

# ELIMINATING CORRUPTION? HOW THE FCPA AND CORPORATE COMPLIANCE PROGRAMS FAIL TO DETER GREED AMONGST THE MOST CHALLENGING OFFENDERS

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## I. INTRODUCTION

The World Economic Forum estimates the global cost of corruption to be at least \$2.6 trillion, or five percent of the global gross domestic product (“GDP”).<sup>1</sup> Add that number to the more than \$1 trillion that businesses and individuals pay in bribes every year,<sup>2</sup> and the problem of worldwide corruption becomes glaringly obvious. While the international community recognizes the negative impact that corruption has on economic development, entrepreneurship, and foreign investment,<sup>3</sup> it has taken years to develop and implement anti-corruption measures. That being said, a few countries

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† The views expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Air Force, the Department of Defense, or the U.S. Government. Major Nicole A. Vele is a Judge Advocate in the United States Air Force who was selected to obtain an LL.M. in Government Procurement at the George Washington University Law School. I would like to thank Dean Jessica Tillipman for believing in me and encouraging me to publish my work. I would also like to thank the *Wake Forest Journal of Law & Policy* for all their help throughout the editing process. Finally, a huge thank you goes to my family. You all lift me up and help me to be the best version of myself. This is for you.

1. UN Security Council 8346th Meeting, Global Cost of Corruption at Least 5 Per Cent of World Gross Domestic Product, Secretary-General Tells Security Council, Citing World Economic Forum Data, Meetings Coverage (Sept. 10, 2018), <https://www.un.org/press/en/2018/sc13493.doc.htm>.

2. *Id.*

3. UN General Assembly Seventy-Second Session, High Level Debate, Battle Against Corruption Vital to 2030 Agenda, General Assembly President Tells High-Level Commemoration of Anti-Corruption Treaty’s Adoption, Meetings Coverage (May 23, 2018), <https://www.un.org/press/en/2018/ga12017.doc.htm>.

have fiercely opposed corruption, with the United States standing out as a leader.<sup>4</sup>

The United States took the lead in the fight against corruption when it passed the Foreign Corrupt Practices Act of 1977 (“FCPA”).<sup>5</sup> The FCPA was the first law of its kind, passed in response to a series of foreign bribery scandals by a number of Fortune 500 companies<sup>6</sup> and the Watergate scandal of the 1970s, which revealed illegal domestic and foreign political contributions.<sup>7</sup> No other nation or empire had ever criminalized the payment of bribes in foreign jurisdictions.<sup>8</sup> Attacking both bribery and fraudulent accounting practices, the FCPA made it unlawful for certain classes of persons and entities to make payments to foreign government officials to assist in obtaining or retaining business.<sup>9</sup> While United States law enforcement neglected to use the FCPA until recently, the FCPA is now implemented aggressively.<sup>10</sup>

In the decades between the 1970s and the 2010s, collections from FCPA enforcement have steadily increased.<sup>11</sup> In the 1970s, the United States collected \$50,000 from enforcement actions; the 1980s experienced an uptick in enforcement amounts to \$6.3 million; the 1990s were almost five times that number at \$31 million;

4. Cale Brown, *The United States Leads the Fight Against Foreign Bribery and Transnational Corruption*, U.S. DEP’T OF ST. (Nov. 17, 2020), <https://www.state.gov/the-united-states-leads-the-fight-against-foreign-bribery-and-transnational-corruption>.

5. Foreign Corrupt Practices Act of 1977, 15 U.S.C. §§ 78dd-1, et seq. (2018); *see also The Foreign Corrupt Practices Act: An Overview*, JONES DAY PUBL’NS. (Jan. 2010), <https://www.jonesday.com/en/insights/2010/01/the-foreign-corrupt-practices-act-an-overview>.

6. André M. Peñalver, *Corporate Disconnect: The Blackwater Problem and the FCPA Solution*, 19 CORNELL J. L. & PUB. POL’Y, 459, 469 (2010).

7. Anne Eberhardt, *How the Foreign Corrupt Practices Act Came to Be*, CORP. COMPLIANCE INSIGHTS (July 3, 2018), <https://www.corporatecomplianceinsights.com/foreign-corrupt-practices-act-came/#:~:text=%E2%80%9CThis%20law%20makes%20corrupt%20payments,illegal%20under%20United%20States%20law.&text=The%20FCPA%20was%20the%20very,of%20bribes%20in%20foreign%20jurisdictions>.

8. *Id.*

9. 15 U.S.C. §§ 78dd-1, et seq.; *see also Foreign Corrupt Practices Act*, U.S. DEP’T OF JUST. (Feb. 3, 2017), <https://www.justice.gov/criminal-fraud/foreign-corrupt-practices-act#:~:text=The%20Foreign%20Corrupt%20Practices%20Act,in%20obtain-ing%20or%20retaining%20business>.

10. Eberhardt, *supra* note 7.

11. Harry Cassin, *With J&F, 2020 becomes the biggest year in FCPA history*, FCPA BLOG (Oct. 19, 2020), <https://fcpablog.com/2020/10/19/with-jf-2020-becomes-the-biggest-year-in-fcpa-history/#:~:text=Falling%20to%20second%20place%20is,settlements%20val-ued%20at%20%242.9%20billion.&text=So%20far%20in%202020%2C%20there,1977%20%E2%80%94%20to%20over%20%2420%20billion>.

the 2000s garnered \$1.8 billion; and the 2010s increased almost fifteen times that number at \$15.4 billion.<sup>12</sup> While those numbers may be interesting and even shocking to most Americans, the bigger question that needs to be asked is, has the FCPA actually accomplished Congress' foundational goal of "being the most effective deterrent [of corruption]?"<sup>13</sup> The answer to that question is unclear. Most research showing that fines are an effective deterrent is methodologically weak.<sup>14</sup> Further, the cost of a fine or penalty does not usually exceed marginal revenues, so "it is hard to argue the current amount of fines is sufficiently 'punitive' to deter corporate misconduct given the overall size of the companies engaging in misconduct."<sup>15</sup>

Fortunately, the FCPA is only one mechanism used to keep corrupt practices at bay. Corporations have also implemented internal compliance programs as a means of self-regulation.<sup>16</sup> As the *United States Federal Sentencing Guidelines for Organizational Crime* have evolved and incorporated "deterrence" incentives for corporations, businesses have tried to strengthen their compliance and ethics programs as a means of mitigating punishment for criminal offenses.<sup>17</sup> However, as is true with the FCPA, many corporate compliance programs have not been examined to determine whether they are accomplishing their mandates of preventing misconduct, detecting misconduct, and aligning corporate policies with laws, rules, and regulations.<sup>18</sup>

When comparing FCPA efficacy concerns with corporate compliance program efficacy concerns, it quickly becomes apparent how little the United States' enforcement regime is tied to data-driven courses of action. While the FCPA and corporate compliance

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12. *Id.*

13. H.R. REP. NO. 95-640, at 3 (1977).

14. SALLY T. HILLSMAN & JUDITH A. GREENE, *THE USE OF FINES AS AN INTERMEDIATE SANCTION* 7, n.6 (1991) (on file with The Vera Institute Library).

15. Michael Volkov, *Measuring Deterrence: How Big a Fine Will Deter Corporate Crime?*, VOLKOV L. GROUP, LLC (July 26, 2012), <https://blog.volkovlaw.com/2012/07/measuring-deterrence-how-big-a-fine-will-deter-corporate-crime>.

16. *See History of Corporate Compliance Regulations*, LAW SHELF EDUC. MEDIA, <https://law-shelf.com/shortvideoscontentview/history-of-corporate-compliance-regulations/#:~:text=The%20development%20of%20modern%20corporate,actions%20and%20%E2%80%9Cdeterrence%E2%80%9D%20incentives%20to> (last visited Feb. 14, 2021).

17. *Id.*

18. *See Hui Chen & Eugene Soltes, Why Compliance Programs Fail—and How to Fix Them*, HARV. BUS. REV., March-April 2018.

programs are an important start to reducing corruption around the world, even with active and aggressive enforcement, corruption and greed are still running rampant.<sup>19</sup> To root out the individuals and corporations who stubbornly cling to corrupt practices and understand the risks such practices pose to their freedom and assets, the United States needs to utilize data-driven courses of action and data-driven enforcement actions, and implement continuous follow-up measures to assess their efficacy. This paper begins by providing an overview of the FCPA and corporate compliance programs in Part II. Then, Part III discusses deterrence generally, exploring how deterrence is currently measured and assessing how the FCPA and corporate compliance programs fall short of meeting Congress' deterrence mandate. Finally, Part IV offers recommendations for meaningfully addressing corruption in the United States and abroad.

## II. BACKGROUND

### A. *The Scope of Corruption and Bribery pre-FCPA*

“Corruption affects all countries, rich and poor,”<sup>20</sup> and “causes instability, inequality, and poverty, eroding national wealth.”<sup>21</sup> Despite these overriding concerns, the practice is often supported by well-articulated rationales such as, “[we] need [to] respect[] the traditional way of doing business in unfamiliar cultures,” or, “if a bribe is not paid, a competitor with a highly inferior product and fewer scruples will get the contract.”<sup>22</sup> These arguments highlight important points associated with the conundrum of how to eliminate corruption from the global marketplace.<sup>23</sup> In fact, for decades, corporate representatives have grappled with how, if at all, “a company [can] adhere to principles that its competition does not accept.”<sup>24</sup>

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19. Rick Rowden & Jingran Wang, *The Global Crisis of Corruption*, GLOBAL FIN. INTEGRITY (July 13, 2020), <https://gfintegrity.org/global-crisis-of-corruption>.

20. Vivek Dodd, *10 Ways to Reduce the Risk of Bribery & Corruption*, SKILLCAST (April 27, 2020), <https://www.skillcast.com/blog/10-ways-to-reduce-the-risk-of-bribery-and-corruption>.

21. *Id.*

22. RONALD E. BERENEBEIM, *RESISTING CORRUPTION: HOW COMPANY PROGRAMS ARE CHANGING* 7 (2006).

23. *Id.*

24. *Id.*

In 1976, The Conference Board, a member-driven think tank founded in 1916 to help leaders navigate the biggest issues impacting business,<sup>25</sup> “asked a panel of seventy-three senior international executives to describe situations where their companies had encountered unusual payments.”<sup>26</sup> In the survey, seventy-five percent of the executives responded that their companies had encountered situations in which government officials received “unusual” payments from abroad.<sup>27</sup> The companies that managed to avoid corrupt payments tended to be enterprises that were “not apt to have government agencies as their sole or major customers.”<sup>28</sup>

Around that same time, the United States Securities and Exchange Commission’s (“SEC”) voluntary disclosure program identified four hundred companies that made overseas payments totaling in excess of \$300 million.<sup>29</sup> Investigations by the Watergate Special Prosecutor and the SEC<sup>30</sup> revealed the existence of slush funds that corporate officials were using to finance contributions to then-president Richard Nixon’s re-election campaign and other domestic political campaigns, as well as to bribe foreign officials.<sup>31</sup> These “revelations [shook] foreign governments, rocked American corporate management, and tarnished the image of American private enterprise both at home and abroad.”<sup>32</sup> In response to the insidiousness of the corruption problem, Congress enacted the FCPA of 1977.<sup>33</sup>

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25. *About Us*, CONFERENCE BOARD, <https://conference-board.org/about> (last visited Feb. 14, 2021).

26. BERENEBEIM, *supra* note 22, at 7.

27. *Id.*

28. *Id.*

29. H. Lowell Brown, *Extraterritorial Jurisdiction Under the 1998 Amendments to the Foreign Corrupt Practices Act: Does the Government’s Reach Now Exceed Its Grasp?*, 26 N.C. J. INT’L L. & COM. REG. 239, 244 (2001).

30. After a break-in at the Democratic National Committee’s Watergate offices, Congress pushed for the appointment of a special prosecutor to investigate the scandal. The SEC got involved when the Watergate Special Prosecutor’s office uncovered illegal, undisclosed, corporate campaign contributions in the 1972 U.S. elections. *See id.* at 241.

31. *Id.*

32. Charles R. McManis, *Questionable Corporate Payments Abroad: An Antitrust Approach*, 86 YALE L.J. 215, 215 (1976).

33. *See* Brown, *supra* note 29, at 241.

*B. Introduction of the FCPA and Its Purpose*

The purpose of the FCPA is to “make[] it unlawful for businesses and individuals to make payments to foreign government officials when seeking or trying to retain business.”<sup>34</sup> In its report, the House asserted:

[bribery] is counter to the moral expectations and values of the American public. But not only is it unethical, it is bad business as well. It erodes public confidence in the integrity of the free market system, it short-circuits the marketplace by directing business to those companies too inefficient to compete in terms of price, quality or service, or too lazy to engage in honest salesmanship, or too intent upon unloading marginal products, and it puts pressure on ethical enterprises to lower their standards or risk losing business.<sup>35</sup>

While this rhetoric was harsh, the Department of Justice’s (“DOJ”) and SEC’s enforcement of the FCPA was almost non-existent.<sup>36</sup> Indeed, the SEC handled a total of two enforcement actions in 1978,<sup>37</sup> it took the DOJ until 1979 to settle its first case,<sup>38</sup> and it was not until the mid-2000s that either entity began enforcement actions in earnest.<sup>39</sup> The movement toward aggressive enforcement efforts appears in part to coincide with a growing international consensus that corruption must be actively combatted<sup>40</sup> along with the adoption of a number of international anti-corruption conventions requiring the United States to allow other parties to monitor its anti-

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34. *What is the Purpose of the Foreign Corrupt Practices Act?*, HILDER & ASSOCIATES P.C. (May 25, 2018), <https://www.hilderlaw.com/blog/2018/05/what-is-the-purpose-of-the-foreign-corrupt-practices-act> (This did not extend coverage to so-called grease or facilitating payments.); *see also* H.R. REP. NO. 95-640, at 4 (1977).

35. H.R. REP. NO. 95-640, at 4–5 (1977).

36. *See SEC Enforcement Actions: FCPA Cases*, U.S. SEC. AND EXCHANGE COMM’N, <https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml> (last visited Feb. 14, 2021) [hereinafter *SEC Enforcement Actions*]; *Enforcement Actions*, U.S. DEP’T OF JUSTICE, <https://www.justice.gov/criminal-fraud/enforcement-actions> (last visited Feb. 14, 2021) [hereinafter *DoJ Enforcement Actions*].

37. *SEC Enforcement Actions*, *supra* note 36.

38. *DoJ Enforcement Actions*, *supra* note 36.

39. *SEC Enforcement Actions*, *supra* note 36; *DoJ Enforcement Actions*, *supra* note 36.

40. *See* U.S. DEP’T OF JUSTICE, CRIMINAL DIV. & U.S. SEC. & EXCH. COMM’N, ENF’T DIV., A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT (SECOND EDITION) 68 (2020) [hereinafter *DOJ FCPA GUIDANCE*].

corruption laws and enforcement.<sup>41</sup> As the DoJ and the SEC continue to ramp up FCPA enforcement actions, individuals and corporations have begun identifying ways that they can increase compliance with anti-corruption laws and mitigate the widespread damage that occurs when there are violations of these laws.<sup>42</sup> One approach was the development of modern corporate compliance programs.<sup>43</sup>

### C. *The Development of Modern Corporate Compliance Programs*

Modern corporate compliance programs were primarily structured in accordance with the 1991 *United States Federal Sentencing Guidelines for Organizational Crime*<sup>44</sup> and DoJ policy.<sup>45</sup> To receive a lesser sentence or a settlement agreement under the Federal Sentencing Guidelines, corporations must incorporate a minimum of seven components into their compliance programs.<sup>46</sup> These components include:

establish[ing] effective compliance standards and procedures; assign[ing] specific, high-level person(s) to oversee compliance; us[ing] due care not to delegate important responsibilities to known high-risk persons; effective[ly] communicat[ing] its program to all levels of employees; [taking] reasonable steps to achieve compliance, which includes systems for monitoring, auditing, and reporting suspected wrongdoing without fear of reprisal; consistent[ly] enforc[ing] compliance standards including disciplinary mechanisms; and

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41. *See id.* This was asserted under the guise of ensuring that such enforcement and legal frameworks are consistent with the United States' treaty obligations.

42. *See History of Corporate Compliance Regulations, supra* note 16.

43. *Id.*

44. *See id.*

45. Aisling O'Shea et al., *DoJ Updates Guidance on the Evaluation of Corporate Compliance Programs*, HARV. L. SCH. F. ON CORP. GOVERNANCE (June 20, 2020), <https://corpgov.law.harvard.edu/2020/06/20/doj-updates-guidance-on-the-evaluation-of-corporate-compliance-programs>.

46. *History of Corporate Compliance Regulations, supra* note 16.

[taking] reasonable steps to respond to and prevent further similar offenses upon detection of a violation.<sup>47</sup>

In addition to incorporating those components, the DoJ's policy requires a corporation's compliance program to be well designed, applied earnestly and in good faith, and work in practice.<sup>48</sup> In its Resource Guide, the DoJ assists corporations in achieving their mandate by providing broader, more detailed guidance on: what it and the SEC consider when deciding whether to open an investigation or bring charges; what is expected of corporations that self-report, cooperate, or participate in remedial efforts; the hallmarks of effective corporate compliance programs; and best practices.<sup>49</sup>

Corporations that include these globally recognized compliance standards in their compliance programs, voluntarily disclose misconduct they find, and cooperate with the DoJ may benefit from a declination of enforcement action in the event misconduct is identified.<sup>50</sup> However, even if the corporation is not completely let off the hook, it is still in a better position to prevent violations, detect any violations that do occur, and remediate violations promptly and appropriately.<sup>51</sup>

#### D. Current Anti-Corruption Landscape

After being in place for more than forty years, FCPA enforcement actions have only continued to rise.<sup>52</sup> The DoJ and SEC are investigating more offenders, and settlement fines continue to be levied against corporations and individuals by the millions or billions.<sup>53</sup> Between 1977 and 2017, "the SEC and DoJ collected about \$10.6 billion in fines and penalties under more than 520

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47. PAULA DESIO, AN OVERVIEW OF THE ORGANIZATIONAL GUIDELINES, U.S. SENT'G COMM'N; see also U.S. SENT'G COMM'N, GUIDELINES MANUAL 2016 § 8B2.1, cmt. n.3(k) (2016).

48. U.S. DEP'T OF JUST., CRIM. DIV., EVALUATION OF CORPORATE COMPLIANCE PROGRAMS I-2 (2020).

49. Jessica Tillipman & Vijaya Surampudi, *The Compliance Mentorship Program: Improving Ethics and Compliance in Small Government Contractors*, 49 PUB. CONT. L.J. 217, 220, 226 (2020) (citing DOJ FCPA GUIDANCE, *supra* note 40, at 54-61).

50. *Id.* at 225 (citing DOJ FCPA GUIDANCE, *supra* note 40, at 51).

51. *Id.* at 224-25 (citing DOJ FCPA GUIDANCE, *supra* note 40, at 56).

52. See *Chronological List*, U.S. DEP'T OF JUST., <https://www.justice.gov/criminal-fraud/chronological-list> (last updated Jan. 21, 2020).

53. *Id.*; see also *SEC Enforcement Actions*, *supra* note 36.



enforcement actions. . . . [A]pproximately ninety-eight percent of the total [ ]came from the 421 enforcement actions pursued between 2006 and 2017.”<sup>54</sup> Since 2017, FCPA enforcement actions have hit record-breaking settlement levels.<sup>55</sup> In 2019, FCPA settlements were valued at \$2.9 billion, and settlement amounts in 2020 surpassed that.<sup>56</sup>

### III. ANALYSIS

Between increased enforcement actions and corporations pouring millions of dollars per year into their compliance programs,<sup>57</sup> the United States and its global trading partners should be reaping the rewards of effective corruption deterrence. However, determining the effectiveness of federal efforts to prevent and punish corruption through these deterrence mechanisms is a difficult task. Ultimately, determining whether the FCPA and corporate compliance programs have been successful in achieving deterrence depends largely on the definition of success.<sup>58</sup>

#### A. *What is Deterrence and How Is It Achieved?*

Although the definitions of deterrence and methods of achieving it vary, deterrence is the inhibition of criminal behavior by fear, especially fear of punishment. Much of the value of deterrence stems from the psychological effect that potential punishments have on human behavior, and the concept of deterrence is one of the basic foundational justifications for codified criminal law.<sup>59</sup> In classical criminological theory, there are three underlying assumptions related to deterring unwanted behaviors: “(1) a message is relayed to a target group . . . ; (2) the target group receives

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54. Anne Eberhardt, *One of the World's Most Feared Enforcement Tools*, CORP. COMPLIANCE INSIGHTS (July 5, 2018), <https://www.corporatecomplianceinsights.com/one-worlds-feared-enforcement-tools>.

55. Cassin, *supra* note 11.

56. *Id.*

57. See Chen & Soltes, *supra* note 18.

58. Mike Koehler, *Has the FCPA Been Successful in Achieving Its Objectives*, 2019 UNIV. ILL. L. REV. 1267, 1272 (2019).

59. Kelli D. Tomlinson, *An Examination of Deterrence Theory: Where Do We Stand?*, 80 FED. PROB. 33, 33 (2016).

the message and perceives it as a threat; and (3) the group makes rational choices based on the information received.”<sup>60</sup>

Embedded within that framework is the premise that when punishment for the actions sought to be deterred is severe, certain, and swift, deterrence will be achieved.<sup>61</sup> Deterrence occurs on both a micro (specific) and macro (general) level.<sup>62</sup>

The concept of specific deterrence proposes that individuals who commit crime(s) and are caught and punished will be deterred from future criminal activity. On the other hand, general deterrence suggests that the general population will be deterred from offending when they are aware of others being apprehended and punished.<sup>63</sup>

When applied to anti-corruption goals, both specific and general deterrence concepts are crucial to affecting behavior. However, as discussed later in this Part, it can be difficult to achieve specific and general deterrence and potentially even more complex to measure the effectiveness of the deterrence.

### *B. Measuring Deterrence*

While “it is very difficult to isolate and measure a deterrent effect precisely,”<sup>64</sup> “[g]eneral deterrence is typically measured in terms of community-wide changes in offending behaviour,” and “specific deterrence is measured by re-offense or recidivism rates.”<sup>65</sup> When measuring the efficacy of the FCPA and corporate compliance programs on achieving deterrence, there are several components that can be analyzed including: the quantity of FCPA enforcement actions, the outcomes in FCPA actions, the law’s ability to

60. *Id.*

61. *Id.*

62. *Id.*

63. Deterrence is substantially reduced when most crimes, including serious ones, do not result in an arrest and conviction and because most humans are not rational actors who consider the consequences of their behavior before deciding to commit a crime. *See id.*; *Deterrence*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/deterrence> (last visited Feb. 13, 2021).

64. Raymond Paternoster, *How Much Do We Really Know about Criminal Deterrence*, 100 J. CRIM. L. & CRIMINOLOGY 765, 766–67 (2010).

65. BARRY C. WATSON ET AL., DIFFERENT APPROACHES TO MEASURING SPECIFIC DETERRENCE: SOME EXAMPLES FROM SPEEDING OFFENDER MANAGEMENT 1 (2010).

facilitate self-policing and compliance, and the number of repeat offenders.<sup>66</sup>

*C. A Review of the United States' Approach to  
Eliminating Corruption*

Congress assumed that criminalization (i.e., loss of liberty and monetary penalties) would be an effective deterrent for corruption because it has proven to be so for other crimes.<sup>67</sup> As such, it passed the FCPA in 1977, giving the United States government the first meaningful tool of its kind for holding both corporations and individuals accountable for corrupt behavior with foreign governments.<sup>68</sup> As previously mentioned, the quantitative aspects of FCPA enforcement demonstrate significant positive change in the style and level of enforcement; however, whether a quantitative increase in action translates to effective corruption deterrence is a more difficult inquiry.

i. The Quantity of FCPA Enforcement  
Actions

Despite an initial lack of enforcement, the number of FCPA investigations and prosecutions did increase over time.<sup>69</sup> This increase, however, was not a static increase, and the inconsistent nature of it raises questions about the effectiveness of FCPA enforcement as a deterrent. As depicted by the chart on the following page, both DoJ and SEC actions were minimal until the early 2000s, and then virtually exploded between 2006 and 2017.<sup>70</sup>

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66. Koehler, *supra* note 58, at 1275, 1299.

67. H.R. REP. NO. 95-640, at 4 (1977).

68. *Id.* at 3–5.

69. See *SEC Enforcement Actions*, *supra* note 36; *DoJ Enforcement Actions*, *supra* note 36.

70. Anne Eberhardt, *One of the World's Most Feared Enforcement Tools: The History of FRCA Enforcement, Part 2*, CORP. COMPLIANCE INSIGHTS (July 5, 2018), <https://www.corporatecomplianceinsights.com/one-worlds-feared-enforcement-tools>; *DOJ and SEC Enforcement Actions per Year*, STANFORD L. SCH. FOREIGN CORRUPT PRAC. ACT CLEARINGHOUSE, <http://fcpa.stanford.edu/statistics-analytics.html> (last visited Mar. 16, 2020).



Such an extreme increase in enforcement actions is not what one would expect to see deterrence-wise from an anti-corruption law that has been “on the books” for several decades.<sup>71</sup> This unexpected conclusion is especially surprising when the law’s primary purpose is eliminating foreign bribery.<sup>72</sup> Most people would expect to see more of a standard bell curve reflecting a majority of enforcement actions occurring between the few years after the FCPA passed and the 2000s, and then a steady decline as its deterrent effect took hold.<sup>73</sup> However, that assumption is not what the FCPA enforcement action trends actually reflect.<sup>74</sup> Instead, enforcement actions continue to rise.<sup>75</sup> If the FCPA was effectively meeting its goal of deterring corruption, it would be reasonable to conclude that after more than forty years of enforcement, the number of foreign corruption cases would be decreasing—not increasing—over time.<sup>76</sup>

## ii. Outcomes in FCPA Actions

Historically, the DoJ has had two choices for resolving FCPA violations: either charge the entity or individual with a legal violation or not charge the entity or individual at all.<sup>77</sup> However, that

71. Koehler, *supra* note 58, at 1280.

72. *Id.* at 1312.

73. *Id.* at 1279–80.

74. *Id.* at 1280.

75. *Id.*

76. *Id.*

77. Koehler, *supra* note 58, at 1291.

approach changed in 2004 with the introduction of non-prosecution agreements (“NPAs”) and deferred prosecution agreements (“DPAs”) to FCPA enforcement actions.<sup>78</sup> An NPA is “a privately negotiated agreement between the DoJ and a business organization” that results in “a letter agreement [that] . . . generally include[s] a brief . . . statement of the facts . . . that the company acknowledges responsibility for, as well as a host of compliance undertakings that the company agrees to implement.”<sup>79</sup>

Like NPAs, DPAs are “privately negotiated agreements between the DoJ and a business organization . . .”, but DPAs are filed with the court.<sup>80</sup> In the case of a DPA, the DoJ agrees to “defer prosecution of the crime alleged (usually for an eighteen-month to three-year period), [and] the company acknowledges responsibility for the alleged conduct and agrees to implement a host of compliance undertakings.”<sup>81</sup> If the company fully cooperates and meets the requirements of the DPA, then the DoJ dismisses the charges at the end of the agreement term; but, if the company does not follow the DPA, then the DoJ will go to trial on the matter.<sup>82</sup> Both NPAs and DPAs also typically require the corporation to make “a payment, which can be structured as a fine, restitution, forfeiture, or some other category.”<sup>83</sup>

From 2004 onward, “the vast majority of corporate enforcement actions [have been] resolved through alternative resolution vehicles such as NPAs, DPAs, administrative actions, and . . . ‘declinations with disgorgement.’”<sup>84</sup> While NPAs and DPAs yield a higher quantity of FCPA enforcement actions,<sup>85</sup> “with so much at stake outside of established markets in the United States and Europe, some

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78. *Id.* at 1290–91.

79. Mike Koehler, *Measuring the Impact of Non-Prosecution and Deferred Prosecution Agreements on Foreign Corrupt Practices Act Enforcement*, 49 U.C. DAVIS L. REV. 497, 504–05 (2015).

80. *Id.* at 505.

81. *Id.*

82. *Id.* at 508–09.

83. *Id.* at 508 (quoting Christopher Wray, Assistant Att’y Gen., U.S. Dep’t of Justice, Remarks to the ABA White Collar Crime Luncheon (Feb. 25, 2005), in Declaration of Lawrence D. Levit at Exhibit 1, *In re Invision Techs., Inc. Sec. Litig.*, No. C-04-3181 (N.D. Cal., Aug. 31, 2006), [http://securities.stanford.edu/filings-documents/1031/INVN04-01/2005628\\_r17d\\_04CV3181.pdf](http://securities.stanford.edu/filings-documents/1031/INVN04-01/2005628_r17d_04CV3181.pdf)).

84. Koehler, *supra* note 58, at 1290. Disgorgement is when criminals are deprived of net profits gained from their unlawful activities. See U.S. DEP’T OF JUST., CRIM. DIV. & U.S. SEC. & EXCH. COMM’N, ENFORCEMENT DIV., A RESOURCE GUIDE TO THE U.S. FOREIGN CORRUPT PRACTICES ACT 56–68 (2d ed. 2020).

85. See Koehler, *supra* note 58, at 1295.

experts say fines like these are hardly a deterrent.”<sup>86</sup> For example, the \$60 million fine assessed against Pfizer equated to less than two days of Lipitor sales during its peak, making it “chump change” for the company.<sup>87</sup> In fact, at the time it settled its FCPA case, Pfizer was on track to record \$10 billion in sales from emerging markets.<sup>88</sup> When considering that an underlying assumption of the deterrence model is that the party being deterred must consider the potential punishments as a threat, it becomes questionable whether these fines that amount to a “slap on the wrist” actually help deter corruption among massive corporations.

What is equally concerning is that even though “corporations do not act criminally, but for the actions of individuals,”<sup>89</sup> the individuals who participate in the corrupt actions often face no consequences in these government enforcement processes. In approximately eighty percent of corporate FCPA enforcement actions resolved using DPAs or NPAs, there are no corresponding individual charges filed against company employees.<sup>90</sup> While these are only two examples of how DPAs and NPAs failed to serve as effective deterrents of corruption, when the vast majority of FCPA enforcement actions are handled this way it is reasonable to conclude that many corporations see these fines as “just the cost of doing business”<sup>91</sup> and even fewer individuals fear the consequences of their criminal behavior.

For example, Richard Bistrong, a former Vice President of International Sales for a large, publicly traded multinational corporation, readily admits that criminal prosecution was not even something he considered when he offered foreign officials bribes.<sup>92</sup>

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86. Thomas Sullivan, *Foreign Corrupt Practices Act and The Medical Products Industry Fines and Investigation Costs Increasing*, POLY & MED.: A ROCKPOINTE PUBLICATION (Nov. 20, 2012), <https://www.policymed.com/2012/11/foreign-corrupt-practices-act-and-the-medical-products-industry-fines-and-investigation-costs-increa.html>.

87. *Id.*

88. *Id.*

89. Press Release, DOJ, Deputy Assistant Attorney General Sung-Hee Suh Speaks at the PLI’s 14th Annual Institute on Securities Regulation in Europe: Implications for U.S. Law on EU Practice (Jan. 20, 2015), <https://www.justice.gov/opa/pr/deputy-assistant-attorney-general-sung-hee-suh-speaks-pli-s-14th-annual-institute-securities>.

90. Koehler, *supra* note 58, at 1291–93.

91. Sullivan, *supra* note 86.

92. Richard Bistrong, *Richard Bistrong: From Behind the Bribe, The Sharp End of Compliance*, YOUTUBE (July 22, 2015), <https://www.youtube.com/watch?v=aYRj-CUx3fo>.

According to Bistrong, “nothing was going to stop [him].”<sup>93</sup> For over ten years, Bistrong traveled more than 250 days per year for his job.<sup>94</sup> During that time, Bistrong conspired to, and actually engaged in, the bribery of foreign officials in order to secure sales for his company.<sup>95</sup> Bistrong claims:

I did it because I was ethically numb to the consequences and implications of my decisions. I wasn’t spending my nights on the Transparency International website. I wasn’t thinking about how bribery and corruption robs whole societies of governance, of human rights, of social and economic development. I wasn’t thinking about the consequences to my employer, and regrettably, not to myself and my family. What was I thinking about? I was thinking “who’s losing here?” I was in the defense business, and I wasn’t pulling layers out of a bullet-proof vest. The end-user was always getting a world class product. Maybe the company would have to hire workers to manufacture the order, creating more jobs. The company is happy.<sup>96</sup>

While Bistrong was one of the few individuals actually prosecuted for his crimes,<sup>97</sup> it would be a mistake to view his prosecution as an FCPA or corporate compliance program deterrence success story. Nothing about the existence of the FCPA or his company’s compliance program deterred Bistrong from violating the law. Even after being caught, the consequences Bistrong experienced were minimal<sup>98</sup> in comparison to what other criminals experience—even when their crimes had far less of a global impact than Bistrong’s

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93. *Id.*

94. Richard Bistrong, *A Unique and Engaging Story*, <https://www.richardbistrong.com/about> (last visited Feb. 13, 2021).

95. Reuters Staff, *Ex-Arms Salesman Pleads Guilty to US Bribe Charges*, REUTERS (Sept. 26, 2010, 4:25 PM), <https://www.reuters.com/article/us-bribery-plea/ex-arms-salesman-pleads-guilty-to-us-bribe-charges-idUSTRE68F5A920100916>.

96. Pamela Hyatt, *How to Protect Your Organization from the “Perfect Storm” of Corruption – A Q&A with FCPA Expert Richard Bistrong*, TRADE READY (Sept. 25, 2017), <http://www.tradeready.ca/2017/topics/import-export-trade-management/protect-perfect-storm-corruption-richard-bistrong>.

97. *See generally FCPA Enforcement Actions*, U.S. DEP’T OF JUST., <https://www.justice.gov/criminal-fraud/chronological-list> (last visited Feb. 19, 2021).

98. Bistrong was able to negotiate a plea agreement and spent fourteen months in a U.S. federal prison. *See Bistrong, supra* note 94.

did.<sup>99</sup> What is worse, Bistrong currently touts himself as a beacon of ethics and conducts corporate workshops and keynotes to sales teams, leadership groups, and compliance teams at global multinational corporations in North America, South America, Europe, Asia, and the Middle East.<sup>100</sup> With results like Bistrong's, it is difficult to see how the FCPA or his corporation's compliance program could be viewed as genuine deterrents of corrupt practices.

### iii. The Law's Ability to Facilitate Self-Policing and Compliance

Self-policing is “the act or action of supervising the activities or policies of one's own group to prevent or detect and address violations of rules and regulations without outside enforcement.”<sup>101</sup> Prior to the enactment of the FCPA, several companies already self-policed and avoided engaging in corrupt practices by refusing to pay “unusual payments” to foreign officials.<sup>102</sup> Other major companies like Lockheed Martin “knew about the occasional practice of payments to foreign officials,” but because there were no rules or laws banning it, they turned a blind eye to it.<sup>103</sup>

Once the FCPA was passed, Congress apparently presumed corporations would take steps toward voluntary compliance despite the absence of language encouraging corporations to self-police.<sup>104</sup> As Senator Amy Klobuchar commented in the Senate's 2010 hearing on Examination of Foreign Corrupt Practices Act Enforcement, “the goal of the FCPA is not just to punish bad actors after a [FCPA] violation is committed, but rather to prohibit actions from happening in the first place.”<sup>105</sup> However, had the FCPA worked as Congress planned, it is dubious that the Federal Sentencing

99. Drug offenders involved with crack cocaine on average were incarcerated for 114 months. See BUREAU OF JUST. STAT., NCJ 187285, FEDERAL DRUG OFFENDERS, 1999 WITH TRENDS 1984-99 1 (2001).

100. Bistrong, *supra* note 94.

101. *Self-policing*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/self-policing> (last visited Feb. 13, 2021).

102. BERENEBEIM, *supra* note 22, at 7.

103. Koehler, *supra* note 58, at 1299 (quoting *Lockheed Bribery: Hearings Before the S. Comm. on Banking, Hous. and Urban Affairs*, 94th Cong., 27–28 (1975) (statement of D.J. Haughton, Chairman of the Board, Lockheed Aircraft Corporation)).

104. See 15 U.S.C. §§ 78dd-1.

105. *Examining Enforcement of the Foreign Corrupt Practices Act: Hearing Before the Subcomm. on Crime and Drugs of the S. Comm. on the Judiciary*, 111th Cong. 7 (2010) (statement of Sen. Amy Klobuchar) as cited in Koehler, *supra* note 58.



Guidelines,<sup>106</sup> DoJ policy,<sup>107</sup> and SEC policy<sup>108</sup> would have to specifically incorporate encouragement in order for corporations to self-police.<sup>109</sup> In fact, it was only after the DoJ and SEC began to actively pursue enforcement actions that corporations began investing in their compliance programs.<sup>110</sup>

#### iv. The Number of Repeat Offenders

An assessment of the FCPA's ability to deter corruption would be incomplete without a review of its enforcement actions for repeat offenders.<sup>111</sup> According to Professor Mike Koehler, there are seventeen corporations who have been caught for corrupt practices and experienced multiple enforcement actions for violating provisions of the FCPA on more than one occasion.<sup>112</sup> Interestingly, eight of these repeat offenses have occurred since 2017.<sup>113</sup> Given the hundreds of enforcement actions against corporations that have been pursued since the FCPA became law in 1977, it is difficult to determine whether seventeen repeat offenders is significant enough to warrant a blanket statement that the FCPA and corporate compliance programs fail to deter corruption. However, it is reasonable to conclude that for at least those seventeen corporations, the FCPA and internal compliance programs did not deter them from corrupt practices.

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106. U.S. SENT'G COMM'N, GUIDELINES MANUAL § 3E1.1 (Nov. 1991).

107. DOJ FCPA GUIDANCE, *supra* note 40, at 56–68.

108. ROBERT W. TARUN, BASICS OF THE FOREIGN CORRUPT PRACTICES ACT 45 (Latham & Watkins eds. 2006).

109. *Id.*

110. *See* ORG. FOR ECON. COOP. & DEV., PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN THE UNITED STATES 30–32 (2010) as cited in Koehler, *supra* note 58.

111. “Repeat offender refers to a business organization that has resolved more than one FCPA enforcement action regardless of which agency (the DOJ or SEC) brought the enforcement action; regardless of the form of the enforcement action (plea agreement, NPA, administrative order, etc.) and regardless of the charges or findings (anti-bribery provisions vs. books and records and internal controls provisions).” Koehler, *supra* note 58, at 1305 n. 152.

112. These companies include ABB, Aibel Group/Vetco, Baker Hughes, Biomet, General Electric, Goodyear, Halliburton, IBM, Marubeni, Lucent/Alcatel-Lucent, Orthofix, Stryker, and Tyco. *Id.* at 1305–08.

113. *Id.*

*D. The Gaps Between the FCPA and Corporate Compliance Programs*

Although the FCPA and corporate compliance programs provide legitimate means of addressing corruption, there are gaps that bad actors regularly exploit. The most damaging gap is the absence of a law that can be used to hold individuals who are demanding bribes accountable. As one author observed, the effect of the current status quo is that, “in the front of the house, [the] fire department is working tirelessly to put out the fire . . . [and] in the back of the house someone is spraying it with gasoline.”<sup>114</sup> Despite efforts by the United States government to vigorously enforce the FCPA against individuals and companies that bribe foreign government officials, “the vast majority of the foreign officials who demand these bribes continue to act with impunity.”<sup>115</sup> There have been efforts to pass legislation to address this issue,<sup>116</sup> but they are “unlikely to become law due to the current political climate.”<sup>117</sup>

Another gap is the lack of a centralized and public beneficial ownership registry of companies and trusts.<sup>118</sup> Public central registers allow watchdog organizations and enforcement entities to monitor beneficial ownership for the purposes of preventing and detecting bribery and money laundering.<sup>119</sup> Without them, shell companies are frequently used to conceal bribe payments and kickbacks, and beneficial ownership information is scattered among a variety of entities, slowing down investigations and preventing watchdog organizations from monitoring the information.<sup>120</sup> In addition, whistleblower protections are inadequate.<sup>121</sup> While legal

114. Jessica Tillipman, *No Easy Solutions to the Scourge of Demand-Side Bribery*, THE FCPA BLOG (Aug. 27, 2019, 12:38 PM), <https://fcpablog.com/2019/08/27/no-easy-solutions-to-the-scourge-of-demand-side-bribery>.

115. *Id.*

116. *See* Foreign Extortion Prevention Act, H.R. 4140, 116th Cong. (2019).

117. Tillipman, *supra* note 114.

118. “Beneficial ownership refers to the natural person or persons who ultimately own or control an asset.” GILLIAN DELL, TRANSPARENCY INT’L, EXPORTING CORRUPTION PROGRESS REPORT 2020: ASSESSING ENFORCEMENT OF THE OECD ANTI-BRIBERY CONVENTION 19 (2020).

119. *Id.* at 19.

120. *Id.* These entities include “financial institutions, corporate service providers, lawyers, notaries, accountants, and real estate agents.” *Id.*

121. *Id.* at 29. “A whistleblower is someone who reports waste, fraud, abuse, corruption, or dangers to public health and safety to someone who is in the position to rectify the

protections exist, agencies responsible for enforcing them are frequently understaffed and under-resourced. Further, there are several loopholes in the whistleblower protection statutes, and retaliation or reprisal remains widespread.<sup>122</sup>

While the FCPA and corporate compliance programs have made some positive strides towards combatting corruption, as they currently exist, there is more to be done to achieve Congress' goal of deterrence. The examples above highlight where the FCPA and corporate compliance programs have failed to deter criminality,<sup>123</sup> and it is clear from the DoJ's and SEC's ever-increasing volume of corruption enforcement actions that sanctions and loss of liberty are not enough of a deterrent. Those conclusions alone should cause lawmakers to pause and consider a different approach.

#### IV. RECOMMENDATIONS

In considering a new approach to corporate corruption deterrence, Congress can build on the base of the FCPA and create a more data- and oversight-driven system. Assessing the shortcomings of FCPA enforcement derived from viewing the enforcement through various lenses of "success," lawmakers have an opportunity to use approaches that focus more on the concept of measurable deterrence. Drawing from data-driven decision-making concepts from Sandra Durcevic and Pritha Bhandari and data-driven enforcement mechanisms from Andrew Guthrie Ferguson, the recommendations in this Part allow for a more trackable and data-driven FCPA enforcement system that would help lead to the ultimate goal of deterrence.

##### A. *Step 1: Data-Driven Courses of Action*

The first step in creating a more effective anti-corruption enforcement system is to allow data to pave the way for policy. "Data driven decision making (DDDM) is a process that involves collecting data based on measurable goals . . . , analyzing patterns and facts from these insights, and utilizing them to develop strategies and

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wrongdoing." NAT'L WHISTLEBLOWER CTR., *What is a Whistleblower?*, <https://www.whistleblowers.org/what-is-a-whistleblower> (last visited Feb. 10, 2021).

122. DELL, *supra* note 118, at 123.

123. See *SEC Enforcement Actions*, *supra* note 36; see also *DoJ Enforcement Actions*, *supra* note 36.

activities that benefit [society] in [several] areas.”<sup>124</sup> The overarching goal for this step is to develop policy for “wicked problems” for which no optimal solution exists.<sup>125</sup> Corruption is one such problem.

While lawmakers and policymakers are beginning to rely more on evidence-based methods for criminal justice policies, such as achieving public safety and reducing incarceration, criminal justice actors are notorious for collecting inadequate data and are often reluctant to use evidence-informed approaches.<sup>126</sup> This concern is an initial hurdle for following a data-driven approach because “[data] cannot inform criminal justice if there is not good [data]” to use.<sup>127</sup> To gather good data, a more systemic approach is needed.<sup>128</sup>

In order to collect good data, it is first vital to guard against biases and define objectives.<sup>129</sup> Then, it is important to consider the aim of the research, the type of data being collected, and the methods and procedures that will be used to collect and store the data.<sup>130</sup> Once the data is collected, it should be analyzed, and any unresolved questions must be identified.<sup>131</sup> If additional data is needed to resolve these questions, then that data must also be collected.<sup>132</sup> Finally, the collected data will be used to reevaluate the proposed way forward and to set measurable goals for the policies that will be pursued.<sup>133</sup> By employing an unbiased and methodical approach toward the identification and definition of anti-corruption objectives, stakeholders (i.e., Congress, States, corporations, etc.) will be able to better identify both the quantitative and qualitative data needed to answer their questions. Then, they can establish a system for

124. Sandra Durcevic, *Why Data Driven Decision Making is Your Path to Business Success*, THE DATAPINE BLOG (Apr. 16, 2019), <https://www.datapine.com/blog/data-driven-decision-making-in-businesses>.

125. Anne Fleur van Veenstra & Bas Kotterink, DATA-DRIVEN POLICY MAKING: THE POLICY LAB APPROACH 109–110 (2017).

126. See Brandon L. Garrett, *Evidence-Informed Criminal Justice*, 86 GEO. WASH. L. REV. 1490, 1495 (2018).

127. *Id.* at 1516.

128. *Id.* at 1523.

129. Durcevic, *supra* note 124.

130. Pritha Bhandari, *A Step-by-Step Guide to Data Collection*, SCRIBBR (July 3, 2020), <https://www.scribbr.com/methodology/data-collection>.

131. Durcevic, *supra* note 124.

132. *Id.*

133. *Id.*

collection and archiving that will allow them to analyze the data collected and develop anti-corruption policies that will effectuate meaningful deterrence.

### *B. Step 2: Data-Driven Enforcement Actions*

Once data-driven corruption policy is established, data-driven enforcement actions can be developed, which “strive[] to reduce crime proactively through innovative and data-driven crime-fighting strategies.”<sup>134</sup> One of these strategies is the development of broad-based collaborations.<sup>135</sup> Prosecutors and law enforcement are integral collaborative partners, but it takes the engagement of multiple cross-functional stakeholders who take ownership of how their area of expertise can be maximized to deter corrupt practices and achieve lasting effects.<sup>136</sup>

Data-driven enforcement actions also assist prosecutors, law enforcement, and analysts in identifying hot spots, priority targets, and other crime drivers.<sup>137</sup> This identification is done using an intelligence-gathering data system that sheds light on patterns of behavior and relationships.<sup>138</sup> Then, that information is used to prioritize crime drivers,<sup>139</sup> incapacitate offenders, and ultimately remove “bad apples”<sup>140</sup> from the global marketplace.<sup>141</sup> If done well, data-driven enforcement actions will dramatically reduce corruption within the global marketplace, and the partnerships between the

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134. *Intelligence-Driven Prosecution*, ASH CTR. FOR DEMOCRATIC GOVERNANCE & INNOVATION, HARV. KENNEDY SCH., <https://www.innovations.harvard.edu/intelligence-driven-prosecution> (last visited Feb. 15, 2021).

135. BUREAU OF JUST. ASSISTANCE TRAINING & TECH. ASSISTANCE PROGRAM FOR ST. ADMINISTERING AGENCIES, USING DATA DRIVEN EVIDENCE BASED APPROACHES TO SOLVING CRIME PROBLEMS 3.

136. *Id.*

137. Andrew Guthrie Ferguson, *How the Manhattan DA’s Use of Big Data Targeting Risks Changing the Rules of Prosecution*, THE APPEAL (Oct. 10, 2017), <https://theappeal.org/how-the-manhattan-das-use-of-big-data-targeting-risks-changing-the-rules-of-prosecution>. A priority target is defined as “people whose incapacitation by the criminal justice system would have a positive impact on the community’s safety and/or quality of life.” *Id.*

138. *Id.*

139. *Id.*

140. See Koffel Brininger Nesbitt, *Can Data Driven Prosecution Really Stem Crime Rates?*, COLUMBUS CRIM. DEF. BLOG (Dec. 3, 2014), <https://www.koffellaw.com/columbus-criminal-defense-blog/2014/december/can-data-driven-prosecution-really-stem-crime-ra> (revealing that examples of “bad apples” include repeat offenders, uncooperative witnesses, and offenders who have shown no signs of stopping).

141. Ferguson, *supra* note 137.

criminal justice system and other stakeholders will enhance the system's legitimacy in the eyes of the public.<sup>142</sup>

*C. Step 3: Continuous Follow-Up and Enforcement  
Actions Efficacy Assessment*

Once data-driven policies and enforcement systems are in place, it is critical to continue to analyze their effectiveness in practice. Monitoring and evaluation are tools “to track implementation and outputs systematically and measure the effectiveness of [policies and enforcement actions].”<sup>143</sup> “It helps determine exactly when a policy or enforcement action is on track and when changes may be needed.”<sup>144</sup> Given that corruption and criminal justice are complex and dynamic,<sup>145</sup> solutions must be continuously reviewed to ensure they are accomplishing the stated goals.<sup>146</sup> If the anticorruption goals are not being met, or there were unforeseen consequences to the implemented policies or enforcement actions, then a course correction should be made, and a new anti-corruption solution should be devised and implemented.<sup>147</sup>

V. CONCLUSION

If the ultimate goal is to eliminate corruption, then the current FCPA and corporate compliance programs alone will not achieve it. While there is value in recouping funds and increasing corporate transparency, it is becoming increasingly clear that those solutions do not significantly deter corruption. Moving forward, the focus should be on the development and use of data-driven policies and enforcement actions. After data-driven policies and enforcement actions are implemented, the government must continually follow up on the data regarding effectiveness to ensure that

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142. *See id.*

143. *Why is Monitoring and Evaluation Important?*, UN WOMEN VIRTUAL KNOWLEDGE CTR. TO END VIOLENCE AGAINST WOMEN & GIRLS, <https://www.endvawnow.org/en/articles/331-why-is-monitoring-and-evaluation-important.html> (last updated Oct. 31, 2010).

144. *Id.*

145. David McMillon, Carl P. Simon & Jeffrey Morenoff, *Modeling the Underlying Dynamics of the Spread of Crime*, 9 PLOS ONE 1, 1 (2014).

146. *8-Step Problem Solving Process*, IOWA UNIV. HUMAN RES., <https://hr.uiowa.edu/development/organizational-development/lean/8-step-problem-solving-process> (last visited Mar. 24, 2021).

147. *Id.*

deterrence is being achieved. While there may be some areas of the world where corruption will remain deeply embedded within the fabric of the culture, if the global economy truly values a corruption-free market, nation states must ban together and commit to doing whatever is necessary to extract corrupt individuals and corporations from the system.