

DEMOCRATIC AND REPUBLICAN AGREEMENT: PROSECUTE HSBC

Apparently, Matt Taibbi and Glenn Greenwald and Matt Stoller and Howie Klein and I aren't the only hippies who believe HSBC should be treated like any other legal person who helped drug gangs and terrorists launder money.

Both Chuck Grassley and Jeff Merkley have written Eric Holder letters complaining about this treatment.

Here's Grassley (who, as he notes elsewhere in the letter, is the Ranking Member on the Senate Judiciary Committee and has demanded a briefing):

I write today to express my continuing disappointment with the enforcement policies of the Department of Justice (Department). On December 12, 2012, the Department entered into a Deferred Prosecution Agreement (DPA) with HSBC, a global bank that has now admitted to violating federal laws designed to prevent drug lords and terrorists from laundering money in the United States. **While the Department has publicly congratulated itself for this settlement, the truth is that the Department has refused to prosecute any individual employees or the bank responsible for these crimes.** This troubling lack of real enforcement will have consequences for the health of our economy and the safety and prosperity of the American people.

[snip]

In spite of this egregious criminal conduct, the DPA fails in finding the

proper punishment for the bank or its employees. Under its terms, the DPA obligates HSBC to pay \$1.92 billion to the federal government, improve its internal AML controls, and submit to the oversight of an outside monitor for five years. **Despite the fact that this is a “record” settlement, for a bank as gigantic as HSBC this is hardly even a slap on the wrist.** It only amounts to between 9 and 11% of HSBC’s profits last year alone, and is a bare fraction of the sums left unmonitored.

[snip]

Even more concerning is the fact that the individuals responsible for these failures are not being held accountable. The Department has not prosecuted a single employee of HSBC—no executives, no directors, no AML compliance staff members, no one. **By allowing these individuals to walk away without any real punishment, the Department is declaring that crime actually does pay.** Functionally, HSBC has quite literally purchased a get-out-of-jail-free card for its employees for the price of \$1.92 billion dollars.

[snip]

Past settlements with large banks prove that they do nothing to change what appears to be a culture of noncompliance for some businesses. According to the U.S. Sentencing Commission, jail time is served by over 96 percent of persons that plead or are found guilty of drug trafficking, 80 percent of those that plead or are found guilty of money laundering, and 63 percent of those caught in possession of drugs.[6] As the deferred prosecution agreement appears now to be the corporate equivalent of acknowledging guilt, the best way for a guilty party to avoid

jail time may be to ensure that the party is or is employed by a globally significant bank. In March 2010, the Department arranged a then-record \$160 million deferred prosecution agreement with Wachovia based on its laundering of more than \$110 million from Colombian and Mexican drug cartels. Officials at the time stated that “blatant disregard for our banking laws gave international cocaine cartels a virtual carte blanche to finance their operations.” In this case, a bank escaped with a record monetary settlement and a conspicuous absence of individuals behind bars. If the story sounds eerily similar, that’s because it is. It happened again with HSBC. [my emphasis]

And here’s Merkley (who is on the Senate Banking Committee):

I do not take a position on the merits of this or any other individual case, but I am deeply concerned that four years after the financial crisis, the Department appears to have firmly set the precedent that no bank, bank employee, or bank executive can be prosecuted even for serious criminal actions if that bank is a large, systemically important financial institution. **This “too big to jail” approach to law enforcement, which deeply offends the public’s sense of justice, effectively vitiates the law as written by Congress. Had Congress wished to declare that violations of money laundering, terrorist financing, fraud, and a number of other illicit financial actions would only constitute civil violations, it could have done so. It did not.**

[snip]

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Note, unlike Lanny Breuer, both Senators mention terrorism (though Merkley seems unaware how serious HSBC's ties to Islamic terrorist financing are).

More importantly, they sound like the rest of us dirty hippies, making the audacious argument that banks ought to be subject to laws.