

STEPHEN F. LYNCH
8TH DISTRICT, MASSACHUSETTS

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SUBCOMMITTEE ON NATIONAL SECURITY, HOMELAND
DEFENSE AND FOREIGN OPERATIONS

ASSISTANT DEMOCRATIC WHIP

Congress of the United States
House of Representatives
Washington, DC 20515-2109

2133 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
(202) 225-8273
(202) 225-3984 FAX

88 BLACK FALCON AVENUE
SUITE 340
BOSTON, MA 02210
617-428-2000
617-428-2011 FAX

PLYMOUTH COUNTY REGISTRY BUILDING
155 WEST ELM STREET
SUITE 200
BROCKTON, MA 02301
508-586-5555
508-580-4692 FAX

1245 HANCOCK STREET
SUITE 16
QUINCY, MA 02169
617-657-6305
617-773-0995 FAX

LYNCH.HOUSE.GOV

March 13, 2013

The Honorable Eric H. Holder, Jr.
Attorney General
U.S. Department of Justice
950 Pennsylvania Ave. NW
Washington, DC 20530

Dear Attorney General Holder:

I write today to express my appreciation for your recent testimony at a Senate Judiciary Committee hearing last week and my deep concern that some large financial institutions are indeed “too big to jail.”

At this hearing you stated:

I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large.¹

Outgoing Assistant Attorney General Lanny Breuer, who as head of the Justice Department’s Criminal Division led your department’s criminal investigations of Wall Street banks, echoed this sentiment earlier this year in a PBS *Frontline* interview when he advocated for prosecutors speaking to regulators and outside experts about the “economic effect” of bringing criminal charges against a large financial institution.² I recognize the risk that prosecuting a large interconnected bank could cause it to go under, resulting in the same ripple effects in the economy that we saw after the failure of Lehman Brothers.

However, as I am sure you agree, it is deeply troubling that the Justice Department would be discouraged from prosecuting any big Wall Street bank merely because it might have serious economic consequences. Over time such a policy would severely undermine the rule of law. Our criminal code is based on the fundamental idea that potential punishments have a deterrent effect on criminal behavior. Yet, to this day no major Wall Street bank or executive has been prosecuted, much less convicted, for the criminal behavior that caused the crisis. If a bank can become so large that it is effectively immune from meaningful sanctions, what incentive does it have to follow the law?

¹ *Oversight of the U.S. Department of Justice: Hearing Before the S. Comm. On the Judiciary*, 113th Cong. (2013) (statement of Eric H. Holder, Jr., Attorney General, U.S. Department of Justice).

² *Frontline: The Untouchables* (PBS television broadcast January 22, 2013).

Moreover, Justice Department guidelines state that prosecutors should take into account “the risk of harm to the public” before bringing charges against a corporation.³ While this could envision the economic effects of an indictment, it also incorporates the risk of lax criminal enforcement leading to another financial crisis. The recent financial crisis, which was brought on by the bad behavior of Wall Street banks, cost the U.S. economy more than \$22 trillion, according to a recent study by the Government Accountability Office.⁴ If banks are left unchecked, we can expect the next financial crisis to be significantly more costly than any individual bank prosecution.

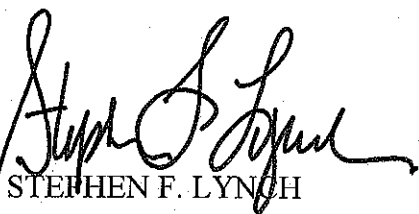
To help me fully understand the Justice Department’s analysis when deciding whether to prosecute a large financial institution, I would like you to answer the following:

1. Does the Justice Department consider the negative effect on deterrence that will arise from deeming some large financial institutions as “too big to jail”?
2. When weighing the economic effect of bringing a prosecution against a bank, does the Justice Department consider the threat of another financial crisis if banks’ criminal behavior goes effectively unchecked?

I wholeheartedly agree with your assessment that some banks have become too big—too big to manage and too big to effectively regulate. However, that should not mean that Wall Street megabanks are above the law.

Thank you as always for your service, and I look forward to your response.

Sincerely,



STEPHEN F. LYNCH
Member of Congress

³ U.S. Department of Justice, Principles of Federal Prosecution of Business Organizations 3 (2003), available at <http://www.justice.gov/opa/documents/corp-charging-guidelines.pdf>.

⁴ GOVERNMENT ACCOUNTABILITY OFFICE (GAO), FINANCIAL CRISIS LOSSES AND POTENTIAL IMPACTS OF THE DODD-FRANK ACT (2013), available at <http://www.gao.gov/assets/660/651322.pdf>.