2008

An Assessment of the Impact of the Sarbanes-Oxley Act on the Investigation Violations of the Foreign Corrupt Practices Act

Karen Cascini
Sacred Heart University, cascinik@sacredheart.edu

Alan L. DelFavero
Sacred Heart University, delfaveroa@sacredheart.edu

Recommended Citation
Cascini, K. & DelFavero, A. (2008). An assessment of the impact of the Sarbanes-Oxley Act on the investigation violations of the Foreign Corrupt Practices Act. *Journal of Business & Economics Research, 6*(10), 21-34. doi: 10.19030/jber.v6i10.2476

An Assessment Of The Impact Of The Sarbanes-Oxley Act On The Investigating Violations Of The Foreign Corrupt Practices Act

Karen T. Cascini, Sacred Heart University, USA
Alan DelFavero, Graduate Research Assistant, Sacred Heart University, USA

ABSTRACT

During the late 1990s and early 2000s, a plethora of corporate scandals occurred. Due to these corporate debacles, corporate executives have been placed under fire. In response to such unethical conduct with regard to internal practices and financial reporting, legislation has been passed in order to ensure that corporations conduct their business in an ethical manner. The purpose of this paper is to assess the connection between the Foreign Corrupt Practices Act of 1977 (FCPA) and the Sarbanes-Oxley Act of 2002 (SOx), to determine whether SOx has influenced the FCPA's investigative violation activities by examining the number of such investigations since the passage SOx. This paper also addresses specific cases of violations of anti-corruption laws and compares SOx and the FCPA on violation penalties.

Keywords: accounting, bribery, corporate scandals, business ethics, business law, Sarbanes Oxley Act, Foreign Corrupt Practices Act, fraud, bribery, corruption, ethics, Dept. of Justice

INTRODUCTION

On July 30, 2002, President Bush signed SOx into law, which created the Public Company Accounting Oversight Board (PCAOB) to "oversee the financial reporting of public companies." The act was sponsored by Maryland Democratic Senator Paul Sarbanes and Ohio Republican Senator, Michael Oxley, and was created in order to improve accounting credibility and reduce corporate fraud (Grumet, 2007).

The Foreign Corrupt Practices Act of 1977 (FCPA), however, was originally created in an effort to punish U.S. companies and citizens who bribed "foreign government officials, politicians, or political parties, either in the form of money or anything of value, to obtain and/or maintain business." The FCPA is principally enforced by the Justice Department and the Securities and Exchange Commission (Norris, 2006). The FCPA's anti-bribery provisions apply to 'issuers', 'domestic concerns,' and 'any person' that violates the Act while in the territory of the United States. "An issuer is a corporation that has issued a security that has been registered in the United States or who is required to file periodic reports with the SEC." However, under the amendment to the law in 1998, a foreign corporation would be subject to FCPA regulations if they attempted to bribe a U.S. company as well (U.S. Department of Justice).

Yet, the FCPA is relatively broad and indistinct. Under the Act's regulations, it is illegal for U.S. citizens, companies, and employees of U.S. companies to "bribe foreign politicians or government officials to secure any improper business advantage. But that's not all; 'the law applies to all U.S. persons, which can include any non-citizen who does business with an American company,' according to John W. Brooks, senior international counsel at Luce Forward Hamilton & Scripps in San Diego" (Wellner, 2006).

Since the FCPA is a much older act than SOx, it is important to determine if its passage has strengthened the FCPA in the area of increases in violation investigations (A timeline of events is listed in Exhibit1 on the next page).

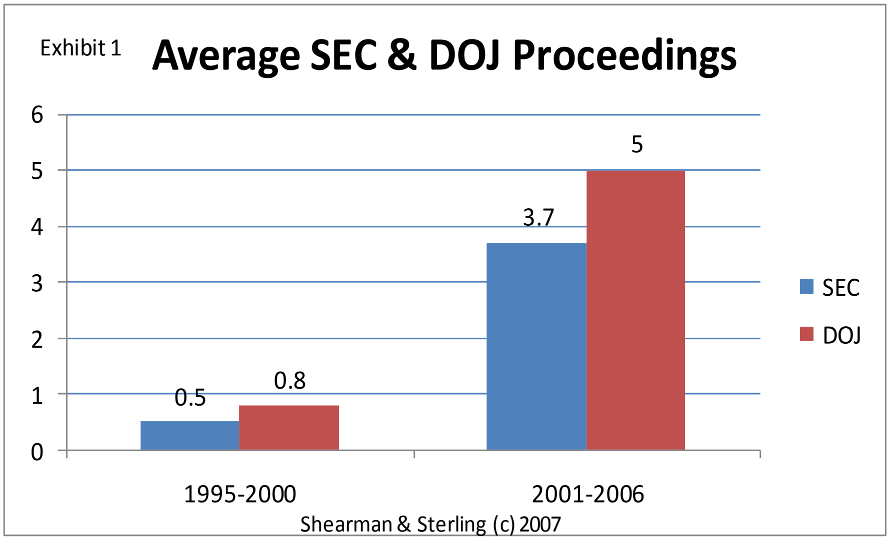
Year	Exhibit 1 Timeline
1972	Lockheed Martin Bribery Scandal in China
1973-74	President Nixon Watergate Scandal & Resignation
1977	FCPA Enacted By Congress
1988	FCPA Amendment - Employees can now be held accountable for their actions prior to the organization being charged
1998	FCPA Amendment- International Bribery Act Created in order to hold foreign corporations accountable when dealing with U.S. firms
2001-02	Enron, WorldCom, Tyco Scandals Revealed
2002	Enactment of the Sarbanes Oxley Act of 2002 by Paul Sarbanes & Michael Oxley
2002-07	Investigations of FCPA violations increase 125%

A COMPARISON OF FCPA AND SOx

An important question to ask here is, "Why was the Foreign Corrupt Practices Act enacted by congress in the first place?" Amidst the Watergate scandal during the Nixon Administration in the mid-1970's, the general public became much more aware of the corruption potential of government officials and corporations. In September of 1972, Lockheed Corporation had given at least $2 million of donations to Japanese Prime Minister Kakuei Tanaka. As a result, in 1974, Tanaka was forced to resign after the outbreak of a large scandal, which eventually led to his 1983 conviction on corruption charges. Although Lockheed was a large factor behind the creation of the FCPA, during the 1970's, based on a SEC investigation, 450 other American corporations were found to have induced foreign companies to accept bribes as well. In addition, at this time, the country was faced with former President Nixon's scandal and resignation. Accordingly, during the Carter Administration, Congress created the Foreign Corrupt Practices Act (FCPA) of 1977 (Graham & Lam, 2007, p.61). Yet, the Act was amended in 1988 during President Ronald Reagan's rein, and again in 1998 in the midst of the Clinton era.

Even though the FCPA was created to prevent corruption, numerous organizations, at first, were "fearful that the act would place them at a competitive disadvantage with foreign competitors" (Snow, 2006). Consequently, businesses argued that payoffs were necessary to conduct business globally, since many countries bribed in order to conduct business. (Graham & Lam, 2007, p.62). Prior to the increase of corporate scandals, the FCPA was not enforced to the same degree as it has been in the post-Enron era. Between 2002 and 2006, law enforcement activity has increased markedly as opposed to the previous decades. "Sarbanes-Oxley and foreign treaties have made it much easier for U.S. prosecutors to extract information from abroad" (Freedman, 2006). SOx allowed for the SEC and DOJ to "sniff out the 'offshore intermediaries' that helped corporations seeking to sidestep provisions of the FCPA, prohibiting payoffs to foreign officials" (Schrage, 2005, p. A21).

For instance, between 2001 and 2006, the average number of SEC & DOJ proceedings increased to slightly less than four and five proceedings per year, respectively. Consequently, there has been a 569% increase in the average number of SEC & DOJ proceedings between the 1995-2000 and the 2001-2006 time periods (Shearman & Sterling, 2007, p.3).



The FCPA regulations alone severely penalize companies and individuals for paying bribes to foreign officials. "The term 'foreign official' denotes any officer or employee of a foreign government or any department, agency, or instrumentality thereof, or a public international organization, or any person acting in an official capacity for or on behalf of any such government or department, agency or instrumentality, or for on behalf of any such public international organization" (United States of America Fifth Congress, 1998). The penalties for firms, executives, and individuals are steep. Businesses can be fined up to $2 million. However, executives may appear to get the brunt of the punishment. Corrupt management can receive up to a $100,000 fine and up to a five year jail sentence. "Under federal criminal laws other than the FCPA, individuals may be fined up to $250,000 or twice the amount of the gross gain or gross loss if the defendant derives pecuniary gain from the offense or causes a pecuniary loss to another person" (Graham & Lam, 2007, p.62). Sections 103 and 104 of the FCPA "prohibit a corporation from making payments to foreign officials for the purpose of inducing him to obtain or retain business from the corporation or to influence legislation or regulations of the government. These two sections cover payments and gifts intended to influence the receipt, regardless of who first suggested the payment of the gift" (U.S. Department of Justice, 1977).

However, there is a provision written into the FCPA that contains an exception to the anti-bribery laws. U.S. companies are allowed to make "facilitating payments,' made in furtherance of routine governmental action. The statute lists multiple examples of payments that may be made to facilitate or expedite performance of routine governmental action, including payments to: obtain permits, licenses, or other official documents; process governmental papers, such as visa and work orders; provide police protection; mail pick-up and delivery; provide phone service, power and water supply, cargo handling, or protection of perishable products; and schedule inspections associated with contract performance or transit of goods across country," under Section 78 (U.S. Department of Justice, 2000).

In regards to the accounting systems within a company, there are regulatory statutes as well. Section 102 "requires reporting companies to make and keep books, records, and accounts which fairly reflect all of their transactions and dispositions of assets. A reporting company would also be required to establish and maintain an adequate system of internal accounting controls sufficient to provide reasonable assurances that: transactions are executed in accordance with management decisions; transactions are recorded in a manner that permits the company to prepare financial statements in accordance with GAAP or other applicable criteria and to maintain accountability for its assets; access to company assets is only allowed with management authorizations; and the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to differences. New Paragraph 3 of Section 102 would make it unlawful for any person knowingly to make or cause a materially false or misleading statement or to omit to state or cause another person to omit to state any material fact. This paragraph would apply to statements made to an accountant in connection with any examination or audit of an issuer with securities registered under the Securities Act of 1933, as well as any examination or audit of a reporting company (U.S. Department of Justice, 1977).

Enhancing the credibility of the "corporate books and records and reliability of the audit process" is one of the main reasons for the creation of Section 102, which aides the issuer in conducting its audit, by helping improve internal controls. Under Section 102, "there is a prohibition against falsification of accounting records and deception of auditors." If the deception is simply negligence, penalties will not apply. On the other hand, if a person is aware that he/she is indeed making a false statement, thus, creating inaccurate corporate records, there will be consequences (U.S. Department of Justice, 1977).

Yet, the passage of SOx does not significantly change the corporation's internal requirements for maintaining internal control, stated in the FCPA. "SOx mandate new disclosures about and assessments of internal controls. Specifically, SOx 302 increases disclosure requirements related to the effectiveness of, and significant changes in, internal control" (Ge & McVay, 2005).

Under Section 302 of SOx, a CEO and CFO must officially state that they have reviewed their organization's financial statements (quarterly and annual reports filed with the SEC), and to their knowledge, the data presented fairly represents the true economic condition of the corporation and does not contain any dishonest statements (Prentice, 2005, p. 25).

In addition, "they must also certify that they are responsible for establishing and maintaining their company's internal financial controls, they have formulated these controls to ensure that the relevant material information is made known to them, that they have recently evaluated the effectiveness of internal controls, and have presented in the report their conclusions about the controls' effectiveness" (p. 25).

Lastly, the CEO and CFO must report to the auditors all of the known facts. Regardless of materiality, if there is corruption involving employees and management, severe deficiencies, or faults within internal controls, CEOs and CFOs must confirm that they have reported this to the auditors or audit committees (p. 25). As a result of the passing of SOx, executives are now personally liable if they allow any type of fraudulent activity to occur within their organization. Section 302 raises more awareness within an organization of the potential dangers of corrupt practices.

In addition, SOx Section 404 supports Section 302. Section 404 "requires management to annually disclose its assessment of the firm's internal control structure and procedures for financial reporting and include the corresponding opinions by the firm's auditor" (Ge & McVay, 2005). More particularly, "while the FCPA required public companies to institute effective internal controls to stop the bribes and make executives accountable, SOx 404 goes further, but has similar goals. This section requires corporations to institute (1) a disclosure committee to review procedures and processes; (2) a disclosure coordinator (any one person within the organization who can ask questions and try to keep everyone on track); (3) a timeline and a responsibility chart; (4) sub-certifications where lower level employees certify the accuracy of the information they send up the line of control within the organization, (5) codes of conduct for all accounting and financial employees; (6) a great deal of consultation with internal audit and outside advisors; and (7) established documentation procedures" (Prentice, 2005, p. 36).

These executives are held personally liable for the credibility of the data presented within the financial reports. If there is fraud detected, then these executives could face prosecution. "By criminalizing false certifications -- the law inadvertently fostered a new industry of global compliance auditors. In the United States, these auditors identified fraudulent 'special purpose entities' that permitted Enron to shift losses off its balance sheets" (Schrage, 2005, p. A21). Yet, an important question to ask here is, "What is a 'special purpose entity'?" The term "special purpose entity" (SPE) is typically not included in the average person's daily vocabulary. In common terms, an SPE is a separate entity designed to accomplish a special task for the sponsoring corporation. Many times, an SPE will provide liquidity for the sponsor through purchasing assets from the sponsor and providing them with cash. While these entities can be designed for legitimate purposes, there are cases, such as Enron, where they are rendered bogus.

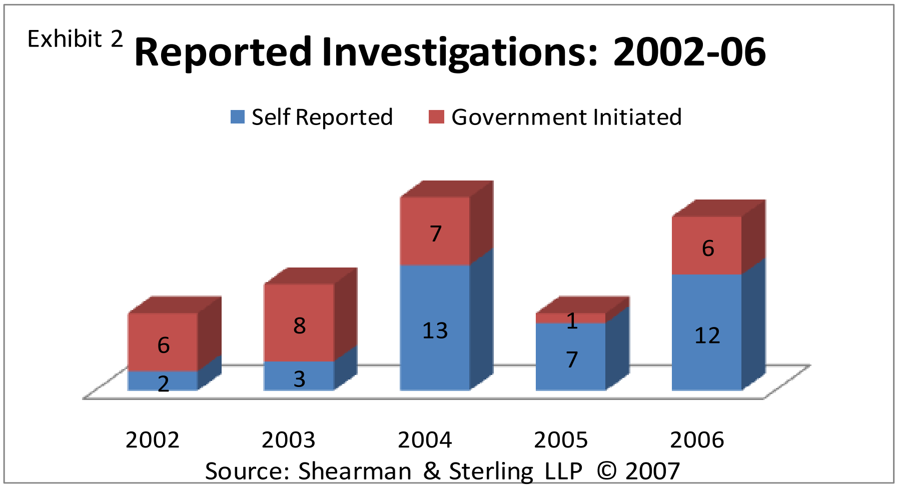
In better defined terms, a SPE is "formed by a sponsoring company and is capitalized with an equity investment, some of which must be from independent third parties." The SPE supports these investments through "borrowings from the credit market and purchases of earnings assets for or from the sponsoring company." Over time, however, the cash provided from these earning assets will provide gains for the equity investors, along with paying down the debt accumulated (Halsey, Subramanyam, & Wild, 2004, pgs. 162-163). For example, a company can utilize SPEs if there is a need to sell accounts receivables. The organization can remove the receivables from their balance sheet and then receive cash which can be invested in other earning assets. The SPE, through a process called securitization, "collateralizes bonds that it sells in the credit markets with the receivables and uses the cash to purchase additional receivables on an ongoing basis as the company's credit card portfolio grows (pgs. 162-163).

Since SPEs are generally "off-balance sheet," (meaning that information is only included in the footnotes) it is very difficult for the accounting industry to easily evaluate the impact that the SPEs have on the sponsoring company. Rules, regulations, and procedures for consolidation with the sponsoring company, are covered very little by GAAP. "Accountants usually do not require consolidation as long as the SPE is capitalized with outside equity from independent third-parities of at least 10% of total capitalization. This level has been raised from 3%, however, since Enron" The third party must tolerate the risk of the investment in order for the SPE not to be consolidated into the sponsor's financial statements (p. 164).

In the case of Enron, SPEs were abused and misused. According to the company's CFO, Enron would not have been able to maintain its growth rate, financial leverage, or its debt rating, without the use of the SPEs. Increased issuance of common stock would have lowered the share price, thus, decreasing shareholder value, and debt issuances would have raised the corporation's debt ratio. Consequently, company earnings were inflated, as a result of the hidden debt in the SPEs. "Essentially, Enron designed these SPEs and capitalized them with their own stock, covered by forward contracts to preserve its value from potential decline." Yet, this SPE does not have any outside equity of its own from a third party, and its assets consist solely of common stock. Additionally, the SPEs were not consolidated into Enron's balance sheet. (p. 166). Deceptive practices such as these were the primary driving factor behind the development of SOx, and its stringent self-examination requirements.

The self-examination requirement imposed by SOx is one of the chief reasons behind the strong increase in FCPA enforcement actions, interacting with "self reporting compelled under the federal prosecutorial guidelines for corporate criminality" (LaCroix, 2007). "Consequently, corporations are finding their own FCPA violations internally and turning themselves in" (LaCroix, 2007).

Exhibit 2



Source: Shearman & Sterling LLP © 2007

According to Shearman & Sterling, as organizations engage in the merger and acquisition process, they are more apt to confess acts of wrongdoing immediately. While the number of reported investigations to the DOJ and SEC have risen in the aggregate, the proportion of cases, resulting from voluntary disclosure, have grown significantly relative to government initiated inquires. “Between 2005 and 2007, 23 of the 26 cases reported to the SEC or DOJ were voluntarily disclosed” (Sherman & Sterling, 2007, p. 6, 7).

For example, Swiss-based ABB Ltd., a global provider of power technologies, improperly “paid $1.1 billion in bribes to officials in Nigeria, Angola, and Kazakhstan between 1998 and 2003. Additionally, the company improperly booked payments, and lacked the internal controls to prevent them. In one instance, ABB’s country manager for Angola doled out $21,600 in a brown paper bag to five officials of the state-owned oil company.” Nevertheless, even when companies disclose internal findings of bribery within business deals and mergers and acquisitions, this does not assure the company that the SEC will not punish them as severely as companies that do not confess. Although ABB worked with authorities in terms of announcing to the SEC and the Justice Department that they had discovered bribery violations at its foreign subsidiaries, they were still forced to pay $10.5 million and an additional $5.9 million in fines (Katz, 2004).

Additional cases of corporations disclosing suspected bribes are UPS and former Germany based Daimler-Chrysler. CFO.com, in March 2006, stated that United Parcel Service (UPS) had launched an investigation into its supply chain subsidiary for potential violations “prior to its 2001 acquisition of a freight forwarding business from Fritz Companies, Inc.” UPS, however, believes that there were only a few former employees who “directed the questionable conduct (Taub, 2006).

In addition, former DaimlerChrysler AG revealed that numerous employees were expelled from the corporation on the grounds that they made ‘improper payments’ in foreign jurisdictions including Africa, Asia, and Eastern Europe (Taub, 2006). However, there is the argument that these extremely stringent rules have been detrimental to the obtaining of contracts. Even though this argument may be valid, it is much more important for American businesses to maintain strong ethical standards. While the ethics behind the payment of bribes depends on cultural values, it is clearly unethical in the United States, and U.S. companies must abide by the FCPA laws.

THE FCPA/SOxs’ CONNECTION & DIRECT EFFECT ON STAKEHOLDERS

In recent years, globalization has had a profound effect on international commerce and financial markets, and has created an increased tendency for executives to accept bribes in order to gain business overseas. For instance, businesses face a great challenge when attempting to conduct business in China. Because China is one of the fastest growing economies currently in the world, U.S. organizations are being enticed to participate in corrupt activity due to the lucrative profit potential that exists. (Goodman, 2005, p. A1). Until 2004, China was not recognized by the FCPA for regulation violations. Yet, since then, there have been increasing numbers of violations. (Norton, 2006). At the current growth rates in the Chinese economy of 8% to 10% per year, China’s gross national product “would equal that of the United States’ by 2015” (Graham & Lam, 2007, p. 43). According to the Transparency International’s Corruption Perception Index in 2005, on a scale of 1-10, where lower scores suggest higher levels of bribery, China scored a mere 3.2, while Iceland scored the highest at an impressive 9.7. The U.S. scored 7.6 (p. 68).

“In February 2004, the secretary of the Central Commission for Discipline of the Communist Party of China (CPC) reported that between December 2002 and November 2003, 174,580 Chinese officials were disciplined for violating anti-corruption laws or policies.” The Chinese economy has grown significantly primarily due to the “decentralization of political decision-making and law enforcement, and loosening executive control.” Nevertheless, Chinese government leaders are more prone to accepting bribes since they are poorly paid. “Government leaders proclaim that ‘to get rich is glorious and officials see others enriching themselves” (China Law & Practice, 2004). As China has become a much more profitable region of the world, companies have begun to concentrate their efforts on obtaining business there. Consequently, American corporations, executives, and citizens are getting caught in the corruption cross-fire.

For American businesses, transactions in China are more difficult to conduct as a result of FCPA regulations. Yet, as China's financial operations become increasingly global, not only Americans, but the Chinese, are obligated to reduce bribes. For instance, the FCPA applies to 50 of China's largest firms such as China Telecom, Lenovo, and China Life Insurance. Although these companies are not located within the U.S., the FCPA does have authority over their executives and employees since they are listed as American Depository Receipts on U.S. exchanges (Graham & Lam, 2007, pgs. 68, 71).

"Between May 1, 2003, and April 30 2004, competition for 47 contracts worth $18 billion 'may have been affected by bribery by foreign firms of foreign officials, according to a July 2004, report issued by the U.S. Department of Commerce. U.S. firms lost at least eight of the contracts, worth $3 billion" (Katz, 2004). Nonetheless, while the FCPA may impose strict requirements, thus preventing some companies from being competitive worldwide, many companies, both domestic and foreign have continued to commit bribery. (A chart summarizing corporate FCPA corruption scandals is listed in Table I).

TABLE I: FCPA Violations Chart

Company	**Year(s)**	**Crime**	**SOX**	**FCPA**	**Penalty**
			Violations	**Violations**	
ABB, Ltd	1998-2003	$1.1m in bribes to Nigeria, Angola, &		AB	
		Kazakhstan Officals & $21,600 in brown paper bag (A)	N/C/PI	B&R	
				ACP	$16.4m (1)
Daimler Chrysler	1994-2002	Improper Payments to foreign jurisdictions (B)	N/A	N/A	N/A
El Paso Corp	2000-01	Payments to Iraqi Officials under UN Oil for Food Program (C)	N/C/PI 404	B&P	
				ACP	$7.7m (2)
GE-InVision	2002-04	Kickbacks to Asian Officials (D)	N/C/PI	AB	
				B&R	
				ACP	$1.18m (3)
Halliburton	1993-98	May Have Bribed Nigerian Officials for Favorable Tax Treatment (E)	NYD	NYD	N/A
Lee Dynamics	2004-05	Thousands of Dollars in Bribes to U.S Army Officers			
		to attain $11m in contracts (F)	NYD	NYD	N/A
Lucent	2000-03	Bribery of Chinese officials for access to telecom market (G)	N/C/PI	B&P	$1.5 m (4)
				ACP	$1m (5)
Siemens AG	2000-06	€1.3 billion in suspicious transactions to foreign	NYD	NYD	$790m (6)
		governments/telecommunications ministers (H)			

SOX Violation Abbreviations
None Charged. However, Organization Lacking Internal Controls = N/C/PI
None Charged. Yet, a Potential Violation of SOX 404 Exists Due to a Lack of Internal Controls= N/C/PI 404
Not Yet Determined= NYD

FCPA Violation Abbreviations
Anti-Bribery Provision (Section 30A of SEC Act of 1934) = AB
Books & Record Provision (Section 13 (b)(2)(A) of SEC Act of 1934) = B&R
Accounting Control Provisions (Section 13 (b)(2)(B) of SEC Act of 1934) = ACP
Not Yet Determined, but at least Section A of SEC Act of 1934, if charged= NYD

Penalty Explanation
(1) $16.4 Million Paid to the Department of Justice (DOJ) and Securities and Exchange Commission (SEC)

(2) $7.7 Million Paid to DOJ & SEC
(3) $1.18 Million Paid in Civil Penalties
(4) $1.15 Million Paid to the SEC
(5) $1 Million Paid to the U.S. Treasury

Footnotes
A) U.S. SEC, 2004 B) Lander, 2006 C) Snow, 2006 D) U.S. SEC, 2005 E) Katz, 2004
F) Glanz & Scmitt, 2007 Gi) NJ Biz, 27 Gii) U.S. Court for the District of Columbia, 2007
Giii) The FCPA Blog, 2007 (H) Africa News Blog, 2007

In April 2004, former New Jersey based Lucent Technologies, Inc., which has since merged with the French telecom giant, Alcatel, publicly disclosed that four senior officials in China had been fired on the grounds that they violated FCPA regulations (Norton, 2006). "Lucent identified the dismissal of the four executives as the president, chief operating officer, a marketing executive, and a finance manager for its China operations," based on the belief that Lucent may have bribed Chinese officials in order to gain access to their markets (Taub, 2006).

Presumably, telecom company executives, such as China Telecom, China Unicom, and China Netcom (Lucent's clients) accepted payments for "approving purchases of equipment worth hundreds of millions of U.S. dollars from foreign and domestic makers" (Xinhau News Agency, 2004). The corruption was discovered "during the company's FCPA compliance audits which stemmed from an investigation into its practices in Saudi Arabia." (Taub, 2004).

In relation to Saudi Arabia, in July 1998, the company won a $699 million mobile telephone. According to the National Group, Lucent paid $15 million in bribes to a Saudi Minister, Ali-al-Johani, in exchange for receiving good treatment from the nation's telephone agency and ultimately, winning the contract (U.S. Investigates Lucent, New York Times, 2003). Though Lucent claimed that these assertions were untrue, National Group argued that the company engaged in several acts of corruption. Not only were bribes offered to Ali-al-Johani, who turned out to be the "chairman of the government controlled Saudi Telecom Company," but this bribe was intended to force Saudi Telecom to act against National Group and act in the best interests of Lucent (Technology Briefing: Telecommunications: Saudi Company Sues Lucent, New York Times, 2003).

SEC examination into the potential bribery in China and Saudi Arabia was still in progress, as of May 2006 (Lucent Technologies Form 10Q, 2006). Consequently, in reaction to the unethical behavior in Saudi Arabia, Lucent investigated operations in 23 other nations, including Brazil, India, Indonesia, the Philippines, and Russia. In turn, Lucent strengthened their internal controls and policies to prevent additional FCPA violations worldwide. In addition to firing the four executives in China, Lucent mandated that, until a new president was appointed, the Chinese division would report to the president of global sales. Although Lucent was not confident on how this would affect Chinese operations, the company believed that the impact would be immaterial on earnings in the aggregate (Taub, 2004).

In addition, General Electric (GE) was not immune to corruption scandals either. In 2004, GE announced that its acquiree, InVision Technologies, had been charged "for paying kickbacks to government officials in several Asian countries, including China, prior to GE's acquisition" (Norton, 2006). Chiefly, InVision produced and sold airport bomb-detection machines which scanned airline passengers' belongings. (Stoller, 2004). The company, based in Newark, California, between June 2002 and June 2004, "had retained distributors and sales agents in China, the Philippines, and Thailand to sell bomb-detection equipment to local airports." (Wellner, 2006).

Nevertheless, according to the SEC and DOJ, however, InVision never attempted to prevent the sales agents or distributors from bribing governments overseas even though they were fairly certain that these agents and distributors would attempt to sweeten any offer with gifts in order to gain business for InVision. (U.S. S.E.C., 2005). While InVision did not admit or deny guilt, they settled and paid more than $1 million in penalties to the U.S. government, "while agreeing to pay disgorgement and prejudgment interest, cease and desist from violations of the FCPA, and comply with its undertakings to retain an independent consultant to ensure that the company adheres to a corporate compliance program to detect and prevent violations of the FCPA" (U.S. S.E.C., 2005). Consequently, GE's Security of Homeland Protection, "performs intense background checks on all third-party relationships, according to Timothy Baxter, general counsel of GE's Security's Homeland Protection" (Wellner, 2006). While the practice may be relatively intrusive, it needs to be conducted if the company wants to avoid being liable under FCPA regulations.

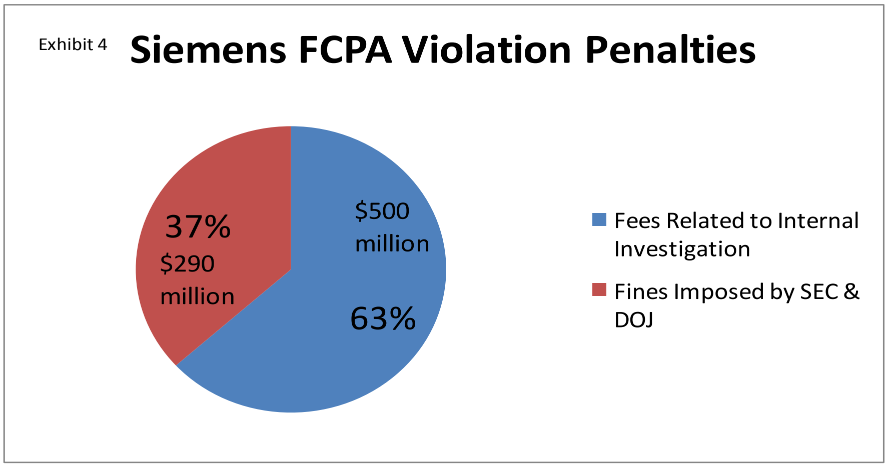
However, corrupt activity was not limited to InVision. In another example, in 2004, Halliburton, disclosed to the SEC and DOJ that it "may have bribed Nigerian officials to secure favorable tax treatment for a liquefied-natural-gas facility" (Katz, 2004). In 1996, a consortium that Halliburton later acquired was awarded an $8.1 billion contract for the rights to build a natural gas plant. However, it was revealed by Halliburton's lawyers that, between 1993 and 1998, a time when human maltreatment was occurring under military dictator Sani Abacha's rule of Nigeria, "the consortium had written notes back and forth between Nigerian officials" (Gold, 2004, p. A3). The ethical implication of this merger is even more significant since it involved Vice President Dick Cheney. At the time, Cheney was the corporation's CEO. However, according to Halliburton officials, Cheney was never cognizant of the corruption. Presently, the company has begun to take measures to prevent this criminal and immoral behavior from reoccurring (p. A3).

Subsequently, a case involving thousands of dollars worth of bribes, concerned Lee Dynamics International. Although Lee Dynamics is based in the U.S., it had operated from Kuwait. As of July 2007, under the authority of the U.S. Army, all business dealings with the government were stopped due to the fact that Lee Dynamics allegedly paid an undisclosed number of bribes worth hundreds of thousands of dollars to Army officers "to build, operate, and maintain warehouses in Iraq that stored weapons, uniforms, vehicles, and other materials for Iraqi forces in 2004 and 2005" (Glanz & Scmitt, 2007, p. A1). "In 2004, the company was awarded an $11.7 million contract to build, operate, and maintain the Iraqi warehouses," along with an additional $12 million contract in 2005 (p. A1).

On an individual basis, after accepting at least $225,000 in bribes from Lee Dynamics, Major Gloria D Davis, a contracting official in Kuwait committed suicide in Baghdad in December 2006. The investigation uncovered acceptances of $9.6 million in bribes for defense contracts in Iraq and Kuwait to Major John Cockerham, a former Army contracting officer in Kuwait, and his wife and sister (p. A1). Overall, Lee Dynamics has taken advantage of the millions of dollars of contracts made available since the fall of the Iraqi government. Additionally, these military officials exploited the opportunity to profit from accepting illegal kickbacks.

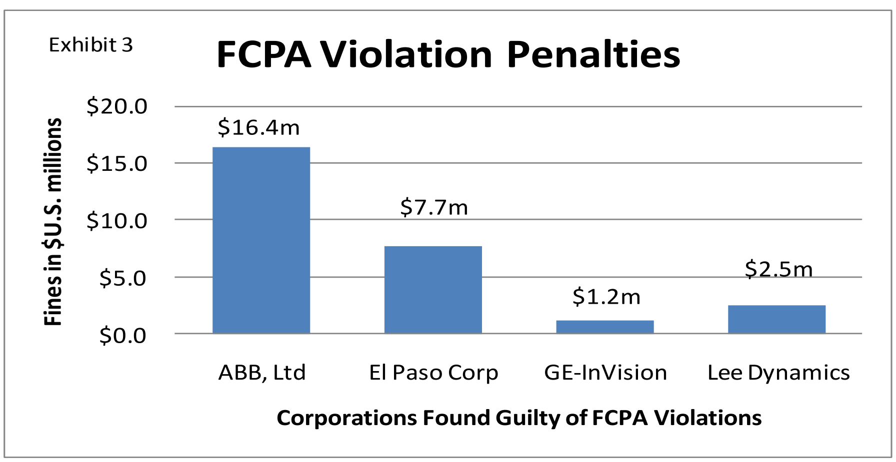
More recently, a bribery case of mammoth proportions involved German electronics and engineering giant Siemens AG. According to a Munich, Germany court ruling on October 4, 2007, in order to obtain very profitable contracts for telecommunications equipment, "Siemens paid four former undisclosed Nigerian telecommunications ministers a total of 77 bribes equivalent to €12 million or $17.5 million" (Crawford & Esterl, 2007, p. A1).

At the end of 2006, the investigation of Siemens commenced with a search of company headquarters by the German police. Consequently, Mr. Reinhard Siekaczek, a thirty-eight year telecommunications equipment unit manager at Siemens, was charged by the German court for embezzlement. Reinhard, fully cooperative with the prosecution, claimed that he was aware of additional bribes in other countries beyond the three countries in question. For example, Siekaczek told Munich prosecutors that foreign managers committed bribes in "more than a dozen countries including Brazil, Cameroon, Egypt, Greece, Poland, and Spain, according to a separate court records reviewed by the Wall Street Journal." Lastly, the company announced that its Chinese operations were also being investigated on the grounds that there was "corruption at several business units, including those specializing in medical equipment, factory automation, and information technology (Africa News Blog, 2007).



Yet, this inquiry rapidly grew into one of Europe's largest bribery ever. "A Munich court ruling listed bribes from €2,000 to €2.25 million steered by Siekaczek and colleagues to dozens of government officials in these three countries, with about €10 million paid to Nigerians, including an immigration official, a senator, and four former telecommunications minister." Consequently, in November 2007, Siemens admitted that it had identified €1.3 billion in "suspicious transactions world-wide between 2000 and 2006" (Africa News Blog, 2007).

Although Siemens is located in Germany, the U.S. government does have jurisdiction over the multinational since the company is listed as an ADR on the New York Stock Exchange and has wide-ranging operations in the U.S. While the Munich courts penalized Siemens for $290 million, payable in Germany, there is no doubt that the consequences for this immoral action will be even more severe in the U.S. "Washington wants to hold foreign companies to the same standards as their U.S. competitors" (Ewing & Javers, 2007, p. 78). Accordingly, in compliance with the U.S., Siemens has invested in excess of $500 million to investigate its internal practices through the use of "installing a team of monitors which will report directly to U.S. authorities, to make sure that the company banishes palm-greasing permanently" (p. 78).



A similar FCPA violation scandal involved El Paso Corp. "On February 7, 2007 the Department of Justice and the SEC said El Paso Corp. agreed to pay $7.7 million to settle charges that it and a company it acquired, Coastal Corp., paid kickbacks to Iraqi officials under U.S. wire fraud, under the United Nations' Oil for Food program in 2000 and 2001" (Snow, 2006).

In addition, in October and November 2007, York International, Ingersoll-Rand, and Chevron were involved in making illegal payments to the former Iraqi government under the U.N. Oil for Food Program, as well during 2001 and 2002. Monies paid by Chevron were not only kept secret, but they were considered to be illegal under U.S. wire-fraud statutes. York International, Ingersoll-Rand, and Chevron were charged and forced to pay $22 million, $6.7 million, and $30 million, respectively, in fines to the U.S. government agencies (Taub, 2007).

While it is generally considered noble for these corporations to turn themselves in for their corrupt internal findings, the costs are still rather significant. When the government determines that these companies have violated FCPA law, "they are opening themselves up to years of negative publicity, fines, criminal investigations, indictments and highly intrusive compliance monitors that have billed companies for as many as 40,000 hours, at rates up to $700 an hour" (Freedman, 2006). Ultimately, this amounts to $28,000,000! Although all of these new rules and regulations have placed some of these U.S. corporations at a disadvantage, isn't it true that, with the passage, of SOx and the FCPA, that corruption is finally being tackled at a serious rate?

Finally, while businesses have been the primary focus of this paper, as previously noted, the FCPA applies to American citizens as well. As an example, former Louisiana Democratic Representative William J. Jefferson faced a 16-count indictment on the grounds that he accepted hundreds of thousands of dollars in a Nigerian business deal. During 2005, the FBI brought to Jefferson's attention that they possessed evidence, in the form of a video, proving that he accepted "$100,000 from a Nigerian government informant, according to a prosecution document filed September 28, 2007, in federal court in Alexandria, VA" (Lengel, 2007, p. A3).

Allegedly, Jefferson, the "the former co-chairman of the congressional caucus on Nigeria and African trade" not only collected money for himself and his family, but his main goal was to bribe a Nigerian Vice President to support U.S. financing for a sugar factory within Nigeria, in so that the sugar factory owners could pay Jefferson and his family commissions. Even worse, Jefferson reported these trips to Nigeria as "official business." After conducting a house search, the FBI discovered $90,000 worth of bills in Jefferson's freezer, allegedly accepted from "a Virginian businesswoman who was working as an informant, to bribe a Nigerian official in a business deal" (p. A3).

Regardless of the amount of money, this government official, who clearly had a better understanding of the FCPA than the average individual, involved himself in crooked activity. An elected official who abuses the FCPA in order to collect and use funds for personal gain must be held accountable for such illegal and unethical acts.

OTHER CORPORATE CRIMINAL ACTIVITY

Additionally, there is corporate criminal activity that does not fall within the parameters of the FCPA or SOx. An example of such activity is Blackwater USA. Blackwater is an American security company based in North Carolina who contracted with the U.S. Department of State to protect non-military personnel in Iraq war zones. There were approximately 987 guards stationed in Iraq, earning an average of $1,222 per day. However, many of these agents did not protect the non-military personnel. For instance, a "drunken Blackwater employee murdered an Iraqi civilian in cold blood. A congressional report found that out of 195 fatal accidents in Iraq, Blackwater was responsible for 163 of them," or 84%. In addition, the military reported that seventeen innocent civilians were murdered without any real cause by Blackwater personnel (Stevenson, 2007).

In addition, Blackwater, according to Democratic California Representative Harry Waxman, "evaded $31 million in taxes by labeling their employees as 'independent contractors" (Stevenson, 2007). This has allowed the company to avoid paying Social Security and Medicare taxes, as well as federal income and unemployment taxes from May 2006 to March 2007. The Internal Revenue Service ruled that the labeling of employees as independent contractors was 'without merit' (Kirchgaessner, 2007). In response to the killings, the Iraqi government forced Blackwater to make a swift departure from the nation (Stevenson, 2007).

However, in front of the House Oversight and Government Reform Committee, U.S. Department Secretary Condoleezza Rice revealed that "there was a 'hole' in United States Law that had allowed Blackwater USA employees and other armed contractors in Iraq to escape legal jeopardy for crimes possibly committed there" (Broder, 2007, p. A6).

Although Rice was cognizant of the fact that the administration needed to back new government laws and regulations in order to determine how contractors conducting business overseas would be handled in situations such as these, she expressed some concerns in regards to trying "contractors under the military justice system" (p. A6).

While Blackwater USA's crimes do not fall under the provisions of the FCPA or SOx, criminal activity does exist. Although the tax evasion has occurred on a domestic level, Blackwater USA employees did "perform" their job duties within Iraq, a foreign country. However, these "job duties" were mostly proven to be of a criminal nature.

CONCLUSION

According to the World Bank, "corruption is the single largest obstacle to economic growth in poor countries" (Schrage, 2005, p. A21). These executives and individuals know the consequences for paying a foreign official a bribe. The facts presented above are clear. The passage of the Sarbanes Oxley Act of 2002, and more specifically sections 302 and 402, requiring the CEO and CFO to validate that the information is fairly presented within their financial statements, has significantly increased the number of investigated violations under the Foreign Corrupt Practices Act of 1977. Since 2002, there have been more violations discovered than in all of the 1980's and 1990's combined. This is a clear indicator that SOx has enhanced the FCPA in this regard. It would be prudent of U.S. corporations, businesses, and individuals to abide by anti-corruption laws. Legislation is heading in the correct direction, however, more needs to be done in the future in order to significantly reduce corruption.

The authors believe that the FCPA should be extended to encompass more stringent anti-corruption regulations. Dr. Rice admits that U.S. law is lacking in bringing criminal charges against Blackwater. While this company may not have committed any bribes, they were most definitely involved in criminal activity. An appropriate amendment to the FCPA could deter criminal activity such as in this case.

AUTHOR INFORMATION

Karen Cascini has been a professor of Accounting for seventeen years at the John F. Welch College of Business, Sacred Heart University in Fairfield, Connecticut. She teaches advanced accounting courses to undergraduate students and international accounting in the MBA program. Dr. Cascini received her Ph.D. from the University of Connecticut and is a licensed certified public accountant in the state of Connecticut. Her research interests include international and financial accounting and accounting ethics. She has traveled extensively presenting papers and teaching accounting topics to an international audience. She is widely published and her work appears in such journals as the Journal of International of Financial Management and Accounting (JIFMA), The CPA Journal, The Journal of Business Case Studies to name a few. Dr. Cascini can be contacted at cascinik@sacredheart.edu.

Alan Delfavero (Graduate Assistant): This paper is Alan Defavero's first venture into academic publishing. A Monroe, Connecticut native, in 2006, Delfavero graduated summa cum laude from Sacred Heart University's John F. Welch College of Business with a finance major and an accounting minor. While immediately pursuing his MBA he worked as Dr. Karen Cascini's graduate research assistant for the academic year 2007/08. Delfavero earned a gold medal for achieving a 3.97 GPA, the highest in his graduating class. He is also a member of three national honors societies.

REFERENCES

1. Broder, John . "Rice Says 'Hole" in U.S. Law Shields Contractors in Iraq." *The New York Times.* October 26, 2007.
2. "Company News; U.S. Investigates Lucent After Bribery Accusations," *The New York Times*, August 23, 2003, http://query.nytimes.com/gst/fullpage.html?res=9D03EEDB1439F930A1575BC0A9659C8B63&n=

Top/News/Business/Companies/Alcatel-Lucent (accessed October 27, 2007).
3. Crawford, David and Esterl, Michael. “Siemens Ruling Details Bribery Across the Globe.” *Wall Street Journal*. November 16, 2007.
4. Ewing, Jack and Javers, Eamon. “Siemens Braces for a Slap from Uncle Sam.” *Business Week* 4060 (November 26, 2007): 78.
5. Freedman, Michael. “Trust Us.” *Forbes* 178 iss. 13 (December 25, 2006): 32.
6. Ge, Weili and McVay, Sarah. “The Disclosure of Material Weaknesses in Internal Control after the Sarbanes-Oxley Act.” *Accounting Horizons* 19, no. 3 (September 2005): 137-158.
7. Glanz, James and Scmitt, Eric. “U.S. Connects Iraq Contracts to Big Bribes.” *The New York Times.* August 31, 2007.
8. Gold, Russell. “Hallibutron Uncovers Talks of Bribes.” *Wall Street Journal.* September 2, 2004. A3.
9. Goodman, Peter S. “Common in China, Kickbacks Create Trouble for U.S. Companies at Home.” *The Washington Post.* August 22, 2005. A1.
10. Graham, John and Lam, N. Mark. *China Now.* New York, NY: McGraw Hill: 2007.
11. Grumet, Louis. “Rethinking Sarbanes Oxley.” *CPA Journal* 77, no. 11 (November 2007): 7.
12. Halsey, Robert, Subramanyam, K.R., and Wild, John J. *Financial Statement Analysis*. 8th edition. New York: McGraw-Hill/Irwin, 2004.
13. Katz, David. “Bribes and the Balance Sheet.” *CFO.com.* (November 8, 2004): http://www.cfo.com/article.cfm/3370117?f=search (accessed November 28, 2007).
14. Kirchgaessner, Stephanie. “Blackwater Accused of Tax Evasion.” *MSNBC.com.* (October 23, 2007): http://www.msnbc.msn.com/id/21427332/ (accessed November 3, 2007).
15. LaCroix, Kevin. “Foreign Corrupt Practices Act: A '70s Revival and Growing D&O Risk.” *National Underwriter. P & C* 111, no. 13 (April 2, 2007).
16. Lander, Mark. “Daimler Chrysler Suspends Employees in Bribery Inquiry.” *New York Times*. March 7, 2006. http://www.nytimes.com/2006/03/07/business/worldbusiness/07daimler.html?_r=1&adxnnl=1&oref=slogin&adxnnl x1203829616-Bx1PKn93gplumJA37GUOWQ (accessed March 18, 2008).
17. Lengel, Allan. “Prosecutors Lay Out Case Against Jefferson.” *The Washington Post.* September, 29, 2007.
18. "Lucent Settles FCPA Violations For $2.5Million." The FCPA Blog. entry posted December 22, 2007. http://fcpablog.blogspot.com/2007/12/lucent-settles-fcpa-violations-for-25.html (accessed February 18, 2008).
19. Lucent Technologies Inc. “Form 10-Q.” (May 9, 2006). http://yahoo.brand.edgar-online.com/fetchFilingFrameset.aspx?dcn=0000950117-06-002142&Type=HTML (accessed October 18, 2007).
20. Norris, Benjamin. “Don’t Ignore the FCPA.” *Journal of Commerce.* (February 27, 2006): 1.
21. "North:Lucent Settles Bribe Charges." NJBIZ 21, no. 1 (December 31, 2007): 27.
22. Norton, Patrick. “The Foreign Corrupt Practices Act Dilemma.” *The China Business Review* 33, no. 6 (November/December 2006): 22-27, 29.
23. Prentice, Robert. *Student Guide to the Sarbanes-Oxley Act,* Thomson West: Ohio, 2005.
24. Schrage, Elliot, J. “Corruption’s New Nemesis.” *The Washington Post.* November 15, 2005.
25. “Siemens Ruling: Details Bribery.” Africa News Blog. Entry posted November 17, 2007. http://www.africanews.com /site/list_messages/13099 (accessed November 29, 2007).
26. Shearman & Sterling. “Recent Trends and Patterns in FCPA Enforcement.” June 26, 2007. http://www.abanet.org/intlaw/fall07/materials/RecentTrendsPatternsFCPAEnforcement.pdf (accessed May 4, 2008)
27. Snow, Nick. “Companies Take Steps to Avoid Bribe Hazards.” *Oil & Gas Journal* 105, no. 9 (March 5, 2006): 20.
28. Stevenson, Michael. “Opinion: Blackwater USA Actions Alarming.” *McClathy-Tribune Business News.* (October 26, 2007).
29. Stoller, Gary. “GE-InVision Merger Gets FTC Nod, but Federal Scrutiny May Hold It Up.” *USA Today.* September 16, 2004. http://www.usatoday.com/money/companies/2004-09-16-invision_x.htm (accessed October 20, 2007).
30. Taub, Stephen, “Chevron Next to Pay Up in Oil for Food Scheme.” *CFO.com.* (November 14, 2007): http://www.cfo.com/article.cfm/10130544?f=search (accessed January 29, 2008).

31. Taub, Stephen. "Lucent Fires Four on Bribery Suspicions." *CFO Magazine.* (April 7, 2004): 1.
32. Taub, Stephen. "SEC Settles Bribery Charges with Statoil." *CFO.com.* (October 16, 2006). http://www.cfo.com/article.cfm/8047389?f=search (accessed December 9, 2007).
33. "Technology Briefing: Telecommunications: Saudi Company Sues Lucent." *The New York Times*. August 12, 2003. http://query.nytimes.com/gst/fullpage.html?res=9F05E2DA1131F931A2575BC0A9659C8B63&n=Top/News/Business/Companies/Alcatel-Lucent (accessed October 20, 2007).
34. "The Foreign Corrupt Practices Act: A Minefield for US Companies in China." *China Law & Practice.* London: 2004. http://0-proquest.umi.com.enterprise.sacredheart.edu/pqdweb?index=1&did=786113131&SrchMode=1&sid=5&Fmt=3&VInst=PROD&VType=PQD&RQT=309&VName=PQD&TS=1208981503&clientId=193 (accessed January 14, 2008).
35. U.S. Court for The District of Columbia."SEC vs. Lucent Technologies." (December 2007). http://www.sec.gov/litigation /complaints/2007/comp20414.pdf (accessed February 14, 2008).
36. U.S. Department of Justice. "1018 Prohibited Foreign Corrupt Practices." *Criminal Resource Manual*. (November 2000). http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/ title9/crm01018.htm. (accessed November 5, 2007).
37. U.S. Department of Justice. "Foreign Corrupt Practices and Domestic And Foreign Investment Improved Disclosure Acts of 1977." (May 2, 1977): http://www.usdoj.gov/criminal/fraud/fcpa/history/1977/senaterpt.html (accessed November 4, 2007).
38. U.S. Department of Justice. "Lay-Person's Guide to FCPA: Anti-Bribery Provisions." U.S. Department of Justice. http://www.usdoj.gov/criminal/fraud/docs/dojdocb.html. (accessed January 20, 2008).
39. U.S. Securities and Exchange Commission. "SEC Settles Charges Against InVision Technologies For $1.1 Million For Violations Of the FCPA." *SEC.* (February 14, 2005) http://www.sec.gov/litigation/litreleases/lr19078.htm (accessed October 20, 2007).
40. U.S. Securities and Exchange Commission. "SEC Sues ABB, Ltd in Foreign Bribery Case: Litigation Release No. 18775." *Accounting & Auditing Enforcement.* July 6, 2004. http://www.sec.gov/litigation/litreleases /lr18775.htm (accessed February 14, 2008)
41. United States of America Fifth Congress. "1998 Amendments International Anti-Bribery and Fair Competition Act of 1998." (January 27, 1998): http://www.usdoj.gov/criminal/fraud/fcpa/history/1998/amends/antibribe. html (accessed October 14, 2007).
42. Wellner, Alison Stein. "No Free Pass Anti-Bribery Law is Now Aggressively Enforced." *Stein Inc* 29, no. 8 (August 2006): 48-49.
43. Xinhau News Agency. "China: Lucent Execs Face Bribery Charges in China and Saudi Arabia." November 9, 2004.http://www.corpwatch.org/article.php?id=11658 (accessed October 20, 2007)