

# PUBLIC PERCEPTIONS OF CORPORATE CRIMINAL SANCTIONS: AN EMPIRICAL STUDY OF THE REPUTATIONAL IMPACT OF CORPORATE CRIMINAL MISCONDUCT

MATTHEW D. KIM, PH.D.<sup>†</sup>

## ABSTRACT

*Corporations prefer to avoid guilty pleas in favor of more lenient resolutions, partly due to the greater reputational damage supposedly associated with a guilty plea. When possible, some corporations also prefer sanctions against their employees over sanctions against corporate entities themselves, similarly due to reputational reasons. However, it is unclear whether the form of the final resolution and the entity under investigation actually affect public perceptions of a corporation accused of criminal misconduct. Using a series of public opinion survey experiments, this study finds that in the United States, (1) a guilty plea and a non-prosecution agreement similarly affect public perceptions of corporations, but (2) corporate misconduct has a larger negative effect on public perceptions of a corporation than individual misconduct by corporate executives. However, in South Korea, such factors regarding U.S. criminal sanctions make little difference in consumer perceptions of a corporation. These findings suggest that a corporation under investigation by U.S. authorities should attempt to resolve the investigation by shifting criminal liability to its employees to reduce the domestic reputational cost, but it should not be as concerned about the reputational impact of U.S. criminal sanctions on East Asian consumers.*

## I. INTRODUCTION

Do U.S. government sanctions for corporate criminal misconduct negatively affect a corporation's domestic and international reputation? Multinational corporations are often concerned about U.S. government investigations into corporate misconduct because of the negative impact criminal sanctions are assumed to have on their reputation among (1)

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<sup>†</sup> Matthew Kim is an Affiliate at Harvard University's Institute for Quantitative Social Science. He earned his Ph.D. in Political Science at Harvard University's Government Department in 2017. He would like to thank Dan Kahn, Leo Tsao, Eugene Soltes, Adriaan Lanni, Crystal Yang, Arevik Avedian, and the editorial staff at the *Southern California Interdisciplinary Law Journal* for offering helpful critique and advice. He is also grateful for the financial support of the Harvard Institute for Quantitative Social Science.

investors and (2) consumers.<sup>1</sup> On the one hand, a corporation's concern with its reputation among investors may be warranted considering the existing scholarship that has long established the substantial negative reputational effect that corporate criminal sanctions have on investors.<sup>2</sup>

On the other hand, the effect that corporate criminal sanctions have on consumers is less clear. Because existing studies focus solely on investor decision-making, no published study to date has directly considered public reactions to various corporate criminal sanctions. Furthermore, in light of growing international trade with East Asia, white-collar crimes committed by multinational corporations operating in East Asia have come under increasing scholarly scrutiny,<sup>3</sup> but the effect that U.S. criminal sanctions have on East Asian consumers is similarly unclear.

Needless to say, addressing these empirical gaps and developing a systematic understanding of the effect of corporate criminal sanctions on consumer opinion in the U.S. and abroad in East Asia are important for several reasons. First, without a systematic understanding of the reputational effect of corporate criminal sanctions, many corporations in the consumer product industry who rely on the public's goodwill will simply assume—perhaps incorrectly—that government sanctions will hurt their reputation among consumers and will litigate accordingly.<sup>4</sup> Others will continue to reinforce the corporations' assumption, without empirical proof, by insisting

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<sup>1</sup> See generally Francis T. Cullen, Gray Cavender, William J. Maakestad & Michael L. Benson, *Corporate Crime Under Attack: The Fight to Criminalize Business Violence* (2nd ed. 2006); Brent Fisse & John Braithwaite, *The Impact of Publicity on Corporate Offenders* (1983); Paul J. Becker, Arthur J. Jipson & Alan S. Bruce, *State of Indiana v. Ford Motor Company Revisited*, 26 Am. J. Crim. Just. 181 (2002); F. Joseph Warin & Julia Rapoport Schenker, *Refusing to Settle: Why Public Companies Go to Trial in Federal Criminal Cases*, 52 Am. Crim. L. Rev. 517 (2015).

<sup>2</sup> See, e.g., Jonathan M. Karpoff, *Does Reputation Work to Discipline Corporate Misconduct?*, in THE HANDBOOK OF CORPORATE REPUTATION (Michael L. Barnett & Timothy G. Pollock eds., 2012); Cindy R. Alexander, *On the Nature of the Reputational Penalty for Corporate Crime: Evidence*, 48 J. L. & ECON. 489 (1999) (examining the reputational effect of sanctions for private party frauds); Kenneth E. Aupperle, Archie B. Carroll & John D. Hatfield, *An Empirical Examination of the Relationship Between Corporate Social Responsibility and Profitability*, 28 ACAD. MGMT. J. 446 (1985); Randolph P. Beatty, Howard Bunsis & John R.M. Hand, *The Indirect Economic Penalties in SEC Investigations of Underwriters*, 50 J. FIN. ECON. 151 (1998) (examining the reputational effect of sanctions for IPO underwriters); Wallace N. Davidson III, Dan L. Worrell & Chun I. Lee, *Stock Market Reactions to Announced Corporate Illegalsities*, 13 J. BUS. ETHICS 979 (1994); John R. Graham, Si Li & Jiaping Qiu, *Corporate Misreporting and Bank Loan Contracting*, 89 J. FIN. ECON. 44 (2008) (examining the reputational effect of sanctions for misreporting earnings restatements); Jonathan M. Karpoff, D. Scott Lee & Gerald S. Martin, *The Cost to Firms of Cooking the Books*, 43 J. FIN. & QUANTITATIVE ANALYSIS 581 (2008) (examining the reputational effect of sanctions for financial misrepresentation); Jonathan M. Karpoff, D. Scott Lee & Valaria P. Vondryk, *Defense Procurement Fraud, Penalties, and Contractor Influence*, 107 J. POL. ECON. 809 (1999) (examining the reputational effect of sanctions for defense procurement fraud); Jean B. McGuire, Alison Sundgren & Thomas Schneeweis, *Corporate Social Responsibility and Firm Financial Performance*, 31 ACAD. MGMT. J. 854 (1988); Deborah L. Murphy, Ronald E. Shrieves & Samuel L. Tibbs, *Understanding the Penalties Associated with Corporate Misconduct: An Empirical Examination of Earnings and Risk*, 44 J. FIN. & QUANTITATIVE ANALYSIS 55 (2009) (examining the reputational effect of sanctions for private party frauds); Sam Peltzman, *The Effects of FTC Advertising Regulation*, 24 J. L. & ECON. 403 (1981) (examining the reputational effect of sanctions for false advertising). But see Jonathan M. Karpoff, John R. Lott, Jr. & Eric W. Wehrly, *The Reputational Penalties for Environmental Violations: Empirical Evidence*, 48 J. L. & ECON. 653 (2005) (finding no reputational effect of sanctions for environmental violations).

<sup>3</sup> See Henry N. Pontell & Gilbert Geis, *Introduction: White-Collar and Corporate Crime in East Asia*, 5 ASIAN J. CRIMINOLOGY 83, 83–88 (2010).

<sup>4</sup> See generally CULLEN, CAVENDER, MAAKESTAD & BENSON, *supra* note 1; FISSE & BRAITHWAITE, *supra* note 1; WARIN & SCHENKER, *supra* note 1.

that “the [public] reputation loss swamps all of the direct costs incurred by the firm, and represents the most consequential impact on firm value.”<sup>5</sup>

Second, existing scholarship about the reputational cost of corporate criminal sanctions vis-a-vis investors is based on assumptions that investors have about how consumers will behave as a result of criminal sanctions.<sup>6</sup> In other words, at the root of the aforementioned studies about the reputational impact on investors is investors’ assumption that corporate criminal sanctions negatively affect members of the public who form the consumer base. As such, understanding how the public behaves in relation to corporate criminal sanctions has the potential to guide not only corporations facing sanctions but also investors making investment decisions about corporations—both of whom may be relying on a false assumption about the reputational impact of corporate criminal sanctions on the public. Therefore, this study examines the actual reputational impact of various corporate criminal sanctions on a corporation’s domestic and international reputation among consumers. The study does so by randomly varying aspects of corporate criminal sanctions and directly examining consumer opinion in light of the varying corporate criminal sanctions.

More specifically, the study focuses on two factors that characterize corporate criminal sanctions and that potentially affect a sanctioned corporation’s reputation among consumers: (1) the form of the final resolution, and (2) the entity sanctioned. First, some scholars argue that corporations under criminal investigation typically attempt to avoid guilty pleas in favor of more lenient resolutions, such as a non-prosecution agreement, in order to avoid the greater reputational damage supposedly associated with guilty pleas.<sup>7</sup> Attempting to secure a more lenient resolution, however, carries substantial costs for corporations not only in terms of legal fees but also in terms of protracted delays in reaching a final resolution, which can be fatal in markets that value certainty.<sup>8</sup> Given such costs, an important practical question this study first asks is whether the domestic and international public actually cares about the final outcome of the charges brought against a corporation by U.S. authorities.

In addition, some corporations prefer to avoid investigations into corporate misconduct in favor of investigations into individual misconduct of corporate employees, also attributed in part to domestic and international reputational concerns, assuming that the principles of *respondeat superior* do not leave corporations themselves liable.<sup>9</sup> However, it is unclear whether an entity under criminal investigation actually affects a corporation’s public image. Unsurprisingly, therefore, some corporations choose instead to

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<sup>5</sup> See Searle Civil Inst., *The Foreign Corrupt Practices Act: Economic Impact on Targeted Firms* 7 (2014).

<sup>6</sup> See Reena Aggarwal, Isil Erel & Laura Starks, *Influence of Public Opinion on Investor Voting and Proxy Advisors* (Charles A. Dice Ctr. for Research in Fin. Econ., Working Paper No. 2014-12, 2015), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2447012](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2447012) (finding that institutional investors are influenced by the changing opinions of their beneficiaries and shareholders and that the public can influence corporate behavior accordingly).

<sup>7</sup> See, e.g., Warin & Schenker, *supra* note 1, at 518.

<sup>8</sup> See Charles D. Weisselberg & Su Li, *Big Law’s Sixth Amendment: The Rise of Corporate White-Collar Practices in Large U.S. Law Firms*, 53 ARIZ. L. REV. 1221, 1269 (2011) (“These are not the sorts of cases in which in-house counsel can expertly play the legal market or tightly control legal fees.”).

<sup>9</sup> See Warin & Schenker, *supra* note 1, at 531.

protect high-level executives. This is due in part to the assumption that the reputational loss to the corporation will be equal regardless of the entity ultimately sanctioned as the result of a criminal investigation.<sup>10</sup> In light of these contrasting responses to government investigations, this study empirically examines whether the entity sanctioned for white-collar crimes affects a corporation's domestic and international public reputation.

Using a series of public opinion survey experiments of 801 U.S. adults, this study finds that in the U.S. (1) a guilty plea and a non-prosecution agreement similarly affect public perceptions of corporations, but (2) corporate misconduct has a larger negative effect on public perceptions of a corporation than individual misconduct by corporate executives. These findings suggest that a corporation facing a criminal investigation for white-collar crimes and hoping to limit the damage to its domestic public reputation should attempt to resolve the investigation by shifting the target of the investigation to its employees, assuming the corporation itself will not be held liable under *respondeat superior*.<sup>11</sup>

As alluded to earlier, this study then asks the important follow-up question of whether foreigners outside the U.S. are affected by U.S. legal proceedings in the same way as Americans. If U.S. legal proceedings do not impact foreign public perceptions of the corporation, then international corporations primarily conducting business outside the U.S. may not need to be as concerned about the reputational effects of U.S. criminal sanctions. Since U.S. public opinion data is a poor proxy for foreign public opinion, this study includes a parallel survey of an East Asian public, specifically the South Korean public, to determine whether foreign publics are similarly affected by U.S. criminal sanctions as the U.S. public. The parallel survey of 577 South Koreans reveals that neither one of the aforementioned factors regarding U.S. corporate criminal sanctions makes a difference in South Korean public perceptions of a sanctioned corporation. The South Korean results suggest that corporations have little reason to be overly concerned about how U.S. criminal sanctions may affect their reputation in East Asia, possibly because East Asian publics do not view U.S. law enforcement agencies as legitimate authorities.

## II. THEORETICAL FOUNDATION

In August of 1978, a rear-end collision involving a 1973 Ford Pinto killed three teenage girls in Indiana.<sup>12</sup> In the ensuing criminal trial, *State of Indiana v. Ford Motor Company*, Ford was charged with three counts of

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<sup>10</sup> See James B. Stewart, *In Corporate Crimes, Individual Accountability Is Elusive*, N.Y. TIMES (Feb. 19, 2015), <https://www.nytimes.com/2015/02/20/business/in-corporate-crimes-individual-accountability-is-elusive.html>.

<sup>11</sup> The U.S. Department of Justice U.S. Attorneys' Manual ("USAM") states in its Principles for Federal Prosecution of Business Organizations that "[u]nder the doctrine of *respondeat superior*, a corporation may be held criminally liable for illegal acts of its directors, officers, employees, and agents. To hold a corporation liable for these actions, the government must establish that the corporate agent's actions (i) were within the scope of his duties and (ii) were intended, at least in part, to benefit the corporation. In all cases involving wrongdoing by corporate agents, prosecutors should not limit their focus solely to individuals or the corporation, but should consider both as potential targets." U.S. DEP'T OF JUSTICE, UNITED STATES ATTORNEYS' MANUAL § 9-28.210 (B) [hereinafter USAM].

<sup>12</sup> CULLEN, CAVENDER, MAAKESTAD & BENSON, *supra* note 1, at 3.

reckless homicide for defective product design.<sup>13</sup> Under the 1978 Indiana state homicide statute, Ford faced a maximum criminal fine of only thirty thousand dollars, yet Ford spared no expense in fighting the criminal charges.<sup>14</sup> Over the course of the lawsuit, Ford spent an estimated one million dollars<sup>15</sup> and hired James Neal of the Watergate prosecution and his eighty-member legal team to defend the corporation.<sup>16</sup> Given the modest criminal fine, Ford's actions deserve close scrutiny, as do the actions of many other major corporations in the consumer product industry since 1978 that have reacted similarly to relatively modest criminal penalties.<sup>17</sup>

#### A. REASONS TO LITIGATE

Existing scholarship suggests a variety of reasons Ford—and other major corporations charged with criminal indictments since Ford—choose to invest heavily in their defense despite the modest criminal penalties arising directly from the criminal charges.

Cindy Alexander and Jennifer Arlen discuss the *direct revelation hypothesis*, which suggests that corporations pursue more lenient resolutions because plea agreements provide more information to interested outsiders about the extent of the corporation's criminal conduct.<sup>18</sup> According to the hypothesis, corporations are more likely to invest in their defense to avoid a guilty plea to prevent unnecessary disclosures of corporate misconduct.<sup>19</sup> However, as Alexander and Arlen convincingly argue, there is little evidence to support this hypothesis as both guilty pleas and more lenient resolutions such as non-prosecution agreements lead to similar disclosures about the corporation, the crime, and the settlement.<sup>20</sup> Moreover, both forms of resolutions are negotiated between the parties and are not subject to verification by a judge or a jury.<sup>21</sup> As such, corporations have substantial leverage to negotiate the extent of their disclosures regardless of the final form of the resolution. This suggests that corporations are not investing heavily in their defense because of the extent of information revealed through a guilty plea.

Another hypothesis is that corporations prefer a more lenient resolution over a guilty plea because of the *increased salience hypothesis*. According to this hypothesis, guilty pleas draw greater media coverage than more lenient resolutions, and corporations seek to avoid guilty pleas to limit the

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 171.

<sup>15</sup> One million dollars in 1978 is equivalent to \$3,020,000.00 in 2019 after accounting for inflation.

<sup>16</sup> See Joyce Leviton, *A Local D.A. Charges the Pinto with Murder—and Watergate's James Neal Comes to Its Defense*, PEOPLE (Feb. 4, 1980), <https://people.com/archive/a-local-d-a-charges-the-pinto-with-murder-and-watergates-james-neal-comes-to-its-defense-vol-13-no-5/>.

<sup>17</sup> See generally FISSE & BRAITHWAITE, *supra* note 1 (noting similar cases involving J.P. Stevens, General Motors, Kepone and Allied Chemical, Broken Hill Proprietary Company Limited, James Hardie Industries, Sharp Corporation, International Telephone and Telegraph Company, Searle, Lockheed, McDonnell Douglas, Exxon, General Electric, IBM, and Air New Zealand).

<sup>18</sup> See, e.g., Cindy R. Alexander & Jennifer Arlen, *Does Conviction Matter? The Reputational and Collateral Effects of Corporate Crime*, in RESEARCH HANDBOOK ON CORPORATE CRIME AND FINANCIAL MISDEALING 87, 109–12 (Jennifer Arlen ed., 2018).

<sup>19</sup> See *id.* at 108.

<sup>20</sup> *Id.* at 126–27.

<sup>21</sup> *Id.* at 89.

damage to their reputation through the media.<sup>22</sup> However, as Alexander and Arlen illustrate, media coverage seems to depend on the public profile of the corporation rather than the form of the settlement.<sup>23</sup> Prominent corporations such as JPMorgan Chase, HSBC, General Motors, and Toyota received much more media scrutiny despite avoiding a guilty plea, while other lesser-known corporations received little media attention despite pleading guilty.<sup>24</sup> Meanwhile, prosecutors' offices typically release press statements online in an identical manner regardless of the actual form of the final resolution.<sup>25</sup> Therefore, increased media scrutiny does not seem to be a motivating factor behind corporations seeking to avoid guilty pleas.

A third hypothesis is the *collateral consequences hypothesis*. Some corporations may be concerned that criminal investigations will result in suspension or debarment from future government contracts. However, much like a guilty plea, more lenient resolutions such as a non-prosecution agreement or deferred prosecution agreement can also result in suspension or debarment from future government contracts.<sup>26</sup> Meanwhile, regardless of the final form of the resolution, once a corporation is indicted, the corporation is likely to face other collateral consequences, such as shareholder derivative suits and class action lawsuits. Therefore, concerns over potential collateral consequences do not adequately address why corporations invest heavily in avoiding a guilty plea.

Instead, others convincingly argue that Ford and other corporations since then have invested heavily in their defense, despite the relatively modest criminal fine, because such corporations were concerned with the long-term reputational effects that a guilty verdict or guilty plea could have on their public image both domestically and abroad.<sup>27</sup> The *reputational effect hypothesis*, which is the focus of this study, suggests that Ford was mainly preoccupied with how the trial and a subsequent guilty verdict could "tarnish[] the corporate image," which would "affect[] investors' funds and the public trust."<sup>28</sup>

However, while the reputational effect of the guilty plea may have driven various corporations' decision-making processes, it is unclear whether extensive investments to fight the charges to secure something more lenient than a guilty plea are actually worth the cost. Some scholars argue that the initial charges against Ford effectively ended any chance of redemption in the public's eye, regardless of the actual outcome of the charges.<sup>29</sup> Their argument is that reputational damage was already done by the allegations of criminal misconduct alone, so the final outcome of the charges did not matter.<sup>30</sup> Nonetheless, corporations today continue to assume, similar to Ford, that the public will view a corporation in a more forgiving light if it

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<sup>22</sup> *Id.* at 111.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> See Warin & Schenker, *supra* note 1, at 529–30.

<sup>27</sup> CULLEN, CAVENDER, MAAKESTAD & BENSON, *supra* note 1, at 172.

<sup>28</sup> *Id.* at 173.

<sup>29</sup> See Becker, Jipson & Bruce, *supra* note 1, at 197–98.

<sup>30</sup> See *id.*

manages to secure a more favorable outcome at trial, and thus, such corporations invest heavily in their defense.<sup>31</sup>

Therefore, this study further explores the *reputational effect hypothesis* and asks which aspects of corporate criminal sanctions should corporations in the consumer product industry focus on in order to reduce the negative impact that U.S. criminal investigations could have on their public image. More specifically, this study focuses on three questions. First, should a corporation invest in a legal strategy to secure a non-prosecution agreement as opposed to a guilty plea in order to help preserve its public reputation? Second, should a corporation attempt to shift criminal liability onto its employees rather than the corporation itself to safeguard its public reputation? Third, should a corporation that relies on consumers not only in the U.S. but also in East Asia be equally concerned about the reputational cost assumed to be associated with U.S. corporate criminal sanctions?

## B. NPA OR GUILTY PLEA

To address the first question, it is important to specify the types of resolutions and how the U.S. Department of Justice (hereinafter “DOJ”) treats the *reputational effect hypothesis* with respect to the various types of resolutions. Once the DOJ begins investigating a corporation for white-collar crimes, the corporation typically has five possible resolutions: a declination, a non-prosecution agreement (hereinafter “NPA”), a deferred prosecution agreement (hereinafter “DPA”), a guilty plea, or a trial.<sup>32</sup> In actuality, corporations nowadays rarely go to trial for corporate criminal investigations thus leaving most corporations with the four former types of resolutions, and corporations that cannot win a declination invest significant time and resources attempting to secure a better resolution among an NPA, DPA, and a guilty plea.<sup>33</sup> During this time, corporations typically suffer significant financial losses because markets place a premium on certainty that follows the resolution of a criminal investigation.<sup>34</sup>

Meanwhile, the DOJ seems to acknowledge corporations’ supposed reputational incentives to secure a more lenient resolution.<sup>35</sup> For instance, the United States Attorneys’ Manual (hereinafter “USAM”) suggests that corporations will cooperate with the DOJ to “limit damage to reputation” by securing an NPA instead of going to trial.<sup>36</sup> In other words, it appears that the DOJ too seems to assume the underlying dynamics of the *reputational effect hypothesis* and seeks to leverage corporations’ desire to secure a more lenient resolution to prevent the reputational damage associated with a guilty plea.

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<sup>31</sup> See generally FISSE & BRAITHWAITE, *supra* note 1.

<sup>32</sup> Cf., e.g., Brandon Garrett, *International Corporate Prosecutions*, in THE OXFORD HANDBOOK OF CRIMINAL PROCEDURE 419 (Darryl K. Brown, Jenia Iontcheva Turner & Bettina Weisser eds., 2019).

<sup>33</sup> See Brandon L. Garrett, *Globalized Corporate Prosecutions*, 97 VA. L. REV. 1775, 1801 (2011); see also Warin & Schenker, *supra* note 1, at 518 (finding that of the 172 corporations convicted in 2013, only nine opted for trial).

<sup>34</sup> See Cassell Bryan-Low, Andersen Staff Works to Tie Up Loose Ends—Some Offices to Close; Others Are Acquired by Rival Companies, WALL ST. J., June 17, 2002, at C1 (describing business losses following an indictment).

<sup>35</sup> USAM, *supra* note 11, at § 9-28.700(B).

<sup>36</sup> Id.

However, although both sides assume that guilty pleas are associated with greater reputational damage than NPAs, no study has yet demonstrated whether the public actually distinguishes between different types of resolutions. That is, no study has empirically tested whether the public is less likely to disapprove of a corporation and more willing to be patrons of a corporation that has secured an NPA as opposed to a guilty plea. In light of the significant time and resources corporations spend to avoid a guilty plea to supposedly preserve their public image, whether the domestic and international public does in fact care about the final form of the resolution is an important practical question to address. This study first addresses this empirical gap.

### C. INDIVIDUAL OFFENDER OR CORPORATE OFFENDER

Corporations can only act through natural persons, and under the principle of *respondeat superior*, a corporation can be held responsible for the acts of natural persons acting within the scope of employment and intending to benefit the corporation at least in part.<sup>37</sup> However, there is significant leeway in interpreting whether an employee is in fact acting within or beyond the scope of employment and whether he or she is intending to benefit the corporation.<sup>38</sup> The USAM states that “it may not be appropriate to impose liability upon a corporation . . . under a strict *respondeat superior* theory for the single isolated act of a rogue employee” and that “[t]here is of course, a wide spectrum between these two extremes [of corporate and individual criminal liability], and a prosecutor should exercise sound discretion in evaluating the pervasiveness of wrongdoing within a corporation” before considering charges against the corporation and against individuals.<sup>39</sup> The USAM recommends charges against individuals instead of charges against the corporation if charges against individuals will satisfy the goals of prosecution, one of the goals being deterrence through the prosecution of culpable individuals.<sup>40</sup>

Therefore, in some instances, a corporation under investigation can opt to cooperate with the DOJ and shift criminal liability to its employee(s) in order to avoid criminal charges against the corporation altogether.<sup>41</sup> If the public is more forgiving and more willing to be patrons of a corporation whose employees, rather than the corporation itself, have been found guilty of criminal wrongdoing, the corporation has an even stronger incentive to shift criminal liability to its employees. For instance, in 2001, Tyson Foods attempted to blame individual employees under the assumption that the corporation could thereby curb the negative publicity surrounding criminal charges against the corporation.<sup>42</sup> On the other hand, some corporations instead choose to protect their culpable executives and allow the focus of the investigation to fall on the corporation itself. Such corporations are willing to pay legal fees for employees who have been charged, stymieing the

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<sup>37</sup> See generally, e.g., *id.*

<sup>38</sup> *Id.* at § 9-28.500 (B).

<sup>39</sup> *Id.*

<sup>40</sup> *Id.* at § 9-28.1300 (A).

<sup>41</sup> See generally Brandon L. Garrett, *Too Big to Jail: How Prosecutors Compromise with Corporations* (2014).

<sup>42</sup> See Warin & Schenker, *supra* note 1, at 530–31.

prosecution.<sup>43</sup> Determining whether the entity under investigation actually affects public perceptions of a corporation can provide further guidance for corporations under investigation.

One of the DOJ's primary goals is deterrence; assuming that corporations are deterred by greater reputational loss, whether an entity under investigation makes a difference in public perceptions of the corporation is material in guiding the DOJ's charging decisions. That is, if the public will view sanctions against the corporation less favorably than sanctions against individuals at the corporation, then the DOJ should be focused on charging the corporation itself rather than corporate executives because such charges will result in the largest deterrence effect. Alternatively, if the public will view sanctions against individuals at the corporation less favorably than sanctions against the corporation, then the DOJ should be focused on charging corporate executives rather than the corporation itself.

However, without empirical evidence about which entity is more likely to have a larger negative reputational effect and thereby is more likely to deter corporate criminal behavior, the DOJ's charging policies have varied from time to time. Under the Obama administration, then-Deputy Attorney General Sally Yates stressed the importance of charging individuals rather than corporations in a 2015 DOJ memorandum titled "Individual Accountability for Corporate Wrongdoing," more commonly known as the "Yates Memo."<sup>44</sup> The Yates Memo states that the DOJ should make cooperation credit for corporations contingent on company disclosures about all employees who were "involved in" the alleged criminal misconduct.<sup>45</sup> The Yates Memo's call to investigate individuals would have a greater deterrent effect if in fact charges against individuals had a larger negative reputational effect than charges against the corporation. Under the Trump administration, the DOJ revised its policy to request company disclosures about only the employees who were "substantially involved in" rather than simply "involved in" the alleged criminal misconduct. The revised policy allows corporations that have not fully disclosed all individual misconduct to receive cooperation credit, signaling the DOJ's intent to deemphasize the prosecution of individual employees.<sup>46</sup> The revised policy to investigate corporations as opposed to individuals would have a greater deterrent effect if charges against corporations had a larger negative reputational effect than charges against individuals.

In sum, despite the importance of public perception in guiding both corporations and the DOJ, no study has empirically tested whether the public is in fact less likely to disapprove of a corporation whose employees have been found guilty of criminal wrongdoing rather than the corporate entity itself. This study addresses this second empirical gap as well.

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<sup>43</sup> See Stewart, *supra* note 10.

<sup>44</sup> Memorandum from Sally Quillian Yates, Deputy Attorney Gen. to U.S. Assistant Attorney Gen.'s et al. (Sept. 9, 2015), available at <https://www.justice.gov/archives/dag/file/769036/download> (letter regarding individual accountability for corporate wrongdoing).

<sup>45</sup> *Id.* at 3.

<sup>46</sup> See Peter Baldwin & Antonio M. Pozos, *Department of Justice Announces Important Revisions to the Yates Memo*, NAT'L L. REV. (Dec. 12, 2018), <https://www.natlawreview.com/article/departments-justice-announces-important-revisions-to-yates-memo>.

## D. EAST ASIAN PERCEPTIONS OF U.S. CRIMINAL SANCTIONS

East Asia is becoming an increasingly important consumer base for major international corporations,<sup>47</sup> and East Asia has become the focus of major DOJ investigations into corporate corruption in recent years.<sup>48</sup> In 2013 and 2014, Asia had the highest proportion of the DOJ's Foreign Corrupt Practices Act ("FCPA") investigations.<sup>49</sup> China in particular is the country with the highest number of FCPA investigations since 2010.<sup>50</sup> Therefore, as a practical matter, given the emergence of the Asian consumer base and the DOJ's focus in East Asia, a corporation primarily operating in East Asia or primarily relying on East Asian customers—as opposed to one operating in the U.S. or relying on U.S. customers—may be more concerned about how the East Asian public reacts to U.S. government investigations rather than how the U.S. public reacts to such investigations. Surveys based on U.S. samples do not adequately capture how the Asian public, or any foreign public for that matter, reacts to DOJ investigations. It is possible that DOJ investigations and U.S. criminal sanctions have no impact on a foreign public's perception of a corporation because the DOJ is a foreign law enforcement body litigating in U.S. courts that may be considered less legitimate than their own domestic courts. Therefore, this study asks whether the aforementioned aspects of U.S. criminal sanctions result in similar or dissimilar effects in East Asia.

This study selected South Korea as its case study due to South Korea's increasing international trade with the U.S. as a result of the 2013 Free Trade Agreement between the U.S. and South Korea.<sup>51</sup> In 2018, the two countries renegotiated the Free Trade Agreement to include additional terms that opened the South Korean market to U.S. corporations even further, in part to reduce the trade deficit in favor of the U.S.<sup>52</sup> The renegotiated trade agreement is expected to result in additional U.S. corporations entering South Korea and relying increasingly on the South Korean consumer base,<sup>53</sup> thus justifying the selection of South Korea for the purposes of this study. However, one concern with the selection of South Korea is that South Korean respondents may not be representative of the larger East Asian public. Although it is difficult to articulate a legitimate theoretical reason for why South Korea is not representative of the larger East Asian public in terms of its reactions to U.S. criminal sanctions, a more skeptical reader may choose to limit this study's inferences to the South Korean public as opposed to the East Asian public as a whole.

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<sup>47</sup> See Michael Schuman, *The Rise of the Asian Consumer*, U.S. NEWS & WORLD REP. (Jan. 23, 2018, 12:01 AM), <https://www.usnews.com/news/best-countries/articles/2018-01-23/asian-consumers-becoming-most-powerful-economic-force-in-world>.

<sup>48</sup> See Lily Kuo, *Asia is Becoming the Global Epicenter of Corporate Corruption*, QUARTZ (Apr. 7, 2015), <https://qz.com/378710/asia-is-becoming-the-global-epicenter-of-corporate-corruption/>.

<sup>49</sup> See id.

<sup>50</sup> See Stan. L. Sch., *Location of Misconduct Alleged in FCPA-Related Enforcement Actions (by Country)*, FOREIGN CORRUPT PRAC. ACT CLEARINGHOUSE: A COLLABORATION WITH SULLIVAN & CROMWELL LLP, <http://fcpa.stanford.edu/index.html> (last visited Mar. 24, 2020).

<sup>51</sup> See *U.S.-Korea Free Trade Agreement*, OFF. U.S. TRADE REPRESENTATIVE, <https://ustr.gov/trade-agreements/free-trade-agreements/korus-fta> (last visited Mar. 24, 2020).

<sup>52</sup> Jim Tankersley, *Trump Signs Revised Korean Trade Deal*, N.Y. TIMES (Sept. 24, 2018), <https://www.nytimes.com/2018/09/24/us/politics/south-korea-trump-trade-deal.html>.

<sup>53</sup> See id.

Lastly, although this study focuses on corporations in the consumer product industry facing investigations for *white-collar crimes*, the underlying dynamics that this study explores may apply to corporations in the consumer products industry facing major civil lawsuits or criminal investigations for misconduct of *any type*, such as product liability claims, if the allegations draw significant negative media exposure in the U.S. and in East Asia.

### III. RESEARCH DESIGN AND HYPOTHESES

#### A. SURVEY DESIGN

To address the aforementioned questions about public perceptions of corporate criminal sanctions, this study conducted two original survey experiments involving 801 U.S. survey respondents and 577 South Korean survey respondents. The same questions were asked to both U.S. and South Korean respondents. In the first experiment for both countries, the survey randomly assigned respondents to one of two possible treatments: the NPA treatment or the guilty plea treatment. Respondents in the NPA treatment read that a hypothetical corporation agreed to an NPA with the DOJ. In contrast, respondents in the guilty plea treatment read that the corporation agreed to a guilty plea with the DOJ. Both treatment groups otherwise read the exact same criminal violation, criminal fine, and corporate monitorship. Furthermore, the survey presented the hypothetical vignettes in the form of a news headline and a short news story in order to mirror the way in which members of the public come across such information in reality. The choice to present the vignettes in this manner also reflected the fact that corporations are most likely concerned with similar forms of negative media exposure.<sup>54</sup>

Afterwards, the survey asked respondents in both treatment groups how they rated the corporation in light of the news article. The survey also asked all respondents whether they would continue their patronage of the corporation. This second question about *behavior* as opposed to *opinion* was designed to partially address the concern that although people may disapprove of misbehaving corporations, they may continue to purchase the corporations' products. In other words, this second question probed into whether people were willing to translate their disapproval of a misbehaving corporation into action.<sup>55</sup>

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<sup>54</sup> Other studies have documented the substantial influence that the news industry has on the public's understanding of crime. See generally RAY SURETTE, *MEDIA CRIME AND CRIMINAL JUSTICE: IMAGES REALITIES AND POLICIES* (Roy R. Roberg ed., 1st ed. 1992).

<sup>55</sup> This question admittedly cannot truly measure respondents' actual behavior given that the corporation is a hypothetical one and responses on a survey question about actions may still not translate to actual consumer behavior in practice. Nonetheless, the question provides a first-cut measure of public behavior as opposed to simply public opinion.

Figure 1: Treatment Conditions for Experiment 1 in the U.S.

Treatment 1: NPA



NEW YORK -- Instead of going to trial, the Department of Justice and the popular clothing brand Epoch signed a non-prosecution agreement earlier today. Federal prosecutors had uncovered evidence that Epoch lied about its profits and misled investors last year. According to the non-prosecution agreement, prosecutors will not take Epoch to trial in return for the company paying a \$300 million dollar fine and implementing new company policies to prevent this type of fraud in the future. By signing the non-prosecution agreement, Epoch is NOT admitting any guilt.

In light of the non-prosecution agreement, how disappointing are Epoch's past actions?

Very disappointing 0    Disappointing 1    A little disappointing 2    A little acceptable 3    Acceptable 4    Very acceptable 5



Assuming you frequently purchased Epoch clothes, how likely would you stop purchasing Epoch clothes?

Very likely 0    Likely 1    Somewhat likely 2    Somewhat unlikely 3    Unlikely 4    Strongly unlikely 5



Treatment 2: Guilty Plea



NEW YORK -- Instead of going to trial, popular clothing brand Epoch pled guilty of fraud earlier today. Federal prosecutors had uncovered evidence that Epoch lied about its profits and misled investors last year. According to the guilty plea, Epoch will have to pay a \$300 million dollar fine and implement new company policies to prevent this type of fraud in the future. By signing the guilty plea agreement, Epoch is admitting that it committed fraud.

In light of the guilty plea, how disappointing are Epoch's past actions?

Very disappointing 0    Disappointing 1    A little disappointing 2    A little acceptable 3    Acceptable 4    Very acceptable 5



Assuming you frequently purchased Epoch clothes, how likely would you stop purchasing Epoch clothes?

Very likely 0    Likely 1    Somewhat likely 2    Somewhat unlikely 3    Unlikely 4    Strongly unlikely 5



In the second experiment, following a similar format as the first, the survey randomly assigned respondents to one of two possible treatments: the individual offender treatment or the corporate offender treatment. Respondents in the individual offender treatment read that corporate executives were found guilty of criminal misconduct. In contrast, respondents in the corporate offender treatment read that the corporation itself was found guilty of criminal misconduct. As before, both treatment groups otherwise read the exact same criminal violation, criminal fine, and corporate monitorship. The survey then asked respondents in both treatment groups how they rated the corporation in light of the news article and whether they would continue their patronage of the corporation. The wording and layout for the English version of the survey, as well as the relevant parts of the Korean version of the survey, are reproduced in the Appendix.

In addition, the survey asked about several demographic characteristics, such as age, income, gender, political identification, education, and willingness to forgive in one's interpersonal relationships. For U.S. survey respondents, race was also measured, but due to the overwhelming homogenous racial makeup of South Koreans, the race question was omitted for South Korean respondents. Demographic characteristics for the U.S. sample and South Korean sample are summarized in Table 1 and Table 2 respectively.

**Table 1: U.S. Survey Sample Descriptive Statistics**

Variables	Obs.	Mean	Std. Dev.	Min.	Max.
Female	801	.448	.498	0	1
Liberal	801	.598	.304	0	1
Income	801	50,748.71	33,944.67	0	150,000
Education	801	.631	.210	0	1
Personal forgiveness	801	.413	.281	0	1
Age	801	38.774	12.806	18	97
Political involvement	801	.253	.315	0	1
Knowledge	801	.625	.343	0	1
Asian	801	.044	.205	0	1
Hispanic	801	.066	.249	0	1
Other	801	.035	.184	0	1
White	801	.752	.432	0	1
African American	801	.104	.305	0	1
NPA response: favorability	801	.229	.246	0	1
NPA response: cont'd patronage	801	.365	.274	0	1
Individual off. response: favorability	801	.240	.251	0	1
Individual off. response: cont'd patronage	801	.384	.294	0	1

*Note: Female is a binary variable indicating female (1) or male (0). Liberal is a Likert scale variable for political ideology normalized to range from 0 to 1. The income variable was measured using ranges of income, and the responses were converted to the mid-point of each selected range. The units for income are in U.S. dollars. Education is a categorical ordinal variable normalized to range from 0 to 1 where more education is denoted with values closer to 1. Personal forgiveness is a categorical ordinal variable normalized to range from 0 to 1 where higher willingness to forgive in interpersonal relationships is denoted with values closer to 1. Age is measured in years. Political involvement is a categorical ordinal variable normalized to range from 0 to 1 where higher involvement is denoted with values closer to 1. Knowledge is a categorical ordinal variable normalized to range from 0 to 1 where higher political knowledge is denoted with values closer to 1. Asian is a binary variable indicating Asian (1) or not (0). Hispanic is a binary variable indicating Hispanic (1) or not (0). Other is a binary variable indicating other races (1) or one of the specified races (0). White is a binary variable indicating white (1) or not (0). African American is a binary variable indicating African American (1) or not (0). NPA response: favorability is the first response to the first experiment normalized to range from 0 to 1. NPA response: cont'd patronage is the second response to the first experiment normalized to range from 0 to 1. Individual off. response: favorability is the first response to the second experiment normalized to range from 0 to 1. Individual off. response: cont'd patronage is the second response to the second experiment normalized to range from 0 to 1.*

**Table 2: South Korea Survey Sample Descriptive Statistics**

Variables	Obs.	Mean	Std. Dev.	Min.	Max.
Female	577	.513	.500	0	1
Liberal	577	.535	.167	0	1
Income	577	37,765.87	25,844.53	0	150,000
Education	577	.496	.260	0	1
Personal forgiveness	577	.239	.224	0	1
Age	577	35.617	12.826	18	59
Political involvement	577	.059	.153	0	1
Knowledge	577	.320	.277	0	1
NPA response: favorability	577	.319	.198	0	1
NPA response: cont'd patronage	577	.418	.206	0	1
Individual off. response: favorability	577	.284	.197	0	1
Individual off. response: cont'd patronage	577	.371	.223	0	1

*Note: Female is a binary variable indicating female (1) or male (0). Liberal is a Likert scale variable for political ideology normalized to range from 0 to 1. The income variable was measured using ranges of income, and the responses were converted to the mid-point of each selected range. The units for income are in South Korean won. Education is a categorical ordinal variable normalized to range from 0 to 1 where more education is denoted with values closer to 1. Personal forgiveness is a categorical ordinal variable normalized to range from 0 to 1 where higher willingness to forgive in interpersonal relationships is denoted with values closer to 1. Age is measured in years. Political involvement is a categorical ordinal variable normalized to range from 0 to 1 where higher involvement is denoted with values closer to 1. Knowledge is a categorical ordinal variable normalized to range from 0 to 1 where higher political knowledge is denoted with values closer to 1. NPA response: favorability is the first response to the first experiment normalized to range from 0 to 1. NPA response: cont'd patronage is the second response to the first experiment normalized to range from 0 to 1. Individual off. response: favorability is the first response to the second experiment normalized to range from 0 to 1. Individual off. response: cont'd patronage is the second response to the second experiment normalized to range from 0 to 1. Information on race was not collected due to the overwhelmingly homogenous racial makeup of South Koreans.*

For respondent recruitment the study relied on Amazon Mechanical Turk (“MTurk”) to recruit all 801 U.S. survey respondents. MTurk is an online survey platform that academics regularly use to gauge public opinion for peer-reviewed studies.<sup>56</sup> The study’s U.S. survey took place on November 17, 2018 and was only available for U.S. adult respondents.<sup>57</sup> In order to ensure the quality of survey responses, the U.S. survey also included two attention-check questions to flag respondents who were not paying attention to the survey prompt. Those who failed the first attention-check question were not included in the survey and not made a part of the final sample of 801 respondents.<sup>58</sup> Those who failed the second attention-check question were allowed to re-do the second attention-check question and continue on with the rest of the survey.<sup>59</sup> Finally, in order to correct for non-response bias, the study required U.S. respondents to complete the survey before receiving a modest financial compensation.<sup>60</sup>

For South Korean survey respondents, the study employed the services of Macromill Embrain, a professional polling firm in South Korea to recruit a nationally representative sample of 577 South Koreans. The South Korean survey took place from January 16 to January 24, 2019. Because Macromill Embrain vetted South Korean respondents prior to the survey, the South Korean survey omitted the attention-check questions that were included in the U.S. survey.

## B. HYPOTHESES

The aforementioned *Ford Pinto* case suggests the inability of corporations to control the damage to their reputation once allegations of corporate misconduct have been made, irrespective of the final verdict.<sup>61</sup> In a recent study of public reactions to supply chain disclosures intended to curb corporate human rights violations, Adam Chilton and Galit Sarfaty also find that the U.S. public is unable to distinguish between low levels and high levels of corporate due diligence.<sup>62</sup> Therefore, in light of the *Ford Pinto* case as well as Chilton and Sarfaty’s findings, this study made the following two hypotheses for both the U.S. and South Korean survey respondents.

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<sup>56</sup> See, e.g., Cass R. Sunstein, Sebastian Bobadilla-Suarez, Stephanie C. Lazzaro & Tali Sharot, *How People Update Beliefs About Climate Change: Good News and Bad News*, 102 CORNELL L. REV. 1431 (2017) (using 302 MTurk respondents to run a public opinion survey on climate change); see also Connor Huff & Dustin Tingley, *Who Are These People? Evaluating the Demographic Characteristics and Political Preferences of MTurk Survey Respondents*, RES. & POL., July–Sept. 2015, at 8 (affirming the use of MTurk respondents by comparing results using MTurk and other survey platforms).

<sup>57</sup> In order to reduce sampling bias, I launched the survey on a Saturday afternoon, a time at which all types of U.S. MTurk users (including those who work 9:00 AM to 5:00 PM jobs and those on the U.S. Pacific time zone) could partake in the survey.

<sup>58</sup> Of the original pool of 905 respondents, 107 respondents failed the first attention-check question.

<sup>59</sup> Of the 801 respondents, 27 respondents failed the second attention-check question. The following analyses rely on the full sample of 801 respondents who successfully completed the first attention-check question. Robustness checks excluding the 27 respondents who failed the second attention-check question did not yield significantly different results.

<sup>60</sup> All 801 U.S. respondents completed the survey. They were each paid \$0.50 for the five-minute survey.

<sup>61</sup> See generally FISSE & BRAITHWAITE, *supra* note 1.

<sup>62</sup> See Adam S. Chilton & Galit A. Sarfaty, *The Limitations of Supply Chain Disclosure Regimes*, 53 STAN. J. INT’L L. 1, 7 (2017).

H1: An NPA and a guilty plea will have similar effects on the public's perception of the corporation.

H2: A guilty plea finding the corporation liable for criminal misconduct and a guilty plea finding corporate employees liable for criminal misconduct will have similar effects on the public's perception of the corporation.

Results consistent with the above hypotheses in both the U.S. and South Korea would suggest that corporations should attempt to resolve government investigations of white-collar crimes as quickly as possible, instead of wrangling over the form of the corporate resolution or attempting to shift criminal liability to individual employees, if corporations are most concerned with their public reputation.

### C. ASSUMPTIONS AND LIMITATIONS

Before discussing the survey results, it is important to discuss this study's assumptions and limitations. Compared to the U.S. adult population as a whole, this study's U.S. sample has a higher proportion of whites who seem to be younger, more educated, and more liberal.<sup>63</sup> As such, drawing inferences to U.S. adults may be problematic, and the results may overestimate the effect of the overrepresented demographics. Fortunately, weighting the sample to reflect the U.S. adult population is one possible solution to the overrepresentation of certain demographics, and robustness checks weighting the sample according to the 2016 American National Election Studies ("ANES") does in fact replicate all of the following results using un-weighted samples.<sup>64</sup> Moreover, scholars have found that studies using MTurk samples can be replicated on nationally representative samples,<sup>65</sup> and there is no theoretical reason to expect otherwise for the MTurk sample used in this study. Meanwhile, the problem of selection bias is not a problem for South Korean respondents because Macromill Embrain drew a mostly nationally representative sample when selecting this study's sample.

Second, there are concerns with validity since the vignettes may not have precisely captured existing criminal sanctions for major corporate

<sup>63</sup> See *2016 Time Series Study*, AM. NAT'L ELECTION STUD. (Jan. 2017), <https://electionstudies.org/project/2016-time-series-study/>.

<sup>64</sup> The 2016 American National Election Studies ("ANES") were used to construct the population weights. It should be noted that using post-stratification weights (i.e., weights placed after treatment assignment for post-hoc regression analyses) can lead to covariate imbalance across the treatment conditions and may also complicate the estimation of the sampling variance of the treatment effects. As such, the weighted least squares regression models should only be considered as robustness checks, not as the main models for analyses. See, e.g., Annie Franco et al., *Developing Standards for Post-Hoc Weighting in Population-Based Survey Experiments* 4 J. EXPERIMENTAL POL. SCI. 161, 168 (2017); Andrew Gelman, *Struggles with Survey Weighting and Regression Modeling*, 22 STAT. SCI. 153, 153 (2007).

<sup>65</sup> See, e.g., Adam J. Berinsky, Gregory A. Huber & Gabriel S. Lenz, *Evaluating Online Labor Markets for Experimental Research: Amazon.com's Mechanical Turk*, 20 POL. ANALYSIS 351, 352 (2012) (finding that MTurk respondents are often more representative of the U.S. population than in-person convenience samples and also replicating important published experimental work using MTurk samples).

misconduct. Longer vignettes that better described criminal sanctions for corporate misconduct may have been warranted. However, doing so would have increased administrative costs. Keeping the vignettes short and using simplified language was intended to guard against the attention span of MTurk respondents and to some extent Macromill Embrain respondents. Another concern with validity is whether the 6-point Likert scale used to measure responses accurately measured public sentiments. A more nuanced response variable may have been warranted, such as a quantitative measure ranging from zero to one hundred. However, doing so would have required a deviation from the more conventional sliding scale of Likert values commonly used in social science surveys.<sup>66</sup> Instead, the response variables to the survey experiments were converted into quantitative variables in the form of percentages after the surveys were completed.<sup>67</sup>

#### IV. RESULTS

This study proceeds by examining results from the U.S. first and South Korea second. The following figures depict average treatment effects for each dependent variable for each country after controlling for all of the aforementioned demographic variables. Not controlling for the demographic variables result in substantively similar results, as the full regression models below make clear.

##### A. NPA OR GUILTY PLEA

The results of the first experiment reveal that an NPA and a guilty plea similarly affect U.S. public perception of a misbehaving corporation. On average, controlling for all observed demographic variables, the NPA treatment group was associated with a 1.69 percentage point increase ( $p=0.291$ ) in favorability rating for the corporation compared to the guilty plea treatment group;<sup>68</sup> the NPA treatment group was associated with a 0.86 percentage point increase ( $p=0.659$ ) in willingness to continue patronage than the guilty plea treatment group.<sup>69</sup> Neither difference is statistically significant, and therefore, the results suggest that corporations seeking to limit damage to their U.S. public reputation while under investigation are likely unable to do so by securing an NPA as opposed to a guilty plea. In short, the first experiment in the U.S. yields strong evidence for the first hypothesis (H1).

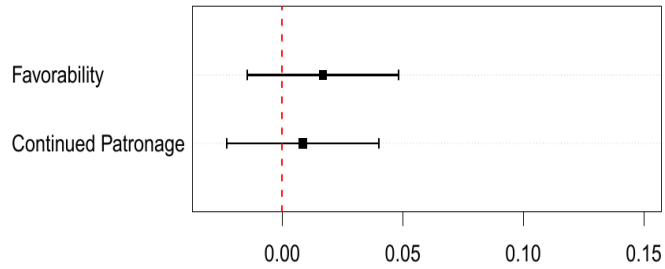
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<sup>66</sup> See Harry N. Boone, Jr. & Deborah A. Boone, *Analyzing Likert Data*, 50 J. EXTENSION 1, 1 (2012).

<sup>67</sup> The response variables were converted from the original 6-point Likert scale to percentage points, where "strong disapprove" on the Likert scale was converted to 0.0, "disapprove" to 0.2, "somewhat disapprove" to 0.4, "somewhat approve" to 0.6, "approve" to 0.8, and "strongly approve" to 1.0. This transformation allowed this study to use a measure that accounted for differences between the responses, rather than collapsing the variable into a binary variable or using a categorical variable. The choice required the assumption that differences on the 6-point Likert scale are equivalent to the quantitative distance of 0.2.

<sup>68</sup> Recall that these percentage points range from zero to one hundred where zero represents very disappointing and one hundred represents very acceptable on the Likert scale. The same is true for the first dependent variable for all of the experiments.

<sup>69</sup> Recall that these percentage points range from zero to one hundred where zero represents very likely and one hundred represents strongly unlikely on the Likert scale. The same is true for the second dependent variable for all of the experiments.

**Figure 2: U.S. Average Treatment Effects (NPA – Guilty Plea)**

Note: The lines depict 95% confidence intervals for the average treatment effects (NPA-guilty plea) for each response variable. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.

**Table 3: U.S. OLS Regression for NPA v. Guilty Plea**

	(1) Favorability	(2) Favorability	(3) Continued Patronage	(4) Continued Patronage
NPA treatment	0.020 (0.017)	0.017 (0.016)	0.006 (0.019)	0.009 (0.019)
Female		-0.051*** (0.016)		-0.041** (0.020)
Liberal		-0.112*** (0.027)		-0.059* (0.033)
Income		0.00000 (0.00000)		-0.00000 (0.00000)
Education		0.132*** (0.041)		0.016 (0.050)
Personal forgiveness		0.087*** (0.029)		-0.005 (0.035)
Age		-0.003*** (0.001)		-0.001 (0.001)
Political involvement		0.100*** (0.026)		-0.061* (0.032)
Knowledge		-0.151*** (0.024)		-0.051* (0.029)
Asian		-0.137*** (0.046)		-0.029 (0.056)
Hispanic/Latino		-0.037 (0.040)		0.008 (0.048)
Other		-0.085* (0.049)		0.002 (0.060)
White		-0.100*** (0.027)		-0.019 (0.033)
Constant	0.219*** (0.012)	0.444*** (0.048)	0.361*** (0.014)	0.526*** (0.058)
Observations	801	801	801	801
R <sup>2</sup>	0.002	0.178	0.0001	0.027
Adjusted R <sup>2</sup>	0.0005	0.165	-0.001	0.011
Residual Std. Error	0.246 (df = 799)	0.225 (df = 787)	0.274 (df = 799)	0.272 (df = 787)
F Statistic	1.361 (df = 1; 799)	13.142*** (df = 13; 787)	0.104 (df = 1; 799)	1.699* (df = 13; 787)

Note:

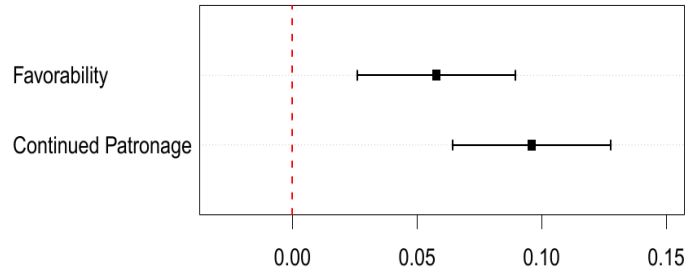
\*p&lt;0.1; \*\*p&lt;0.05; \*\*\*p&lt;0.01

Standard errors are reported in the parentheses. The reference group in all of the models is the treatment condition in which respondents were told that the offender made a guilty plea, rather than an NPA. The reference group for race is African American. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.

## B. INDIVIDUAL OFFENDER OR CORPORATE OFFENDER

The results of the second experiment reveal that a guilty plea for an individual offender and a guilty plea for a corporate offender do not similarly affect U.S. public perception of a corporation. On average, controlling for all observed demographic variables, the individual offender treatment group was associated with a 5.77 percentage point increase ( $p=0.000$ ) in favorability rating for the corporation compared to the corporate offender treatment group; the individual offender treatment group was associated with a 9.60 percentage point increase ( $p=0.000$ ) in willingness to continue patronage than the corporate offender treatment group. Both differences are statistically significant, and therefore, the results suggest that corporations under investigation and seeking to limit damage to their U.S. public reputation are likely able to do so by shifting criminal liability to their employees as opposed to pleading guilty to corporate criminal liability. The second experiment in the U.S. thus yields strong evidence against the second hypothesis (H2).

**Figure 3: U.S. Average Treatment Effects (Individual Offender – Corporate Offender)**



Note: The lines depict 95% confidence intervals for the average treatment effects (individual offender-corporate offender) for each response variable. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.

**Table 4: U.S. OLS Regression for Individual Offender v. Corporate Offender**

	(1) Favorability	(2) Favorability	(3) Continued Patronage	(4) Continued Patronage
Individual offender treatment	0.056*** (0.018)	0.058*** (0.016)	0.096*** (0.020)	0.096*** (0.020)
Female		-0.060*** (0.017)		-0.029 (0.021)
Liberal		-0.105*** (0.027)		-0.098*** (0.034)
Income		0.00000 (0.00000)		0.00000 (0.00000)
Education		0.099** (0.042)		-0.047 (0.053)
Personal forgiveness		0.097*** (0.029)		-0.007 (0.037)
Age		-0.003*** (0.001)		-0.00001 (0.001)
Political involvement		0.097*** (0.027)		-0.069** (0.034)
Knowledge		-0.175*** (0.025)		-0.015 (0.031)
Asian		-0.081* (0.047)		0.002 (0.059)
Hispanic/Latino		-0.025 (0.040)		-0.014 (0.051)
Other		-0.084* (0.050)		0.043 (0.063)
White		-0.077*** (0.028)		-0.032 (0.035)
Constant	0.212*** (0.013)	0.466*** (0.049)	0.336*** (0.015)	0.479*** (0.061)
Observations	801	801	801	801
R <sup>2</sup>	0.012	0.187	0.027	0.053
Adjusted R <sup>2</sup>	0.011	0.174	0.025	0.037
Residual Std. Error	0.250 (df = 799)	0.228 (df = 787)	0.290 (df = 799)	0.288 (df = 787)
F Statistic	10.066*** (df = 1; 799)	13.946*** (df = 13; 787)	21.833*** (df = 1; 799)	3.370*** (df = 13; 787)

Note:

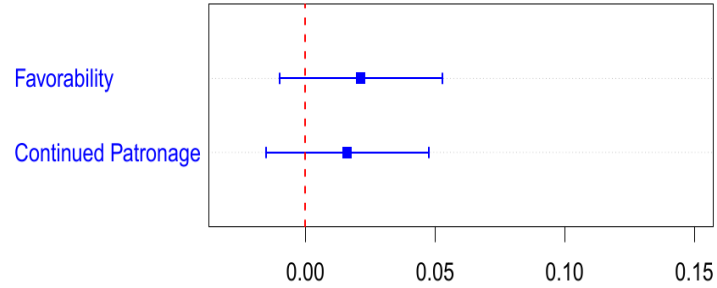
\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Standard errors are reported in the parentheses. The reference group in all of the models is the treatment condition in which respondents were told that the offender was a corporate entity, rather than an individual offender. The reference group for race is African American. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.

### C. EAST ASIAN PERCEPTIONS OF U.S. CRIMINAL SANCTIONS

The results of the first experiment for South Korean respondents reveal that an NPA and a guilty plea similarly affect South Korean public perception of a corporation. On average, controlling for all observed demographic variables, the NPA treatment group was associated with a 2.13 percentage point increase ( $p=0.182$ ) in favorability rating for the corporation compared to the guilty plea treatment group; the NPA treatment group was associated with a 1.61 percentage point increase ( $p=0.331$ ) in willingness to continue patronage than the guilty plea treatment group. Neither difference is statistically significant, and therefore the first experiment in South Korea also yields strong evidence for the first hypothesis (H1), supporting the U.S. results.

**Figure 4: South Korea Average Treatment Effects (NPA – Guilty Plea)**



Note: The lines depict 95% confidence intervals for the average treatment effects (NPA-guilty plea) for each response variable. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.

**Table 5: South Korea OLS Regression for NPA v. Guilty Plea**

	(1) Favorability	(2) Favorability	(3) Continued Patronage	(4) Continued Patronage
NPA treatment	0.025 (0.017)	0.021 (0.016)	0.019 (0.017)	0.016 (0.017)
Female		0.001 (0.016)		0.035** (0.017)
Liberal		-0.200*** (0.049)		-0.310*** (0.051)
Income		0.019 (0.033)		-0.027 (0.034)
Education		0.007 (0.034)		-0.002 (0.035)
Personal forgiveness		0.198*** (0.036)		0.110*** (0.037)
Age		0.00002 (0.001)		-0.001* (0.001)
Political involvement		-0.008 (0.054)		0.021 (0.056)
Knowledge		-0.027 (0.030)		-0.012 (0.031)
Constant	0.306** (0.012)	0.365** (0.041)	0.408*** (0.012)	0.588*** (0.042)
Observations	577	577	577	577
R <sup>2</sup>	0.004	0.086	0.002	0.085
Adjusted R <sup>2</sup>	0.002	0.071	0.0003	0.070
Residual Std. Error	0.198 (df = 575)	0.191 (df = 567)	0.206 (df = 575)	0.199 (df = 567)
F Statistic	2.338 (df = 1; 575)	5.899*** (df = 9; 567)	1.185 (df = 1; 575)	5.834*** (df = 9; 567)

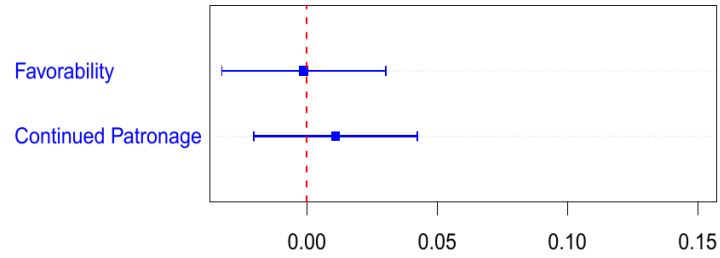
Note:

\*p&lt;0.1; \*\*p&lt;0.05; \*\*\*p&lt;0.01

Standard errors are reported in the parentheses. The reference group in all of the models is the treatment condition in which respondents were told that the offender made a guilty plea, rather than an NPA. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.

However, unlike the U.S. results for the second experiment, the South Korean results reveal that a guilty plea for an individual offender and a guilty plea for a corporate offender similarly affect the South Korean public's perception of a corporation. On average, controlling for all observed demographic variables, the individual offender treatment group was associated with a 0.13 percentage point decrease ( $p=0.938$ ) in favorability rating for the corporation compared to the corporate offender treatment group; the individual offender treatment group was associated with a 1.11 percentage point increase ( $p=0.544$ ) in willingness to continue patronage than the corporate offender treatment group. Neither difference is statistically significant, and the second experiment in South Korea yields strong evidence for the second hypothesis (H2). This result suggests that, while the U.S. public may be affected by whether an individual or the corporation is found guilty of criminal misconduct, the South Korean public is not affected by the court finding the entity guilty of criminal misconduct.

**Figure 5: South Korea Average Treatment Effects (Individual Offender – Corporate Offender)**



*Note: The lines depict 95% confidence intervals for the average treatment effects (individual offender-corporate offender) for each response variable. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.*

**Table 6: South Korea OLS Regression for Individual Offender v. Corporate Offender**

	(1) Favorability	(2) Favorability	(3) Continued Patronage	(4) Continued Patronage
Individual offender treatment	-0.003 (0.016)	-0.001 (0.016)	0.008 (0.019)	0.011 (0.018)
Female		-0.012 (0.016)		0.033* (0.019)
Liberal		-0.201*** (0.049)		-0.272*** (0.056)
Income		0.032 (0.033)		0.008 (0.037)
Education		0.011 (0.034)		-0.012 (0.039)
Personal forgiveness		0.163*** (0.036)		0.120*** (0.041)
Age		0.0005 (0.001)		-0.00001 (0.001)
Political involvement		-0.058 (0.054)		-0.018 (0.061)
Knowledge		-0.041 (0.030)		-0.037 (0.034)
Constant	0.285*** (0.012)	0.342*** (0.040)	0.367*** (0.013)	0.481*** (0.046)
Observations	577	577	577	577
R <sup>2</sup>	0.00004	0.076	0.0003	0.062
Adjusted R <sup>2</sup>	-0.002	0.062	-0.001	0.047
Residual Std. Error	0.197 (df = 575)	0.191 (df = 567)	0.223 (df = 575)	0.218 (df = 567)
F Statistic	0.025 (df = 1; 575)	5.204*** (df = 9; 567)	0.186 (df = 1; 575)	4.187*** (df = 9; 567)

Note:

\*p<0.1; \*\*p<0.05; \*\*\*p<0.01

Standard errors are reported in the parentheses. The reference group in all of the models is the treatment condition in which respondents were told that the offender was a corporate entity, rather than an individual offender. The response variables (favorability rating and support for continued patronage), which were measured on a 6-point Likert scale, were converted to percentage points.

Taken together, the South Korean results suggest that U.S. criminal sanctions do not affect the South Korean public's perceptions of misbehaving corporations or the South Korean public's willingness to continue their patronage of such corporations. These results also suggest that corporations being investigated by the DOJ may not need to be as concerned about their public reputation in South Korea, possibly due to the lack of perceived legitimacy conferred to a foreign law enforcement agency.

## V. CONCLUSION

The classic sociological principle known as the Thomas Theorem states that situations which people define as true become true regardless of the actual facts.<sup>70</sup> Unsurprisingly, although the jury in the *Ford Pinto* case eventually returned a verdict of "not guilty," public perceptions of the Ford

<sup>70</sup> WILLIAM THOMAS & DOROTHY THOMAS, *THE CHILD IN AMERICA: BEHAVIOR PROBLEMS AND PROGRAM* 571-72 (1928) ("If men define situations as real, they are real in their consequences."); see Robert K. Merton, *The Thomas Theorem and the Matthew Effect*, 74 *SOC. FORCES* 379, 382-83 (1995).

Motor Company had already soured and many people believed that Ford was guilty irrespective of the final verdict.<sup>71</sup> Because allegations of misconduct may shape domestic and international public approval and consumer behavior, irrespective of actual guilt or innocence, corporations under investigation must be prudent in their handling of government investigations.

The findings in this study suggest that corporations should not be as concerned with securing an NPA as opposed to a guilty plea if their primary objective is limiting public reputational damage. The exact form of the resolution is unlikely to make a difference in the public's disapproval of a corporation and unlikely to change whether Americans or East Asians will continue to be patrons of the corporation. Attempting to secure a better resolution will most likely only delay the final resolution, which may be costly in markets that value certainty.

Instead, corporations willing to invest the time and resources to curb reputational damage should focus their efforts on shifting criminal liability away from the corporation itself and onto culpable employees; however, such efforts will reduce reputational damage only in the U.S. and not in East Asia. In other words, this study finds strong evidence that the American public is more willing to forgive a corporation and continue to be patrons of a corporation if the guilty entity is a corporate employee rather than the corporation itself. Of course, under *respondeat superior*, corporations may not always have the ability to shift criminal liability to their employees if the employees' criminal misconduct was under the scope of their employment and for the benefit of the corporation,<sup>72</sup> but the USAM states that prosecutors could consider whether charges against individual employees will instead adequately satisfy the goals of prosecution.<sup>73</sup> As such, to the extent that a corporation can distance itself from an employee's misconduct and argue against the applicability of *respondeat superior*, a corporation may help preserve its public reputation in the U.S. by convincing the DOJ to hold the culpable employee accountable. However, in South Korea, the type of entity that is held responsible is not likely to affect the corporation's reputation.

From the DOJ's perspective, given that its goal is deterrence and that corporations are deterred by the public's negative reactions, the DOJ's charging decisions should focus on holding corporations accountable as opposed to individuals within the corporation. Charging the corporation is more likely to draw negative public reactions than charging individuals and, in turn, more likely to deter corporations from misbehaving. While there may be other reasons to hold individuals accountable for corporate misconduct, the DOJ benefits in terms of further deterring corporations by prosecuting the corporation itself rather than individuals.

Taken together, the results suggest that although the U.S. public may be affected by the entity facing criminal sanctions, little else seems to matter in terms of U.S. public opinion, and none of the factors seem to affect East Asian public opinion of the corporation, possibly due to the lack of perceived legitimacy conferred to a foreign law enforcement agency.

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<sup>71</sup> See Becker, Jipson & Bruce, *supra* note 1, at 197–98.

<sup>72</sup> See, e.g., USAM, *supra* note 11, at § 9-28.210(B).

<sup>73</sup> *Id.* at § 9-28.1300.

Finally, it is important to reiterate a limitation of these findings. A corporation may be incentivized to secure a more lenient resolution, regardless of its negligible effect on a corporation's public reputation. While this study considers and dismisses the direct information hypothesis, salience hypothesis, and collateral consequences hypothesis, some corporations may be opposed to shifting criminal liability to their employees because doing so may reduce employee morale, even if it could help preserve their public reputation. The extent to which the final form of the resolution actually affects employee morale is unclear and grounds for future research.

Despite this caveat, for corporations that rely on the public's goodwill, this study suggests that the public is more concerned with the entity under investigation than the form of the final resolution. If corporations are willing to invest the time and resources into preserving their public reputation, they can do so more effectively by focusing their efforts on distancing themselves from their criminally liable employees. However, corporations should keep in mind that doing so will likely only affect the corporations' reputation in the U.S.—not in East Asia.

VI. APPENDIX: SURVEY TEXT

U.S. Experiment 1: NPA v. Guilty Plea

Treatment 1: NPA

Treatment 2: Guilty Plea



NEW YORK – Instead of going to trial, the Department of Justice and the popular clothing brand Epoch signed a non-prosecution agreement earlier today. Federal prosecutors had uncovered evidence that Epoch lied about its profits and misled investors last year. According to the non-prosecution agreement, prosecutors will not take Epoch to trial in return for the company paying a \$300 million dollar fine and implementing new company policies to prevent this type of fraud in the future. By signing the non-prosecution agreement, Epoch is NOT admitting any guilt.

NEW YORK – Instead of going to trial, popular clothing brand Epoch pled guilty of fraud earlier today. Federal prosecutors had uncovered evidence that Epoch lied about its profits and misled investors last year. According to the guilty plea, Epoch will have to pay a \$300 million dollar fine and implement new company policies to prevent this type of fraud in the future. By signing the guilty plea agreement, Epoch is admitting that it committed fraud.

In light of the non-prosecution agreement, how disappointing are Epoch's past actions?

Very disappointing 0 Disappointing 1 A little disappointing 2 A little acceptable 3 Acceptable 4 Very acceptable 5



Assuming you frequently purchased Epoch clothes, how likely would you stop purchasing Epoch clothes?

Very likely 0 Likely 1 Somewhat likely 2 Somewhat unlikely 3 Unlikely 4 Strongly unlikely 5



In light of the guilty plea, how disappointing are Epoch's past actions?

Very disappointing 0 Disappointing 1 A little disappointing 2 A little acceptable 3 Acceptable 4 Very acceptable 5



Assuming you frequently purchased Epoch clothes, how likely would you stop purchasing Epoch clothes?

Very likely 0 Likely 1 Somewhat likely 2 Somewhat unlikely 3 Unlikely 4 Strongly unlikely 5



### U.S. Experiment 2: Individual Offender v. Corporate Offender

Treatment 1: Individual Offender Treatment 2: Corporate Offender



WASHINGTON DC -- The Department of Justice (DOJ) announced today that the CEO and 12 high-ranking executives of KM Shoes agreed to a plea agreement. The executives were charged illegally bribing politicians to win a government contract, contrary to the firm's policies. The executives will be paying \$45 million dollars in fines and will be under probation for the next 3 years. The firm itself was NOT found guilty of any wrongdoing.

In your opinion, how disappointing are KM Shoes' past actions?

Very disappointing 0    Disappointing 1    A little disappointing 2    A little acceptable 3    Acceptable 4    Very acceptable 5



Assuming you frequently purchased products from KM Shoes, how likely would you stop purchasing products from KM Shoes?

Very likely 0    Likely 1    Somewhat likely 2    Somewhat unlikely 3    Unlikely 4    Strongly unlikely 5



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WASHINGTON DC -- The Department of Justice (DOJ) announced today that KM Shoes agreed to a plea agreement after the firm was charged with illegally bribing politicians to win a government contract. The firm will be paying \$45 million dollars in fines and will be under probation for the next 3 years. The DOJ will not be pursuing charges against individual employees of the firm.

In your opinion, how disappointing are KM Shoes' past actions?

Very disappointing 0    Disappointing 1    A little disappointing 2    A little acceptable 3    Acceptable 4    Very acceptable 5



Assuming you frequently purchased products from KM Shoes, how likely would you stop purchasing products from KM Shoes?

Very likely 0    Likely 1    Somewhat likely 2    Somewhat unlikely 3    Unlikely 4    Strongly unlikely 5



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## South Korea Experiment 1: NPA v. Guilty Plea

### Treatment 1: NPA



유광진 수석기자 | 기사입력: 2019-01-03 | 오늘 오전 미국 검찰과 S 그룹이 법정 소송 대신 법적 합의에 동의했다. 미국 검찰은 유명 옷 브랜드인 S 그룹이 지난해 이익을 제대로 보고하지 않아 투자자들을 오도한 증거를 확보했다. 합의에 의하면 미국 검찰이 법정 소송을 추진하지 않는 대신에 S 그룹이 300 억원의 벌금을 내고 다시는 그런 일을 발생하지 않도록 하는 사내 정책을 도입하기로 했다. 합의에 동의함으로써 S 그룹은 법적으로 무죄를 주장한 것에 대해 인정받는 바이다

S 그룹의 법적 합의를 고려해볼 때, 당신은 S 그룹을 지난 행실을 어떻게 평가하십니까?

- 매우 실망스럽다
- 실망스럽다
- 다소 실망스럽다
- 다소 이해한다
- 이해한다
- 매우 이해한다

당신이 S 그룹의 소비자라는 가정 하에, 당신은 S 그룹을 보이콧할 의향이 있습니까?

- 매우 있다
- 있다
- 다소 있다
- 다소 없다
- 없다
- 매우 없다

### Treatment 2: Guilty Plea



유광진 수석기자 | 기사입력: 2019-01-03 | 오늘 오전 미국 법원의 판결에 의하여 S 그룹이 유죄 판결을 받았다. 미국 검찰은 유명 옷 브랜드인 S 그룹이 지난해 이익을 제대로 보고하지 않아 투자자들을 오도한 증거를 확보했다. 유죄 판결에 의하면 S 그룹은 300 억원의 벌금을 내야 되고 다시는 그런 혐의를 저지르지 않기 위한 사내 정책을 도입해야 한다. S 그룹은 판결을 항소하지 않을 것으로 보이며, 이로써 S 그룹은 혐의를 인정하는 바이다.

S 그룹의 유죄 판결을 고려해볼 때, 당신은 S 그룹을 지난 행실을 어떻게 평가하십니까?

- 매우 실망스럽다
- 실망스럽다
- 다소 실망스럽다
- 다소 이해한다
- 이해한다
- 매우 이해한다

당신이 S 그룹의 소비자라는 가정 하에, 당신은 S 그룹을 보이콧할 의향이 있습니까?

- 매우 있다
- 있다
- 다소 있다
- 다소 없다
- 없다
- 매우 없다

### South Korea Experiment 2: Individual v. Corporate Offender

#### Treatment 1: Individual Offender



A그룹 회장과 미국 검찰 결의, 유명 신발 브랜드 A그룹 회장 450억원 벌금

유광진 수석기자 | 기사입력: 2019-01-03 | 오늘 미국 검찰은 A그룹 회장과 고위직관들과의 결의를 발표했다. A그룹의 회장을 비롯한 고위직 12명은 사내 정책에 어긋나게 일부 정치인들에게 뇌물을 준 혐의로 수사를 받던 중이었다. 이들은 450억원의 벌금을 내고 다시는 그런 뇌물죄를 저지르지 않기 위한 사내 정책을 도입하고 검찰이 3년간 불시에 조사할 수 있도록 미국 검찰과 합의했다. 미국 검찰은 K그룹 자체는 법을 위반하지 않았고 K그룹의 회장을 비롯한 12명이 법을 어겼다는 입장이다.

당신은 A 그룹(회사)을 어떻게 평가하십니까?

- 매우 실망스럽다
- 실망스럽다
- 다소 실망스럽다
- 다소 이해한다
- 이해한다
- 매우 이해한다

당신이 A 그룹의 소비자라는 가정 하에, 당신은 A 그룹을 보이콧할 의향이 있습니까?

- 매우 있다
- 있다
- 다소 있다
- 다소 없다
- 없다
- 매우 없다

#### Treatment 2: Corporate Offender



A그룹과 미국검찰 결의, 유명 신발 브랜드 A그룹 450억원 벌금

유광진 수석기자 | 기사입력: 2019-01-03 | 오늘 미국 검찰은 A그룹과의 합의를 발표했다. A그룹은 일부 정치인들에게 뇌물을 준 혐의로 수사를 받던 중이었다. A그룹은 450억원의 벌금을 내고 다시는 그런 뇌물죄를 저지르지 않기 위한 사내 정책을 도입하고 검찰이 3년간 불시에 조사할 수 있도록 미국 검찰과 합의했다. 하지만, 미국 검찰은 A그룹 자체가 법을 위반하였고, A그룹의 회장을 비롯한 각 임원이나 각 직위에 대해서는 수사 대상이 아니라는 입장이다.

당신은 A 그룹(회사)을 어떻게 평가하십니까?

- 매우 실망스럽다
- 실망스럽다
- 다소 실망스럽다
- 다소 이해한다
- 이해한다
- 매우 이해한다

당신이 A 그룹의 소비자라는 가정 하에, 당신은 A 그룹을 보이콧할 의향이 있습니까?

- 매우 있다
- 있다
- 다소 있다
- 다소 없다
- 없다
- 매우 없다