Wal-Mart's Four "Most Worrisome" Governance Issues

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Wal-Mart Stores Inc. took a double hit last week from both the legal and the business experts at Harvard University over the giant retailer's Mexican bribery scandal. And now Ben Heineman Jr., the former general counsel of the General Electric Company, is calling on Wal-Mart's board of directors to "get to the bottom" of the alleged scheme and cover-up—and to "possibly discipline or remove the past CEO (who still sits on the board) or the current CEO."

The company "appeared to commit virtually every governance sin in its handling of the Mexican bribery case, if the long, carefully reported New York Times story is true," Heineman wrote in an article posted Saturday on the Harvard Law School Forum on Corporate Governance.

Heineman is a vocal supporter of the U.S. Foreign Corrupt Practices Act, which outlaws bribery of a foreign official for business purposes. He is now a senior fellow at both Harvard's law school and its Kennedy School of Government.

His article goes on to recite the allegations laid out by the Times on April 21, including how Wal-Mart de Mexico leaders approved payments to government officials in exchange for such things as permits and licenses to open hundreds of new stores. And how corporate leaders in Arkansas, including the CEO and then-general counsel Thomas Mars, learned of the allegations in 2005 but failed to pursue them vigorously—and may even have aided in a cover-up.

Among the most worrisome governance issues at Wal-Mart, Heineman cites four factors:

1. The company had a "culture of silence" that allowed the Mexican subsidiary to hide the payments from the parent corporation for years. And that, in turn, let Wal-Mart executives apparently hide the matter from the board of directors. "Wal-Mart appears to have operated like a compartmentalized criminal enterprise rather than a lawful global company," the article states.
2. Mars, then the general counsel, and key finance officials acted as business partners and not corporate guardians, apparently "knuckling under to the demands of an ambitious country CEO with no legal and moral compass by helping to direct and hide the bribery scheme." Heineman calls international counsel Maritza Munich—who received a whistleblower's initial report and sought in vain to have an independent, thorough investigation—the "heroine" of the tale.
3. Then-CEO Lee Scott failed to perform with integrity. And serious questions remain about current CEO Michael Duke—who was head of Wal-Mart International and oversaw the subsidiary at the time—as to whether he acquiesced in the decision to suppress the investigation.
4. Finally, where was the board in 2005—did it know anything about the matter and failed to act? And what kind of discipline is appropriate for those who were involved and are still at the company, including senior legal staff?

Meanwhile, over at the *Harvard Business Review*, environmental guru Andrew Winston wrote about what he called Wal-Mart's "shades of gray" in an article posted Thursday.

Winston, co-author of *Green to Gold* (Yale University Press, 2006) and author of *Green Recovery* (Harvard Business Review Press, 2009), began by praising Wal-Mart's recent advances in social consciousness and environmental sustainability. In fact, the same week the Times' story surfaced, the company released its 2012 Global Responsibility Report with what Winston calls "a list of impressive accomplishments."

But then Winston turned his focus to the Mexico scandal.

Citing a drop in Wal-Mart's stock price last week, he wrote, "There's some understanding that a

company's value in the market is connected to its values (of which sustainability efforts can be a good indication). Just as it’s not sustainable to over-consume natural resources, it’s not sustainable to alienate key stakeholders through ethical lapses.”

Winston goes on to say that what matters is the totality of a company's actions. “We should demand consistent, ethical behavior and a real commitment to doing what's good for people, planet, and profit, which includes not compromising on ethics,” he concludes.