

# Simple Justice

A New York Criminal Defense Blog

## What's Good For Wal-Mart

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It's a fiasco all around. And yet, it's as American as apple pie. When the [New York Times](#) broke the story of rampant bribery at Wal-Mart's Mexican subsidiary, the dreaded Foreign Corrupt Practices Act went from being "reformed" to being the primary weapon in the war against the dreaded Wal-Mart.

The allegations cover all the bases. There were \$24 million in bribes paid to locate stores in Mexico, where Wal-Mart is hated for undermining local businesses, the claim being that for every job Wal-Mart created, four were lost in business that died in its shadow.

When the company became aware of the bribery, and its scope, it quelched the investigation. Then Wal-Mart became a righteous force in FCPA reform. Then, when it learned that the news was about to break bigtime, it reported itself a mere six years too late and denied that it reflected "who we are or what we stand for."

Wal-Mart stands for business. Wal-Mart stands for cheap products, cheap prices, an efficient supply chain and making money. Not necessarily in that order. Wal-Mart stands for America, now more than ever.

As Walter Olson noted in his [Cato post](#), Wal-Mart's biggest problem here was that it didn't even bribe smart, opening itself to charges when, had it smurfed its bribes, nobody would have broken a sweat. He notes, via Stephen Bainbridge, that honest companies are burdened by FCPA, while dishonest ones violate it anyway. He notes that efforts to take this mutt of a law and attempt to reform it, at least to the extent that it not make American multinational corporations chose between being criminals or uncompetitive, is dead.

It's enormously hard to be sympathetic toward Wal-Mart, whose history of corporate behavior has been unsavory, to say the least. But Wal-Mart is huge, and the costs associated with these charges, from internal investigations to defense to likely fines will dwarf the alleged \$24 million in bribes. On the other hand, the dirty little secret of doing business, certainly internationally and, if one doesn't become a slave to rhetoric, at home as well, is that everybody has a finger in it and wants their piece of the pie.

This could well be the clash of the titans that America needs to come to grips with reality. The Foreign Corrupt Practices Act is the corporate version of blue laws, a reflection of American idealism born of our Puritanical origins, our Pollyanna-ish denial of how the sausage of business is made, our jingoistic belief that we are so integral to the economic functioning of the world that we can dictate a cultural and moral code for everyone, and they can either comply with our great American will or suck eggs.

It's a fantasy of self-righteousness, and even Wal-Mart got caught in the reality that the business of business is business, and not puffy-chested Americans can bully Mexicans into succumbing to

our moralistic ways.

It would be a wonderful world if businesses weren't told to hand over the cash, or a Ferrari, or whatever some tin-horn local Poobah demanded. But on their turf, they're in charge. America doesn't own the world, despite our belief to the contrary. Tin-horn local Poobahs don't care about our Almighty Congress, or the vast power of the Department of Justice. They have their hand out, and if its not filled, you don't do business on their turf.

The FCPA criminalizes companies that don't play by the rules of purity, as viewed through the prism of Assistant United States Attorneys, who, in their vast business experience, decide what meets the approval of our Puritan forefathers and what should cost business millions. Granted, Wal-Mart's conduct, if true, is so far over the line, both in its commission and cover-up, that there's no explaining it away. This was a flagrant violation.

Perhaps it's time for a corporation as large, as important to the American economy, as Wal-Mart to stand up and proclaim:

*We did it. We had to do it to do business. We covered it up because there's a ridiculous, misguided law that says we can't do it, but we did it anyway.*

*If you don't like it, America, Department of Justice, Congress, Judge, we'll pack up our bags and leave. We'll close our stores and leave a few hundred million Americans with no place to buy stuff at low prices. We'll fire our 2,100,000 employees, and you can put them all on welfare and feed their families. You'll have to manage without our sales taxes and payroll taxes and income taxes, so you can pick up the cost of living up to your ideals.*

*We didn't pay bribes because we wanted to be evil, but because it was demanded of us. That's how life works in Mexico. We didn't like paying the money any more than you do, but we had no choice. It's not terribly different than contributing to your campaign fund, Senator, if you catch my drift. Or building the new children's center you demanded in exchange for a variance. You got yours. They got theirs. And that's how we get ours.*

*This is America. This is the world. This is how business gets done. Grow up already.*

This isn't an endorsement of bribery and corruption. It would be a wonderful world if none of this happened, if no local Poobah demanded a bribe and instead behaved in the ways that Americans want and expect. Until other countries police themselves, deal with the demand for bribes on their ends and allow corporations to do business in their world in the way we expect it to be done in ours, we're living in a state of delusion.

Welcome Wal-Mart shoppers to the perfect, righteous world you created. Hope you enjoy it.