

# AS PART OF CONFIRMATION PROCESS, LORETTA LYNCH SUGGESTED DOJ DIDN'T HAVE ENOUGH EVIDENCE TO PROSECUTE HSBC

The WSJ has a story reporting what we long pretty much knew: DOJ decided not to prosecute HSBC for helping drug kingpins (this report, like most others and like DOJ's settlement itself, forgets to mention HSBC also materially supported terrorism) because doing so might create global financial havoc.

U.S. Justice Department officials overruled their prosecutors' recommendation to pursue criminal charges against HSBC Holdings PLC over money-laundering failings, according to a House committee report prepared by Republicans that sheds new light on the bank's 2012 settlement.

The report, which was reviewed by The Wall Street Journal and prepared by the Republican staff of the Financial Services Committee, concluded that former Attorney General Eric Holder overruled the internal recommendation and subsequently misled Congress about the Justice Department's decision not to prosecute the U.K. bank.

"Rather than lacking adequate evidence to prove HSBC's criminal conduct, internal Treasury documents show that DOJ leadership declined to pursue [the] recommendation to prosecute HSBC because senior DOJ leaders were concerned that prosecuting the bank 'could result in a

global financial disaster,' " the 282-page report stated.

[snip]

Holder later said those comments were misconstrued and that the Justice Department doesn't believe any institution is too large to face legal punishment. "If we find a bank or a financial institution that has done something wrong, if we can prove it beyond a reasonable doubt, those cases will be brought," Mr. Holder said at a 2013 House hearing.

The report, which was expected to be released Monday, concluded those comments were misleading because lower-level prosecutors had recommended the department prosecute HSBC, according to Treasury Department emails subpoenaed by the committee.

The report blames Eric Holder for the decision, not Loretta Lynch, who oversaw the case as US Attorney. Indeed, her name doesn't appear in the WSJ story at all.

But given the claim that line prosecutors believed they had plenty of evidence to charge HSBC, consider how Lynch answered a question about the topic during her confirmation process.

38. As United States Attorney for the Eastern District of New York, you helped secure nearly \$2 billion from HSBC over its failure to establish proper procedures to prevent money laundering by drug cartels and terrorists. You were quoted in a DOJ press release saying, "HSBC's blatant failure to implement proper anti-money laundering controls facilitated the laundering of at least \$881 million in drug proceeds through the U.S. financial system."

You stated that the bank's "willful

flouting of U.S. sanctions laws and regulations resulted in the processing of hundreds of millions of dollars in [Office of Foreign Assets Control]-prohibited transactions." Still, no criminal penalties have been assessed for any executive who may have been involved.

a. Did you make any decision or recommendation on charging any individual with a crime?

i. If so, please describe any and all decisions or recommendations you made.

ii. Please explain why such decisions or recommendations were made.

b. If you did not make any decision or recommendation on charging any individual with a crime, who made the decision not to prosecute?

RESPONSE: On December 11, 2012, the Department filed an information charging HSBC Bank USA with violations of the Bank Secrecy Act and HSBC Holdings with violating U.S. economic sanctions (the two entities are collectively referred to as "HSBC"). Pursuant to a deferred prosecution agreement ("DPA"), HSBC admitted its wrongdoing, agreed to forfeit \$1.256 billion, and agreed to implement significant remedial measures, including, among other things, to follow the highest global anti-money laundering standards in all jurisdictions in which it operates. As the United States District Judge who approved the deferred prosecution found, "the DPA imposes upon HSBC significant, and in some respect extraordinary, measures" and the "decision to approve the DPA is easy, for it accomplishes a great deal." *Although grand jury secrecy rules prevent me from discussing the facts involving any individual or entity*

*against whom we decided not to bring criminal charges, as I do in all cases in which I am involved, I and the dedicated career prosecutors handling the investigation carefully considered whether there was sufficient admissible evidence to prosecute an individual and whether such a prosecution otherwise would have been consistent with the principles of federal prosecution contained in the United States Attorney's Manual.*

I want to reiterate, particularly in the context of recent media reports regarding the release of HSBC files pertaining to its tax clients, that the Deferred Prosecution Agreement reached with HSBC addresses only the charges filed in the criminal violations of the Bank Secrecy Act for failures to maintain an adequate anti-money laundering program and for sanctions violations. The DPA explicitly does not provide any protection against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA explicitly mentions that the agreement does not bind the Department's Tax Division, nor the Fraud Section of the Criminal Division. information, which are limited to violations of the Bank Secrecy Act for failures to maintain an adequate anti-money laundering program and for sanctions violations. The DPA explicitly does not provide any protection against prosecution for conduct beyond what was described in the Statement of Facts. Furthermore, I should note the DPA explicitly mentions that the agreement does not bind the Department's Tax Division, nor the Fraud Section of the Criminal Division. [my emphasis]

To be fair to Lynch, hers was basically a non-answer. She said she and career prosecutors review the evidence. She *implied* that there was insufficient admissible evidence to prosecute, but did not say it.

But if the WSJ report is correct (and we should find out soon enough) in fact at least her prosecutors recommended prosecuting.