Corporate and Governmental Deviance

Problems of Organizational Behavior in Contemporary Society

Third Edition

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To
Marlene, Michael, and Natalie Ermann
and
Jean, Julie, and Bob Lundman

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Preface

The study of corporate and governmental deviance has continued its progress since the second edition of this book. One sign of this continued progress is the sheer increase in works on the subject. This third edition reflects the growth in this area—three-quarters of the selections are new and nearly all were published after the second edition was prepared. The readings we have retained have made lasting contributions and most of these appeared in the first edition.

A second sign of continued progress has been the growth of analytical and conceptual sophistication. Changes in the structure of the book and in our editorial introductions reflect that growth. Our first section traces the origins of corporate and governmental deviance. Section II details patterns of corporate and governmental deviance—including the knowing release of an unsafe product, price-fixing, police corruption, and government "experimentation" with human subjects. Our last section examines reactions to corporate and governmental deviance.

This book is designed for use in courses on deviance, social problems, criminology, organizations, and business and society. In these courses, reading assignments frequently involve a comprehensive text and a number of supplemental works focusing on specific topics. Whether comprehensive or supplemental, most of the assigned readings in these courses direct attention to the actions of individuals. This book provides an important balance by directing attention to the deviant actions of organizations. The student who reads the introductions and a sampling of the essays in this book will come away with an appreciation of the fact that organizations, not just individuals, commit deviant acts.

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The Impact of Publicity on Corporate Offenders: Ford Motor Company and the Pinto Papers

Brent Fisse and John Braithwaite

The Pinto Trial

Prevalent as corporate "violence" is,[1] corporations are rarely prosecuted for homicide or assault. The Pinto trial in Indiana provided a dramatic exception, for it involved the spectacle of one of America's largest corporations, the Ford Motor Company, being charged with reckless homicide, not by knife or gun but by fire.

The trial arose from an accident in August 1978 in which three young women were fatally burned when their 1973 Ford Pinto burst into flames after being rear-ended by a Chevrolet van. The fuel tank of the Pinto ruptured in the collision, gasoline entered the passenger compartment as the car crumpled, and fire exploded instantaneously.

Grand jury proceedings were launched, there being much doubt as to the safety of the Pinto fuel system. Over the previous year the media had criticized the location of the fuel tank, which was positioned six inches forward of the rear bumper. As a result, the National Highway and Traffic Safety Administration [NHTSA] had initiated defect proceedings in April 1978, and in June Ford had announced a voluntary recall of all Pintos manufactured between 1971 and 1976.[2] Moreover, these events aroused product liability actions against Ford, most notably the *Grimshaw*[3] suit in which damages of $128.5 million were awarded, including a record $125 million in punitive damages (later reduced to $3 million). Although the suit in *Grimshaw* was civil, the award of punitive damages depended upon a finding of corporate knowledge about the danger of the Pinto fuel tank location, and this in turn suggested that Ford might be found at fault in criminal proceedings for unlawful homicide.

The grand jury returned three indictments of reckless homicide, an offense recently enacted under Indiana's criminal code.[4] A pre-trial skirmish ensued wherein Ford attacked the indictments on a variety of grounds, including the application of the reckless homicide offense to corporate persons[5] and the constitutional difficulty raised by the allegations of reckless conduct by Ford at times prior to the creation of the offense. The indictments stood. It was held that corporations could commit reckless homicide under Indiana law and unconstitutional retroactivity was avoidable if the recklessness alleged was deemed to be that Ford had knowingly failed to rectify the Pinto danger after the new offense became law.

The resulting trial revolved around three issues. First, had Ford been aware of an unjustifiable danger in the design of the Pinto? Second, had Ford failed substantially to rectify any such unjustifiable danger? Third, in any event, was the closing speed between the van and the Pinto low enough that a small car could reasonably have been expected not to leak fuel? For the prosecution to succeed, each of these questions had to be resolved affirmatively beyond reasonable doubt.

The main obstacle confronting the prosecution on the first issue was the non-admission of much evidence. Many of the so-

From *The Impact of Publicity on Corporate Offenders*, pp. 41-54. Copyright © 1983 by State University of New York. Reprinted by permission.

1. John Monahan and Raymond W. Novaco, "Corporate Violence: A Psychological Analysis," in Paul Lipsitt and Bruce Sales, eds., *New Directions in Psycholegal Research* (New York: Van Nostrand, 1980): 3-25.

2. *New York Times*, June 10, 1978, p. 1.

3. Grimshaw v. Ford Motor Co., No. 197761 (Superior Court, Orange County, Ca., 1978).

4. Ind. Code, 35-42-1-5 (Supp. 1978).

5. See generally Comment, "Corporate Homicide: A New Assault on Corporate Decision-Making," *Notre Dame Law Review* 54 (1979): 911-924; Comment, "Corporate Criminal Liability for Homicide: The Controversy Flames Anew," *California Western Law Review* 17 (1981): 465-492; Comment, "Corporate Homicide: The Stark Realities of Artificial Beings and Legal Fictions," *Pepperdine Law Review* 8 (1981): 367-412.

called "Pinto Papers"—internal documents about engineering and safety matters—were ruled inadmissible, some because Ford refused to stipulate their authenticity, others because they related to the 1971 and 1972 Pinto and not the 1973 car in which the victims had suffered their fatal burns.[6] The most critical document excluded was a highly unfavorable NHTSA report of fuel leakage rates from crash-tested Pinto and GM Vegas, the ground of exclusion being that only 1971 and 1972 Pintos had been tested, whereas some improvements had been made for the 1973 model (according to Ford, these improvements raised the speed of barrier-crash survivability from "around" 20 m.p.h. to above 20 m.p.h.).[7] Surprisingly, the prosecution never asked NHTSA to perform tests on the 1973 model (Ford has suggested that this possibly was because the results were expected to be unfavorable to the prosecution's case).[8]

The prosecution also ran into difficulty over the second issue. Had Ford failed substantially to rectify any danger in the design of the Pinto? To begin with, the relevant time span was the 41-day period between the commencement of the new reckless homicide offense and the date of the fatal accident subject to prosecution; the diligence of Ford prior to that period was not in issue. Furthermore, during the two months between Ford's recall announcement and the accident, NHTSA had been regulating the recall and there was no evidence of undue delay or neglect on the part of Ford.[9]

Third, was the closing speed between the van and the Pinto so high that no small car could reasonably have been expected not to leak fuel? The contention of the prosecution was that the closing speed was no more than 35 m.p.h. (several eye-witnesses so asserted) and that this speed was insufficiently high to cause fuel leakage in a small car of adequate design. Late in the trial the defense produced two witnesses who testified that, just before the driver of the Pinto died in hospital, she had mentioned

6. *Chicago Tribune*, March 14, 1980.

7. Lee Strobel, *Reckless Homicide: Ford's Pinto Trial* (South Bend, Ind.: And Books, 1980), pp. 151–152.

8. *New York Times*, April 4, 1980, p. 8.

9. Strobel, *Reckless Homicide*, pp. 221, 223–225.

stopping just before the crash occurred.[10] If this were true, the closing speed would have been approximately 50 miles per hour, a speed of impact that no small car fuel tank could be expected to withstand. To highlight the point, the defense showed films of specially arranged crash tests in which a similar van hit a 1973 Pinto and other makes of cars at 50 m.p.h. All of the cars struck suffered substantial fuel leakage.[11]

After 25 hours of deliberation stretched over four days, the jury returned a verdict of not guilty. Its members' reasons for acquitting Ford were aired at a press interview arranged by the trial judge at the conclusion of proceedings. Although there was no consensus as to the safety of the Pinto or the closing speed of the vehicles at the time of the accident, it was agreed that the prosecution had not proven reckless failure by Ford to rectify any danger which may have existed in the Pinto's fuel system.[12]

Publicity and Counterpublicity

The Pinto trial attracted intensive media coverage, partly because there had been much advance publicity, and partly because the idea of a corporation committing reckless murder was no longer merely political rhetoric but living law.[13]

The adverse publicity began in earnest with "Pinto Madness,"[14] an award-winning article by Mark Dowie in the September 1977 *Mother Jones* magazine; this, Ford executives lamented to us, was "the real watershed." The article claimed that internal company documents (the "Pinto Papers") showed that "Ford has crash-tested the Pinto at a top-secret site more than 40 times and that *every* test made at over 25 m.p.h. without special structural alteration of the car has resulted in a ruptured

10. *New York Times*, February 14, 1980, p. 20; *Wall Street Journal*, March 14, 1980, p. 7.

11. Strobel, *Reckless Homicide*, Ch. 20.

12. Ibid., pp. 267–270.

13. See further Victoria Lynn Swigert and Ronald A. Farrell, "Corporate Homicide: Definitional Processes in the Creation of Deviance," *Law & Society Review* 15 (1980): 161–182.

14. Mark Dowie, "Pinto Madness," *Mother Jones*, September/October 1977: 2–13.

fuel tank." It also contended that none of the protective modifications tested had been incorporated in production-line Pintos, reference being made to an internal cost-benefit study[15] in 1973. The gist of this particular study was represented as follows:

$11 VS. A BURN DEATH

Benefits and Costs Relating to Fuel Leakage
Associated with the Static Rollover
Test Portion of FMVSS 208

Benefits

Savings: 180 burn deaths, 180 serious burn injuries, 2,100 burned vehicles.
Unit cost: $200,000 per death, $67,000 per injury, $700 per vehicle.
Total benefit: (180 × $200,000) + (180 × $67,000) + (2100 × $700) = $49.5 million.

Costs

Sales: 11 million cars, 1.5 million light trucks.
Unit cost: $11 per car, $11 per truck.
Total cost: (11,000,000 × $11) + (1,500,000 × $11) = $137 million.[16]

The implication was that Ford had deliberately chosen not to make "an $11-per-car improvement that would prevent 180 fiery deaths a year."[17] These were the allegations which stuck in the mind of the state trooper at the scene of the Elkhart accident, and prompted him to take active steps toward prosecution.[18]

Soon thereafter the *Grimshaw* suit was decided. A "major spout" of adverse publicity resulted from the record award of $125 million in punitive damages and, more significantly, from the evidence relied upon to establish that Ford had consciously and willfully disregarded the safety of Pinto owners. As a result, the Pinto became infamous, even overseas.[19]

15. E. S. Grush and C. S. Saunby, *Fatalities Associated with Crash-Induced Fires and Fuel Leakages* (internal document, Ford Motor Company, 1973).
16. Dowie, "Pinto Madness," p. 7. See also Strobel, *Reckless Homicide*, pp. 89-90.
17. Dowie, "Pinto Madness," p. 7.
18. Strobel, *Reckless Homicide*, pp. 19, 28.
19. See, e.g., *National Times* (Australia), February 27-March 4, 1978; Strobel, *Reckless Homicide*, p. 66.

Then came the much-publicized NHTSA defect notice in May 1978.[20] After completing an initial investigation into the Pinto (an investigation provoked by the *Mother Jones* article), NHTSA advised Ford that there has been "an initial determination of the existence of a safety-related defect" in the 1971-1976 Pintos.[21]

It was the trial, however, which drew the most publicity. The horrific nature of the deaths, the sinister reputation of the Pinto Papers, the novelty of the charge of corporate homicide, and the flamboyance of chief counsel on both sides made the event a theatrical occasion. Throughout the two months of the trial a group of about 50 reporters, producers, cameramen, and technicians stayed on location to cover the proceedings. Their output was prodigious, largely because prosecution and defense supplied them with an abundance of newsworthy lines, including the prosecution's chilling opening allegation that Ford "deliberately chose profit over human life" and "totally disregarded" repeated warnings from its engineers.[22] Ultimately, the trial became the subject of a book by Lee Strobel, a reporter who covered the event for the *Chicago Tribune*.[23]

A notable feature of the publicity about the Pinto trial was that a *corporate* defendant held the limelight. As was repeatedly stressed in the media, it was the first case in which a corporation had been charged with unlawful homicide in the context of product liability,[24] and the indictment for reckless homicide as opposed to merely manslaughter added an additional element of novelty. Moreover, no Ford personnel were tried with the company itself, the prosecutor's explanation being that "Ford Motor Co., the corporation itself, was all that Elkhart County could handle. To go further, and take the next step, which may be individuals, [would have to be taken by] somebody with far more resources than we have. . . ."[25] Accordingly, those who followed

20. *New York Times*, May 4, 1978, p. 22.
21. Strobel, *Reckless Homicide*, p. 2[illegible]
22. *Wall Street Journal*, January 16, 1980.
23. Strobel, *Reckless Homicide*.
24. *Washington Star*, March 13, 1980.
25. *Los Angeles Times*, January 8, 1980.

the trial were presented squarely with a question of corporate blameworthiness.[26]

Despite the acquittal of Ford in the Pinto trial, adverse publicity continued. Although the decision was generally considered to be correct, given the particular facts of the case, it did not resolve the basic doubts surrounding the safety of the Pinto. Thus, in one widely-publicized comment on the jury's verdict, Clarence Ditlow, a leading critic of the motor industry, revived the issue of blameworthiness:

> In view of the judge's restrictions against the introduction of supporting evidence, but letting in the Ford crash tests, I felt the decision was preordained. However, in the next case, with a better judge or with a different striking vehicle, I feel sure Ford or any other manufacturer would be convicted.[27]

Faced by the adverse publicity outlined above, Ford became involved in three counterpublicity exercises of note: a press release in response to the *Mother Jones* article, a voluntary recall in response to the NHTSA defect notice, and the trial itself.

In response to the *Mother Jones* article, Ford issued an eight-page release. The main counterclaims stressed in this press release were threefold:

a. statistically, the Pinto was not involved in an unusually high proportion of fire-related deaths;
b. internal Ford documents (i.e., the Pinto Papers) relied upon by *Mother Jones* related neither to the Pinto models subject to criticism nor to rear-end impact protection, but concerned either later models or prospective federal vehicle safety standards; and
c. autos and their makers should be judged by the standards applicable at the time, rather than in light of ideas for future improvements.

26. By contrast, in the electrical equipment conspiracies, corporate blameworthiness took second place to the jail sentences handed out to individual actors.

27. *Los Angeles Times*, March 14, 1980.

In conclusion, it was argued that:

> the Ford Pinto does not pose any undue hazard to its occupants as [*Mother Jones*] tries to contend. Although absolute travelling safety cannot be guaranteed in any car, [government statistics] show that the performance of the Pinto's fuel-tank system in actual accidents appears to be superior to that which might be expected of cars of its size and weight.[28]

A second counterpublicity measure was the recall of the 1971–1976 Pintos shortly after the NHTSA defect notice. The press release announcing the recall indicated Ford's disagreement with the NHTSA finding that the Pinto was unsafe, but nonetheless offered the promise of "modifications" designed to "reduce significantly" the risk of fire if the cars were hit from the rear. As one executive testified at the Indiana trial, the recall was seen as an important public relations exercise:

> The corporation had been subjected to allegations of a problem unique to the Pinto, and this obviously was damaging our public reputation, and the attitude of the public. It had become a critical problem for the company, a reputational problem. . . . On balance, it was felt that if we could reach an agreement with NHTSA [on a recall], it would reassure the owners and the public of the company's good intentions in the matter.[29]

In effect, although not by admitted intention, the recall avoided a full-scale NHTSA hearing and reduced the obvious risk of further adverse publicity (however, the recall did provoke Nader into issuing a press statement vilifying Henry Ford II).[30] At this time, it should be remembered, Ford had no other small car to offer in the immediate future; in the words of one of our respondents, "we had to keep the Pinto alive for two years."

Subsequently, the Pinto trial provided Ford with a far better opportunity to defend itself publicly, and full advantage was taken of it. As an initial precaution, an opinion poll was conducted to test the reaction of potential jurors in the areas where

28. Ford Motor Company, Press Release, August 29, 1977, p. 8. This release appears to have received little press coverage: see Swigert and Farrell, "Corporate Homicide," p. 175.

29. Strobel, *Reckless Homicide*, p. 217. See also *New York Times*, February 21, 1980, p. 16.

30. *Chicago Tribune*, August 26, 1978.

the accident occurred;[31] the results being unfavorable, a change of venue was obtained (from Elkhart to Winamac, Indiana). When the trial began, a senior public relations officer was assigned to follow press reactions, to keep reporters abreast of Ford's stand, and to tackle those "not giving us a fair break."[32] Above all, Ford staged a showcase defense, meticulously prepared by a team of lawyers and brilliantly presented by James Neal, an accomplished trial counsel of Watergate fame. As well as winning over the jurors at the trial, Neal's presentation was deliberately aimed at the general public. It repeatedly portrayed Ford as an All-American institution which, far from being an inhuman reckless murderer, was peopled by executives who not only were sensitive to the issue of safety, but also were prepared to provide Pintos for the use of their own families.[33]

After the acquittal, Ford considered mounting a public relations campaign, but no serious steps were taken in this direction, largely because the media was believed to be preoccupied with immediate events; "news a day late is no news." This belief, we were told, was founded partly on experience: some information had been provided to reporters without evoking any sign of interest. Accordingly, Ford let the matter rest with a statement by its new chairman, Philip Caldwell, that "there must be responsibility on the part of those who use products as well as on the part of those who manufacture them."[34] Others, however, were quick to come to Ford's side. Most notably, General Motors issued a congratulatory press release, and one of Ford's defense counsel for the trial published a sympathetic series of articles in the *National Law Journal*.[35]

Looking back over the Pinto trial, the Ford executives with whom we spoke regarded being prosecuted as a blow which

31. Bruce Mays, "Hans Zeisel: The Time of His Life," *Student Lawyer*, April 1980: 22-39, pp. 23, 37.

32. Strobel, *Reckless Homicide*, p. 104. An additional function was to offer selected news items for distribution to media unrepresented by a reporter at the trial: ibid., p. 120.

33. Strobel, *Reckless Homicide*, pp. 185, 203-212; *New York Times*, February 20, 1980, p. 16.

34. *Los Angeles Times*, March 14, 1980.

35. *Detroit Free Press*, March 14, 1980; Malcolm E. Wheeler, "In Pinto's Wake, Criminal Trials Loom for More Manufacturers," *National Law Journal*, October 6, 1981: 27-28 (first of five-part series). See also Richard A. Epstein, "Is Pinto a Criminal?," *Regulation*, March-April 1980: 15-21.

could have been struck against any company in the auto-manufacturing business and, indeed, many companies in other industries as well. They resented the difficulty they experienced in getting Ford's side of the story into the media, especially the company's position that the cost-benefit study related to a proposed federal safety standard, and not to the actual design of the Pinto. It was said that Strobel, the author of *Reckless Homicide: Ford's Pinto Trial*, had written a distorted account because he had never approached Ford to check out the facts. These reflections ended on a sweeter note, however, because *Fortune* had smiled. A recent article in the magazine had excluded Ford from its list of 100 leading corporate criminals, presumably because the company had been vindicated by the acquittal at Winamac.[36]

Financial Impacts

The adverse publicity before and during the Pinto trial did have an impact on Ford's sales and profitability, and stock prices may also have suffered. Sales of the Pinto dropped sharply at first but later recovered. As a result of the "Pinto Madness" scare in 1977-1978, its share of the market was cut from 11-12 percent to 6.7 percent.[37] The car was then facelifted for the 1980 model year, and an advertising campaign stressed the price advantage the Pinto had over imports. The share of the market then climbed back to 9.7 percent.[38] We were informed that the path back had not been blocked by any criticism of the Pinto by competitors ("they were rooting for us on the footing that, but for the grace of God, there go I") or by any bans on government purchases (the last 4,000 Pintos were bought by the U.S. government for the Postal Service). At the same time, the recovery had not really been Ford's doing alone; the crisis in Iran had resulted in an upsurge in demand for small cars generally. Within 30 days of the onset of

36. Irwin Ross, "How Lawless are Big Companies?," *Fortune*, December 1, 1980: 56-64.

37. *Advertising Age*, April 7, 1980. Ford used car prices were also severely affected: *Houston Post*, September 15, 1978.

38. *Advertising Age*, April 7, 1980.

that crisis there had been a significant switch in consumer preference from large to small cars (in 1980 the number of Pintos produced increased by 125,000 to 325,000). This being so, why had the Pinto been discontinued in 1980? Contrary to rumor, it was insisted that the production of the Pinto had not been stopped as a result of the publicity about safety, but because the car had come to the end of its planned 10-year cycle.

Despite overall sales of 2.9 million, however, the Pinto was not a profitable car. As Ford's chairman recently bemoaned in corporates: "I just wish we had been able to get a better balance between the incomings and the outgoings."[39] Apart from loss of revenue through a fall in sales, and the cost of the 1978 recall, considerable legal costs were incurred in the criminal trial and in civil damages actions. The legal costs associated with the criminal trial were never disclosed by Ford, but the figure often guessed was $1 million;[40] the amount paid out in civil damages remains confidential. By no means can all of these costs be attributed to the adverse publicity surrounding the Pinto, but that publicity did induce Ford to spare no expense in staging its defense at the criminal trial and undoubtedly contributed to the onset of civil claims and to Ford's willingness to settle them. It is noteworthy that Ford's associate counsel in charge of litigation felt that the publicity about the deaths of three young women in the homicide case "made it very difficult for us to get a fair trial almost anywhere on a Pinto case."[41] After the acquittal in the criminal trial, the flow of civil claims dropped to a trickle and a case proceeding to trial in December 1980 was won by the company.[42]

Apart from the impact upon the sales and profitability of the Pinto, the effects of the publicity were felt generally in the market share of other cars sold by Ford. During the period of the trial, Ford sales declined 30.6 percent whereas General Motors and

39. Ibid.

40. *New York Times*, February 17, 1980, section IV, p. E9.

41. *New York Times*, June 10, 1979, p. 26. See also Strobel, *Reckless Homicide*, p. 41.

42. Yarborough v. Ford Motor Co., Civil No. 80 CI 409 (Dist. Ct., 45th Judicial District, Texas, 1980).

Chrysler suffered smaller declines of 7.2 percent and 26 percent respectively.[43] At least part of this decline was attributed to the adverse publicity. As one spokesman informed us, "management here believe that the Pinto adverse publicity has raised questions about our product quality generally and is one of the reasons for our declined market share in the last two years."

The impact on stock market prices was far more difficult to gauge. We were told by one senior executive that "the general reaction is that nobody knows what the hell the stock market is doing; I can't remember anyone saying that the market went up or down in response to the acquittal or the indictment." He also said that he could not remember any impact, favorable or unfavorable, of the *Grimshaw* case.

We then spoke to Ford's investor-relations officer. Ford's stock had generally traded in the range of $40–$50 during the 1960s and 1970s but more recently there had been a precipitous drop to the $22 mark. Throughout 1980 and late 1979, Ford stocks consistently traded well below the prices prevailing during the previous four years. However, there had been no apparent connection between any attacks on Ford during the Pinto trial and any drop in the price of Ford stock on particular days. The market was so irrational that it was impossible to explain particular changes in stock market prices except where the causes were blatant. He pointed out that Ford's stock price had dropped on the day of the acquittal in the Pinto trial whereas it had gone up after the announcement of a quarterly loss and a substantial reduction in dividend. Nonetheless, the Pinto publicity was considered to have had an adverse effect over the period during which Ford's stocks had dropped in price. "It had an effect on our image and therefore on our ability to sell cars and trucks; in turn, it affected our profitability and hence had an effect on our stock price."

These financial impacts should be seen in perspective. All of the executives with whom we spoke stressed that the loss threatened by the sudden switch in preference from large to small cars (a switch precipitated by the crisis in Iran) had transcended any

43. *Indianapolis News*, March 15, 1980. See also John B. Schnapp, *Corporate Strategies of Automotive Manufacturers* (Lexington, Mass.: Lexington Books, 1979), p. 48.

of the other problems facing the company, especially since Ford then had no car to match the Japanese subcompacts. Adverse publicity, particularly as extreme as that in the Pinto case, is much less likely than fines to be written off as a minor cost of doing business, but it can be pushed into the background by a force majeure.[44]

Non-Financial Impacts

The adverse publicity leading up to and surrounding the Pinto trial had four main non-financial impacts: tarnishing of Ford's corporate image, lowering of personal reputation of executives, creating worry about possible longer-term effects on sales, and arousing concern about legislative implications.

The image-blackening effect of the Pinto trial and the prior adverse publicity was considerable. Numerous newspaper accounts of the Pinto story spoke explicitly of its detracting from Ford's corporate reputation,[45] and then pressure to save that reputation in large part accounted for the effort which the company put into defending itself against the reckless homicide charges. Just how great that pressure was is apparent from the results of one survey of consumer opinion undertaken soon after the indictments: 38 percent of the persons surveyed had heard that Ford cars were unsafe (cp. 6 percent re GM cars; 4 percent re imports; and 1 percent re American Motors cars) and 47 percent of those under 35 years of age had heard or read negative comments.[46] Moreover, there was Henry Ford II's famous quote: "The lawyers would shoot me for saying this, but I think there's some cause for the concern about the car. I don't even listen to the cost-figures—we've got to fix it."[47]

44. Cf. Christopher D. Stone, *Where the Law Ends: The Social Control of Corporate Behavior* (New York: Harper & Row, 1975), pp. 39–40.

45. *Wall Street Journal*, October 1, 1979, pp. 1, 39; *New York Times*, June 10, 1979, p. 26.

46. Strobel, *Reckless Homicide*, pp. 40–41.

47. *Washington Post*, August 26, 1978; Walter Guzzardi, Jr., "Ford: The Road Ahead," *Fortune*, September 11, 1978: 36–48, p. 42.

The attack upon Ford's corporate image radiated out to executives. This is how Strobel saw the impact:

> Even though no executives were formally charged, prosecutors had to present evidence that the car had been defectively designed and that the corporation had been reckless in failing to warn consumers. A corporation acts through its executives, and so the prosecutors, in effect, would be trying individual members of Ford management for their decisions regarding the Pinto. Ford executives, accustomed to receiving community respect commensurate with their high social status and lucrative salaries, cringed at such a degrading possibility. Even if they felt they had done nothing wrong, the idea of undergoing public interrogation and being the target of a prosecutor's allegations and insinuations was a humiliating thought.[48]

"Cringed," however, is much too strong a word, for although the executives felt themselves assailed (for example, the chief engineer felt under an obligation to explain to his family why he considered Ford not to be a murderer), their attitude was described to us as being one of willingness and anxiety to have the opportunity "to set the record straight." Furthermore, the reflection was offered that persons working for auto-makers in Detroit were essentially members of one big family, whereas personnel employed by Lockheed during the bribery scandal had far less collegiate insulation; unlike the car industry in Detroit, aerospace has no real home.

Also significant was the worry occasioned about long-term sales. Shortly after the indictments, Ford's associate general counsel for litigation admitted that "publicity has called into question the design of the Pinto and that has a tendency to rub off on other areas as people are apt to wonder: 'If there's a problem with the Pinto, there might be a problem in other areas.'"[49] Ford's sensitivity on this issue was particularly acute since its executives worried that adverse publicity from the Pinto trial could trigger sales resistance to the new Escort, a car essential to the company's recovery in the early 1980s; in the words of Henry Ford II,

48. Strobel, *Reckless Homicide*, p. 41.

49. *New York Times*, June 10, 1979, p. 26.

> Everything hangs on the success of that car—it sure does. It has to do *everything* by itself for 1981 and 1982. We'll have to sell every one we can make to . . . support the profitable end of the line.[50]

Moreover, it was feared that a dramatic downturn in Pinto sales would increase Ford's fleet fuel economy average above that required by the Energy Policy and Conservation Act of 1975, thereby forcing the company to restrict sales of its new full-size models.[51]

A further non-financial impact was concern about legislative implications. Although no safety standard governing resistance to rear-end collisions resulted from the Pinto trial or the publicity which inspired it (a new standard had been introduced in 1977 prior to that publicity), the Pinto case was relied upon to support a federal Bill requiring corporate managers to disclose life-threatening defects in any of their company's products.[52] The statute proposed was not enacted, but the prospect was anathema to business because of the possibility of severe individual criminal liability and the danger of being forced to provide information which could provoke costly civil damages claims.[53]

Reforms

Shaken by the adverse publicity over the Pinto, Ford instituted several reforms in the areas of safety and legal self-protection. No changes were made in the fuel storage system of the Pinto after the recall for modifications in 1978, and the fuel tank of the new Escort, a front-wheel drive car, had always been planned to sit ahead of the rear wheels. As to law reform, Ford's acquittal muffled any calls for change.

In the area of safety, it was felt within Ford that one contributing factor in the Pinto crisis had been the pressure placed upon the design and engineering staff by the then president, Lee Iacocca, that the car had to weigh under 2000 pounds and cost less than $2,000.[54] The edict, according to one executive we interviewed, was the toughest Ford had ever experienced with a new vehicle. There was also limited time for design and retooling. Today, these areas are covered by a major policy directive of June 1979: "Targets will be selected in sufficient time for all company activities to achieve the desired DQR [Durability, Quality, and Reliability] end result."[55] This policy directive was backed by considerable pruning and grafting of decision trees within the organization, the aim being to ensure that management would look beforehand at points of no return. In addition, there was an increase in engineering and research staff, and several positions were upgraded.

The document setting out the new policy directive, Policy Document F 1, sought to establish the importance of durability, quality, and reliability by stressing the relevance of these goals to how Ford fared competitively. It was explained to us that the problem within the organization was to convince people that there was no justification for sacrificing safety in the name of profit. The real solution to this problem was to elevate safety to a high level, "DQR" being a designation which minimized the risk of association with Ford's unsuccessful "Life Guard" campaign to sell safety in the 1950s.

It was readily conceded by those with whom we spoke that the new policy directive was subject to the pressures of time, cost, and survival. Time was always a problem in the planning, design, and manufacture of cars. Consumer preferences were fickle, whereas car production was necessarily governed by routine. In the car industry, flexibility had always been delicately balanced against rigidity and certainty. Admittedly, the Japanese had adjusted to this tension by opting for long-term planning and sticking to their plans, but in the American context that was considered to be a recipe for disaster. In terms of cost, it was

50. Guzzardi, "Ford: The Road Ahead," p. 42.

51. *Houston Post*, September 25, 1978.

52. H.R. 7040 (1980); U.S.H.R., Subcommittee on Crime of the Committee on the Judiciary, *Corporate Crime*, 96th Cong., 2nd Sess., 1980. See also *New York Times*, March 16, 1980, section IV, p. 20.

53. Cf. W. Allen Spurgeon and Terence P. Fagan, "Criminal Liability for Life-Endangering Corporate Conduct," *Journal of Criminal Law & Criminology* 72 (1981): 400–433.

54. Strobel, *Reckless Homicide*, p. 79.

55. Ford, *Policy Document F-1* (Dearborn, Mich.: Ford, 1979).

stressed that mammoth expenses were involved in retooling and that, once a car had been put on the market, there was little room to adjust the trade-off between safety and profitability. Above all, the first aim of the company was to survive. It was all very well talking about safe cars, but there was no future in losses; the business of automobile manufacturers was not to make "museum pieces."

The other significant area of organizational reform was that of legal self-protection. The main impact of the Pinto trial, according to product liability specialists at Ford, was to ignite their desire to provide effective legal protection against exposure to liability. A new procedure was instituted for recording the background to safety and engineering decisions; the aim of the fuller documentation was to enable the company to defend itself more adequately in any future litigation.

Although the Pinto was a rough ride for Ford and led to some internal revisions within the company, legislative reform did not ensue. Calls for tougher regulation of auto safety were muted by the acquittal at Winimac.[56] It cannot be said, however, that the trial provided the public with the information required to make an informed choice about the need for reform.

The Pinto trial, although widely heralded as a passion play about the riskiness of Ford engineering and design, turned out to be a great disappointment. The relevant offense was defined in terms of recklessly causing death, and the trial therefore necessarily focused on issues directly connected with the particular deaths subject to prosecution. This meant that information about the safety and engineering decisions behind the Pinto was irrelevant unless it related to the 1973 Pinto involved in the death of the three young women. Moreover, any question of reckless engineering or non-rectification of faults was overshadowed by the question of whether the closing speed of the van that struck the Pinto was so high that the fuel tank of any small car would have been ruptured. As a result, the rights or wrongs of the Pinto Papers were never effectively canvassed at the trial.

56. But note that the Pinto case was one of several instanced in support of a federal bill requiring corporate managers to disclose the existence of life-threatening defects to the relevant enforcement agency: Subcommittee on Crime, *Corporate Crime*, pp. 8–11. See also *New York Times*, March 16, 1980, section IV, p. 20.

Not surprisingly, the trial confused rather than clarified lay perceptions of the dangers of Ford's policy and the safety of the Pinto. For instance, after Ford had been acquitted, the foreman of the jury disclosed that "We just felt that the state never presented enough evidence to convince us that Ford was guilty," but added that he wouldn't buy a Pinto himself, although he would not be averse to a gift of one. "I wouldn't feel safe but I'd drive it."[57] So, from the standpoint of community education or sociodrama[58] the trial was a dismal flop. It failed to clarify, much less resolve, the issues that should have been of real concern to the public.

This bears out the point that criminal trials and their attendant publicity inadequately inform public choices about corporate decision-making if the focus of attention is an offense defined in terms of causing harm as opposed to taking an unacceptable *risk*.[59] Harm-causing offenses are oriented towards idiosyncratic results rather than underlying problems of risk-taking. Guido Calabresi has made this clear in his discussion of road-accident compensation policy:

> The effect of case-by-case decisions is to center on the particular or unusual cause of an accident. If one asks, as case-by-case determinants tend to do, "What went wrong in this case?" the answer will most likely center on the peculiar cause. Yet here is a very good argument for the notion that the cheapest way of avoiding accident costs is not to attempt to control the *unusual* event but rather to modify a recurring event. It may be that absentmindedness is a cause of one particular accident, too much whiskey the cause of another, and drowsiness the cause of a third. But it may also be that a badly designed curve or inadequate tires are causes of each of these as well. The fault system, because it centers on the possible *particular* cost avoider, is very likely to ignore the recurring cost avoider and hence fail altogether to consider some potential cheapest cost avoiders such as highway builders or tiremakers.[60]

57. *Buffalo Evening News*, March 14, 1980.

58. See generally Hugh Dalziel Duncan, *Symbols in Society* (New York: Oxford University Press, 1968).

59. See generally Stephen J. Schulhofer, "Harm and Punishment: A Critique of Emphasis on the Results of Conduct in the Criminal Law," *University of Pennsylvania Law Review* 122 (1974): 1497–1607; Christopher D. Stone, "The Place of Enterprise Liability in the Control of Corporate Conduct," *Yale Law Journal* 90 (1980): 1–77.

60. Guido Calabresi, *The Costs of Accidents: A Legal and Economic Analysis* (New Haven, Conn.: Yale University Press, 1970), p. 256.

In the absence of an offense defined in terms of manufacturing an unjustifiably dangerous product, questions of acceptable risk of the kind raised by the Pinto Papers will rarely be the central subject of inquiry in the context of corporate offenses against the person. This is unsatisfactory, not only because of the danger of a serious underlying risk being concealed from society, but also because it may do more harm than good not to face up to the need for studies of the costs of improving product safety in matters such as that for which Ford was pilloried.[61]

61. See generally Jonathan D. Glover, *Causing Death and Saving Lives* (New York: Penguin, 1977); Richard T. DeGeorge, "Ethical Responsibilities of Engineers in Large Organizations," *Business & Professional Ethics Journal* 1 (1981): 1-14; Rachel Dardis and Claudia Zent, "The Economics of the Pinto Recall," *Journal of Consumer Affairs* 16 (1982): 261-277.

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