

“ALL CRETANS ARE LIARS”: THE FIGHT AGAINST CORPORATE CRIME

JOHN FLOOD

John Braithwaite. *Corporate Crime in the Pharmaceutical Industry*. (London: Routledge and Kegan Paul, 1984). viii + 440 pp. Notes, bibliography, index. \$45.00.

Susan P. Shapiro. *Wayward Capitalists: Target of the Securities and Exchange Commission*. (New Haven, CT: Yale University Press, Yale Studies on White-Collar Crime, 1984). xx + 227 pp. Notes, figures, tables, bibliography, index. \$26.00.

Studying crime or criminals places the researcher in a quandary: Do I go out on the job with criminals? What if it is a burglary? Do I abandon all moral stances and just get on with it? Polsky (1967: 135) is a criminal camp follower: “Studying a criminal in his natural setting . . . means studying him in *his* usual environments rather than yours, in his living quarters or streets or taverns or wherever, not in your home or your laboratory.” These are tight strictures to follow, but if one is trying to discover what criminals do and how they do it, it may be the best, although exhausting, way. In an engaging, albeit egocentric and narcissistic study of professional villains, Taylor (1984) was sponsored in the criminal community by a former professional criminal who had just completed a sociology degree in prison. Nevertheless, Taylor kept his distance, committing no crimes except for some after-hours drinking. All his information came vicariously through interviews, but when you interview a con man, how do you know if he is telling you the truth? As Epimenides the Cretan said, “All Cretans are liars.”

John Braithwaite, in *Corporate Crime in the Pharmaceutical Industry*, and Susan Shapiro, in *Wayward Capitalists*, take the process of distancing themselves from their subjects to a further remove, that of basically relying on official data, with some interviewing. In part this is a function of moving up the scale of criminality from blue collar to white collar crime. There is simply more documentation on the latter; furthermore, not everyone defines white collar crime as crime. Libertarian economists, for example, would consider insider trading to be a reasonable means of obtaining information. This should make us all the more wary about the Cretan paradox, because corporate entities have more resources with which to dissemble than do ordinary criminals. One

LAW & SOCIETY REVIEW, Volume 21, Number 5 (1988)

marked difference between white collar crime and blue collar crime is that the former is often, on detection, visited with *civil* rather than *criminal* penalties. In Shapiro's sample from the Securities and Exchange Commission's files, 48 percent of offenders were subject to civil proceedings compared to 21 percent who were subject to criminal proceedings. Clinard and Yeager (1980) found that, among Fortune 500 companies, two-thirds of serious offenses and four-fifths of moderately serious offenses received *administrative* sanctions. Braithwaite too notes that, by and large, corporate crimes were not punished.

Despite their methodological constraints, these are timely books. Shapiro's work assists, in a limited way, our understanding of the current insider trading scandals on Wall Street. Braithwaite's study enlightens our present difficulties with, for example, Burroughs-Wellcome's reluctance to allow the drug AZT to be tested against other possible remedies for AIDS, and the role of the Food and Drug Administration in these machinations. Both tell stories in which the breakdown of trust between producer and consumer, which is central to a business like the drug industry, make one very chary about trusting business ever again.

The stories are told in different ways: Braithwaite concentrates on a single industry but is encyclopedic in scope; Shapiro examines the various ways the SEC tracks down offenders in the United States. Braithwaite conducted 131 interviews with pharmaceutical industry executives. He also scoured the Senate Judiciary Committee's files. Unfortunately, with these potentially rich sources of data, Braithwaite relies mostly on the committee files and other secondary sources; the interviews receive short shrift. The fault does not entirely lie with the author, for in another book (Fisse and Braithwaite, 1983), he explains how the publisher of *Corporate Crime*, Routledge and Kegan Paul, pressured him into dropping much of the interview data unless he could prove them to "the satisfaction of a court of law" (p. 7). After the struggle of interviewing the informants, it is a shame that the interviews had to be ignored, and it has worked to the detriment of the book. Shapiro also had to work to obtain her data, for the SEC had never before let a social scientist poke around in their confidential files. Her study is predominantly a statistical one, and the reader would never fully realize that she had, in fact, conducted some observations.

Braithwaite roams around every part of pharmaceutical corporate malfeasance, covering the manufacture, testing, distribution, and marketing of drugs. He could, however, have been more sensitive to cross-cultural issues inasmuch as there is little theoretical explanation for the countries he selected, namely the United States, the United Kingdom, Australia, Guatemala, and Mexico. Corporations resort to bribery to set up plants in countries where the governments have no testing facilities and rely on the "good-

will” compliance of the companies to produce and disseminate safe drugs. Braithwaite (pp. 245–246) states that Guatemala is one such place in which the companies conspire to prevent egalitarian tax reforms, suppress labor unions, and align themselves with the CIA to promote political stability. The drug companies are apparently without any moral qualms. They will sell drugs, whether needed or not, whether safe or not, for the greatest possible profit to Third World countries, which have few resources to counter them. For example, Parke-Davis produced a drug, chloramphenicol, that is primarily used to treat diseases such as typhoid. Throughout Latin America the company promoted its use for a plethora of complaints from tonsillitis to eye infections to gonorrhoea, without any warning of the side effects, which range from deafness to death. In addition, when an epidemic of typhoid occurred in Mexico, the prior indiscriminate use of the drug had rendered it useless for its original purpose. Even within the United States the companies will push drugs, such as antidepressants, that not only have deleterious side effects but also fail to cure the underlying cause of the disease.

One particular observation by Braithwaite is the discrepancy between external and internal regulation. As I suggested earlier, the forces of external regulation can be rendered powerless if there are no government inspectors or, when they do exist, if the companies are able to camouflage their faults from the inspectors by such means as using scientists who regularly test their products and can be relied upon not to submit distressing results. As one quality control manager said to Braithwaite (p. 139), “Government inspectors ensure the quality of your records, not the quality of your deeds.” With respect to internal regulation, the contrary is true. The drug companies know where infringements of the correct procedures occur. Knowledge of the faults, however, does not necessarily mean that the companies will prevent a batch of faulty drugs from entering the market, for holding back a suspect batch might alienate a major customer. But, on a counterintuitive note, the companies’ rules regarding their workers are sometimes more stringent than the government’s.

Shapiro’s book is odd, for its title bears little relation to what is inside the covers. The work is merely a statistical analysis of the efficacy of various detection strategies employed by the SEC. Shapiro is without doubt thorough in her analysis of the agency’s records from 1948 to 1972, perhaps overly thorough. Every page is full of endless lists of every possible percentage that could be tediously computed from her data. It is a catalogue of crimes. Moreover, she promises a historical perspective that never materializes. Her data are presented and interpreted in such a way that any diachronic component remains hidden. The problem is an old one: Not all Ph.D. dissertations make readable books. This one would have been ideal as a government report or at best an article.

The one point that comes through clearly in Shapiro's book is that the SEC is too understaffed and underfunded to carry out its mandate thoroughly. As she (pp. 68–69) notes, "Unfortunately, the exploitation and integration of many of [the] intelligence opportunities is tenuous at best." The commission uses approximately fifteen detection strategies, ranging from insider information to surveillance to inspections of securities' filings. Each, Shapiro (p. 167) writes, "reveals that the social organization of illicit activities determines the way they are detected and, therefore, that different strategies of intelligence catch different kinds of securities offenses." So, although some strategies yield more culprits than others, the others cannot be abandoned because a range of offenses would be omitted. The SEC will therefore always be overstretched.

Both books finish with policy statements. Braithwaite locates his within the domain of what the law can and cannot achieve, that is, what are the limits of the law? In effect, what is the balance between punishment and persuasion? He delineates the strategies that can and could be used against drug companies, including the imprisonment of executives (he interviewed two executives who claim to be "vice-presidents responsible for going to jail" (p. 308)), fines, and coercion by the regulatory agencies. The question is, according to Braithwaite, how Draconian can government be in a liberal democracy? Shapiro's coda is nothing more than a piecemeal list of suggested improvements for the SEC's intelligence work. It is not set in the context of any sociological theory, nor even wider policy considerations.

If you move your research out of the criminal's home and into the laboratory, what kind of results do you get? One, I would suggest, that has too many filters between it and reality. But given that caveat, if you want to know how the pharmaceutical industry works (or fails to work) read Braithwaite; Shapiro, unfortunately, will not tell you much about either capitalists or the SEC.

JOHN FLOOD is Assistant Professor of Criminal Justice and Law at Indiana University, Bloomington. He received a LL.B. from the London School of Economics in 1975, a LL.M. from the Warwick University School of Law in 1978, a L.L.M. from Yale Law School in 1980, and a Ph.D. in Sociology from Northwestern University in 1987. His recent publications include *Barristers' Clerks: The Law's Middlemen*. (Manchester: Manchester University Press, 1983), and "The Changing Face of American Corporate Law Practice," *La Revue Française d'Etudes Americaines* (forthcoming).

REFERENCES

- CLINARD, Marshall B., and Peter C. YEAGER (1980) *Corporate Crime*. New York: Free Press.
- FISSE, Brent, and John BRAITHWAITE (1983) *The Impact of Publicity on Corporate Offenders*. Albany: SUNY Press.
- POLSKY, Ned (1967) *Hustlers, Beats and Others*. Chicago: Aldine Publishing Co.
- TAYLOR, Laurie (1984) *In the Underworld*. Oxford: Basil Blackwell.