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DOJ Goes After Smaller Fraudsters, Lets Big Fish Escape

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Successful criminal prosecutions of mortgage fraud seem to have one thing in common: a fraud figure well below $10 million. One of the recent cases that generated a fair amount of press involved the **convictions of co-conspirators in a mortgage scheme carried out by an ex-NFL player. That scheme, which took place during the housing boom in the early 2000's, resulted in 10 convictions. Former Dallas Cowboy linebacker Eugene Lockhart is facing jail time of up to 10 years.** The nine other individuals are looking at sentences of roughly two to five years.

The mortgage scheme – which led to convictions for wire fraud, conspiracy to commit wire fraud, and making false statements to a federal agency – seems pretty typical of the conduct that prosecutors **have been going after: the use of "straw borrowers" to apply for loans on home purchases; falsification of data on loan applications to ensure that straw borrowers would qualify for home loans; and creation of artificially high appraisal values for the homes to be purchased by the straw borrowers.** In the case of Lockhart and his cohorts, the Justice Department alleges that the scheme resulted in an actual loss to lenders of roughly $3 million.

While $3 million is not a trivial sum, it is a very tiny portion of the housing industry. Even the total amount in all similar prosecutions nationwide is quite small. Recent headline prosecutions involving similar schemes include a Florida case valued at $8 million in loan proceeds, an Alabama case valued at $2 million, and a New York case valued at $82 million in loan proceeds. At least the latter is a more aggressive number (as apparently was one of the defendants in the New York case, who moonlighted as a dominatrix in a Manhattan club).

The government has been touting these prosecutions as a part of a major crackdown on the mortgage business. The DOJ press statements note that "[m]ortgage fraud is a major focus of President Barack Obama's Financial Fraud Enforcement Task Force." But these are comparatively minor matters if one looks to the real causes of the housing crash that led to the 2008 financial crisis. Bank of America, Goldman Sachs, JPMorgan Chase, and Wells Fargo, who were all in the business of packaging and selling subprime mortgages, have been more or less covered with Teflon.

The lack of criminal prosecutions against the big banks in the subprime crisis has been written about many times. But that doesn't mean it's not worth repeating. Something seems just wrong about the DOJ's focus on the smaller fraudsters and its soft approach to the bigger players.

Hopefully, the SEC's recent decision to send *Wells* notices to Goldman Sachs, JPMorgan

Chase, and Wells Fargo indicating possible enforcement proceedings, means that at least these banks could face some civil liability for their role in the housing crash. And Bank of America recently settled a False Claims Act case with the Feds for $1 billion. But approaching the banks with civil actions, and skirting individual culpability, sends the message that once you reach a certain level of success, you are above the law.

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