
Why Prosecutors Don't Go After Wall Street

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When the energy giant Enron collapsed 10 years ago, top executives of the company faced criminal prosecution, and many served lengthy prison terms. In the savings and loan scandal of the 1980s, hundreds of bankers went to jail.

But the financial meltdown of 2008 hasn't generated a single prosecution of high-level Wall Street players — even though the Securities and Exchange Commission has brought civil cases against some companies and reached financial settlements.

That's a result of new guidelines issued by the Justice Department in 2008, which have allowed prosecutors to take a "softer approach" to corporate crimes. The guidelines — known as deferred prosecution agreements — have permitted financial companies to avoid indictments if they agree to investigate and report their own crimes.

"It's a gentlemen's agreement, and it really allows companies to keep their share prices higher and it helps companies continue to do business with the government, but it's a lot lighter [in terms of penalties,]" says New York Times financial reporter Louise Story. "And this [approach] was celebrated on Wall Street."

"[The memo said] 'It shows that the aggressive days at the Department of Justice were coming to an end or at least decreasing,' " Story tells Fresh Air's Dave Davies. "So this decision was really good news for the banks — and it was interesting that it occurred at the end of the summer of 2008, right when all of these financial crisis cases that might have been made were becoming apparent."

In a recent series of stories, Story and Morgenson have examined the lack of criminal prosecutions against financial executives who profited from the 2008 mortgage crisis.

"There really have been very few criminal prosecutions [of companies], and there has been no criminal prosecution of a senior executive from a major bank or financial company related to the financial crisis," Story says.

Civil Cases, Not Criminal Prosecutions

Some civil cases have been filed by the SEC against some of the mortgage and financial companies that profited throughout the financial crisis, though very few of those cases have actually named individuals who work for the companies.

"For instance, the settlement with Goldman Sachs that the SEC entered into last summer was a pretty large one — \$550 million — and some people would say, 'That's a big punishment,' " Story says. "But then other people would say, 'But Goldman Sachs makes that in about three weeks of trading. And these penalties are ultimately paid for by Goldman's shareholders — not by the executives or the salespeople or the traders that actually individually played a role in what happened.' [The leaders of Goldman] are still there, and they're all still getting very large bonuses."

Only one Goldman Sachs employee — a 28-year-old salesman named Fabrice Tourre — has been sued by the SEC for his role in a toxic mortgage-securities fraud case during the 2008 financial

crisis. No criminal charges were filed.

"We were told by a lot of current and former Goldman people that there were a large team of people involved, and in fact, since then many Goldman employees and former employees have told us that they were so surprised that only Fabrice was named," Story says. "Fabrice himself thinks it was a little odd that he was the only one named. And we recently obtained the private reply that Fabrice sent to the SEC trying to convince them that he should not be the only one named. And in the reply, he laid out all kinds of people — six or seven other people — who were just as involved in all of the activities as he was."

Other SEC civil cases that have named individuals — as in the case of Countywide ex-CEO Angelo Mozilo, who allegedly profited from toxic mortgages while misleading investors about the risks and agreed to a \$67.5 million settlement — have not resulted in criminal prosecutions.

On the benefits of deferred prosecutions

"You can have really rough consequences if you indict a company. ... A lot of people say, 'You shouldn't indict a company because it can drive down the stock price, it can put a company out of business, it can make people lose their jobs.' Another argument for deferred prosecution is that the government often enters into agreements with companies when they cooperate with the government and when they help the government find out what happened. But this is a practice that is becoming very common and is becoming criticized by some people who are long-time lawyers who used to be prosecutors. Those former prosecutors told us that relying on these companies for cooperation is not smart because you're essentially outsourcing the investigation to the very company that is under suspicion."

On bank regulators

"Bank regulators are supposed to focus on the safety and soundness of the markets, and we were in a crisis [in 2008]. So that was a legitimate part of their role — to focus on the safety and soundness of the banks. But they also are supposed to do enforcement. And part of how you keep a market sound is if there's someone who committed wrongdoing, you hold them accountable. And so those goals came into conflict in 2008 and 2009. These regulators were divided. Not only did the Federal Reserve push to have the banks reimburse fewer customers so that billions of dollars would be saved for the banks — we also found out about a meeting where Timothy Geithner, who is now the Treasury secretary but back then was the president of the New York Federal Reserve, met with the attorney general of New York [in October 2008] and he expressed to him how nervous he was about the markets. And what I heard from a couple people who had heard about this meeting is that it made a big impression on the attorney general that it wasn't a good time to throw a bunch of subpoenas around. It was a really fragile time in the markets. So Geithner did not sit there and say, 'Oh, you cannot bring cases.' But he expressed a strong concern for the markets that really gives a 'slow down' message."

On SEC staffing

"There is a real concern that all of the new regulations that have passed related to the financial crisis will be very difficult to enforce, and any wrongdoing that needs to be examined will also be difficult to look at because these agencies are so stretched for staffing."

On the revolving door issue

"You've always seen on Capitol Hill, staffers who go in and out, working for senators and then working for lobbyists and then working for companies. You're seeing it a lot at the DOJ. There was a time from 2002 until 2008 that financial-law businesses were booming and there were a lot of law firms hiring any prosecutor who had financial expertise, and a lot of those prosecutors have gone back to government or cycled back out, so the ties between the [legal] defense community

and the DOJ have gotten particularly strong when it comes to financial sorts of cases."

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