

B207. "A Vote for Peer Pressure" The New York Times, (May 5, 1991) p. F-13.

The moaning and groaning coming from American corporations seems excessive. It has been going on since well before the United States Sentencing Commission presented its recommendations on penalties for corporate crime to Congress last week, and it may even accelerate while Congress studies the report.

But the recommendations have less bite than they should, mainly because the commission bent to heavy corporate lobbying. They direct judges to impose tougher fines than are now in effect for such Federal crimes as theft, fraud and antitrust violations. The hitch: they allow judges to greatly reduce penalties if companies add internal compliance programs to insure observation of the law.

This is hardly deterrence.

When the commission started looking into penalties for corporate crime, it found them to be low or non-existent. A fine of \$5,000 for a major transgression by a company the size of Mobil was far from unknown. The average penalty for corporations convicted of Federal crimes was \$54,000 between 1984 and 1987. But when the commission issued a proposal in February 1990 with stiff penalties, the business community howled, arguing that American corporations are extraordinarily law abiding. It said that if crimes take place, they are caused by overly complex laws that make compliance almost impossible or by rogue individuals - in places like the mailroom - for whom the corporation should not be held responsible.

The commission caved in and cut the proposed penalties by 97 percent, which brought out new critics. Environmentalists, consumer advocates, the press and others pointed to studies showing that major violations of the law by corporations - falsifying test results, marketing drugs known to be unsafe, midnight dumping of toxic waste - were far from unknown; in many instances, top management orchestrated them. Critics said that given low detection rates, low fines would, in effect, invite corporations to chance disregarding the law. After the outcry, the commission issued another proposal toughening the penalties.

But if the commission urged penalties high enough for deterrence, Congress is unlikely to enact them. It would be cheaper - and more morally uplifting - if companies could be encouraged to obey the law. Compliance plans are fine; but if business continues to claim "we see no evil, hear no evil," and celebrates making money with no questions asked, they will have little effect. Public trust in companies will falter, propelling public support for stiffer regulations and fines.

To avoid a major wave of re-regulation and stiffer penalties, business may have to professionalize management and develop moral codes backed up with censoring measures. First offenders, for example, may be taken to lunch by the ethics chairman of a professional organization and told they embarrassed corporate America. Repeat and serious offenders may have their membership revoked in those groups - in effect, be kicked out of the club. Imagine the effects of a headline that said Corporation XYZ has been ejected from, say, the Business Roundtable for conduct unbecoming a corporation.

Laws can underwrite, help sustain and enforce a moral community, but when the moral community is weak, even tough laws are insufficient. Today we have neither a business community mindful of putting its own house in order nor tough sentencing guidelines for the public to rally behind.

