

Brand Names and More
Why the Wal-Mart Bribery Case is a Big Deal

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In the wake of the [New York Times exposé](#) on bribery at Wal-Mart's Mexico operations, much has been written about the case's meaning, some good and some bad. Some commentators [persuasively speculate](#) that it could mean the death knell for FCPA reform. Others rightly [point out](#) the case's potential negative effects on foreign investment in Mexico. Some looking at the FCPA for the first-time [mistakenly suggest](#) that it is an old, obscure, and backwards law, ignoring the fact that the FCPA serves as the cornerstone of a global movement to criminalize foreign bribery. The law has also generated an entire industry around helping companies manage corruption risks and enhance compliance when operating abroad.

The reason this case might ultimately be so important flows from several key factors, and their cumulative effect.

Wal-Mart is a household name calling attention to corruption risks in Latin America. In FCPA enforcement, people tend to pay more attention when recognizable brand names are under the microscope. More and more, companies like Bridgestone, Embraer, Tyson Foods, IBM, and now Wal-Mart are being added to the list of companies subject to investigations for their alleged improper payments in Latin America. With every case, U.S. businesspeople working in the region pay a bit more attention to risks. Latin Americans also begin to understand the global network of anti-corruption rules.

The Wal-Mart story is told with a level of detail not found in your everyday FCPA settlement document. The Times exposé gives readers a look behind the curtain, a peak into the inner workings of corruption. We see how the executive behind the bribery gets promoted. We learn that the investigation was improperly assigned internally to one of the very people accused of wrongdoing. We hear stories of the shady *gestores*, the fixers who delivered bags of cash.

Bribery is messy, as most crimes are. It is common for cases to have twists and turns like these. It is *not* common for the public to learn the inside story, front and center. These are the types of details that FCPA attorneys who work on compliance and enforcement regularly confront – the low-level company official whose hands shake during an interview when trying to justify the business rationale behind use of a certain agent. The executive who tells one story until shown an e-mail that suggests another. In contrast, U.S. enforcement's settlement documents, publicly released, usually say little more than, "Company A used Consultant B to pay Government Official C to obtain business." With Wal-Mart, the Times makes common stories of corruption risk accessible to the general public.

Wal-Mart suggests top-down as well as bottom-up compliance failures. While most FCPA cases are built on corrupt acts that occur primarily in a company's operations on the ground (*see, e.g.,* [Watts Water and Panalpina](#)), some focus instead on activities at high levels of management (*see, e.g.,* [Siemens Argentina](#)). Wal-Mart combines both. Not only did Mexican company officials create codes on invoices

to track types of bribes, use third parties to deliver cash, and falsify accounting records. Bentonville executives were also complicit, ignoring red flags and seeking to silence the issues.

Wal-Mart highlights how compliance departments can be isolated and understaffed. Internal audit appears to have been accused by top management of being too aggressive when it was attempting to perform a basic compliance function. This is not uncommon. Just ask any compliance officer, internal auditor, or investigator if they have ever faced push-back from management. Matt Kelly, editor-in-chief of Compliance Week, captures this frustration in his [recent article](#): “You have to wonder whether any of the work that ethics and compliance officers have done in the last 10 years makes much difference.”

Time will tell what the real importance of the Wal-Mart case will be, if any. Will it have a substantive impact? Or will it be another fleeting headline? Based on my discussions over the last ten days with compliance counsel, my guess is that the impact has the potential to be lasting. The Wal-Mart revelations give general counsel and compliance officers yet another tool with which to educate their management and boards on real corruption risks. This can serve to increase concern where it is deserved. No executive wants his or her picture in the New York Times. As a result, compliance might be taken more seriously.

While the Wal-Mart case is important, it is by no means a unique story. Its issues can arise at any company, large or small. Corruption risks do not know brand names.

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