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Wave of Corporate Wrongdoing Demands More Prosecution, Not Less

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The Wells Fargo scandal, in which the bank was fined $185 million for opening more than 2 million bogus accounts by the Consumer Financial Protection Board (CFPB) and other regulators, is just the latest in a deluge of stories about corporate wrongdoing. In just the past few months, Goldman Sachs was fined $36 million because an employee unlawfully obtained confidential New York Federal Reserve Bank documents; a House committee uncovered evidence suggesting that former Attorney General Eric Holder overruled prosecutors' recommendations to pursue criminal charges against HSBC for its failure to announced a $14.7 billion civil settlement with Volkswagen over its efforts to trick emissions testing.

In the auto industry alone, Toyota paid $1.2 billion in penalties because of sudden, unintended acceleration in some models. GM paid $900 million in penalties because of defective ignition switches. Takata paid a $70 million fine because of exploding airbags that will result in the recall of 34 million cars—the largest such event in U.S. history. These defects killed hundreds and injured thousands. Yet no one responsible has been prosecuted.

Even though large, these fines seem to have become just another cost of doing business for multinational corporations. A few scapegoats are fired, investors pay the bill and business goes on as usual. Senior management is never held accountable. Only when we start prosecuting responsible senior executives will these dynamics change.

What approaches would allow us to restore individual accountability in the corporate world?

The task of unraveling a criminal enterprise is not a new one for law enforcement. Prosecutors have abundant experience taking down organized crime syndicates, drug trafficking cartels and street gangs. Central to prosecuting any organized criminal enterprise is the strategy of working up the chain of command by flipping lower-level people to testify against their superiors.

What works for drug gangs and the mob also can work for corporations engaged in criminal activity. Both organized crime syndicates and rogue corporations are hierarchical organizations focused on profit that create the circumstances in which crimes occur. Crooked executives, like mob bosses or drug kingpins, may not know every move their lower-level managers make, but they make clear that anything that improves the bottom line – including fraud and cutting corners on safety – will be rewarded.

In September 2015, Deputy Attorney General Sally Yates announced that if companies want reduced penalties in exchange for cooperating with law enforcement, they must disclose all the information they have about which managers knew what when.

And yet some business organizations are opposed to Yates' insistence on common sense corporate accountability. The U.S. Chamber of Commerce, for example, argues that misconduct may cause companies to stop cooperating altogether.

That's a stunning argument: that crooked companies whose executives broke the law should receive reduced penalties even if they don't fully cooperate with law enforcement. This isn't justice. Prosecutions of corporate executives shouldn't be any less vigorous than prosecutions of the masterminds of street crime.

In a separate report, the Chamber further argues that federal, state, and local prosecutors and regulators are over-enforcing criminal and civil statues against companies. In an era of rampant corporate wrongdoing, the Chamber thinks there should be less enforcement, not more! Moreover, the Chamber has led the unceasing attack on the CFPB. The CFPB is, of course, the very regulator that helped end Wells Fargo's practice of fraudulently opening accounts in its customers' names.

Rather than trying to shield Big Business and executives from prosecution, the Chamber should consider the effect that repeated corporate scandals have on honest businesses. Gallup polling shows that Americans have less confidence in big business than they do in any other institution except for Congress.

The 2008 financial crisis caused millions of people to lose their jobs, homes and savings. Yet just one banker went to jail for the wrongdoing that crashed the markets. Americans now believe that there's one justice system for the well-heeled and another for the rest of us. As U.S. Sen. Elizabeth Warren stated at the Senate's Wells Fargo hearing, "The only way that Wall Street will change is if executives face jail time when they preside over massive frauds."

As federal and state authorities continue to investigate Wells Fargo and other corporations, they must use every tool available to prosecute both the companies and the executives responsible. Justice demands no less.

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