Durbin, senators call for Justice depart to hold Wells Fargo execs accountable

October 6 2016 4:20 PM

Senators: There Shouldn't Be a Separate Set of Rules for Wall Street and Main Street

CHICAGO—U.S. Senator Dick Durbin (D-IL) joined Senator Mazie K. Hirono (D-HI) and 12 other Senators to urge the Justice Department to investigate and, if appropriate, prosecute wrongdoing by executives at Wells Fargo after revelations that the bank's employees had opened millions of accounts without customer approval. In September, the federal Consumer Financial Protection Bureau issued its largest penalty to date of over $100 million to the bank as a result of this multi-year, multi-state fraud. The Senators urged Attorney General Loretta Lynch not only to hold Wells Fargo accountable as a corporation, but also prosecute individual executives who may have broken the law.

The Senators wrote:

"**A bank teller that takes a handful of bills from the cash drawer is likely to face charges for theft and prison time. She can't hide behind an army of lawyers and corporate policies that diffuse accountability for those at the top. Meanwhile, an executive who oversees a massive fraud that implicates thousands of bank employees and costs customers millions of dollars can walk away with a hefty retirement package and millions in the bank.**

"**Every time the Department of Justice settles a case of corporate fraud without holding individuals accountable, it reinforces the notion that the wealthy and powerful have purchased a higher class of justice for themselves**."

The letter was signed by Senators Tammy Baldwin (D-WI), Richard Blumenthal (D-CT), Al Franken (D-MN), Kirsten Gillibrand (D-NY), Angus King (I-ME), Amy Klobuchar (D-MN), Patrick Leahy (D-VT), Ed Markey (D-MA), Jeff Merkley (D-OR), Bernard Sanders (I-VT), Elizabeth Warren (D-MA), and Ron Wyden (D-OR).

The full letter is printed below:

> Dear Attorney General Lynch:
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> According to public filings, the Department of Justice is investigating whether Wells Fargo violated federal laws when its employees opened as many as two million deposit and credit card accounts without customer authorization over the span of several years.
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> As part of this investigation, we urge you to thoroughly investigate the culpability of senior executives at the bank. We believe this is a critical test of the Department's promise last September to "strengthen pursuit of individual corporate wrongdoing" and to "focus on individuals from the inception of the investigation."
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> Following the 2008 financial crisis, the American people watched as senior executives repeatedly escaped accountability for actions that nearly brought down the global economy. No top Wall Street executives went to prison or even faced prosecution. Instead, the government regularly settled for a penalty

that was borne by the bank's shareholders, not its executives. Even that penalty tended to pale in comparison to the profits the bank generated from its illegal activity.

That trend has continued. In 2015, for example, BNP Paribas was ordered to pay nearly $9 billion in penalties for violating sanctions against Sudan, Cuba, and Iran. The firm potentially compromised U.S. national security objectives by facilitating billions of dollars in transactions for sanctioned entities, yet none of the bank's employees faced charges.

Americans are rightly frustrated when they see that justice for the wealthy and powerful is very different than justice for everybody else. A bank teller that takes a handful of bills from the cash drawer is likely to face charges for theft and prison time. She can't hide behind an army of lawyers and corporate policies that diffuse accountability for those at the top. Meanwhile, an executive who oversees a massive fraud that implicates thousands of bank employees and costs customers millions of dollars can walk away with a hefty retirement package and millions in the bank. It's no wonder that Americans are skeptical of the effectiveness of our criminal justice system.

The Justice Department promised to change this two-tiered system in a September 9, 2015 memo issued to the nation's federal prosecutors by Deputy Attorney General Sally Quillian Yates. The memo articulated new policies that prioritize the investigation and prosecution of individual corporate employees. As stated in the memo, "ne of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing." In an interview following the release of the memo, Deputy Attorney General Yates stated, "It's only fair that the people who are responsible for committing those crimes be held accountable. The public needs to have confidence that there is one system of justice and it applies equally regardless of whether that crime occurs on a street corner or in a boardroom."

We could not agree more. Every time the Department of Justice settles a case of corporate fraud without holding individuals accountable, it reinforces the notion that the wealthy and powerful have purchased a higher class of justice for themselves.

That's why the Wells Fargo investigation is so important. Last week's Senate Banking Committee hearing with Wells Fargo Chairman and CEO John Stumpf raised serious questions that demand additional answers and point to potential individual wrongdoing. Mr. Stumpf testified under oath that he became aware of employees creating fraudulent bank accounts in 2013. Yet for years thereafter, Mr. Stumpf did not disclose that information to investors and did not take decisive action to crack down on the incentives that encouraged that behavior, even as the bank fired more than 5000 employees for improper behavior. Instead, he continued to personally benefit by pitching Wells' inflated retail account numbers to investors.

We are not in a position to determine if any of the senior executives at Wells Fargo committed criminal conduct. That is ultimately the job of the Justice Department and courts. But these facts raise questions about whether senior executives, including Mr. Stumpf, knowingly allowed illegal conduct to continue. As University of Virginia Law Professor Brandon Garrett noted, "If it was one person or even 100, you might argue it was a rogue contingent. But you can't seriously argue that 5,000 people have gone rogue. That's systemic behavior. People above them had to have noticed."

While the Consumer Financial Protection Bureau and Office of the Comptroller of the Currency settlements in this case are a good first step toward providing restitution to Wells Fargo's customers, they are no substitute for a thorough Justice Department investigation into potential wrongdoing by senior executives at the bank. We hope the Department follows through on its promise in the Yates memo and brings all the resources it has to bear on investigating the conduct of Wells Fargo's senior leadership.