8-3 Who Is Liable for Business Crime?

One of the major differences between nonbusiness and business crimes is that more people can be convicted of business crimes. For nonbusiness crimes, only those involved in the planning or execution of the crime or assistance after it is committed can be convicted. In other words, those who were in any way involved in the criminal act or aftermath are criminally responsible. For business crimes, on the other hand, those in management positions at firms whose employees actually commit criminal acts can be held liable if they authorized the conduct, knew about the conduct but did nothing, or failed to act reasonably in their supervisory positions. Liability for crimes also extends to employees who participate with the company and its management in illegal acts. For example, employees who help their employers establish fraudulent tax shelters for customers can be held liable along with the company and its officers. The key to establishing criminal liability is showing personal knowledge of wrongdoing.

U.S. v Park (Case 8.1), a landmark case, discusses the liability standards for those who are in charge but may not themselves commit a criminal act.

CASE 8.1

United States v Park
421 U.S. 658 (1975)

Is Chasing Rats from the Warehouse in My Job Description?

FACTS

Acme Markets, Inc., was a national food retail chain headquartered in Philadelphia, Pennsylvania. At the time of the government action, John R. Park (respondent) was president of Acme, which employed 36,000 people and operated 16 warehouses.

In 1970, the Food and Drug Administration (FDA) forwarded a letter to Mr. Park describing, in detail, problems with rodent infestation in Acme's Philadelphia warehouse facility. In December 1971, the FDA found the same types of conditions in Acme's Baltimore warehouse facility. In January 1972, the FDA's chief of compliance for its Baltimore office wrote to Mr. Park about the inspection. The letter included the following language:

> *We note with much concern that the old and new warehouse areas used for food storage were actively and extensively inhabited by live rodents. Of even more concern was the observation that such reprehensible conditions obviously existed for a prolonged period of time without any detection, or were completely ignored.*
>
> *We trust this letter will serve to direct your attention to the seriousness of the problem and formally advise you of the urgent need to initiate whatever measures are necessary to prevent recurrence and ensure compliance with the law.*

After Mr. Park received the letter, he met with the vice president for legal affairs for Acme and was assured that he was "investigating the situation immediately and would be taking corrective action."

When the FDA inspected the Baltimore warehouse in March 1972, there was some improvement in the facility, but there was still rodent infestation. Acme and Mr. Park were both charged with violations of the Federal Food, Drug, and Cosmetic Act. Acme pleaded guilty. Mr. Park was convicted and fined $500; he appealed based on error in the judge's instruction, given as follows:

> *The individual is or could be liable under the statute even if he did not consciously do wrong. However, the fact that the Defendant is president and chief executive officer of the Acme Markets does not require a finding of guilt. Though he need not have personally participated in the situation, he must have had a responsible relationship to the issue. The issue is, in this case, whether the Defendant, John R. Park, by virtue of his position in*

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the company, had a position of authority and responsibility in the situation out of which these charges arose.

The court of appeals reversed Mr. Park's conviction, and the government appealed.

JUDICIAL OPINION

BURGER, Chief Justice

Central to the Court's conclusion [in *United States v Dotterweich*, 320 U.S. 277 (1943)], that individuals other than proprietors are subject to the criminal provisions of the Act was the reality that "the only way in which a corporation can act is through the individuals who act on its behalf."

At the same time, however, the Court was aware of the concern . . . that literal enforcement "might operate too harshly by sweeping within its condemnation any person however remotely entangled in the proscribed shipment." A limiting principle, in the form of "settled doctrines of criminal law" defining those who "are responsible for the commission of a misdemeanor," was available. In this context, the Court concluded, those doctrines dictated that the offense was committed "by all who have . . . a responsible share in the furtherance of the transaction which the statute outlaws."

The Act does not, as we observed in *Dotterweich*, make criminal liability turn on "awareness of some wrongdoing" or "conscious fraud." The duty imposed by Congress on responsible corporate agents is, we emphasize, one that requires the highest standard of foresight and vigilance, but the Act, in its criminal aspect, does not require that which is objectively impossible. The theory upon which responsible corporate agents are held criminally accountable for "causing" violations of the Act permits a claim that a defendant was "powerless" to prevent or correct the violation to "be raised defensively at a trial on the merits." *U.S. v Wiesenfield Warehouse Co.*, 376 U.S. 86 (1964). If such a claim is made, the defendant has the burden of coming forward with evidence, but this does not alter the Government's ultimate burden of proving beyond a reasonable doubt the defendant's guilt, including his power, in light of the duty imposed by the Act, to prevent or correct the prohibited condition.

Turning to the jury charge in this case, it is of course arguable that isolated parts can be read as intimating that a finding of guilt could be predicated solely on respondent's corporate position?. . . . Viewed as a whole, the charge did not permit the jury to find guilt solely on the basis of respondent's position in the corporation; rather, it fairly advised the jury that to find guilt it must find respondent "had a responsible relation to the situation," and "by virtue of his position . . . had authority and responsibility" to deal with the situation. The situation referred to could only be "food . . . held in unsanitary conditions in a warehouse with the result that it consisted, in part, of filth or . . . may have been contaminated with filth."

Park testified in his defense that he had employed a system in which he relied upon his subordinates, and that he was ultimately responsible for this system. He testified further that he had found these subordinates to be "dependable" and had "great confidence" in them.

[The rebuttal] evidence was not offered to show that respondent had a propensity to commit criminal acts, that the crime charged had been committed; its purpose was to demonstrate that respondent was on notice that he could not rely on his system of delegation to subordinates to prevent or correct unsanitary conditions at Acme's warehouses, and that he must have been aware of the deficiencies of this system before the Baltimore violations were discovered. The evidence was therefore relevant since it served to rebut Park's defense that he had justifiably relied upon subordinates to handle sanitation matters.

Reversed.

CASE QUESTIONS

1. What problems did the FDA find in the Acme warehouses, and over what period?
2. Was Mr. Park warned about the problem? What action did he take?
3. What standard of liability did the instruction given by the judge impose?

8-4 Federal Laws Targeting Officers and Directors for Criminal Accountability

8-4a White-Collar Crime's Origins and History

With each wave of accounting and fraud scandals, new legislation at the federal level has increased penalties for those who are the masterminds of white-collar