

BARNEY FRANK: “AS WELL AS TO FINANCIAL REGULATORS”

When I first read about this letter from retiring Financial Services Committee Ranking Member Barney Frank to Eric Holder, I thought it akin to what retiring Homeland Security Chair Joe Lieberman did on the Sunday shows when he aggressively called for gun control: a PR stunt by an outgoing top Committee member, addressing a problem in all-but retirement that he didn't address while he had the authority to do so in Congress.

Dear Mr. Attorney General:

I note several instances recently in which Administration officials have proceeded civilly against blatant violations of our important financial laws, in part because of the difficulty of proving cases beyond a reasonable doubt, especially where the law may have been somewhat uncertain, but also because of a concern that the criminal conviction—and even indictment—of a major financial institution could have a destabilizing effect. This latter consideration does not apply, similarly, to individuals. It is, of course, the case that no corporation can have engaged in wrongdoing without the active decision of individual officers of that entity. I believe it is also the case that prosecuting individuals has more of a deterrent effect than prosecuting corporations.

I am writing to you as well as to financial regulators, understanding that the decision to pursue criminal proceedings rests with the Justice Department, so I ask that there be a series of consultations involving law

enforcement officials and regulators with the goal of increasing prosecution of culpable individuals as an important step in seeing that the laws that protect the stability and integrity of our financial system are better observed.

BARNEY FRANK

And that may well be what this is: an effort to pile on all the calls for prosecuting the banksters.

But I am fascinated by that second paragraph, the mention of the financial regulators. Consider this NYT account of HSBC's wrist-slap that Bill Black highlighted.

Despite the Justice Department's proposed compromise, Treasury Department officials and bank regulators at the Federal Reserve and the Office of the Comptroller of the Currency pointed to potential issues with the aggressive stance, according to the officials briefed on the matter. When approached by the Justice Department for their thoughts, the regulators cautioned about the effect on the broader economy.

"The Justice Department asked Treasury for our view about the potential implications of prosecuting a large financial institution," David S. Cohen, the Treasury's under secretary for terrorism and financial intelligence, said in a statement. "We did not believe we were in a position to offer any meaningful assessment. The decision of how the Justice Department exercises its prosecutorial discretion is solely theirs and Treasury had no role."

Still, some prosecutors proposed that Attorney General Eric H. Holder Jr. meet with Treasury Secretary Timothy F. Geithner, people briefed on the matter

| said. The meeting never took place. [my emphasis]

DOJ went to Treasury and the Fed and OCC and asked for permission to get HSBC to plead guilty to Bank Secrecy Act violations. According to Cohen, Treasury said they had no meaningful assessment. According to NYT, the regulators—the Fed and OCC—raised concerns about the broader economy.

And Barney Frank says he is writing financial regulators (in addition to Holder himself) about bank immunity, but this appears not to be the letter to financial regulators, because they are not CC'ed on the letter. Yet he has not released a separate letter to regulators to the press (though if my attempts to get this letter this morning are any indication, Frank's staffers have already moved onto look for new jobs).

This suggests there's another letter to the people who told DOJ to let HSBC skate.

It's worth noting that one of these regulators—OCC—was broadly implicated by the Permanent Subcommittee Investigation of HSBC.

In any case, there seems to be more to what Frank is doing. It may be he's just trying to push Holder to meet with TurboTax Timmeh and the financial regulators, as Holder's prosecutors attempted to make happen. Or he may be doing something else here, potentially even coaxing regulators to embrace individual indictments to stave off the larger anger about the HSBC wrist-slap.

It may well be this is a show. But it appears that we're only seeing half the show.