The 10 Worst Corporations of 2005

by Russell Mokhiber and Robert Weissman

BP Delphi Dupont ExxonMobil Ford
Halliburton KPMG Roche Suez W.R. Grace

2005 was a good year for bad corporations.

There were no U.S. elections to worry about, with their troubling possibility of politicians running on the popular platform of curbing corporate power.

There were corporate scandals and corporate crime and violence galore, but none that rated the ongoing banner headlines of Enron and WorldCom.

Indeed, the ongoing prosecutions of individuals associated with corporate financial scandals enabled Big Business and its apologists to claim there had actually been a crackdown on corporate crime.

All leaving corporations free to buy legislation, profiteer, pollute, poison and mistreat workers without restraint.

Benefiting from the spike in oil prices associated with the tragedy of Hurricanes Katrina and Rita, ExxonMobil recorded the most profitable year any company has ever achieved.

Thirty years ago, when the oil giants profited in the wake of the first oil embargo, almost half the U.S. Senate voted to break up the integrated oil companies. In 2005, just 40 of 435 members of the House of Representatives were willing to co-sponsor the leading legislation calling for a much more modest approach, imposing a windfall profits tax on the oil companies. Eight members of the Senate co-sponsored the leading windfall profits bill there.

In the U.S. Congress, corporations were able to ram through limitations on victims’ rights to sue corporate perpetrators (mislabeled class action “reform”), the NAFTA-expanding Central American Free Trade Agreement (CAFTA), and an energy bill that deregulates electric utilities and actually gives tax breaks to the oil industry, among many other government gifts.

Perhaps nothing revealed Big Business’s cockiness more than the Chamber of Commerce and other trade associations’ efforts to undermine the Sarbanes-Oxley legislation. Sarbanes-Oxley imposes very modest anti-fraud requirements on corporations. It was the only reform legislation passed after the Enron and related financial scandals.

These corporations will never stop on their own.

Asked to comment on a recent Harris poll that found 90 percent of people in the United States believe corporations have too much power in Washington, D.C., Hank Cox, a spokesperson for the National Association of Manufacturers replies, “That’s a perception fostered by the news media and the entertainment industry, and if they really had any idea of how little power corporations have they would be astounded.”

The corporations will never give up power, unless forced to do so by the people.

Where to start?

No better place than the 10 worst corporations of 2005, presented herewith in alphabetical order:

BP

In November 2005, BP said that it expects to spend as much as $8 billion in alternative-energy projects, including solar, wind, hydrogen and carbon-abatement technology, over 10 years.

It is running two-page ads in major U.S. newspapers touting itself as a leader in alternative energy.
This is part of a high-energy campaign to cover up BP’s dirty tricks that flow from its oil business.

To do so, it has to cover up its shoddy operations on the North Slope of Alaska, where it is seeking to bust open the Arctic National Wildlife Refuge for drilling, and its reckless operations at its refineries around the globe.

In March, 15 workers were incinerated, and more than 170 injured, following an explosion at BP’s sprawling refinery in Texas City, Texas.

It was the third fatal accident at the Texas City BP facility in the last four years.

In September 2004, two workers were burned to death and another was seriously injured.

In 2001, a maintenance worker at the facility died after falling into a tank that had been shut down. Nationwide, BP’s facilities have had more than 3,565 accidents since 1990, ranking first in the nation, according to a 2004 report by the Texas Public Interest Research Group (TexPIRG).

BP has admitted it was at fault in the Texas City explosion. “We regret that our mistakes have caused so much suffering,” said Ross Pillari, president of BP Products North America, after the company had completed an interim investigation in May.

“We apologize to those who were harmed and to the Texas City community,” said Pillari. “We cannot change the past or repair all the damage this incident has done. We can assure that those who were injured and the families of those who died receive financial support and compensation. Our goal is to provide fair compensation without the need for lawsuits or lengthy court proceedings.”

There is a case to be made that BP engaged in criminal reckless homicide, or involuntary manslaughter. To prove this, the District Attorney in Galveston County, where the deaths occurred, would have to find that BP and its executives consciously disregarded “a substantial and unjustifiable risk that a death will occur.”

We believe that the families of the dead deserve a full-blown reckless homicide investigation by the District Attorney in Galveston County.

When asked about this, Mohamed Ibrahim, the first assistant district attorney in Galveston County, told us that his office had opened no such criminal investigation into the BP matter. “We have no reason to believe at this point that it was anything but an unfortunate industrial accident,” Ibrahim said.

“If OSHA [the Occupational Safety and Health Administration] came to us and said it was a result of criminal recklessness, we would look at an investigation,” he added.

In September, OSHA fined the company $21 million for violating federal OSHA law. There was no criminal referral. Lesser workplace crimes this year have resulted in criminal convictions against smaller companies. BP gets off because it is a large multinational?

On the North Slope of Alaska, BP continues to muscle the political machinery to get its way.

Its reckless operations there — including unreported oil spills — will someday end up in an environmental disaster, long predicted by oil industry critic Charles Hamel.

BP is eager to portray itself as the good guy oil company, but it is not eager to answer tough questions.

In October, U.S. News and World Report held a press conference to announce “America’s Best Leaders 2005.”

The press event was paid for by BP.

BP’s guy at the door wouldn’t let us in.

No questions about corporate crime allowed.

**Delphi**

“I want you to view what is happening at Delphi as a flash point, a test case, for all the economic and social trends that are on a collision course in our country and around the globe,” Delphi CEO Steve Miller told BusinessWeek in October.

Miller’s view of how those trends should be resolved: with a leveling down of worker wages to the lowest common denominator, and provision of huge windfalls for executives.
In October, Miller took his company into bankruptcy, with the explicit purpose of trashing the social contract between unionized auto workers in the United States and the auto industry. He proposed slashing worker wages from $27 an hour to a mere 10 bucks.

In a fit of staggering arrogance, Miller and Delphi simultaneously proposed huge bonuses for company executives.

Delphi is the world’s largest auto parts supplier. In a strange arrangement, it was spun off from General Motors in 1998. Roughly half of its business remains supplying GM. Many critics say GM separated Delphi for the purpose of dumping unwanted expenses on the new company. But GM agreed to guarantee certain Delphi obligations — including healthcare and pension costs — in the event the new company was unable to meet them.

Delphi enters bankruptcy not in any severe financial crisis, but having experienced steady losses over the last several years.

In its bankruptcy filings, the company stated that three problems are driving down revenues: the wages and benefits guaranteed under existing union contracts, declining sales from GM, Delphi’s main buyer, and rising commodity prices. Through bankruptcy, it sought to address only the first issue — that is, to attack the living standards of its workers.

Delphi workers have reacted with predictable dismay and anger. “It’s difficult to see our middle-income jobs go away like this,” said Ron Garrett, 54, who has worked at Delphi’s Dayton facility for 21 years. “It’s very tough to see them go out the door.” Workers have picketed and demonstrated against Delphi’s proposals.

Their outrage has been stoked by the executive compensation plan Delphi has proposed in bankruptcy court.

Although Steve Miller has touted the fact that he has agreed to accept a salary of just $1 a year (he also received a signing bonus of $3 million after taking over the company in the summer, and $750,000 in salary before making the $1 pledge, and is due an unspecified bonus from the board of directors when the company emerges from bankruptcy), the executive class at Delphi will make out great.

Delphi has proposed in bankruptcy court through a “Key Employee Compensation Plan” that executives be given $43 million in incentive bonuses during the two years the company expects to undergo reorganization, that the top 500 executives pocket $88 million when the company emerges from bankruptcy, and that the top 600 get 10 percent of the shares of the post-bankruptcy Delphi.

Rationales for this?

Well, the company argued in bankruptcy court, “many of the company’s incentive-based compensation programs failed to provide salaried and executive workforce with total compensation that is competitive with the industry norm.”

Got that?

Because the company did poorly, executives made less money. The new plan is intended to remedy this perceived inequity.

Unfortunately, Delphi proposes the opposite deal for it workers.

Also, “the commencement of a bankruptcy case heightens employee concerns regarding possible job loss, and often increases employee responsibilities, creates longer hours, and imposes other burdens of an employer’s status as a debtor-in-possession.” In the dire time of bankruptcy, the company needs the “continued efforts and loyalty” of its executives, so they need big bonuses.

Workers’ “continued efforts and loyalty” are apparently thought available on the cheap.

**Dupont**

So, we kill Stanley Tookie Williams for killing four people.

And we fine DuPont $16.5 million for two decades’ worth of covering up company studies that showed it was polluting drinking water and newborn babies with an indestructible chemical that causes cancer, birth defects and other serious health problems in animals.

Sounds like rough justice to us.

A public interest group in Washington, D.C., the Environmental Working Group (EWG), brought the disaster to the attention of the Environmental Protection Agency (EPA).
And the EPA sued DuPont in a civil action in July 2004.

No crime here, right?

EWG reported on the case of Glenn Evers.

Evers was a DuPont employee of 22 years, one of the company’s top technical experts and the chair of an invitation-only committee of its 40 best scientists and technical experts.

He holds six patents, and his work has, to date, made the company an estimated $250 million in after-tax profits. Evers was, by his own description, a dedicated “company man.”

According to EWG, he was also the company’s top chemical engineer involved with designing and developing new uses of grease-resistant, or perfluorinated, chemical-based coating for paper food packaging.

Chemicals from these coatings and related sources are now in the blood of 95 percent of people in the United States.

DuPont has claimed that it does not know how the chemicals got there — and that it is not aware that the company’s product is responsible.

“If we had any reason to believe that [there] was a safety issue for fluorinated telomers-based product, we wouldn’t have commercialized them,” DuPont Director of Planning and Technology Robert Ritchie told the Wilmington News Journal in 2003.

But Glenn Evers told EWG how his former employer hid for decades that it was polluting people’s blood with a hyper-persistent chemical associated with the grease-resistant coatings on paper food packaging. (For a complete history, see www.ewg.org.)

The EPA boasted that the $16.5 million fine was the largest administrative fine it has ever levied under a weak toxic chemical law.

But as EWG noted, the fine is less than half of 1 percent of DuPont’s after-tax annual profits from the Teflon product when averaged over the 20-year cover-up.

“What’s the appropriate fine for a $25 billion company that for decades hid vital health information about a toxic chemical that now contaminates every man, woman and child in the United States?” asked EWG President Ken Cook.

“What’s the proper dollar penalty for a pollutant that will never break down, and now finds its way into polar bears in the Arctic and human babies in their mothers’ wombs? We’re pretty sure it’s not $16 million, even if that is a record amount under a federal law that everyone acknowledges is extremely weak.”

We’re pretty sure it’s not just a fine.

The poison is in the blood of 95 percent of people in the United States.

How many cancers has it caused?

**ExxonMobil**

Here is what ExxonMobil has to say about global warming:

ExxonMobil recognizes that although scientific evidence remains inconclusive, the potential impacts of greenhouse gas emissions on society and ecosystems may prove to be significant.

And this:

> The earth has experienced a warming trend in global surface air temperatures during the twentieth century, but the cause of this trend and whether it is abnormal remain in dispute. Although recent temperatures are elevated, they are not unprecedented in the geological record, which shows considerable variation as well as previous periods that were as warm as or warmer than today.

Here is what the Intergovernmental Panel on Climate Change (IPCC), a UN-affiliated grouping of 1,800 of the world’s climatologists — often needled for the extraordinarily cautious language it employs — says about global warming:

> The Earth’s climate system has demonstrably changed on both global and regional scales since the pre-industrial era, with some of these changes attributable to human activities.

Globally, it is very likely that the 1990s was the warmest decade, and 1998 the warmest year, in the instrumental record (since 1861).
There is new and stronger evidence that most of the warming observed over the last 50 years is attributable to human activities.

Recent regional changes in climate, particularly increases in temperature, have already affected hydrological systems and terrestrial and marine ecosystems in many parts of the world.

The rising socio-economic costs related to weather damage and to regional variations in climate suggest increasing vulnerability to climate change.

The projected rate of warming [over the twenty-first century] is very likely to be without precedent during at least the last 10,000 years.

The impacts of climate change will fall disproportionately upon developing countries and the poor persons within all countries, and thereby exacerbate inequities in health status and access to adequate food, clean water and other resources.

Unfortunately, so far, the cynical, profit-motivated, short-term and self-interested views of ExxonMobil have mattered more than the evidence-based perspective of the IPCC.

That’s because the most profitable corporation on earth has lots of political power and is skilled at amplifying its views, and the climatologists do not and are not.

ExxonMobil has funded dozens of front groups, think tanks, industry associations, corporate-friendly research centers and purportedly independent scientists to spread its denialism. Greenpeace has documented the company’s support for a web of more than 100 organizations — from the American Council on Science and Health to the Washington Legal Foundation — that work to cast doubt on global warming science and likely consequences.

It hasn’t hurt ExxonMobil to have a (failed) oilman and the former head of Halliburton, an oil services company, as president and vice president of the richest, most powerful and biggest greenhouse-gas-emitting country, the United States. The company was not without influence during the Clinton administration, but has been able to gain complete access and shape policy during the Bush era, in ways large and small.

ExxonMobil, for example, in 2002 urged the Bush administration to push to have Dr. Robert Watson removed as chair of the IPCC, according to company documents obtained by the Natural Resources Defense Council. Soon after, the Bush administration announced its opposition to the respected scientist who ExxonMobil said had a “personal agenda,” and a new chair was selected.

The company has also collaborated with the administration on the basic denialism project. A former lobbyist for the American Petroleum Institute and chief of staff of the White House’s Council on Environmental Quality, Philip Cooney, resigned in June 2005 after the New York Times revealed he had edited government reports to challenge the link between carbon emissions and global warming. A week later, Cooney was on ExxonMobil’s payroll.

ExxonMobil is not just fiddling while the world burns. The company is raking in record profits — more than $36 billion in 2005, the highest ever earned for a single company in one year — as it benefited especially from the spike in oil prices after Hurricanes Katrina and Rita.

Given the company and the oil industry’s obscene profits, many are calling for a windfall profits tax. (If just 3 percent of ExxonMobil’s 2005 profits were taxed and invested in solar energy technology development, it would constitute a quintupling of the U.S. government solar R&D budget.)

But lubricated with oil industry cash, the Bush administration and Congress have chosen what might generously be called a different path. In July, the Congress passed an energy bill that showered tax breaks and other goodies on the industry — more than $4 billion worth, according to the U.S. Public Interest Research Group.

ExxonMobil is completely unashamed about this state of affairs. Outgoing CEO Lee Raymond testified before Congress about gas price hikes and industry super-profits in November. “If we are to continue to serve our consumers and your constituents, corporate and government leaders alike cannot afford to simply follow the ups and downs of energy prices,” he told a Senate Committee. The basic message: don’t tax us more, we need the huge earnings to find more oil to meet rising energy demand. Alternative energy is nice, but not serious.

Of course, it is not only by blocking efforts to address global warming that ExxonMobil is making the world a worse place.
It continues to stonewall on paying roughly $5 billion to fishing communities and Native Alaskans in punitive damages assessed for the impact of the Exxon Valdez spill.

It is lobbying hard for the opening of the Arctic National Wildlife Refuge.

And through a major oil development and pipeline in Chad, it is funding a dictatorial government that is using oil money to buy weapons. Amnesty International says that the ExxonMobil-led consortium operating the Chad project negotiated a deal enabling the oil companies "to effectively sidestep the rule of law in Chad and Cameroon, and limits the ability of those countries to develop effective human rights protection for their citizens over the next several decades."

For more details on ExxonMobil’s sordid performance, see ExposeExxon.org, a website maintained by a coalition of environmental and public interest groups seeking to pressure ExxonMobil to "shed its past as an irresponsible oil company."

Ford

One block from the White House, on Washington, D.C.’s 15th Street, Northwest, embedded in the sidewalk, in front of The Old Ebbitt Grill, is a bronze medallion honoring the life of Booker T. Washington.

The medallion has a picture of Booker T. and reads:

“As an influential African American, living in a time of escalating segregation, Booker T. Washington negotiated a course between accommodation and progress in advocating greater civil rights for blacks. His philosophy of 'request' not 'protest' allowed him to gain the respect of presidents and politicians, but sometimes alienated those of his own race. Washington believed education was a cornerstone for the advancement of blacks and his efforts to raise money for his beloved Tuskegee Institute helped secure its well-deserved reputation as a leading educational institution for African Americans."

“My life work is the promotion of education of my race.”

— Booker T. Washington
Sponsored by Ford Motor Company

The Booker T. medallion is one of a growing list of U.S. volunteer pioneers being honored by the Points of Light Foundation.

Ultimately, the medallions will form a mile-long pathway in the heart of Washington, D.C.

There are now 20 medallions embedded on the sidewalks of 15th Street and G Streets in downtown Washington.

The monument — known as The Extra Mile — was dedicated on October 14, 2005 with great fanfare in a ceremony attended by former President George Bush and many extended family members of the honorees.

Each medallion is sponsored by a major U.S. corporation.

The one honoring Cesar Chavez, co-founder of the United Farm Workers of America, was also made possible by Ford Motor Company.

His plaque reads in part: “Under his leadership of nonviolent protest, the UFW was able to secure improved wages and benefits, more humane living and working conditions, and better job security for some of the poorest workers in America.”

Obviously, the company is no fan of Cesar Chavez — or Booker T. for that matter.

Ford is doing it to buff its image, as they say.

Why?

For one, officials in New Jersey are calling for an investigation of the company for environmental crimes.

It turns out that over a period of years, Ford Motor Company dumped millions of gallons of paint sludge into a now-residential area of northern New Jersey.

The paint sludge was from the Ford Motor Co.’s factory in Mahwah, once the largest auto assembly plant in the nation, according to an investigative report published in October in the Bergen Record.
The Record has put out a series of investigative reports on the dumping. They are compiled at [www.toxiclegacy.com](http://www.toxiclegacy.com).

According to the series, before closing in 1980, the plant spat out six million vehicles and an ocean of contaminants — including enough paint sludge to fill two of the three tubes of the Lincoln Tunnel.

Millions of gallons of paint sludge were dumped in the remote section of Ringwood, which is now a residential area.

Children played in it.

Streams washed over it.

And early this year, New Jersey officials announced some cancer rates in the area are unusually high.

Tests commissioned by the Record found lead, arsenic and xylenes in the sludge — some at 100 times the levels the government considers safe.

The Record found that Ford repeatedly dumped in poor communities and failed to clean up its mess.

Reporters with the Record dug up documents showing that Ford executives knew as early as 34 years ago that its waste had contaminated a stream that feeds the Wanaque Reservoir.

The documents show that the company tried to evade responsibility by presenting tainted land as a “gift” to the state, the paper reported.

The Record interviewed truckers who hauled Ford’s waste — they say that mob-controlled contractors dumped anywhere they could get away with it.

They bribed, threatened, even murdered to maintain control of Ford’s waste, the paper reported.

Millions of gallons of hazardous waste vanished in their hands.

According to the Record, Ford says its dumping in Ringwood was legal.

Ford says others dumped in Ringwood and share responsibility for the pollution.

Well, let’s have a federal prosecutor decide.

There are points of light. ([www.extramile.us](http://www.extramile.us))

And there are points of darkness. ([www.toxiclegacy.com](http://www.toxiclegacy.com))

Getting cheap publicity by putting your name on a plaque is one thing.

Paying for the human and environmental wreckage you’ve caused in northern New Jersey is something else. (Not to mention matching your rhetorical concern with climate change and environmental well-being with company actions that help take the planet off the SUV-hardened fast track to planetary overheating. See [www.jumpstartford.com](http://www.jumpstartford.com).)

In honor of Booker T., we “request” that the U.S. Attorney in Newark take seriously the New Jersey hazardous waste case and open a criminal investigation of the company.

**Halliburton**

Try as we might, we couldn’t keep Halliburton off a list of the worst companies two years running.

The company has effectively made a business model of crooked dealing with the U.S. government. Getting caught, over and over, doesn’t seem to affect things much.

Here are the company’s lowlights for the year, via Halliburtonwatch: January 10: Halliburton admitted that it expanded economic relations with Iran despite the Bush administration’s insistence that the nation finances terrorism.

February 8: The U.S. Army agreed to pay Halliburton’s KBR subsidiary nearly $2 billion for work that nobody can prove ever took place. Army auditors determined in 2004 that 43 percent of the $4.6 billion requested by Halliburton under a major contract could not be verified under normal accounting procedures. Despite recommendations to withhold 15 percent of payment from Halliburton, the Pentagon decided to pay the company what it requested. “This is indeed great news for KBR,” said Andy Lane, chief operating officer of Halliburton, in a news release. “The Army and KBR have agreed to continue working closely together to resolve any remaining billing issues.”
March 2: The U.S. Justice Department opened a criminal inquiry into possible bid-rigging on foreign contracts by Halliburton, the company revealed. In a filing with the Securities and Exchange Commission, the company said “information has been uncovered” that former employees of KBR “may have engaged in coordinated bidding with one or more competitors on certain foreign construction projects and that such coordination possibly began as early as the mid-1980s.” These bribes involve contracts in Nigeria, and occurred in the 1990s, when Vice President Cheney headed Halliburton.

March 14: Pentagon auditors found another $108 million in overcharges by Halliburton’s KBR subsidiary for provision of oil in Iraq, according to a disclosure by Representative Henry Waxman, D-California.

March 16: The Los Angeles Times reported that the U.S. Environmental Protection Agency (EPA) will investigate complaints by one of its engineers who said the agency purposely tampered with environmental science in order to shield a lucrative drilling technique, pioneered by Halliburton and known as hydraulic fracturing, from pollution laws.

April: the State Department issued a report concluding that Halliburton’s repair work in Iraqi oil fields is plagued by serious cost overruns and “poor performance.”

June 29: At a Congressional hearing, Bunnatine H. Greenhouse, then the senior contracting specialist with the Army Corps of Engineers, testified, “I can unequivocally state that the abuse related to contracts awarded to KBR [Halliburton’s subsidiary] represents the most blatant and improper contract abuse I have witnessed during the course of my professional career.” In August, Greenhouse would be demoted for her testimony.

At the hearing, Representative Waxman released a previously secret military audit criticizing an extra $1.4 billion in “questioned” and “unsupported” expenditures by Halliburton’s KBR subsidiary in Iraq.

July 22: Halliburton announced that its KBR division, responsible for carrying out Pentagon contracts, saw profits jump 284 percent during the second quarter of the year.

September 8: The Washington Post reported that former head of the Federal Emergency Management Agency (FEMA), Joseph Allbaugh, now a lobbyist for Halliburton, is in Louisiana helping his clients obtain disaster relief contracts.

But Allbaugh insisted he’s not in Louisiana seeking contracts for clients. “I don’t do government contracts,” he told the Post. Instead, he said he’s “just trying to lend my shoulder to the wheel, trying to coordinate some private-sector support that the government always asks for.”

September 15: Senator Frank Lautenberg, D-New Jersey reiterated his call for Vice President Dick Cheney to forfeit his continuing financial interest in Halliburton. Lautenberg points out that Cheney’s Halliburton options are worth more than $9 million. Cheney insists he has no ongoing financial entanglement with Halliburton because he will donate the profits from stock sales to charity.

September 20: Former KBR employees and water quality specialists Ben Carter and Ken May told HalliburtonWatch that KBR knowingly exposes troops and civilians to contaminated water from Iraq’s Euphrates River. One internal KBR email provided to HalliburtonWatch says that, for “possibly a year,” the level of contamination at one camp was two times the normal level for untreated water.

October: Senator Mary Landrieu, D-Louisiana, charged that a Halliburton subcontractor had hired as many as 100 undocumented immigrants to clean up areas damaged by Hurricane Katrina. The president of the subcontractor, Alabama-based BE&K, is Retired U.S. Navy Admiral David Nash. Nash was head of the U.S. office in Baghdad which handed out Iraq contracts. “There is no connection between the hurricane-related work we are doing in Mississippi and Louisiana and Nash’s involvement in Iraq,” a BE&K spokesperson told Reuters.

November 15: Halliburton’s KBR subsidiary and its subcontractors illegally abuse immigrants and undocumented workers in hurricane-damaged areas of the Gulf Coast, Roberto Lovato of Salon.com reported.

In an article titled “Gulf Coast Slaves,” Lovato writes of his travels throughout the storm-ravaged region where KBR’s cleanup contracts currently amount to $124.9 million.

He observed “squalid trailer parks where up to 19 unpaid, unfed and undocumented KBR site workers inhabited a single trailer for $70 per person, per week.” Many suffer from work-related health problems, including diarrhea, sprained ankles, cuts and bruises acquired while working for KBR. Halliburton denies violating labor laws, but immigration enforcement officials discovered
undocumented workers at the Belle Chasse facility in October.

November 19: The Washington Post reported that a criminal investigation of Army practices that allegedly favored Halliburton over competitors during the pre-war contract award process has been referred to the Department of Justice (DOJ). This probe follows on allegations made by Army Corps of Engineers whistleblower Bunnatine Greenhouse.

In a written statement to the Post, Halliburton said it “continues to cooperate fully with the Justice Department’s investigation of certain issues pertaining to our work in Iraq.” “As the investigation is ongoing, it would be inappropriate to comment further at this time.”

December 2: The Army Corps of Engineers paid $38 million in bonuses to Halliburton for oil transport and repair in Iraq even though the Pentagon’s own auditors declared $169 million in costs for the work to be “unreasonable” and “unsupported,” Representative Henry Waxman revealed.

December 27: The Chicago Tribune reported that Pentagon contractor trade groups are blocking a Pentagon proposal prohibiting defense contractor involvement in human trafficking for forced prostitution and labor. The contractors do not want to be responsible for trafficking undertaken by their subcontractors. Halliburton subsidiaries have been linked to trafficking-related controversies.

After the Tribune reported in October on the kidnapping of a dozen Nepali men and their transport to work for Halliburton subcontractors in Iraq, Halliburton said it was not responsible for the recruitment or hiring practices of its subcontractors.

The U.S. Army, for its part, said questions about alleged misconduct by subcontractor firms should be addressed to those firms, as these are not Army issues.”

KPMG

It is all about perception, isn’t it?

KPMG was charged in August with one felony count of conspiracy.

The Attorney General of the United States said that KPMG “has admitted to criminal wrongdoing in the largest-ever tax shelter fraud.”

Yet, there was no conviction. There was no plea agreement.

For individuals, partners or executives who commit major crimes — yes. If there is a crime, there is an indictment. And there is a plea agreement. Or there is a trial.

But for major U.S. corporations or other large entities, like KPMG, if you commit a crime, you get a prosecution deferred.

Now, it’s almost automatic.

Ask Skadden Arps partner Robert Bennett. He’s the king of deferred prosecutions.

At the insistence of Bob Bennett, KPMG gets a deferred prosecution agreement.

Why?

Because if you indict KPMG, you might drive it out of business, à la Arthur Andersen.

But no matter, you can charge the company with a felony. And the Attorney General can get on national television and say that KPMG has admitted to criminal wrongdoing.

The U.S. Attorney in New York wanted to pursue criminal charges. But he was overruled by his higher ups at the Justice Department.

There is no doubt about it. KPMG engaged in criminal wrongdoing. Attorney General Alberto Gonzales said so. But because of possible “collateral consequences,” there is no conviction.

Corporate crime is now crime without conviction.

It’s all about perception.

What collateral consequences? What law says that if you are convicted of a crime, you are driven out of business?

When reporters walked into the seventh floor conference room at the Justice Department for the press conference announcing the KPMG deal, they were
handed a number of documents.

They were handed the Justice Department press release.

This informed us that KPMG has admitted to criminal wrongdoing and agreed to pay $456 million in fines, restitution and penalties as part of an agreement to defer prosecution of the firm.

The press release also informed us that “in the largest criminal tax case ever filed, KPMG has admitted that it engaged in a fraud that generated at least $11 billion in phony tax losses which, according to court papers, cost the United States at least $2.5 billion in evaded taxes.”

Reporters were also handed a tough statement by IRS Commissioner Mark Everson. “Simply stated, if you had a multi-million dollar tax liability, KPMG would find a way to wipe it out even when the firm’s own experts thought the transactions would not survive IRS scrutiny,” Everson said. “The only purpose of these abusive deals was to further enrich the already wealthy and to line the pockets of KPMG partners.”

“Since the income tax first came into being under President Lincoln during the Civil War, the wealthy have always paid more than average citizens,” Everson said. “But not according to KPMG. KPMG’s actions were a direct assault on our progressive system of income taxation, and, left unchecked, would have badly eroded the faith of hard working, taxpaying Americans in the fairness of government itself.”

“At some point such conduct passes from clever accounting and lawyering to theft from the people,” Everson said. “We simply can’t tolerate flagrant abuse of the law and of professional obligations by tax practitioners, particularly those associated with so-called blue chip firms like KPMG that, by virtue of their prominence, set the standard of conduct for others. Accountants and attorneys should be the pillars of our system of taxation, not the architects of its circumvention.”

They can’t tolerate this grand theft, but they did.

If they didn’t tolerate it, they would have indicted KPMG and forced a guilty plea.

Reporters were also handed an indictment of eight KPMG partners and an outside tax attorney. These were the nine individuals behind the crime, prosecutors said.

The entity gets a deferred prosecution for criminal activities. It must pay $456 million in fines and restitution. But there is no loss of freedom to operate.

The individuals face a loss of freedom. That’s what prison is all about.

Why the double standard?

True, the entity must hire a monitor, in this case, former Securities and Exchange Commissioner Richard Breeden.

But who pays Breeden? KPMG.

How much? KPMG decides.

KPMG’s public response to the deferred prosecution makes clear the firm does not view the deal as imposing serious punishment (let alone deterrence). It was as if the company was required to stay after school for a day.

“KPMG LLP is pleased to have reached a resolution with the Department of Justice. We regret the past tax practices that were the subject of the investigation. KPMG is a better and stronger firm today, having learned much from this experience,” said KPMG LLP Chair and CEO Timothy P. Flynn. “The resolution of this matter allows KPMG to confidently face the future as we provide high quality audit, tax and advisory services to our large multinational, middle market and government clients.”

What documents were reporters not handed at the Justice Department news conference?

They were not handed a 10-page, single-spaced statement of facts that laid out the criminal activity in detail. And they were not handed the information charging KPMG with a felony. They came only later, after the Attorney General was asked, Where’s the charging document against KPMG?

Roche

Until recently, Swiss drug maker Roche’s sales of Tamiflu were doing dismally. (Roche makes the drug on license from the patent holder, the San Francisco-
In 2001, sales of Tamiflu, an anti-viral intended to alleviate the flu, were $76 million. Health advocates criticized the drug as offering few benefits, and encouraged people concerned about the flu to instead get a flu shot.

Then along came avian influenza, and the threat of an outbreak of bird flu among humans. There is no available vaccine for bird flu, and Tamiflu appears to be the best available pharmaceutical defense for those exposed to the disease.

For now, avian flu is not communicative among humans. More than 150 people have been infected with bird flu since 2003, when the first bird-to-human transmission was recorded, and more than half of those infected have died.

Many public health experts believe that an outbreak among humans is virtually inevitable.

An outbreak could have extremely dire consequences. In the United States, the Centers for Disease Control reports that, a "medium-level" pandemic could cause 89,000 to 207,000 deaths, 314,000 and 734,000 hospitalizations, 18 to 42 million outpatient visits, and another 20 to 47 million people being sick. Between 15 percent and 35 percent of the U.S. population could be affected by an influenza pandemic, and the economic impact could range between $71.3 and $166.5 billion. The illness and death toll would be much worse in developing countries.

Slowly, the message has begun to penetrate government officials' and the public's consciousness, and governments are, very belatedly, looking to stockpile Tamiflu in advance of a potential outbreak.

That has provided a windfall for Roche. 2005 sales of Tamiflu are expected to top $1 billion.

It has also created a bit of a problem for Roche, because it cannot make enough Tamiflu to meet demand.

Given the public health urgency of stockpiling the drug, Roche could have simply announced that it would license other companies to manufacture it, conditioned on payment of a reasonable royalty.

Instead, it chose a different course.

With no prospect of the company satisfying growing demand, it announced that it would not license others to produce the medicine. Nor could others easily make the drug, the company claimed. It said that the manufacturing process was extremely complicated and dangerous, and that the key ingredient to make the drug was in short supply.

As it turned out, all of these claims turned out to be deeply misleading, or worse.

As late as October 13, Roche insisted that it would not license the product to competitors, and that it was too complicated for them to make. These claims deterred officials at the World Health Organization from pushing for compulsory licenses enabling competitors to manufacture Tamiflu. ("There will be no way in the next two years a company would be able to produce generic Tamiflu," the head of WHO's influenza program said on October 6.)

Roche "fully intends to remain the sole manufacturer of Tamiflu," company spokesperson Terry Hurley told reporters. He said that the company would not reveal production figures, on the grounds that such information was "commercially sensitive." All drug makers are able to track other manufacturers' sales through commercial databases — but the information is not made available to public officials. Hurley also offered the company line on the complexity of making the drug. Manufacturing Tamiflu involves 10 complicated steps, and would take two-to-three years for a new entrant, he alleged.

But October 13 would be the last day Roche could make these claims.

On October 14, the New York Times reported that the Indian drug maker Cipla had reverse-engineered the drug two weeks earlier, and would have small commercial quantities available by early 2006.

With the spread of bird flu being reported daily, countries in Southeast Asia, where the epidemic among birds originated, started clamoring for the right to acquire greater quantities of Tamiflu. Following Cipla's announcement, many other firms soon said they could produce the drug as well.

Taiwan's National Health Research Institutes announced it had figured out how to synthesize Tamiflu in September — in 18 days.

In Thailand, the Government Pharmaceutical Organization announced in
November that it had capacity to manufacture 1 million Tamiflu tablets in 10 days.

Roche’s claim that making Tamiflu involved a dangerous and potentially explosive step also was revealed to be an exaggeration. Reported the Wall Street Journal: “that step — which involves a chemical reaction with sodium azide, whose explosive potential has made it the common choice in automobile air bags — turns out to be relatively routine, according to some pharmaceutical executives and scientists familiar with the chemistry. Although it is still dangerous, the process is well within the abilities of university chemistry labs, let alone the world’s top generic-drug makers, these scientists say.”

The shortage of a key ingredient in Tamiflu also proved a chimera. The drug is made with shikimic acid, which is found in the Chinese plant star anise (used as a spice in Chinese cooking). The limited supply of star anise placed a constraint on how much Tamiflu could be made, Roche had claimed. But it turns out that a Michigan State University professor had developed a technique to make shikimic acid without star anise — and that Roche had been using the technique under license for years.

With it increasingly plain that dozens of generic companies were capable of manufacturing Tamiflu, Southeast Asian countries were prepared to issue compulsory licenses to enable new manufacturers to start making the product.

With its posture of “fully intend[ing] to remain the sole manufacturer of Tamiflu” no longer tenable, Roche announced it would license other companies to make the drug. In December, it said it would enter intense negotiations with a dozen firms.

Many countries, it turned out, did not need to seek a license from Roche, compulsory or otherwise. As countries began moves to authorize generic competition by issuing compulsory licenses, Roche explained that Tamiflu was not patented in those countries. The governments themselves did not know what was patented, and Roche had conveniently let them operate under misperceptions that patents had been granted. This occurred in the Philippines and Indonesia, among other countries.

While production is expanded — and in addition to the generic entrance into the market, Roche has announced it has increased its manufacturing capacity 10 times over — there remains a shortfall to meet the stockpiling standard urged by many public health officials. The U.S. stockpile, for example, is sufficient to provide medications to less than 2 percent of people in the United States — about a tenth the coverage recommended by public health officials.

“Roche has had plenty of time to figure out what its options are regarding the licensing of the patents,” says James Love, director of the Washington, D.C.-based Consumer Project on Technology. “There are too many potential suppliers to undertake individual negotiations with each company. Roche needs to simply identify the relevant terms it will impose on generic suppliers and offer open licenses to anyone who can comply.”

If Roche refuses such an approach, says Love, “governments should issue the appropriate compulsory licenses in order to assure the competitive generics sector they can legally sell generic copies of the drug.”

Suez

One of the continuous challenges of Big Business is to develop stories that explain why the private sector is good and efficient and the public sector is bad, wasteful and incompetent.

Given the scandals, criminality and wastefulness that pervades so much of corporate activity, this is no easy matter. It certainly poses a major challenge for Suez, the French services giant that is one of the world’s largest private water companies.

Suez has been a leading purveyor and beneficiary of the global trend of water privatization — the selling off of public water systems to private entities, or the turning over of control and management of public systems to corporations such as Suez.

In negotiations over the World Trade Organization’s services agreements, Suez has worked through trade associations to ensure that the European Union works to pry open water service markets around the world to private and foreign corporations.

And the company has worked hand in glove with the World Bank to encourage developing countries to turn control over their water systems to private business.

However, Suez walks a fine line on the public-private divide. The company wants
to extract profits from water service provision, but it wants to limit its investment obligations and maintain strong public bodies that can impose high prices on consumers, and make them pay. And, if and when things go bad, it wants to blame public agencies.

Thus Suez Chair and CEO Gerard Mestrallet talks not about privatization, but “public-private partnerships.”

“The success of public-private partnerships rests primarily on a sharing of roles between those parties whose skills are best suited to fulfilling them,” he says. “It is perfectly clear that the decision-makers in these arrangements are the public authorities, and whether or not they seek the expertise of the private sector is entirely their decision.”

To those who complain about the failure of Suez and other companies to expand and provide water service to the poor and lower-income groups, Mestrallet’s line is clear: blame the public sector. “At present, 95 percent of water services worldwide are provided by the public sector, so it is hardly the fault of the private sector if 1.2 billion people have no access to water and 2 billion people have no sanitation services.”

Things look a little different in the municipalities and regions where Suez has had responsibility for water provision, however.

As Public Citizen’s Water for All Campaign (now part of a new organization, Food and Water Watch) shows in an April 2005 corporate profile, Suez has raised service charges, underinvested and mismanaged water projects around the globe. City after city has found out the hard way what exactly Suez has in mind by “public-private partnership.”

- In El Alto, Bolivia, mass demonstrations in January 2005 led the Bolivian government to cancel a water privatization contract with Aguas del Illimani, of which Suez is a major shareholder. “The Suez contract is a classic example of ‘ring fencing,’ where the contract obligates service delivery only in specific areas of the city,” explains the Water for All Campaign in its report. “What is termed the ‘served area’ in the Suez contract focuses water service provision on profitable customers and removes obligation from extending service to the newest and most marginal settlements — the areas most in need of improvements.” For those who did seek new connections, the price was $445, more than eight times the monthly minimum wage. With the contract cancelled, Suez is threatening to sue Bolivia for $90 million in lost investments and future profits.
- In Atlanta, the Suez subsidiary United Water signed a 20-year deal to operate the city’s water system. Maintenance backlogs accumulated, with broken water lines sometimes taking two months to fix. United Water improperly billed the city. Although privatization was supposed to avert a rate hike, combined water and sewer bills rose by about 25 percent. After only five years, Atlanta opted out of the contract.
- In Manila, the Philippines, pressure by the World Bank led the government to privatize the water system to two concessions, one led by Suez, in 1997. Within five years, water rates for Manila residents had tripled. Both the Suez and other concession won contract amendments that would weaken their performance requirements. Still, because the value of the Philippines peso dropped sharply with the Asian financial crisis of the late 1990s, Suez wanted steeper rate increases. When the Manila authorities refused — the drop in the exchange rate of the peso didn’t mean Manila residents had more pesos to spend — Suez sought to renegotiate or abandon the contract. The company claims it is owed hundreds of millions of dollars by the Manila water authority, while the government claims Suez owes it money.

“Suez, the world’s largest water corporation, places profit over the human right to water,” says Wenonah Hauter of Food and Water Watch.

W.R. Grace

What does it take to get federal prosecutors to indict an asbestos company for endangering the health of the community?

If 2005 is any guide, it takes activist citizens who pressure their elected officials to “do something” to bring justice.

It takes conscientious federal officials who shrug off bureaucratic inertia and demand that justice be done.

And first and foremost, it takes editors and reporters who are willing to stay with a story.

One such reporter is Andrew Schneider, now deputy assistant managing editor
Before moving to St. Louis, Schneider was a reporter at the Seattle Post-Intelligencer, where, in 1999, he broke the story of how W.R. Grace’s vermiculite mine was killing its workers and residents.

He has written a couple hundred stories about Grace since then and was in Billings, Montana for the February announcement of the indictment against Grace.

With David McCumber, Schneider is the author of An Air That Kills: How the Asbestos Poisoning of Libby, Montana, Uncovered a National Scandal.

Schneider told us that federal prosecutors and witnesses were “terrified” that Bush administration corporate connections would derail the indictment.

Prosecutors and witnesses were “terrified that it was going to be derailed at any moment,” Schneider said.

“They worried about Vice President Dick Cheney, who of course had his relationship with Halliburton, which had $4.3 billion worth of asbestos claims against them,” Schneider said. “They worried about his influence in killing off this prosecution. They worried about the asbestos legislation on the Hill that President Bush has been touting. Bush wins the election and goes on the stump talking about the poor corporations that have been bankrupted by these bogus cases. And that frightened the hell out of the investigators and a couple of the prosecutors.”

The criminal charge against W.R. Grace and seven of its current or former executives represents the first time in the history of the industry that criminal charges have been filed against an asbestos manufacturer for endangering the lives of residents.

And Schneider says the Grace indictment may well serve as a blueprint for prosecutors in other areas of the country to criminally prosecute Grace for endangering the lives of residents in their jurisdictions.

“How widespread it will be, I don’t know,” Schneider said. “But I know there is a great deal of interest from prosecutors in what actually went down. I’m just basing that on the number of calls that I received from prosecutors in different states.”

The indictment handed down against Grace in Billings charged the company and seven current and former Grace executives with knowingly endangering residents of Libby, Montana, and concealing information about the health affects of its asbestos mining operations.

Federal officials alleged that Grace and its executives, as far back as the 1970s, attempted to conceal information about the adverse health effects of the company’s vermiculite mining operations and distribution of vermiculite in the Libby, Montana community.

The seven individual and one corporate defendant were also accused of obstructing the government’s cleanup efforts and wire fraud.

Federal officials said that approximately 1,200 residents in the Libby area have been identified as suffering from some kind of asbestos-related abnormality.

Schneider says that more than 200 Libby residents have died from asbestos-related disease.

“We will not tolerate criminal conduct that is detrimental to the environment and human health,” stated Thomas Sansonetti, assistant attorney general for the Justice Department’s Environment and Natural Resources Division.

“A human and environmental tragedy has occurred in Libby,” said William Mercer, U.S. Attorney for the District of Montana. “This prosecution seeks to hold Grace and its executives responsible for the misconduct alleged.”

W.R. Grace operated a vermiculite mine in Libby, Montana from 1963 to 1990, as part of its Construction Products Division, which was headquartered in Cambridge, Massachusetts.

Vermiculite was used in many common commercial products, including attic insulation, fireproofing materials, masonry fill, and as an additive to potting soils and fertilizers.

The vermiculite deposits in Libby were contaminated with a form of asbestos called tremolite.

Studies have shown that exposure to asbestos can cause life-threatening
diseases, including asbestosis, lung cancer and mesothelioma.

Federal officials alleged that health studies on residents of the Libby area show increased incidence of many types of asbestos-related disease, including a rate of lung cancer that is 30 percent higher than expected when compared with rates in other areas of Montana and the United States.

The government claims that the defendants, beginning in the late 1970s, obtained knowledge of the toxic nature of tremolite asbestos in its vermiculite through internal epidemiological, medical and toxicological studies, as well as through product testing.

Despite legal requirements under the Toxic Substances Control Act to turn over to the Environmental Protection Agency (EPA) the information they possessed, “W.R. Grace and its officials failed to do so on numerous occasions.”

In addition to charging that the company concealed information from EPA, the indictment alleges that W.R. Grace and its officials also obstructed the National Institute of Occupational Safety and Health (NIOSH) when it attempted to study the health conditions at the Libby mine in the 1980s.

Despite their knowledge of the hazards of asbestos, the company and executives “distributed asbestos-contaminated vermiculite and permitted it to be distributed throughout the Libby community” by allowing workers to leave the mine site covered in asbestos dust, allowing residents to take waste vermiculite for use in their gardens and distributing vermiculite “tailings” to the Libby schools for use as foundations for running tracks and an outdoor ice skating rink.

And after W.R. Grace closed the Libby mine in 1990, it sold asbestos-contaminated properties to local buyers without disclosing the nature or extent of the contamination. One of the contaminated properties was used as a residence and commercial nursery.

In response to the groundbreaking series of articles in 1999 by Schneider documenting the hazards posed the Grace mine, “W.R. Grace and its officials continued to mislead and obstruct the government by not disclosing, as they were required to do by federal law, the true nature and extent of the asbestos contamination.”

Ultimately, the Libby mine and related W.R. Grace properties were declared a Superfund site by EPA, and as of 2001, EPA had incurred approximately $55 million in cleanup costs. If convicted, the defendants face up to 15 years imprisonment on each endangerment charge, up to five years imprisonment on each of the conspiracy and obstruction charges, and 10 years on prison on the wire fraud charge.

W.R. Grace could face fines of up to twice the gain associated with its alleged misconduct or twice the losses suffered by victims.

Federal officials alleged that Grace enjoyed at least $140 million in after-tax profits from its mining operations in Libby. Grace also could be ordered to pay restitution to victims.

Grace denies the charges. In a company statement released after the indictment was handed down, Grace said it “categorically denies any criminal wrongdoing.”

“As a company and as individuals, we believe that one serious illness or lost life is one too many. That is why we have taken so seriously our commitment to our Libby employees and the people of Libby,” the company said.

“The entire W.R. Grace team is supportive of the citizens of Libby. We hope that our continued and dedicated support for their long-term health care, combined with their characteristic strength and determination, will help them through these difficult times.”