1 1.0	1 1.3	35 22.0	26 27.7	32 26.7	24 35.8	3 7.7	2 7,4

APPENDIX F (continued)

NUMBER OF ACTIONS INSTITUTED BY FEDERAL AGENCIES IN 1975 AND 1976

		All Corporations							Par	ents					Subsid	iaries		
AGENCY	Total		Manu- facturing		Non-m factu	Non-manu- facturing		Total		Manu- facturing		anu- ring	Total		Manu- facturing		Non-manu- facturing	
	Total	S/M	Total	S/M	Total	s/M	Total	S/M	Total	s/m	Total	s/m	Tota1	s/M_	Total	S/M	Total	s/m
Federal Energy	31	28	30	27	1	1	28	26	27	25	1	1	3	2	3	2	0	0
Administration	1.8%	3.3	1.9	3.6	0.7	0.9	1.8	3.4	1.9	3.7	1.0	1.3	1.9	2.1	2.5	3.0	0.0	0.0
Department of	60	0	59	0	1 0.7	0	57	0	56	0	1	0	3	0	3	0	0	0
Defense	3.5%	0.0	3.8	0.0		0.0	3.7	0.0	3.9	0.0	1.0	0.0	1.9	0.0	2.5	0.0	0.0	0.0
Other Agencies	13	10	10	7	3	3	12	9	9	6	3	3	1	1	1	1	0	0
	0.8%	1.2	0.6	0.9	2.1	2.9	0.8	1.2	0.6	0.9	2.9	3.8	0.6	1,1	0.8	1.5	0.0	0.0
Total	1712	854	1571	749	141	105	1553	760	1451	682	102	78	159	94	120	67	39	27
	100.0%	100.0	100.0	160.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

* Many of the cases where seriousness was unknown were from the Environmental Protection Agency (EPA).

APPENDIX F

NUMBER OF ENFORCEMENT ACTIONS TAKEN BY FEDERAL AGENCIES IN 1975 AND 1976

			A11 Cor	poration	S				Par	rents					Subsid	laries		
AGENCY	Tot	:a1	M fac	lanu- turing_	Non- fact	manu-	Tot	a1	Ma fact	nu- uring	Non- fact	manu- uring	Tot	:a1	Ma fact	inu- uring	Non- fact	manu- uring
	Total	S/M	Total	s/M	Total	s/M	Total	s/M	Total	S/M	Total	S/M	Total	s/m	Total	_s/m	Total	S/M
Department of	7	3	4	3	3	0	5	1	2	1	3	0	2	2	2	2	0	0
Agriculture	0.4%	0.3	0.3	0.4	2,1	0.0	0.3	0.1	0.1	0.1	2.9	0.0	1.2	2.1	1.6	2.8	0.0	0.0
Consumer Product	43	37	35	32	8	5	40	34	32	29	8	5	3	3	3	3	0	0
Safety Commission	2.5%	4.2	2.2	4.1	5.7	5.0	2.6	4.3	2.2	4.1	7.6	6.5	1,9	3.2	2.4	4.2	0.0	0.0
Environmental	267	25	264	25	3	0	249	21	247	21	2	0	18	4	17	4	1	0
Protection Agency	15.5%	2,8	16.7	3.2	2.1	0.0	16.0	2.7	17.0	2.9	1.9	0.0	11.2	4.2	13.6	5.6	2.8	0.0
Federal Trade	62	62	51	51	11	11	60	60	51	51	9	9	2	2	0	0	2	2
Commission	3.6%	7.0	3.2	6.5	7.8	10.9	3.9	7.6	3.5	7.2	8.6	11.7	1.2	2.1	0.0	0.0	5.6	8.3
Food and Drug	330	173	293	157	37	16	294	155	271	147	23	8	36	18	22	10	14	8
Administration	19.2%	19.6	18.6	20.0	26.2	15.8	18.9	19.6	18.7	20.6	21.9	10.4	22.4	18.9	17.6	14.1	38.9	33 .3
Department of	14	1	14	1	0	0	14	1	14	1	0	0	0	0	0	0	0	0
Justice	0.8%	0.1	0,9	0.1	0.0	6 0	0.9	0.1	10.0	0,1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Occupational Safety and Health Review Commission	53 3.17.	28 3.2	48 3.0	26 3.3	5 3.5	2 2.0	42 2.7	23 2.9	41 2.8	23 3.2	1 1.0	0 0.0	11 6.8	5 5.3	7 5.6	3 4.2	4 11.1	2 8.3
National Labor	115	115	86	86	29	29	104	104	82	82	22	22	11	11	4	4	7	7
Relations Board	6.7%	13.0	5.5	11.0	20,6	28.7	6.7	13.2	5.6	11.5	21.0	28.6	6.8	11.6	3.2	5.6	19.4	29.2
Securities and	1	1	1	1	0	0	1	1	1	1	0	0	0	0	0	0	0	0
Exchange Commission	0.17	0.1	0.1	0.1	0.0	0.0	0.1	0,1	0.1	0.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
U.S. Coast Guard	220 12.8%	13 1.5	218 13.8	13 1,7	2 1.4	0.0	202 13.0	9 1.1	202 13.9	9 1.3	0 0.0	0 0.0	18 11.2	4 4.2	16 12.8	4 5.6	2 5.6	0 0.0
National Highway Traffic Safety Administration	291 16.97	181 20.5	287 18.2	178 22.7	4 2.8	3 3.0	256 16.4	155 19.6	255 17.6	154 21.6	1 1.0	1 1.3	35 21.7	26 27.4	32 25.6	24 33.8	3 8.3	2 8.3

APPENDIX F (continued)

NUMBER OF ENFORCEMENT ACTIONS TAKEN BY FEDERAL AGENCIES IN 1975 AND 1976

		All Corporations							Pa	irents			Subsidiaries						
AGENCY	To	Total		Manu- facturing		Non-manu- facturing		Tota1		Manu- facturing		Non-manu- facturing		Total		Manu- facturing		manu- uring	
	Total	S/M	Total	s/m	Total	S/M	Total	S/M	Total	S/M	Total	S/M	Tota1	s/M	Tota1	s/M	Total	S/M	
Federal Energy Administration	25 1.5%	19 2.1	25 1.6	19 2,4	0 0.0	0 0.0	21 1.3	17 2.2	21 1.4	17 2.4	0 0.0	0 0.0	4 2.5	2 2.1	4 3.2	2 2.8	0 0.0	0 0.0	
Department of Defense	59 3.4%	0 0.0	58 3.7	0 0.0	1 0.7	0 0.0	56 3.6	0 0.0	55 3.8	0 0.0	1 1.0	00.0	3 1.9	0 0.0	3 2.4	0 0.0	.0 0.0	00.0	
Federal Courts	224 13.0%	220 24.9	187 11.9	186 23.8	37 26.2	34 33.7	206 13.2	202 25.6	172 11.8	171 24.0	34 32.4	31 40.3	18 11.2	18 18.9	15 12.0	15 21.1	3 8.3	3 12.5	
Other Agencies	7 0.4%	6 0.7	6 0.4	5 0.6	1 0.7	1 1.0	7 0.4	6 0.8	7 0.5	5 0.7	1 1.0	1 1.3	0 0.0	0 0.0	0 0.0	0 0.0	0 0.0	0 0.0	
Total	1718 100.07	884 100.0	1577 100.0	783 100.0	141 100.0	101 100.0	1557 100.0	789 100.0	1452 100.0	712	105 100.0	77 100.0	161 100.0	95 100.0	125 100.0	71 100.0	36 100.0	24 100.0	

APPENDIX G

LAW SERVICES USED AS SOURCE OF INFORMATION*

Department of Labor (Wage and Hour Division, NLRB)

CCH Labor Cases Decisions and Orders of the National Labor Relations Board

Federal Trade Commission and Department of Justice (Antitrust Division)

CCH Trade Regulation Reporter BNA Product Safety and Liability Reporter CCH Trade Cases CCH Consumer Credit Guide CCH FTC Complaints and Orders

Environmental Protection Agency

CCH Pollution Control Guide BNA Environment Reporter

Food and Drug Administration

Federal Consumer Product Safety Service FDA Consumer

BNA Product Safety and Liability Reporter

Securities and Exchange Commission

CCH Federal Securities Law Reporter SEC News Digest

Federal Energy Administration

CCH Energy Management Energy Users Report

Consumer Product Safety Commission

BNA Product Safety and Liability Reporter CCH Consumer Product Safety Guide

Occupational Safety and Health Administration

CCH Employment Safety and Health Guide BNA Occupational Safety and Health Reporter BNA Occupational Health and Safety Cases

Internal Revenue Service

CCH U.S. Tax Cases CCH Tax Court Petitions

U.S. Department of Agriculture

U.S. Department of Agriculture Decisions

National Highway Traffic Safety Administration

BNA Product Safety and Liability Reporter CCH Consumer Product Safety Guide

* CCH = Commerce Clearinghouse BNA = Bureau of National Affairs

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Case Number: DF DE S Source: DL C1	CORPORATE VIC	NATION FORM News/mag Other	L Sance:	ion Incomplete	
	Name: Parent Firm:	Agency or Court:			
	Primary Industry:	Date of Decision:		00000	
	Agency Initiating Action:				DAT
		SANC	TIONS		S
	Date Action Instituted:	□ Warning letter	D Probation	<u>fc</u> for officers	RDS
005	Violation:	Corrective advertising Consent order Cease order Restitution Eliminate Follution Install equipment License revocation	Fine offic Imprison o Other acti	ers fficers ons against ôfficere	USED IN ST
	Length of Violation:	Recall commodity Destruction of commodity	Consent de	ration crees	AGD
	Amount of Violation:	Production Halt Divestiture	□ Injunction	s ction	
	Severity of Violation:	Other:	Seizure an of goods	d destruction	
	□Serious □Moderate □Minor		🗍 Treble dam	ages e	
	Sanction:		Class acti	on	
	Severity of Sanction:	Resulting Corporate Change:			

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APPENDIX H

Case	Number: DDDDDDDDDD Source: Law Service	LEGAL ACTIONS INSTITUTED	Incomplete Final decision reached
	10K	Other	
000 00 00	Name: Parent firm: Primary Industry: Agency Initiating Action:	Severity of Proposed Sanction:	□ Minor
300000 000	Date Action Instituted: Alleged Violation:	Present status of case:	
	Length of Alleged Violation: Date of Violation: Amount of Alleged Violation: Severity of Alleged Violation: Serious Moderate	FINAL DECISION Date: Agency or Court: Minor	
	Proposed Sanction:	Details:	ont'd on back)

APPENDIX H (continued)

APPENDIX I

MEASUREMENTS OF ASSOCIATION

ACTIONS INSTITUTED

	<u>N</u>	<u></u>	<u> </u>	Gamma
Primary Violation Type X Secondary Violation Recorded	305	.732		
Primary Industry X Seriousness of Violation				
Federal, Parent Federal, Subsidiary	1,598 149	.077 .184		
Primary Violation Type X Seriousness of Violation				
Federal, Parent, Manufacturing	258	.423		
Primary Violations Level 2 X Seriousness of Violation				
Federal, Parent, Manufacturing	1,467	. 574		
Size of Corporation X Seriousness of Violation				
Federal, Parent, Manufacturing, Not Against Officers Only + Imposed + Proposed	1,460 1,216 219			.12 .14 .16
Primary Industry X Primary Violation Type				
Federal, Parent + Imposed, Not Against Officers Only + Proposed, Not Against Officers Only	1,863 1,558 270	.047 .048 .106		
Federal, Subsidiary + Imposed, Not Against Officers Only + Proposed, Not Against Officers Only	167 142 21	.137 .120 .439		
Size of Corporation X Primary Violation Type				
Federal, Parent, Not Against Officers Only + Serious + Serious/Moderate + Minor (only)	1,853 465 1,012 578	.129 .125 .156 .207	.033 .025 .019 .154	
+ Imposed	1,552	.152	.033	
+ Serious + Serious/Moderate + Minor (only)	353 788 527	.139 .191 .211	.038 .022 .135	
+ Propcsed + Serious + Serious/Moderate + Minor (only)	269 103 206 42	.155 .145 .200 .645	.039 .039 .018 .536	

	<u>N</u>	Tau	<u> </u>	Gamma
Size of Corporation X Primary Violation Type (continued)				
Federal, Parent, Not Against Officers Only				
+ Manufacturing	1.716	.133	.037	
+ Serious	408	.129	.035	
+ Serious/Moderate	905	.161	.023	
+ Minor (only)	555	.205	.154	
+ Imposed	1,448	.156	.037	
+ Serious	31.3	.146	.055	
+ Serious/Moderate	712	.201	.028	
+ Minor (only)	504	.209	.135	
+ Proposed	238	.148	.048	
4 Serious	88	.144	.071	
+ Serious/Moderate	177	.186	.035	
+ Minor (only)	42	.645	.536	
+ Non-Manufacturing	137	.155	.043	
+ Serious	57	.151	.101	
+ Serious/Moderate	107	.164	.023	
+ Minor (only)	23	.431	.147	
T WHOLESSIE	7/	1.00	EAI	
Timposed + Sorious	14	.409	• 791 1 0	
+ Serious/Moderate	10	•0.00 51.0	1.0	
+ Minor $(oply)$.)10	007	
+ Proposed	2	000	000	
+ Serious	3 1	.000	000	
+ Serious/Moderate	- -	000	000	
	*			
+ Ketali				
τ 1 mposed	84	.166	.061	
+ Serious	31	.10/	.018	
+ Serious/Moderate	01	.141	.020	
+ Proposed	L9 01	.455	.1.25	
L Corious	21	.349	.450	
T Serious/Moderate	21	.020	1.0	
· Derrous/Moderate	4 1	• 249	.450	
+ Service				
+ Imposed	6	.400	.750	
+ Serious	3	.500	.250	
+ Serious/Moderate	- 5	.500	.875	
+ Minor (only)	1	.000	.000	
+ Proposed	7	.570	.424	
+ Serious	4	.667	.818	
+ Serious/Moderate	7	.570	.424	

	<u>N</u>	<u>_Tau</u>	2	Gamma
Categories of Subsidiary X Primary Violation Type				
Manufacturing. Federal	1 866	0///		
+ Large - Billion dollars and un	1,302	.044		
+ Not Against Officers Only	1,002	.057		
+ Imposed	1 083	0/13		
+ Proposed	191	.045		
+ Medium - \$500 - \$999 million	344	.040		
+ Not Against Officers Only				
+ Imposed	304	053		
+ Proposed	38	081		
+ Small - \$300 - \$499 million	214	107		
+ Not Against Officers Only				
+ Imposed	186	.125		
+ Proposed	21	.096		
Note-monufacturing Federal				
A Targo - Dillion dollars and we	185	.135		
+ Modium = $(500 - 6000 \text{ million})$	112	.130		
+ Small - \$300 - \$755 million	02	.197		
	τ0	.10/		
Wholesale, Federal, Not Against Officers Only				
+ Large - Billion dollars and up				
+ Proposed	5	.583		
+ Medium - \$500 - \$999 million				
+ Imposed	5	1.0		
Retail. Federal. Not Against Officers Only				
+ Large - Billion dollars and un				
+ Imposed	69	120		
+ Proposed	19	346		
+ Medium - \$500 - \$999 million				
+ Imposed	24	.080		
Commiss Endowed Net Applant Office of				
belvice, rederal, Not Against Officers only				
T Large - Diffion collars and up		~ ~ ~		
+ Modium = \$500 = \$000 = 11i = 1	5	.643		
t Twocod		0 F 0		
+ Small - S200 - S400 mall	Э	.352		
+ Bronocod		500		
a de la construcción de la constru La construcción de la construcción d	3	.300		
Primary Violation Type X Level of Sanction				
Federal Parent Not Against Officars Only	1 706	67E		
+ Manufacturino	1,700	.075		

	<u> </u>	Tau	<u> </u>	Gamma
imary Violations Level 2 X Level of Sanction				
Federal, Parent, Not Against Officers Only				
+ Manufacturing	1,651	.836		
+ Imposed	1,450	.855		
+ Serious	313	.645		
+ Serious/Moderate	712	.734		
+ Minor (only)	505	1.0		
+ Proposed				
+ Serious	85	.726		
+ Serious/Moderate	167	.825		
+ Minor (only)	5	1.0		
Non-montfacturing				
+ Imnocod	105	.796		
n de la constante de la constan La constante de la constante de		•••		
+ All Primary Industry Category Total				
+ Imposed	1,555	.842		
imary Violation Type X Initiating Agency				
Federal, Parent, Manufacturing, Not Against				
Officers Only				
+ Imposed	1,453	.365		
+ Serious	315	.501		
+ Serious/Moderate	714	.341		
+ Minor (only)	506	.620		
+ Proposed	239	.455		
+ Serious	89	.446		
+ Serious/Moderate	178	.506		
+ Minor (only)	42	.681		
가장 성격 이상 전에 가장 이 것을 알려요. 이는 것을 가지 않는 것은 것은 것을 가지 않았다. 것은 것을 가지 같은 것은 것은 것을 같은 것은 것은 것은 것은 것을 알려요. 것은 것은 것을 다 가지 않았다. 것은 것은 것은 것은 것은 것을 하는 것을 것을 수 있다. 것은 것은 것은 것은 것은 것은 것은 것을 것				
rimary Violation Type X Categories of Victim				
Federal, Manufacturing				
+ Parent	1,725	.920		
+ Subsidiary	141	.986	an an Ar Ar Ar A An Ar An Ar Ar	
Federal, Non-manufacturing				
	138	.852		
+ rarent + Subsidiary	47	,946		

ENFORCEMENT ACTIONS

	<u></u> <u>N</u>	<u>Tau</u>	2	Gamma
Primary Sanction X Secondary Sanction Recorde	<u>d</u> 631	.549		
Primary Violation Type X Sanction Type Level	1 (combined)			
Imposed, Federal, Parent	1,557	.510		
+ Serious	356	.547		
+ Serious/Moderate	790	.582		
Proposed, Federal, Parent	271	.443		
+ Serious	104	.420		
+ Serious/Moderate	207	.435		
Manufacturing, Federal, Parent				
+ Imposed	1,453	.563		
+ Serious	315	.563		
+ Proposed	240	.455		
+ Serious	89	.436		
Primary Violations Level 2 X Sanction Type Le	vel 1 (combined)			
Manufacturing, Federal, Parent				
+ Imposed	1,453	.725		
+ Serious	315	.657		
+ Serious/Moderate	714	.720		
+ Minor (only)	506	.886		
+ Proposed	240	.705		
+ Serious	89	.719		
+ Serious/Moderate	178	.752		
+ Minor (Only)	42	.360		
Primary Violation Type X Enforcement Action				
Imposed, Federal, Parent	1,552	.460		
+ Manufacturing	1,448	.468		
Proposed, Federal, Parent	260	.493		
+ Manufacturing	229	.484		
Primary Violation Type X Criminal Fines Again	st Corporation/Offic	<u>ers</u>		
Manufacturing Federal Parent	는 이 것은 것은 것은 것은 것은 것이 있다. 같은 것은 것은 것은 것은 것은 것은 것은 것이 같이			
+ Imposed	360	.876		
+ Serious	71	.593		
+ Serious/Moderate	126	.770		
+ Proposed	그는 것을 같은 것을 해야 한다.			
+ Serious	30	.559		
+ Serious/Moderate	39	.684		
Primary Violations Level 2 X Criminal Fines A	gainst Corporation/0	fficers		
Monufacturing Ecderal Baront			이 있다. 제품 문제 1945년 - 1945년 - 1947년 - 1947년 - 1947년 - 1947년 1947년 - 1947년 - 19	
Manutacturing, reverar, rarent	260	885		
T Imposed		609		
+ Sarious/Moderate	126	.787		
+ Pronosed	66	.822		
	о Л	600		
T Derlous L Contour Moderate	UC 00	-003 70/		
T DELTOUS/INDELALE		./44		

Ì

		<u> </u>	<u> </u>	2	Gamma
Size of Corporation X Sanction Typ	e Level 1 (combined)				
Federal, Parent, Not Against	Officers Only				
+ Imposed		1.549	.213	.044	
1996년 2011년 - 1997년 1998년 1997년 1997년 1997년 - 1997년 - 1997년 1997년 1997년 1997년 1997년 1997년 1997년 1997년 1997년 1997년 1997년 - 1997년 1 1997년 - 1997년 1 1997년 1997년	+ Serious	351	.215	.030	
	+ Serious/Moderate	785	.232	.013	
	+ Minor (only)	527	.242	.122	
+ Proposed		269	.131	.013	
· 사망에는 물건 · · · · · · · · · · · · · · · · · ·	+ Serious	103	.158	.024	
	+ Serious/Moderate	206	.162	.024	
지만 그는 것이는 것이 것을 한 것을 하는 것은	+ Minor (only)	42	.222	.049	
+ Manufacturing					
+ Imposed		1 446	217	050	
물건은 가격을 전 것이 가슴 것을 벗어야 한다.	+ Serious	311	217	.020	
	+ Serious/Moderate	710	227	.039	
	+ Minor $(only)$	504	-237	130	
+ Proposed	1	238	129	023	
에 가지는 것 같은 것이 있는 것이 같은 것이 같이 있다. 가지 않는 것이 같은 것이 있다. 같은 것은 것은 것이 같은 것은 것이 같은 것이 같은 것이 같은 것이 같이	+ Serious	88	149	015	
	+ Serious/Moderate	177	157	031	
기 것은 것 같은 것을 알 것 같아요. 이 것 같아요.	+ Minor (only)	42	.222	.049	
+ Non-mont footuring					
+ Tmpocod		100	050	050	
, mbosed	- Comi ouro	103	.259	.050	
	+ Serious Medenete	40	.2/3	.056	
이가 바랍니다. 이가 가려면 있는 것이라. 이가 가 있는 것이 있는 것이다. 이가 있는 것이 있다. 이가 가 같은 것이 같이	+ Minor (only)	/)	.323	.055	
+ Proposed	i minor (onry)	23	.449	.102	
	+ Serious	JL 15	•204	.12/	
에는 것은 것이 있는 것을 알았다. 이는 것을 가지 않는 것이 있는 것이 있다. 같은 아이들은 것이 있는 것은 것이 있는 것이 있는 것이 같이 있는 것이 같이 있는 것이 같이 있다.	+ Serious/Moderate	20	- 322	.344	
	· Derwend/indichard	L J	•233	•124	
Size of Corporation X Enforcement A	<u>iction</u>				
Federal, Parent, Not Against	Officers Only				
+ Imposed		1,544	.184	.049	
	+ Serious	349	.173	.039	
이 것은 것은 것은 것을 가지 않는 것을 수 있다. 것은 것을 가지 않는 것을 수 있다. 것은 것은 것은 것을 수 있다. 것은 것을 가지 않는 것을 수 있다. 것은 것을 가지 않는 것을 수 있다. 가지 않는 것을 수 있다. 것은 것은 것은 것은 것은 것을 수 있다. 것은 것은 것은 것은 것은 것을 수 있다. 것은	+ Serious/Moderate	783	.181	.017	
	+ Minor (only)	527	.238	.122	
+ Proposed		258	.169	032	
	+ Serious	102	.165	.061	
방법 등 전에 가지 않는 것을 하는 것이 같아요. 말	+ Serious/Moderate	205	.232	050	
	+ Minor (only)	32	.218	.121	
+ Manufacturino					
+ Imnosed		1 //1	101	^ = 7	
	+ Serious	1,441	.191	.055	
승규가 가장 물건을 가지 않는 것을 가지 않는 것을 가지 않는 것을 했다.	+ Serious/Moderate	309	.1/8	.047	
물건은 방법을 물러 걸었다. 그는 것을 수 있는 것을 가지?	+ Minor (only)	700	.190	.019	
+ Proposed	······································		.439	.131	
	+ Serious	441 97	•12/ 15/	.033	
	+ Serious/Moderate	176	•1J4 911	•041 052	
	+ Minor (only)	-70	•411 919	101	
	, s = - J ∕		• • • • • • • • • • • • • • • • • • •		

이 방법에 가장되었다. 그는 것 같은 것은 것은 것을 가지 않는 것을 가지 않는 것을 가지 않는 것을 했다. 같은 것은 것을 알려야 한다. 것은 것을 것을 것을 것을 수 있다.	<u> </u>	<u>Tau</u>	<u> </u>	Gamma
Size of Corporation X Enforcement Action (continued)				
Federal, Parent, Not Against Officers Only				
+ Non-manufacturing				
+ Imposed	103	.166	.055	
+ Serious	40	.186	.081	
+ Serious/Moderate	75	.195	.066	
+ Minor (only)	23	.449	.419	
+ Proposed	31	.399	.329	
+ Serious	15	.523	.830	
+ Serious/Moderate	29	.488	.332	
<u>Size of Corporation X Amount of Monetary Penalty Against</u>	Corporat	<u>ion</u>		
Manufacturing, Federal, Parent, Not Against Office	rs Only			
+ Imposed	339			44
+ Serious	50			09
+ Serlous/Moderate	105			08
+ MINOF (ONLY)	224			τ.υ
+ Proposed	82			-1.0
+ Serious	18			-1.0
+ Serious/Moderate	34			-1.0
+ Minor (only)	39			-1.0
Categories of Subsidiary X Sanction Type Level 1 (combine	<u>ed)</u>			
Federal, Not Against Officers Only				
+ All Primary Industry Types, Imposed	1,716	.084		
+ Manufacturing				
+ Imposed	1,576	.073		
+ Billion dollars	1,082	.054		
+ \$500-\$999 million	303	,086		
+ \$300-\$499 million	186	.204		
+ Proposed				
+ Billion dollars	191	.033		
+ \$500-\$999 million	38	.083		
+ \$300 ₂ \$499 million	21	.077		
+ Non-manufacturing				
+ Imposed	140	.210		
+ Billion dollars	83	.177		
+ \$500-\$999 million	37	.165		
+ \$300-\$499 million	б.	.385		
+ Wholesale				
+ Imposed	15	.099		
+ Billion dollars		.000		
+ \$500-\$999 million	5	.306		
+ \$300-\$499 million	1	.000		
+ Proposed				
+ Billion dollars	5	.583		
+ \$500-\$999 million	1	.000		
- 2018년 2017년 2017년 동생동의 대출에 관련 대출을 통합을 위해 통한 것이 가득 수는				

(continued from previous page)

Categories of Subsidiary X Sanction Type Level 1 (combined)

Federal, Not Against Officers Only

+ Retail			
+ Imposed		95	.167
	+ Billion dollars	69	.228
	+ \$500-\$999 million	24	.102
방법 사람이 있는 것은 것이 있는 것을 했다.	+ \$300-\$499 million	1	.000
+ Proposed			
	+ Billion dollars	19	.389
	+ \$500-\$999 million	6	.000
+ Service			
+ Imposed		11	.267
	+ Billion dollars	5	.352
방송에 있는 것 것은 것에서 가격을 들었다.	+ \$500-\$999 million	5	1.0
	+ \$300-\$499 million	1	.000
+ Proposed			
	+ Billion dollars	3	.000
	+ \$500-\$999 million	3	.500
	+ \$300-\$499 million	2	500

Victim X Enforcement Action

Federal, Parent, Manufacturing, Not Against Officers Only

+ Imposed	1,446	.458
+ Serious	311	.502
+ Serious/Moderate	710	.494
+ Minor (only)	506	.813
+ Proposed	228	.494
+ Serious	88	.497
+ Serious/Moderate	177	.505
+ Minor (only)	32	.306

Court/Administrative Sanction X Sanction Type Level 1

Federal, Parent, Manufacturing, Not Against Officers Only

+ Imposed

+ Imposed	1 ₉ 400	.093
	+ Serious 313	.183
	+ Serious/Moderate 712	.172
	+ Minor (only) 505	.000
+ Proposed	180	.236
	+ Serious 85	.257
	+ Serious/Moderate 167	.252
	+ Minor (only) 5	.464

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전 성상 관계에 가지 않는 것이다. 또한 것이다. 가지 것이다. 가지 않는 것이다. 가지 않는 것이다. 가지 않는 것이다. 같은 것이다. 이는 것은 것은 것은 것은 것이다. 같은 것은 것이다. 것은 것은 것은 것은 것이다. 것이 같은 것이다.	<u> </u>	Tau	<u> </u>	Gamma
urt/Administrative Sanction X Retroactive/Future Effe	<u>ct</u>			
Imposed, Federal, Parent, Manufacturing, Not				
Against Officers Only	440	.396		
+ Serious	149	.438		
+ Serious/Moderate	272	.367		
+ Unilateral Order	253	.245		
+ Serlous	78	.299		
+ Serious/Moderate	135	.255		
+ Minor (only)	62	.000		
+ Orders Not Elsewhere Classified	7	.470		
+ Serious	1	.000		
+ Serious/Moderate	5	1.0		
+ Minor (only)	1	.000		
+ Consent Orders	179	.442		
+ Serious	69	.420		
+ Serious/Moderate	131	.359		
Proposed, Federal, Parent, Manufacturing, Not Against Officers Only				
+ Inilateral Order	20	.325		
+ Serious	11	.000		
+ Serious/Moderate	18	.487		
+ Minor (enly)	1	.000		
+ Orders Not Elsewhere Classified	33	.254		
	23	.194	al territoria da 1970. Se a constante	
+ Serious/Moderate	33	.254		
+ Concent Orders	6	591		
L Carious	, a	1 0		
+ Serious/Moderate	5	.591		
1 of Sanction X Sanction Type Level 1 (combined)				
	1 667	169		
imposed, rederal, rarent	1 / EQ	.10) 1/0		
T Manuracturing	1,430	• 147		
Proposed, Federal, Parent	209	.496		
+ Manufacturing	181	.481		
1 of Sanction X Enforcement Action				
Imposed, Federal, Parent, Manufacturing	1,445	.125		
Proposed, Federal, Parent, Manufacturing	180	.389		
그는 것 같아요. 이렇게 이렇게 집에 들어야 한다. 것이 가지 않는 것이 많이 가지 않는 것을 받았는 것을 했다.				

N Tau Orders X Retroactive/Future Effect of Orders Manufacturing, Federal, Parent, Not Against + Imposed .477 439 + Serious 148 .467 + Serious/Moderate .389 271 + Minor (only) 63 .165 + Proposed 60 .505 + Serious 37 .577 + Serious/Moderate 57 .532 + Minor (only) 2 1.0

61

.380

E²

Gamma

Non-manufacturing, Federal, Parent, Not Against Officers Only + Imposed

Consent of Corporation X Sanction Type Level 1

Officers Only

Imposed, Federal, Parent, Manufacturing	1,443 .322
+ Serious	313 .411
+ Serious/Moderate	709.372
+ Minor (only)	504 .549
Proposed, Federal, Parent, Manufacturing	4.000
+ Serious	1.000
+ Serious/Moderate	3.000

Consent of Corporation X Retroactive/Future Effect of Orders

Federal, Imposed, Parent, Manufacturing, Not Against Officers Only	438	486
+ Court/Civil or Court Enforcement of		• • • •
Agency Order	93	.272
+ Serious	54	.382
+ Serious/Moderate	92	.268
+ Administrative/Administrative	341	.571
+ Serious	93	.458
+ Serious/Moderate	176	.435
+ Minor (only)	62	.329

Seriousness of Violation X Sanction Type Level 1 (combined)

Imposed,	Federal,	Parent			1,3	19	.291
	+ Manufaci	turing			1,2	20	.290
	+ Non-many	ıfacturi	ng			99	.454
Proposed	Federal	Parent					
	+ Manufac	turing			?	20	307
	r manutaci	Luring			2	20	.30/

	<u> </u>	<u>Tau</u>	2	Gamma
Seriousness of Violation X Enforcement Action				
Imposed, Federal, Parent, Manufacturing Proposed, Federal, Parent, Manufacturing	1,218 209	.263 .322		
Seriousness of Violation X Level of Sanction				
Federal, Parent, Manufacturing, Not Against Officers Only + Imposed + Proposed	1,217 172	.701 .349		
Primary Violation Type X Total Imposed				
Federal, Parent, Manufacturing, Not Against Officers Only	1,451		.065	
Primary Violation Type X Total Proposed				
Federal, Parent, Manufacturing, Not Against Officers Only	209		.167	

OFFICERS

	<u> </u>	Tau	<u> </u>	<u>Gamma</u>
Primary Violation Type X Against Whom Sanction Imposed/Pr	oposed			
Federal, Court/Criminal, Parent				
+ Tmnosed	45	-516		
+ Manufacturing	40	.499		
+ Proposed	18	.413		
+ Manufacturing	17	.413		
Primary Violation Type X Criminal/Non-criminal Sanction				
Imposed, Federal, Parent	208	.655		
+ Manufacturing	175	.635		
Pronosed Rederal Parent	132	804		
+ Manufacturing	132	.792		
Primary Industry X Number of Officers Charged				
Imposed, Federal, Parent	48		.042	
+ Serious	47		.040	
+ Serious/Moderate	48		.042	
Proposed, Federal, Parent	13		.000	
+ Serious	12		.000	
+ Serious/Moderate	12		.000	
Seriousness of Violation X Number of Officers Charged				
Imposed, Federal, Parent	48			-1.0
Proposed, Federal, Parent	12			*
Primary Violation Type X Number of Officers Charged				
Criminal Court Sanction, Federal, Parent, Manufac-				
curing the Turnocod	26		107	
+ Proposed	20 10		.187	
Seriousness of Violation X Type of Officer Sanction			la de la companya Na seconda de la companya Desarro de la companya	
Federal, Parent, Manufacturing	53	.000		
Primary Violation Type X Type of Officer Sanction				
Federal. Parent. Manufacturing				
+ Imposed	42	.099		
+ Proposed	11	.497		
같이 집에 다니 방법에서 이 것입니다. 한 것 같은 것 이라는 것 같은 것은 것 것 같아. 것 같은 것 같은 것 같이 있는 것 같이 없는 것 같이 없는 것 같이 없는 것 같이 없는 것 같이 없다. 것				

* This table has too few non-zero rows or columns for the computation of any statistics.

	<u>N</u>	Tau	²	<u>Camma</u>
Trade Violations X Number of Officers Charged	e			
Federal, Parent, Manufacturing, Not Against Officers Only, Not Credit Violations				
+ Imposed	24		.067	
+ Abuses	1		.000	
+ Horizontal Combinations	23		.132	
+ Proposed	8		.000	
+ Horizontal Combinations	7		.013	
Trade Violations X Type of Officer Sanction				
Federal, Parent, Manufacturing				
+ Imposed	36	.000		
+ Horizontal Combinations	36	.052		
+ Proposed	8	.000		
+ Horizontal Combinations	7	.000		
Size of Corporation X Fines Against Officers				
Federal, Parent, Manufacturing, Not Against Officers Only				
+ Imposéd	18			57
+ Serious + Serious/Moderate	18 18			57
+ Proposed		-		
+ Serious	э 5	*		
+ Serious/Moderate	5	*		
Victim X Number of Officers Charged				
Criminal Court Sanction, Federal, Parent,				
+ Tmposed	26		1/3	
+ Proposed	20 10		.346	
Federal, Parent, Manufacturing				
+ Imposed	45		.049	
+ Serious	44		.050	
+ Serious/Moderate	45		.049	
T reupused + Sarione	13 10		.418	
+ Serious/Moderate	12		.394	

Û

* This table has too few non-zero rows or columns for the computation of any statistics.

ANTITRUST

에는 사람이 같은 것이 있는 것이 있다. 같은 것이 같은 것이 같은 것이 같은 것이 같은 것이 있는 것이 있는 것이 있는 것이 있는 것이 같은 것이 있는 것이 같은 것이 있다. 것이 같은 것이 있는 것이 같은 것이 있는 것이 있는 것이 있는 같은 것이 같은 것이 같은 것이 같은 것이 같은 것이 같은 것이 있는 것이 같은 것이 있는 것이 같은 것이 없다. 것이 같은 것이 같은 것이 같은 것이 없는 것이 같은 것이 없다. 것이 있는 것이 있	<u>N</u>	Tau	<u> </u>	Gamma
rade Violations X Sanction Type Level 1 (combined)				
Imposed Rederal Parent Manufacturing	119	.512		
+ Not Against Officers Only	113	.358		
+ Serious	87	.188		
+ Date of Violation				
ro Initiation		.256		
+ Date of Initiation				
to Decision		.195		
+ Date of Violation				
to Decision		.256		
+ Moderate	31	.241		
n 1 Hadawal Barant Manufacturing	43	.505		
Proposed, Federal, Falence, Manufacturing	36	.294		
+ NUL ABAINSL OILICETS ONLY	26	.131		
+ Moderate	13	.606		

Eta -- Eta is an asymmetrical measure or association, meaning that the independent variable should be at the nominal-level of measurement and the dependent variable should be on at least the interval level. Eta ranges from 0.0 to 1.0. When it is squared, it has the interpretation as the proportion of variation in the dependent variable accounted for by categories of the independent variable. In this study, this measure applies most appropriately to the number of officers charged as the dependent variable, although it is supplied as an additional statistic in many cases. It was not used to judge degree of association except where appropriate. (See Blalock, H.M., Jr., <u>Social Statistics</u>, 1972 i r additional discuss' nn.) APPENDIX J

TABLES REFERRED TO IN TEXT

DISTRIBUTION OF NUMBER OF NON-MANUFACTURING CORPORATIONS (105) BY CLASS INTERVALS OF NUMBER OF INITIATED ACTIONS/VIOLATIONS

TABLE 1

<u></u>															Prim	ary	Violat	ion						
Violation			A11	Five	Fie	lds	(Tota	1)				Tota	1						Seri	ous/l	Mode	rate		
туре	0	1	2	3	4	5	6-20	21+	0	1	2	3	4	5	6-20	21+	0	1	2	3	4	5	6-20	21+
Administrative	97 92.4%	8 7.6	0	0	0	0	0	0	97 92.4	8 7.6	0	0	0	c	0	0	99 94.3	6 5.7	0	0	0	0	0	0
Environmental	104 99.0%	1 1.0	0	0	0	0	0	0	104 99.0	1 1.0	0	0	0	0	0	0	105 100 D	0	0	0	0	0	0	0
Financial	98 93.2%	5 4.8	0	1 1.0	1 1.0	0	0	0	99 94.2	5 4.8	1 1.0	0	0	0	0	0	100 95.2	5 4.8	0	0	0	0	0	0
Labor	79 75.2%	15 14.3	4 3.8	0	4 3.8	1 1.0	2 1.9	0	79 75.2	19 18.1	4 3.8	0	2 1.9	1 1.0	0	0	79 75.2	19 18.1	4 3.8	0	2 1.9	1 1.0	0	0
Manufacturing	87 82.7%	9 8.6	3 2.9	3 2,9	2 1.9	0	1 1.0	0	87 82.8	10 9.5	4 3.8	3 2.9	0	0	1 1,0	0	93 88.5	8 7.6	3 2.9	1 1.0	0	0	0	0
Trade	96 91.4%	6 5.7	3 2.9	0	0	0	0	0	96 91.4	8 7.6	1 1.0	0	0	0	0	0	96 91.4	9 8.6	0	0	0	0	ð	0
Total	55 52.4%	26 24.7	8 7.6	3 2.9	2 1.9	3 2.9	8 7.6	0	55 52.4	30 28.6	11 10.4	1 1.0	2 1.9	2 1.9	4 3.8	0	62 59.0	28 26,6	8 7.6	2 1.9	1 1.0	1 1.0	3 2.9	0

PRIMARY INDUSTRY BY VIOLATION TYPE FOR PARENT CORPORATIONS

			Primary Indust	ry Type	
Violation Type	Toral	Manufac- turing	Wholesale	<u>Retail</u>	Service
Administrative	7.9% (N = 147)	8.0%	5.9%	7.4%	0.0%
Environmental	28.3% (527)	30.5	0.0	0.9	0.0
Financial	3.7% (69)	3.4	11.8	6.5	7.7
Labor	17.1% (319)	15.4	5.9	41.7	53.8
Manufacturing	32.3% (602)	32.5	52.9	28.7	7.7
Trade	9.8% (183)	9.4	11.8	14.8	23.1
Other	0.9% (16)	0.8	11.7	0.0	7.7
TOTAL	100.0% (N = 1863)	100.0% (1725)	100.0% (17)	100.0% (108)	100.0% (13)

懐

PARENT AND SUBSIDIARY MANUFACTURING CORPORATIONS BY PRIMARY VIOLATION TYPE

Violation Type	Total	Parent	Subsidiary
Administrative	8.1% (N = 152)	8.0%	9.9%
Environmental	30 .3 % (565)	30.5	27.7
Financial	3.4% (63)	3.4	2.8
Labor	15.4% (287)	15.4	14.9
Manufacturing	33.0% (615)	32.5	38.3
Trade	9.1% (170)	9.4	5.7
Other	0.7% (14)	0.8	0.7
Total	$ \begin{array}{r} 100.0\% \\ (N = 1866) \end{array} $	100.0% (1725)	100.0% (141)

TABLE 4

SIZE	OF	CORPORATION	BY VIOLATION	TYPE FOR	PARENT CORPO	RATIONS
	-					a services can a strate.

		Size of	E Corporation (Ne	t Sales)
Violation Type	Total	<u>Small</u> \$300-499 Million	<u>Medium</u> \$500-999 Million	Large \$1 Billion and Up
Administrative	7.8% (N=144)	9.5%	9.3%	7.1%
Environmental	28.4% (526)	18.5	11.9	34.1
Financial	3.6% (66)	2.8	2.3	4.0
Labor	17.2% (318)	22.5	20.4	. 15.6
Manufacturing	32.4% (601)	33.7	45.3	28.8
Trade	9.8% (182)	12.4	9.9	9.5
Other	0.8% (16)	0.6	0.9	0.9
TOTAL	100.0% (N = 1853)	100.0% (178)	100.0% (353)	100.0% (1322)

TABLE 5

		Size of (Corporation (1	Net Sales)
Seriousness of Violation	Total	<u>Small</u> \$300-499 Million	<u>Medium</u> \$500-999 Million	Large \$1 Billion and up
Serious	28.0% (N = 408)	29.1%	26.4%	28.2%
Moderate	34.0% (497)	41.1	45.8	30.0
Minor	38.0% (555)	29.8	27.8	41.8
Total	100.0% (N = 1460)	100.0% (141)	100.0% (277)	100.0% (1042)

SIZE OF CORPORATION BY SERIOUSNESS OF VIOLATION FOR PARENT MANUFACTURING CORPORATIONS

		U IIK	77-1-	• 1	1997 - Million Maria	
		uown -		. í i se		
the second s						
	(N = 25)		and the second			
	56)			179 B. B. B. B.		
and the second	(3					10 10 10 10 10 10 10 10 10 10 10 10 10 1
	1)		1.12		1 A A A A A A A A A A A A A A A A A A A	
and the second	(39)					
		1.1.1	a barrante	 5		
		and the second		10 S	1	
	(186)				しょうそう しょうしょう しょうせい	

TABLE 6

NUMBER OF VIOLATIONS AND RATIOS FOR INDUSTRY TYPE BY PRIMARY VIOLATION TYPE

					ing a second set of the second second		PRIM	ARY VIO	LATION	TYPE1					
TADUSTRY TYPE		Tot	al	Admir trat	is- ive	Envir ment	on- al	Finan	cial	Lab	or	Manuf turi	ac- ng	Trade	
		Viola- tions	Ratio ²	Viola- tions	Ratio	Viola- tions	Ratio	Viola- tions	Ratio	Viola- tions	Ratio	Viola-	Ratio	Viola- tions	Ratio
INING AND	T	17	0.4	1	0.3	10	0.6	0	0.0	1	0.2	2	0.1	3	1.5
DIL PRODUCTION	S/M	8	0.4	1	0.9	1	0.6	0	0.0	1	0.2	2	0.2	3	1.5
2000	T	96	0.5	4	0.3	11	0.2	5.	1.0	12	0.5	54	0.8	7	0.9
	S/M	49	0.6	2	0.5	3	0.5	5	1.0	12	0.6	20	0.5	7	0.9
DDADET	T	4	0,1	0	0.0	0	0.0	1	1.0	2	0.5	0	0.0	1	0.7
AFFRALL	S/M	3	0.2	0	0.0	0	0.0	0	0.0	2	0.5	0	0.0	1	0.7
	T	81	1.1	3	0.4	50	1.9	0	0.0	15	1.6	1	0.1	10	2.9
REAR, FIDER, WOOD	S/M	28	0.3	2	1.1	3	1.1	0	0.0	12	1.4	1	0.1	10	3.0
TUENTOAL	T	115	1.0	13	1.3	55	1.4	1	0.3	15	1.1	21	0.5	7	1.4
SUCLIFORT	S/M	49	0.9	3	1.1	12	2.7	1	0.3	10	0.8	16	0.6	7	1.5
NIL DECENTIO	T	289	3.2	6	0.8	229	7.3	25	9.7	9	0.8	8	0.3	10	2.5
JIL KETIMING	s/M	70	1.7	5	2.3	19	5.7	23	9.6	9	0.9	4	0.2	8	2.1
METAL	T	88	0.9	8	1.0	71	2.1	0	0.0	4	0.4	3	0.1	2	0.5
LANUFACTURING	S/M	13	0.3	3	1.3	3	0.8	.0	0.0	2	0.2	3	0.1	2	0.5
	T	28	0.4	8	1.3	5	0.2	0	0.0	9	1.0	4	0.2	2	0.6
ALIAL PRODUCIS	S/M	13	0.4	0	0.0	0	0.0	0	0.0	7	0.9	4	0.3	2	0.6




TABLE 6 (continued)

NUMBER OF VIOLATIONS AND RATIOS FOR INDUSTRY TYPE BY PRIMARY VIOLATION TYPE

		PRIMARY VIOLATION TYPE ^L													
TNDICTON TYDE		Tot	al	Admin	nis- ive	Envir	con- tal	Finar	ncial	Lal	oor	Manu	Eac- ing	Trade	9
		Viola- tions	Ratio ²	Viola- tions	Ratio	Viola- tions	Ratio	Viola- tions	Ratio	Viola- tions	Ratio	Viola- tions	Ratio	Viola- tions	Ratio
REVERACES	T	11	0.4	0	0.0	1	0.1	1	1.3	4	1.3	4	0.4	1	0.9
	S/M	7	0.6	0	0.0	0	0.0	1	1.4	4	-1.4	1	0.2	1	0.9
ELECTRONICS	T	65	0.7	12	1.6	5	0.2	1	0.4	3/0	2.7	12	0.4	5	1.3
AND APPLIANCES	S/M	49	1.2	1	0.5	2	0.6	1	0,4	2,8	2.8	12	0.6	5	1.3
	T	238	3.9	20	3.8	19	0.9	0	0.0	20	2.6	171	7.7	S	3.0
MOTOR VEHICLES	S/M	142	5.0	3	2.0	7	3.1	0	0.0	19	3.1	105	7.7	8	3.0
	T	18	0.5	1	0.3	1	0.1	1	0.8	6	1.2	7	0.5	2	1.1
AEROSPACE	S/M	16	0.8	1	1.0	0	0.0	1	0.9	6	1,3	6	0.7	2	1.1
na an an Anna a Anna an Anna an	T	134	2.5	18	3.9	0	0.0	0	0.0	6	0,9	109	5.6	0	0.0
DRUGS	S/M	81	3.2	5	3.9	0	0.0	¢	0.0	6	1.0	70	5,8	0	0.0
ENDUSTRY AND	T	70	0.5	11	0.9	8	0.2	0	0.0	11	0,6	37	0.7	3	0.5
FARM EQUIPMENT	S/M	42.	0.6	0	0.0	3	0.6	0	0.0	10	0.6	26	0.8	3	0.5
	T	174	0.6	18	0.7	31	0.3	6	0.7	34	0.9	81	0.7	2	0.1
DTRER	S/M	97	0.7	8	1.1	0	0.0	6	0.7	33	1.0	48	0.7	2	0.2
TOTAL	T	1428	1.0	123	1.0	496	1.0	41	1.0	178	1.0	514	1.0	63	1.0
	S/M	667	1.0	34	1.0	53	1.0	38	1.0	161	1.0	318	1.0	61	1.0

¹ Thirtzen "other" violations are excluded from the non-total columns of this table.

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² The percentage of a violation type accounted for by an industry type was divided by the percentage that industry type represented in the sample. This was done to control for the fact that some industry types have more companies in them than do others. A ratio of 1.0 means that an industry type committed as many violations as its percentage in the sample would indicate. A ratio greater than 1.0 indicates that an industry type had more than its share of violations.

INDUSTRY TYPE BY NUMBER OF ACTIONS INSTITUTED

INDUSTRY TYPE	Firms in	Fira	m,s	Per-			Numb	er of A	ctions	Instit	uted		5
	Industry	Viola	ting	cent	0	1	2	3	4	5	6-10	11-20	21+
Mining and Oil		T	9	64.3	5	5	1	2	1	0	0	0	0
Production	4 4	S/M	5	35.7	9	4	0	0	1.	0	0	0	0
Paad	52	T	34	60.7	22	15	5	7	2	1	3	1	0
rood	00	S/M	24	42.9	32	13	4	4	0	2	1	¢	0
Anneral	10	T	4	40.0	6	4	0	0	C	0	0	0	0
uhherer		S/M	3	30.0	7	3	0	0	Ũ	0	0	0	0
Parer Fiber Mood	2%	T	21	87,5	3	7	3	1	3	1	6	0	o
rapel, ribet, wood		S/M	15	62.5	9	7	5	1	2	0	0 '	0	0
Chemical	25	T	23	65.7	12	4	2	4	4	1	5	3	• 0
UNEMICAL		S/M	17	48,6	18	5	1	6	2	2	1	0	0
Oil Refining	28	T	22	78.6	6	3	1	1	0	1	5	6	5
· · · · · · · · · · · · · · · · · · ·		S/M	20	7°,4	8	4	4	3	4	2	3	0	0
Metal Manufacturing	30	T	19	63.3	11	5	5	1	0	0	6	2	0
		S/M	9	30.0	21	7	1	0	1	0	0	0	0
Metal Products	23	T	17	73.9	6	10	4	2	1	0	0	0	0
		S/M	9	39.1	14	6	2	1	0	0	0	0	0

TABLE 7 (continued) INDUSTRY TYPE BY NUMBER OF ACTIONS INSTITUTED

INDUSTRY TYPE	Firms in	Fi	Lrms	Per-			Num	ber of	Actions	Instit	uted		
	Industry	Viol	lating	cent	0	1	2	3	4	5			21+
Electronic and		Т	21	75.0	7	6	6	3	3	1	1	1	0
Appliances	20	S/M	17	60.7	11	7	3	3	1	1	2	0	0
Matan Wahialaa	10	T	18	94.7	1	3	3	1	1	2	2	2	_4
MOLOL VEHICLES	19	S/M	1.7	89.5	2	5	3	3	0	0	3	0	3
		Т	10	76.9	3	7	1	0	1	1	0	0	0
Aerospace	13	S/M	9	69.2	4	6	1	0	2	0	0	0	0
	1.7	T	17	100.0	0	3	4	2	1	1	3	1	2
Drugs	1	S/M	15	88.2	2	5	3	2	2	0	1	1	1
Industry and Farm		Т	20	45.5	24	8	6	3	0	1	1	1	1
Equipment	44	S/M	11	25.0	33	3	5	0	0	1	1	1	0
Dationa		T	6	75.0	2	1	5	0	0	0	0	0	0
Deverages	0	S/M	5	62.5	3	3	2	0	0	0	0	0	Ö
Orbon	06	T	56	58.3	40	19	1.5	8	2	4	6	2	0
VLINEL	70	S/M	43	44.8	53	22	10	3	3	4	0	1	· 0
Totol	645	Т	297	66.7	148	100	61	35	19	13	38 🛛	1.9	12
	447	S/M	219	49.2	226	100	44	26	18	12	12	3	4

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PRIMARY INDUSTRY BY SERIOUSNESS OF VIOLATION FOR PARENT CORPORATIONS

			Primary Industry Type									
Violation	Total	Manufac- turing	Wholesale	Retail	Service							
Serious	29.5% (N = 471)	28.1%	50.0%	42.3%	53.8%							
Moderate	34.2% (<u>5</u> 47)	33.9	28.6	39.4	38.5							
Minor	36.3% (580)	38.0	21.4	18.3	7.7							
TOTAL	100.0% (N = 1598)	100.0% (1467)	100.0% (14)	100.0% (104)	100.0% (13)							

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DISTRIBUTION OF NUMBER OF PARENT NON-MANUFACTURING CORPORATIONS (105) BY CLASS INTERVALS

OF IMPOSED SANCTIONS/ENFORCEMENT ACTIONS

				-										ŀ.	Priz	ary	Sanct	lon						
Sanction			Up t	o Fi	ve S	anct	ions			4		Tote	11					5	eric	us/N	loder	ate		
type	0	1	2	3	4	5	6-20	21+	0	0 1 2 3 4 5 6-20 21+			0	1	~2	3	4	5	5-20	21+				
Monetary Penalty	98 93.3	5 4.8	2 1.9	0	0	0	0	0	98 93.3	7 6.7	0	0	0	0	0	0	100 95.2	5 4.8	0	0	0	0	0	0
Unilateral Order	80 76.1	15 14.3	5 4.8	32.9	2 1.9	0	0	0	80 76.1	15 14.3	5 4.8	4 3.8	1 1.0	0	Ø	0	84 79.9	11 10.5	5 4.8	4 3.8	1 1.0	0	0	0
Consent Order	88 83.7	15 14.3	1 1.0	1 1.0	0	0	0	0	90 85.6	13 12.4	1 1.0	1 1.0	0	0	0	0	90 85.7	13 12.4	2 1.9	0	0	0	0 °	0
Injunction	102 97.1	2 1.9	1 1.0	0	0	0	0	0	102 97.1	2 1.9	1 1.0	0	0	0	0	0	102 97.1	3 2,9	0	0	0	0	0	0
Nonmonet ary Penalty Against Öfficer	103 98.1	2 1.9	0	0	0	0	0	0									9 							
Warnings	86 81.9	13 12.4	4 3.8	1 1.0	0	0	1 1.0	0	86 81.8	13 12.4	4 3.8	1 1.0	0	0	1 1.0	0	'96 91.4	7 6.7	2 1.9	0	0	0) 0	0
Total	55 52.4	32 30.4	6 5.7	2	2 1.9	3 2.9	5 4.8	ò	55 52.4	32 30.4	7 6.6	2 1.9	1	3	5	0	63 60.0	29 27.5	2 1.9	.5 4.8	2 1.9	3 2.9	11.0	Ø

VICTIM BY SANCTION TYPE FOR PARENT MANUFACTURING CORPORATIONS

				Vict	:1m				
Sanction Type	Total	Consumer (Product Quality)	Consumer (Economic Power)	Economic System	Environ- ment	Labor Force	Govern- ment		
Other and Unspecified	0.8% (N = 11)	0/12%	0.0%	2.5%	0.0%	4.4%	9.0%		
Warnings	44.2% (639)	89.0	0.0	0.0	23.9	0.6	26.1		
Future Effect Orders (including Injunctions)	24,6% (356)	0.7	62.8	53.4	23.6	60.6	53.9		
Retroactive Effect Orders	7.0% (102)	6.0	31.4	22.0	0.4	16.3	2.6		
Civil Penalty	21.0% (304)	3.6	• 2.9	• 1.7	51.7	18.1	13.9		
Criminal Fines	2.4% (34)	0.5	2.9	20.4	0.4	0.0	3.5		
Total	100.0% (N = 1446)	100.0% (561)	100.0% (35)	100.0% (113)	100.6% (457)	100.0% (160)	100.0% (115)		

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SIZE OF CORPORATION BY SANCTION TYPE FOR PARENT CORPORATIONS

	-/	Size of	Corporation (Net	: Sales)
Sanction Type	Tota1	<u>Small</u> \$300-499 Million	<u>Medium</u> \$500-999 Million	<u>Large</u> \$1 Billion and up
Other and Unspecifiel	0.8% (N=13)	0.0%	1.0%	0.9%
Warnings	43.1%	44.3%	57.3%	39.0%
Orders	32.5% (505)	47.6%	31.4%	30.5%
Injunction	1.5% (23)	0.7%	⇒ 1.9%	1.5%
Monetary Penalty	22/.1% (344)	7.4%	8.4%	28.1%
Total	100.0% (N = 1554)	100.0% (N = 150)	100.0% (N = 310)	100.0% (N = 1094)

PARENT AND SUBSIDIARY CORPORATIONS BY SANCTION TYPE FOR ALL INDUSTRY TYPES

Sanction Type	Total	Parent	Subsidiary
Other and Unspecified	0.9% (N = 16)	0.8%	1.9%
Warnings	43.7% (749)	43.0	49.6
Orders	31.8% (546)	32.5	25,5
Injunctions	1.3% (23)	1.5	0.0
Monetary Penalty	22.3% (381)	22.2	23.0
Total	100.0% (N = 1715)	100.0% (1554)	100.0% (162)

NUMBER OF SANCTIONS AND RATIOS FOR INDUSTRY TYPE BY SANCTION TYPE

			SANCTION TYPE										
INDUSTRY		Toi	:al	Mono Per	etary nalty	Unilat Ord	eral ler	Cons Ord	ent er	War	ning	Injund	tion
TYPE		Sanc- tions	Ratio	Sanc- tions	Ratio	Sanc- tions	Ratio	Sanc= tions	Ratio	Sanc- tions	Ratio	Sanc- tions	Ratio
MINING & OIL PRODUCTION	T	16	0.4	7	0.7	3	0.4	4	0.7	1	0.1	1	1.7
	S/M	7	0.2	1	0.3	2	0.5	. 3	0,7	0	0.0	1	1.7
FOOD	T	105	0.6	12	0.3	ž4	0.8	17	0.8	50	0,6	1	0.4
	\$/M	60	0.7	10	0.8	1.8	1.1	14	0,8	15	0.4	1	0.4
APPAREL	T	4	0.1	1	0.1	0	0.0	2	0.5	0	0.0	0	0.0
	S/M	4	0.2	1	0.4	0	0.0	2	0.7	0	0.0	0	0:0
PAPER, FIBER,	T	95	1.2	27	1,5	23	1.7	1.5	1.6	28	0.8	0	0.0
WOOD	S/M	35	0.9	22	4,0	7	1.0	4	0.6	1	·0.1	0	0.0
CHEMICAL	Т	110	1.0	25	0.9	13	0.7	25	1,8	44	0.9	0	Ũ.O
	S/M	55	1.0	13	1.6	4	0.4	21	2.0	15	0.6	0	0.0
OIL REFINING	T	248	2.8	192	9.0	25	1.6	14	1,2	11	0.3	4	3.5
	S/M	56	1.3	23	3.5	16	1.9	9 /	1.1	3	0.2	4	3.5
METAL MANUFAC-	T	98	1.0	27	1.2	13	1.1	19	1.6	32	0.8	1	0,8
TURING	S/M	25	0.5	8	1,1	5	0.78	8	0.9	3	0.1	1	0.8
METAL PRODUCTS	T	35	0.5	4	0.2	16	1.2	7	0.8	6	0.2	1	1.1
	S/M	18	0.5	3	0.6	4	0.6	6	0,9	4	0.3	1	1.1

TABLE 13 (continued)

NUMBER OF SANCTIONS AND RATIOS FOR INDUSTRY TYPE BY SANCTION TYPE

							SANCTI	ON TYPE					
INDUSTRY TYPE		Tot	:al	Mone Pen	tary alty	Unilat Ord	ieral ler	Cor Oz	nsent :der	Warn	ning	Injur	nction
		Sanc- tions	Ratio	Sanc- tions	Ratio	Sanc- tions	Ratio	Sanc- tions	Ratio	Sanc- tions	Ratio	Sanc- tions	Ratio
ELECTRONIC &	T	57	0.6	3	0.1	27	1,7	10	0.9	12	0.3	2	1.8
APPLIANCES	S/M	40	0.9	1	0.2	16	1.9	8	1.0	12	0.6	2	1.8
	T	227	3.7	14	1.0	34	3.1	8	1.0	170	6.4	0	0.0
MOTOR VEHICLES	S/M	131	4.4	7	1.6	16	2.8	8	1.4	100	7.7	0	0.0
	T	. 26	0.6	1	0.1	5	0.7	11	2.1	7	0.4	2	3.8
AEROSPACE	S/M	24	1.2	1	0.3	4	1.0	11	2.9	6	0.7	2	3.8
	T	138	2.5	2	0.2	8	0.8	6	0.9	121	5.1	0	0.0
DRUGS	S/M	85	3.2	1	0.3	6	1.2	6	1.2	72	6.3	0	0.0
INDUSTRY & FARM	T	67	0.5	5	0.2	14	0.6	7	0.4	41	0.7	0	0.0
EQUIPMENT	S/M	39	0.6	3	0.3	5	0.4	6	0.5	25	0.8	0	0.0
	T	8	0.3	0	0.0	1	0.2	2	0.6	4	0.4	0	0.0
BEVERAGES	S/M	4	0.3	0	0.0	1	0.4	2	0.9	0	0.0	0	0.0
0	T	195	0.6	17	0.2	41	0.8	32	0.8	94	0.7	6	1.6
UTHER	S/M	115	0.8	9	0.4	29	1.0	23	0.8	45	0.7	6	1.6
momat	T	1,430	1.0	337	1.0	252	1.0	179	1.0	621	1.0	18	1.0
LOTAL	S/M	698	1,0	103	1.0	133	1.0	131	1.0	301	1.0	18	1.0

*Twenty-three sanctions were excluded from the non-total columns of this table. These included 11 other and unspecified, 10 orders not elsewhere classified, and 2 prosecutions terminated. There were 12 sanctions excluded in the non-total serious or moderate cases.

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SERIOUSNESS OF VIOLATION BY ENFORCEMENT LEVEL OF SANCTION FOR PARENT MANUFACTURING CORPORATIONS

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Entorcement		Seriousness of Violation							
Sanction	Total	Serious	Moderate	Minor					
Criminal	3.2% (N = 39)	11.8%	0.5%	0.0%					
Civil	10.9% (133)	25.9	13.0	0.0					
Administrative	85.9% (1045)	62.3	86.5	100.0					
Total	100.0% (N = 1217)	100.0% (313)	100.0% (399)	100.0% (505)					

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ENFORCEMENT LEVEL OF SANCTION BY SANCTION TYPE FOR PARENT CORPORATIONS

		Enforcement Level of Sanction							
Sanction Type	Total	Criminal	Civil	Administrative					
Other and Unspecified	0.8% (N = 13)	6.8%	1.8%	0.6%					
Warnings	43.1% (N = 669)	0.0%	0.0%	49.6%					
Orders	32.5% (N = 505)	4.6%	72.1%	28.7%					
Injunctions	1.5% (N = 23)	0.0%	13.7%	0.1%					
Monetary Penalty	22.1% (N = 334)	88.6%	12.4%	21.0%					
Total	100.0% (N = 1554)	100.0% (N = 44)	100.0% (N = 161)	100.0% (N = 1349)					

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AVERAGE MONTHS BATWEEN DATE ACTION WAS INSTITUTED AND DATE OF FINAL DECISION FOR SERIOUSNESS OF VIOLATION BY ENFORCEMENT LEVEL OF IMPOSED SANCTION FOR PARENT MANUFACTURING CORPORATIONS

Enforcement		Seriousness of Violation							
Sanction	Total	Serious	Moderate	Minor					
Total	6.7 (N = 955)	13.1 (290)	6.0 (374)	1.3 (291)					
Criminal	12.4 (33)	12.3	15.0	0 .0 (0)					
Civil	23.5 (116)	30.2	12.9	0.0 (0)					
Administrative	4.1 (806)	6.8	5.1	1.3					

N is the number of total months.

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LEVEL OF ENFORCEMENT OF SANCTION BY SANCTION TYPE FOR PARENT MANUFACTURING CORPORATIONS

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Sanction Type		Level of Enforcement				
	Total	Court	Administrative			
Other and Unspecified	0,6% (N=9)	2.9%	0.4%			
Warnings	44.2% (639)	44.2% 0.0 (639)				
Unilateral Orders	17.6% (254)	12.1	18.3			
Orders Not Elsewhere Classified	0.7% (10)	0.6	0.7			
Consent Orders	12.4% (180)	42:8	8.3			
Injunctions	1.3% (19)	10.4	0.1			
Monetary Penalty	23.2 % (335)	31.2	22.2			
Total	100.0% (N = 1446)	100.0% (173)	100.0% (1273)			

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LEVEL OF ENFORCEMENT OF SANCTION BY EFFECT OF ORDERS AGAINST PARENT MANUFACTURING CORPORATIONS

9		Level	of Enforcement
Effect of Order	Total	Court	Administrative
Retroactive	23.2% (N = 102)	49.5%	15.9%
Future	76.8% (338)	50.5	84.1
Total	100.0% (N = 440)	100.0% (95)	100.0% (345)

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CONSENT OF CORPORATION BY EFFECT OF IMPOSED ORDER FOR FARENT MANUFACTURING CORPORATIONS

Effect of Order	Order Total Consented to		Not Consented to	Unknown		
Retroactive	23.2% (N = 102)	29.8%	17.3%	50.0%		
Future	76.8% (N = 338)	70.2%	82.7%	50.0%		
Total	100.0% (N = 440)	100.0% (N = 181)	100.0% (N = 249)	100.0% (N = 10)		

TYPE OF ORDER BY EFFECT OF IMPOSED ORDER FOR PARENT MANUFACTURING CORPORATIONS

		Type of Order							
Effect of Order	Total	Consent Orders	Orders Not Elsewhere Classified	Unilateral Orders					
Retroactive	23.2% (N = 102)	29.67	28.6%	18.6%					
Future	76.8% (338)	70.4	71.4	81.4					
Total	100.0% (N = 440)	100.0% (180)	100.0% (7)	100.0% (253)					

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LEVEL OF ENFORCEMENT OF SANCTION BY EFFECT OF CONSENT ORDERS AGAINST PARENT MANUFACTURING CORPORATIONS

		Level of Enforcement					
Effect of Consent Order	Total	Court	Administrative				
Retroactive	29.6% (N = 53)	47.3%	17.1%				
Future	79.4% (127)	52.7 _e	82.9				
Total	100.0% (N = 180)	100.0%	10850%				

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FINANCIAL PERFORMANCE AND CORPORATE VIOLATIONS¹ (Total number of violations; not calculated per unit of size)





DEPENDENT VARIABLE

<u>en la seconda de la construcción de</u>						- 			4° 4'		<u> </u>	
<u>[Stal</u> Thicial Equation	00 (09)	15 (-2.60) [#]	05 (92)	_03 (.59)	02 (44)	06 (-1.09)	20 (-3.17) ^a	19 (-2.85) ⁴	03 (60)	.06 (1.12)	7 (F _{10,434} = 4	.20) ^a
Final Equation		15 (-2.60) ^a					23 (-3.81) ^a	-4,20 (-3,70) ⁶		21	7 (F _{3,441} = 12	.50) [#]
<u>Total (S/M)</u> Initial Equation	01 (15)	15 (-2.47) ^b	-,08 (-1.40)	.01 (.20)	03 (59)	.01 (.13)	04	.01	-,19 (-3,45) ^a	.01 (.18)	3 (F _{10,434} = 2	.41) ⁴
Final Equation		16 (-3,36) ^a							18 (-3.80) ^a		4 (F _{2,442} = 10	.66) ^a
<u>Administrative</u> Initial Equation	.05 (1.04)	° .06 (1.04)	02 (29)	.00 (.01)	01 (27)	10 (-1.86) ^c	14 ∢-2.08) ^b	12 (-1.86) ^c	15 (-2.83) ^a	.06 (1.21)	4 (F _{10,434} = 2	.90) ^a
Final Equation						12 (-2.56) ^b			-,14 (-3.07)		4 (F _{2,442} = 9.:	31)ª
<u>Environmentel</u> 	00 (08)	17 (-2.96) ⁸	01 (14)	.06 (1:25)	09 (04)	04 (74)	21 (-3.26) [®]	24 (-3.70)*	.15 (2.85) ⁴	.07 (1.33)	11 (F _{10,434} = 5	.52) ²
7inal Equation		17 (-2.98) [*]					22 (-3,83) ⁴	22 (∹.02) [●]	.17 (3.56)*	3 6	11 (F _{4,440} = 15	.13) ^a
<u>Environmental (S/M)</u> Initial Equation	.03 (.65)	11 (-1.80) ^{&}	00 (05)	.09 (1.73) ⁶	07 (~1.34)	.09 (_1,68) ^C		07 (-1.07)	01 (18)	.10 (1.82) ^c	1 (F _{10,434} = 1	.57)
Final Equation		10 (-2.17) ^b									1 (F _{1,443} = 4.	71) ^{b.}
	4	i - Sugar	1 days	5				0				

TABLE 22 (continued)

DEFENDENT VARIABLE	VICT CONT	FLAGUERICS	The child	Electricititie	Active treated	Induser Inthing	Tegna translated	THUS FEEL (THE)	Induser Industry	polosect the true		Variation and the second
<u>Labor</u> Initial Equation	02 (33)	09 (-1.47)	08 (-1.33)	02 (43)	03 (69)	03 (64)	05 (79)	08 (-1.13)	14 (-2.60) ^{**}	00 (07)	3	(F _{10,434} = 2.20) ^b
Final Equation		10 (-2.14) ^b	11 (-2.24) ^b						·-,16 (-3.43) [*]		3	(F _{3,441} = 6.25)*
<u>Labor (S/M)</u> Initial Equation	00 (09)	11 (-1.82) ^c	09 (-1.54)	02 (39)	02 (35)	-,04 (- ,82)	03 (42)	05 (71)	17 (-3.25) [*]	02 (31)	4	$(F_{10,434} = 2.71)^4$
Final Equation		12 (-2.45) ^b	11 (-2.37) ^b			• • • • • • • • • • • • • • • • • • •			20 (-4.15) [*]		5	$(F_{3,441} = 8,46)^2$
<u>Manufacturing</u> 3 Initial Equation	11 (-1.05)	07 (64)	03 (23)	28 (-2.51) ^b	24 (-2.67) [*]	.12 (.95)	.02 (.20)	-,10 (74)	26 (-2.05) ^b	.24 (1.82) ^c	16	$(F_{10,104} = 3.24)^*$
Final Equation				31 (-3.56) ^a	26 (-2.96) ⁸						16	$(F_{2,112} = 11.93)^{a}$
<u>Manufacturing (S/M)</u> Initial Equation	06 (48)	09 (72)	.03 (.20)	25 (-1.87) ^c	23 (-2.19) ^b	.10 (:66)	.07 (.46)	07 (43)	23 (-1.53)	.21 (1.43)	9	(F _{10,81} = 1.92) ^c
Final Equation				26 (-2.62) ^b	22 (-2.25) ^b						12	(P _{2,89} = 7.33) [*]

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¹ For each equation, figures in the top row are standardized regression coefficients; figures in parentheses are the t-statistics. Superscripts indicate level of statistical significance: a = .01; b = .05; c = .10. The percent variance explained is corrected for degrees of freedom, and is accompanied by the F-ratio for the equation.

² S/M indicates that only serious and moderate violations are being analyzed.

³ Only violating firms are considered in analyses of manufacturing violations.

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STRUCTURE, PERFORMANCE AND CORPORATE VIOLATIONS (Total number of violations; not calculated per unit of size)

DEPENDENT VARIARLE	theo to	Los pases bit	ALCO CECONIN	Proportion 1	Port Diversity	Store Constant	SD STATES	Los Tables	se see the see	over tobust (Store to the tote	or sites
<u>Total</u> Initial Equation	.48 (7.57) [#]	12 (-1.68) ^c	02 (40)	06 (-1.13)	02 (34)	.05 (.96)/	03 (49)	.15 (1.58)	-,02 (- ,26)	05 (66)	14 (-1.63)	22 (F _{11,412} = 12.06) [*]
Final Equation	.47 (9.74) [*]	15 (-3.00) [■]						.18 (2.96) [#]			22 (-4.00) [*]	23 (F _{4,419} = 32.05) ⁴
<u>Total (S/M)</u> ² Initial Equation	.45 (6.93) ⁴	13 (-1.73) ^c	.03 (.55)	.01 (,19)	-,04 (- ,74)	,05 (,97)	04 (67)	.16 (1.63)	15 (-1.52)	-,02 (22)	-,01 (06)	19 (F _{11,412} = 9.86) [®]
Final Equation	.42 (8.70) ⁴							.19 (3,08) [#]	26 (-4.33) [*]			19 $(P_{3,420} = 35.08)^{*}$
Administrative Initial Equation	.20 (2.92) [*]	10 (-1.26)	.01 (.20)	-,03 (52)	00 (03)	,09 (1.65) ^e	-,08 (-1,32)	.09 (84)	14 (-1.37)	-,16 (-1.95) ^c	.14 (1.50)	8 (F _{11,412} = 4,33) ^a
Final Equation	.15 (2.89) ^{**}	14 (-2.69) [#]	1			.11 (2.23) ^b				22 (~3.45) [®]	,20 (3.17) ⁴	8 (F _{5,418} = 8.67) [*]
<u>Environmental</u> Initial Equation	.34 (5.07) [*]	03 (43)	03 (51)	08 (-1.61)	03 (53)	03 (53)	.02 (.31)	.09 (.91)	, 10 (.95)	.03 (.35)	29 (-3.13)	15 (F _{11,412} = 7.70)*
Pinal Equation	.32 (6.73) ⁴						e increasean		.13 (2.67) [#]	alayta , a	,27 (5,69)*	16 (F _{3,420} * 26.97)*
Environmental (S/M) Initial Equation	.32 (4.56) [#]	06 (74)	.06 (1.11)	02 (29)	08 (-1.45)	07 (-1.28)	06 (-1.05)	.14 (1.31)	09 (82)	.16 (1.95) ^c	19 (-1.94) ^c	5 (F _{11,412} = 3,13) ⁴
Final Equation	.23 (4.85) [•]								et anna anna anna anna anna anna anna an			$5 (F_{1,422} = 23.50)^{\circ}$

TABLE 23 (continued)

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DEPENDENT VARIABLE	Elen est	UNE NEVERAL	Elto Crow	2 2 COROLLING	ston photosta	Concentration	tel Dool PED	Los Tabust -	10% peer parties	1nduser 161	Loous for	ru est strates est
Labor Initial Equation	.32 (4.66) [*]	15 (-2.00) ^b	.00 (.07)	00 (04)	,03 (.52)	.08 (1.36)	02 (32)	.13 (1.26)	14 (-1.32)	03 (41)	10. (80.)	12 (F _{11,412} = 6.16) ^a
Final Equation	.30 (6.12) ⁴							.19 (2.97) ⁴	31 (-4.99) [#]			12 (F _{3,420} = 20.75) ^a
Labor (S/M) Initial Equation	.34 (5.05)*	14 (1.87) ^c	.02 (.47)	01 (16)	.02 (.35)	.08 (1,47)	01 (11)	.12 (1.17)	16 (-1.55)	06 (79)	.05 (.49)	14 (F _{11,412} =7.18)*
Final Equation	.33 (6.66) [*]							.21 (3.23) ⁴	34 (-5.45) ⁰		-	14 (F _{3,420} = 24.61)*
<u>Menufacturing</u> Initial Equation	.42 (3.16)*	42 (-2.84) ^a	,25 (2,54) ^b	.02 (.22)	15 (-1.32)	.29 (2.36) ^b	20 (-1.81) ^e	.00. (.01)	1.3 (.64)	.00 (.00)	.07	19 (F _{11,96} = 3.28) ⁴
Final Equation	.37 (3.50) [*]	28 (-2.83) ⁴	.23 (2.54) ^b			.22 (2.19) ^b						20 (F4,103 - 7.50)*
Manufacturing (S/M) ³ Initial Equation	,49 (3,12) ^a	-,66 (-3.02) [#]	.23 (2.06) ^b	.05 (.45)	08 (70)	.31 (2,25) ^b	15 (-1.18)	-,03 (- ,14)	.40 (1,59)	.00 (.01)	.05	20 (F11,74 - 2.95)*
Final Equation	.41 (3.33) ⁶	-,65 (-3.17)*	.22 (2.18) ^b			.31 (2.52) ^b			.45 (2.24) ^b			24 (F _{5,80} .35)*

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¹ For each equation, figures in the top row are standardized regression coefficients; figures in parentheses are the t-statistics: Superscripts indicate level of statistical significance: a = .01; b = .05; c = .10. The percent of variance explained is corrected for degrees of freedom, and is accompanied by the F-ratio for the equation.

² S/M indicates that only serious and moderate violations are being analyzed.

³ Only violating firms considered in analyses of manufacturing violations.

STRUCTURE, PERFORMANCE AND CORPORATE VIOLATIONS¹

(Total number of violations; not calculated per unit of size)

DAPE- WEST VARIANIA	THP	7%.	PTR	FT	m	1109	14	178	117	1TL	7.0	A/R	10	773	DVS	CONC	NO C	THUTS	INA/E	16	1975	Vaelanca Esplained
Totest Reverten	0) (31)	,04 (,60)	,60 (,86)	,01 (.71)		.08 (.43)	-,18 (-1.04) ⁸	-, 14 (-1,78) ⁴	.06 (1,07)	.04	,47 (7.10)*	-,1) {-1,73} ⁶	0) (48)	04 (~1.30)	~.05 (- ,+1)	.03 (-,00 (- ,98)	.01 (.78)	-,10 (- ,75)	-,11 (- ,49)	0) (51)	23 (F _{21,402} = 7,12) ⁴⁶
Pinat Équities			متعليد			ه جند 	-,15 (-2,75) ⁴	,16 (-3,19) ⁴	هنتمد ۰۰ـــــــــــ	•• ••	e 4.753 ^b			 			، همینی نوبین و بانانست			14' (-7. r6)*	¢	24 (74,119 = 53.79)*
Tread for his 2. Institut Equation	05	07 (-1.0+)	02	00 (01)	-,03 (-1,12)	.09	-,60 (02)	.10	-,01 (- ,04)	01 (40)	43 (6.25)*	+.15 (-1.01) ^b	. 63 (. 14)	.07 1 30) •	-:02 (31)	.05	+ .07 (+ ,33)	.14 (1.44)	-,23 (-1,41)	05 (21)	42 (- ,72)	18 (r _{21,402} + 5,46) ⁴
Final Equation		, 	<u></u>	<u>i</u>						سبدہ	.42 (a.23)*		بندمید تشخیر میدو			••••••		.19 (3.08)*	76 (-4.33)*			19 (r _{3,420} = 35.08) ⁴
Afr. Lateristice Initial Equation	,ù s (1,50)	.08 (1.09)	00 (-,04)	01 (17)	~,01 (~ ,23)	,02 (,10)	-,17 (-1.52)	~,08 (~ ,92)	03 (34)	.04 (.47)	22 (2,02) ⁴	ñ/ (+2)	(,)) (- ,.iz)	04	02 (~ .35)	,09 (1,53)	-,10 (-1,61)	-,03 (- ,37)	13 (76)	-,21 (- ,M))	.23 (1,37)*	# (Y _{21,402} = 2,44)*
Final Equation				<u> </u>	•	ر. بر میند . در در د	-,24 (~3,30) ⁴	 	••••••		,17 (3,46) ⁴			• • •					-,39 (-3,34) ⁴		1/ (3.77)*	\$ (14,419 + 9.92)*
farir 4 matul Instiel Equation	-,04 (- ,71)	05 (78)	.03 (.49)	,05 (.15)	-,04 (-1,23)	,02 (,12)	17 (-1.47) ⁶	27 (-3.30)*	,1) (1,72) ⁶	.09 (1.52)	.33 5 4.863 ⁴	4.04 (51)	-,2 (- ,21)	+,08 (-1,63)	08 (-1.52)	01 (45)	.05	.04 (.44)	,05 (,24)	.40 (401)	,14 (-1,40)	1+ (T _{21,602} +5.72) ⁴
tical Equation				-		7	~,21 (~3,94) ⁴⁰	-,17 (-3,13)*	,15 (3,15) ⁰		.5) (4:4)*			 		•••••					-,17 (-3,63)*	19 (75,-18-81,02)*
Envir restat (1/2) Initial Lisation	-,01 (- ,22)	-, (4 (37)	.06 (.96)	.09 (1.72) ⁷	-,04 (-1.36)	.04 { ,18}	,08 (.73)	-,10 (-1,17)	,03 (,36)	.05 (1.36)	,31 { 4,2+)*	- 08 (+), 115p	,03 / 1,35)		-,07 (-1,23)	07 (-1.16)	,04 (,63)	.10	~.04	,07 (30)	,19 (-1,60)	4 (r _{21,442} = 2,21)*
Final Equation				,10 (2.03) ⁶				••••••			.88 (4,76) ⁴		 	•	مىيىتە . ئىسىدە سىيە							* 6 (# _{4,1} (), = 15,47)*
ior y Taltial Equation		,96 (,96)	-,05 (- ,01)			.01	-,#4 (+ ,33)	, 64 5 - 67)	.03	03	.30 (4.15) ⁸	-,16	62	-,91	.02	.07	•	.15	-,21	.01	,91	11 (1721,402 = 3.46) ⁴
Tinat Equation			()								.30 (4.)3)*							-19 (2.92) ⁰	31 (-4.99)*			12 (F3,476+20,75)*
12.5. P. (1 49) Jinatiat Equition	41	06	03	-103	-,04	,0J	-,02	.07	.00	- 06	,32 • 4 461 ⁴	-,13	,00	01	.91	,00	-,40	.12	-,23	~,04	,04	13 (7 _{31,402} =4,00)*
tinal Remation						4.000 4.000	- 1999	·			,3) (.8,66)*		(,09)	(= ,17)	(((, , , , ,))	 (10,)	(1,90) ,21 (3,23) ⁸	(~1.53) #,34 (~5,43) [®]	·····		16 (73,620=26,61) ⁶
Tatilas fire 3	25 (-1.96) ^e	,14 (1,10)	-,04 (~ ,34)	-,27 (-2,03)*			,56 (2,53) ^b	-,174 (-',45)	-,75 (-1,71)	.21	.45 (3.05)*	24 (-1.47) ⁶	17	.03	10. (-,07	,19 (.45	···	-,76	36 (*1),86=2.06)*
Final Rquiting	-,30 (-2,04) ⁶			~.11 (-1.34)*		••••••	,17 (7.39) ⁶				.39 (3,37)*	~,36 (-7,72)®	.74 (2,48) ⁶	-		,25 (2,29) ^b			.34 4(15.8)			26 (F _{0,19} = 3,63) ⁴
the Concurrence (1/4) I	20	,19 (),60)	.04 (- ,24)	19 (-1,39)	4,15	,32 (,45)	.47 (1.49) ⁴	11 (51)	12 (31)	.10	(3,64) ^b	~.4) (-1,34)		.به دور د (۱۹۵۰)	~,03 (~ ,23)		-,02 (- ,12)	. 19	(1.47)*	~.41 (31)	17	22 (721,44=2.13)6
Fingl Ryxaslam	*******				-,24 (-8.53) ^b						,37 (3,60)*	+,71 (-3,50)*				,34 (2,01) ^b			,92 (2,38) ⁹			25 (# _{5,80} - 6.00) ⁴
NAME AND ADDRESS OF TAXABLE PARTY OF TAXABLE PARTY.													a series of the			_					Contraction of the local division of the loc	والبابية المتراشفية فيناجيا بالبية ليبتعه ومعوالة بالتكافي ومستعديه

¹ For each equation, figures in the top row are standardized regression coefficients; figures in parentheses are the t-statistics. Superscripts indicate level of statistical significance: a = .01; b = .05; c = .10. The percent of variance explained is corrected for degrees of freedom, and is accompanied by the F-ratio for the equation.

^{2°}S/M indicates that only serious and moderate violations are being analyzed.

³ Only violating firms considered in analyses of manufacturing violations.

	1 75	2 7NP	3 DAL	4 A/E	5 7G	6 FTP	7 PTR	8 FTL	9 11078	10 IMP	11 IN.	12 IMA/E
1 75	1.000											
2 FMP	.069	1.700										
3 FML	373	.195	1.000							المحتوير المحتوير المحتوير		
4 A/E	.334	ា ំដែល	541	1.000								\mathbf{x}_{i}
5 FG	150	.411	015	.108	1.000							1
6 FTP	. 651	147	117	.209	134	1.007						1
7 FTE	. 307	H.167	241	.2.55	164	.705	1.000					
8 PTL	. 057	. (55	. (61	030	162	.113	.0?5	1.000				
9 IMFS	.309		294	.4.98	.126	.093	- 146	029	1.000			#
0 IMP	.132	.332	.137	.195	.270		035	067	.073	1.000		<i></i>
1 IML	304	.063	.369	544	-• 050	217	->222	039	652	.277	1.000	
2 IMA/E	.33 7	.104	476	.759	.178	.222	.251	022	.6?5	.294	~.62ü	1.000
3 IG	. 671	.324	.068	.267	.319	.005	. 620	(63	.276	•940	•153	.392
4 ITP	.013	.115	214	.362	.047	.286	.111	.033	124	.125	232	.437
5 ITE	• 176	-•350	451	•5.60	. 109	.133	.402	.031	-470	+.045		•670
6 ITL		-+056	087	•032	s 016	. 155	. 196	.212	.013	223	- 134	.027
7 PFS	• 32 0	.196	+004	.054	• 125	774	070	076	•176	•2.55	.005	
8 IPFS.	.109	-101	• û 6 ð	.214	.256	145	.021	112	•613	•496	-• U20	• 37 0
9 DVRS	+172	111	•074	≉.1 ℃7	118	r24	108	C01	.170	057	.015	074
O CONC	• 27 3	. 369	01.	• 10	m•105	~•117	043	004	. 170		•000	143
1 RFD	•376	•219	- • 633	013	609		355	• 100	178	-050-	• 086	095
2 *	053	•015	.013	- • 6 95	• 097	66	145	075	.177	•133	012	. 34.4
3 TOTAL	676		• 622	074	**113	- •005	106	587	810.	100	070	04
4 *	473	•0.04	•134	117	• 138	067	~.158	084		177	.095	03
5 TOTAL(S/M)			#L57	0.93	018	739	070		.044	+.341	• 04 2	102
6 ADHIN	• 38.5	•063	•145	124	062		67.6	.023	• 023	113	002	116
7 ADMIN(S/M)	• 116	=+043		•756	036	• 740	• 036	• 127	•036	023	-,072	, 149
8 ENVIR			146	•088	082	,755	621	∞. C78	+.033	- 122	164	.053
9 ENVIR(S/M)				•546	• 990	•770	.031	142	012	•021	022	•012
U FINAN		049	.080	053	~.044		040	049	067	7 61	•114	
I FINAN(S/H)	• 64 /	- USP	.016		050	110	• UZO	069	• 074		.003	
Z LABOR	- 654		•107	1 - 0		090			+024		-040	152
J LABOR(S/H)			4 1 1 C		*+050		· 152	- U.S7	• 021	100	.004	15U
4 MANUT		• 304	+ 146		• 101	# \$ 7 1 4	15.5	019	.025	.184	001.	010
S HANUF(S/N)	1.2.2.7		•136	一 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一 一	. 149	M • (179	157		.075		A104	· • • • • • • • • • • • • • • • • • • •

Variables 22 and 24 are total violation scores without the controls for date of violation and "specialized" violations included in variables 23 and 25. Variables 22 and 24 were not analyzed in the regressions.

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CORRELATION MATRIX (VIOLATION SCORES CONTROLLED FOR SIZE) CORRELATION MATRIX (CONTINUED) (VIOLATION SCORES CONTROLLED FOR SIZE)

the set of the set of

حييده

	13 XG	14 ITP	15 ITE	16 ITL	17 PES	18 IPFS	19 DVRS	20 CONC	21. RTD	22 *	23 TOTAL	24
13 70	• • • • • • • •	-										
14 ITP	2.2	1.515)	al		and an
15 ITE	alitera	777	1.000									
16 ITL	- 47	213	- 376	1.0.00								
17 PFS		746		117	1.000		فحوصو والمعاصف		- Angele - A Angele - Angele - Ang		بكتك أصداعي منبعه مجازحي جدان	است جامانا در مطالب بر ام
18 IPFS	- 07.3	7.5	141	070	363	1.000						
19 DVRS		177	778	- 167	-1140	.202	1.000					A CARLER STOC
20 CONC	9.47	- 3,00	- 144	- 941	. 035	-169	002	1.660			أستعدها فشرؤ وحومه مغنو أستك	
21 RFD	S		- 40	- 749	.095	- 100		1344	1.000			
22 +	426	- 155	041	025	. 656	.636	. 62-	051	~.110	1,000		
23 TOTAL	144	7.46	137	+.001	131	196		-065	114	.305	1.000	
24 *	155	- 4 - 9	134	057	. 461	.114	. 196	020	001	.570	.209	1.000
25 TOTAL(S/M)		15	191	3.3	169	. 14 2	. 091		004	.275	.653	.408
26 ADMIN		- ° Y7	113	0.12	1156	.050	.128	.014	126	.121	44	029
27 ADMIN(S/M)		. 155	.Ü4o	157	. 6.8.8	014	051	050	.019	.007	.016	.046
28 ENVIR	137	.137	571	•n 37	101	213	043	.042	010	.248	.646	.012
29 ENVIR(S/M)	. J.7	. ? 06	15	.154	039	539	064	C. 3	067	-221	.410	.129
30 FINAN	175	. ~. '55	610	746	044	052	014	032	.054	.019	.073	013
31 FINAN(S/M)	167		. 271	612	028	.005	• UCe	• 056	• 053	- + Nu2	S20	.C16
32 LABOR		1.1	139	040	054	.019	. 132	,005	074	.224	.576	.332
33 LABOR(S/H)	191	197	141	051	441	.031	. 175	.079	062	.199	.516	.357
34 MANUT	. 10.2	9:49	692	042	. 072	. 19 4	- 641	963	0*5	,843	092	.839
35 MANUT (S/M)	6172		115	- • ° 67	• G* 3	.10#	+072	055	045	.914	568	• 645

CORRELATION MATRIX (CONTINUED)

-

بالتساطي يتسرن

11

(VIOLATION SCORES CONTROLLED FOR SIZE)

		25 TGEAL(8/H)	26 Admin	27 ADMIN(S/H)	28 Envir	29 ENVIR(S/M)	30 FINAN	31 FINAN(8/H)	32 LABOR	33 LABOR(S/H)	34 MAJUT	35 MANUT (8/M)
	25 TOTAL (S/M)	1.600										- Star
	26 ADMIN		1.040				متحجيل منادر سنسمده العبوين			<u> </u>	ستخليجة جميلا سرا	
	27 ADMIN(S/M)	• 09 1	.045	1.001						منتقد منابع مسلم المحمد وور	معلقة بغشغ تدعي	
	28 ENVIR		060	005	7 - 0 - 0 - 0				iok-		•	
	29 ENVIR(5/M)	(************************************	- 021	- 001	e734 - 717	1.000	1 000		وسنسهد فتعنع يتعمد ويتلجون			
	31 VINAN(S/M)	. 37 3	022	-000	702	617	.465	1.000				
	32 LABOR	.037	.063	013	004	.000	024	616	1.000			
	33 LABOR(8/M)	.875	.055	011	046	045-	024	015	.943	1.010		
	34 MANUP	023	=+053	014	081	032	014	000	<i>∷</i> ⊿). ⊸ ∎018	008	1.000	
	35 MANUF(S/H)	+011	048	009	.076	030	014	005	.009	•022	•954	1.000
			ومراغبته والمستعد	المعانية فكمنته ويست				n i se se se ser ie en	이 같은 것이 같다.			
		1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 - 1997 -	معجله من المعرفة المعرفة من المعرفة ال معرفة المعرفة ال									
	$\overset{\mathbf{\omega}}{\mathbf{-}}$	من المعمر المنتق بالمراجلة المراجلة المراجلة والمعادية الم										
1		1										
	and the second							a i				
فيدفئ ومرود والمراج ومسهور					ii							
and the second se												

a'

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	TA	Bl	LE	26		
, f.			1.11	1.1.1	1.1	
		. • `		1.5		

CORRELATION MATRIX

(VIGLATION SCORES NOT CONTROLLED) FOR SIZE)

	1	2	3	4	5	6	7	8	9	10	11	12
	2 8	Inr	r Mile	A/ 6	F 9	e i e	FIG	₩¥4	Wit e	1415	ملاكلا	lina/s
1 FS					خفك المصرح بالتشري فصده		······					
2 FNP	.1.50	1.00				25			Hereit in 19			
3 FIL	373	1.1.25	1.570									
4 A/E				1.000					<u> </u>			
5 FG	15 C	.411	10	.1.8	1.675							
6 FTF	51	Co7	117	.202	134	1.000						
7 FTE					164	.305	1.000					a ang ang ang ang ang ang ang ang ang an
8 FTL	.57	155	.061	053	162	.113	.025	1.000				
9 IMFS	. <u>5</u> -4	101	274	.4 78	.126	0.00	.146	029	1.000			
10 IMP		. 532	117.	195		C14		007		1.050	ه وجود المحمد المحمد المحمد المحمد	
11. IML	5 4	.//63	.564	544	020	217	#+ 222	730	672	.277	1.000	
12 IMA/E	• 27	.1 4	475	.759	.178	•575	.251	+• 022	• 6°5	.294	¢ ⁴ 0	1.000
13 IG	and marie Interior		C.P.a	2.67		.005	au2C	0.67				
14 ITP	.6.13	. 115	19	.362	. 147	.286	.171	.033	124	.126	272	.437
15 ITE	.175	720	451	.567	.109	.133	.442	.031	.420		536	.67.0
16 ITL	<u> </u>	54	- 23.127	022			150		eU <u>r 5</u>	- 1213	-134	.027
17 PFS	.32.	. 196	1 1 1 1 1 1 1 1	.054	.125	974	° ⇔.076 :	776	.176	.235	.005	+127
18 IPFS	.19.7	- tc1:	.168	.214	. 256	÷,145	•U?1	112	.6*3	.496	020	.373
19 DVRS	17.	111	ii7.4	107			<u>128</u>		110	757		
20 CONC	7.3		015	.110	-,102			- <u>- 904</u>	.170	0.20	ະບໍ່ດີບ	
21 RFD	.375	+212	53		104	051	055	•1uP	178	. • 020 · ·	•030•	098
22 *			- 167	1.70	<u> </u>	05 9	1.5.1				221	
23 TOTAL	.439	- Ctr	700	.072	iii - ₊1 61	,043			.163	= .145	213	• 25 9
24 *	•3F2	. "17	- LAS	•721	.023	116		?74	62 ⁿ 1	· 749	647	.054
25 TOTAL(S/M)				<u> </u>					172		D7 7	
26 ADMIN	•15 J	.013	·		(+79		U75	+010	.091	143	(31	109
27 ADMIN(S/M)	•177	C37	115	.074	020	1045	• 130	•055	.067	135	072	.057
28 ENVIR						AA2	34			1.3		<u>138</u>
29 ENVIR (S/M)	•22 U	• 723	1"c	.007	.020	.107	51	146	.679	• 765	054	.091
30 FINAN			•01a	•715	031	041	i−+ üña	64	.029	-•325	• 017	64 8
31 FIMAN(S/M)	<u>124_</u>		Line Liens	745	024			-= [2]		46		005
32 LABOR	273	753	049	020	099	083		030	.099	- • JP5	019	
33 IABOR(S/M)		747	055	076	385	093	1/1	737	.175	830	012	709
34 MANUF			alize		072	166	006	964	<u>. 025</u>			~.059
35 MANUF(S/M)	.225	• 1.7	-C25	27%	.058	144	096	+.067	.091	• 1 56	.053	051

I. Variables 22 and 24 are total violation scores without the controls for date of violation and "specialized" violations included in variables 23 and 25. Variables 22 and 24 were not analyzed in the regressions.

	CORRE	LATION	MATI	RIX (CON	TINUE	.D)	le je
(VIOL	ATION	SCORES	NOT	CONTROL	LED P	OR	IZE)

	13 IG	14 ITP	15 ITE	16 1TL	17 PFS	18 IPFS	19 DVR S	20 CONC	21 NFD	22 *	23 TOTAL	24 *
13 IG	1.11											
14 ITP	. 194 4	1.200										
15 ITE	. 39 0	.277	1.520									
16 ITL		.2.13	. 329	1.000								
17 PFS	.302	14t	.211	112	1.000							
18 IPFS	.673	+ . 225	.141	079	.343	1.000						
19 DVRS	12	- 1.22	273	162	.040	.202	1.000					
20 CONC	- 47	- 300	144	041		.067	(02	1.000				
21 RFD	.632	126	48	7-8	. 395	107	- 180	. 34	1.000			
22 *	17 2	- 1.9	. 193		.243	207	.022	. 147	. 129	1.000		
23 TOTAL	0.132	÷. 1		0.15	. 140	- 744	. 677	. 1 . 7	.165	\$50	1.000	
24 *		- 166	.51.	7.42	2.20	155		.217	.175	.752	-485	1.000
25 TOTAL (S/M)	- 177	154	1 -	- 7/4	.149	ny7		.205	.151	.553	.744	.632
26 ADMIN	115	- 100	- 142	.013	. 27	162	. 107	. 174	. (14	733	.425	-30 P
27 ADMIN(S/M)		1.40		- 010	.125	260	639	005	357	118	.284	.156
28 ENVIR	116	145		C 70	+.042	- 101	- 1172	049	.140	.276	749	.097
29 ENVIRIS/MY	a 16 3	. 169	.1.75	.052	. 676			.003	.057	.201	.452	.160
30 FTNAY	- 193	- 773	. 76.	- 077	. 025	011	047	.017	-024	.077	.147	-107
31 FTNAN(S/M)		- 77	. 70	- 6.1	.341	C37	ú5E	.045	.012	. 290	.160	.123
32 TARCE	Talif 5	- 154		- 010	. 991	.056	. 128	.196	.115	. 3 49	.634	.513
33 TAROR(S/M)		- 196	(·7 h	- 769	490	768	. 126	.215	.137	.421	.611	.554
34 MANUT		- 176		041	.147	102		.191	C97	.743	.265	.898
35 MANTER RIN	. 35 1	-101	(.7A	= .0.42	. 145	.101	. 425	. 193	. 094	.750	.285	.932

CORRELATION MATRIX (CONTINUED) (VIOLATION SCORES NOT CONTROLLED FOR SIZE)

		25 TOTAL(S/M)	26 Admin	27 ADMIN(8/M)	28 Envir	29 ENVIR(S/M)	30 Finan Fi	31 (NAN(8/M)	32 LABOR	33 34 LABOR(8/M) HANU	35 F MANUF (S/M)
25	TOTAL(S/M)										
26 27 28	ADMIN ADMIN(S/M) ENVIR	• 32 ÷ • 59 4 • 27 6	1.500	1.000	1.306						
29 30 31	ENVIR(S/M) FIMAN FIMAN(S/M)	• 36 2 • 21 7 • 24 4	003	• 226 • 120 • 141	-532 -007	1.000	1.000	1.000			
32 33 34	LABOR LABOR(S/M)	• 265 • c94	•258 •205	.213	.095 .074	.110 .02,	•130 •125 •24	• 149 • 144	1.000	1.000	10
35	MANUF (S/M)	.390	.304	.C44	+C02	.031	.016	• 622	.317	•357 •9	73 1.000