

# United States Senate

WASHINGTON, DC 20510

October 4, 2016

The Honorable Loretta E. Lynch  
Attorney General  
Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Lynch:

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.<sup>1</sup> 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 [its] pursuit of individual corporate wrongdoing" and to "focus on individuals from the inception of the investigation."<sup>2</sup>

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.<sup>3</sup>

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. He or 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

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<sup>1</sup> Wells Fargo & Company, Form 8-K, filed Sept. 27, 2016 (stating that Wells Fargo is under investigation by "Federal, state and local government agencies, including the United States Department of Justice")

<sup>2</sup> Memo from Deputy Attorney General Sally Quillian Yates on Individual Accountability for Corporate Wrongdoing (Sept. 9, 2015), at <https://www.justice.gov/dag/file/769036/download>.

<sup>3</sup> Nate Raymond, "BNP Paribas Sentenced in \$8.9 Billion Accord Over Sanctions Violations," *Reuters* (July 1, 2014) (online at <http://www.reuters.com/article/us-bnp-paribas-settlement-sentencing-id/USKBN0NM41K20150501>)

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, "[o]ne of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing."<sup>4</sup> 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."<sup>5</sup>

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.<sup>6</sup> 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.<sup>7</sup>

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<sup>4</sup> Department of Justice, "Individual Accountability for Corporate Wrongdoing" (September 9, 2015) (online at <https://www.justice.gov/dag/file/769036/download>)

<sup>5</sup> Matt Apuzzo and Ben Protess, "Justice Department Sets Sights on Wall Street Executives," *New York Times* (September 9, 2015) (online at <http://www.nytimes.com/2015/09/10/us/politics/new-justice-dept-rules-aimed-at-prosecuting-corporate-executives.html>)

<sup>6</sup> James B. Stewart, "Wells Fargo Tests Justice Department's Get-Tough Approach," *New York Times* (September 22, 2016) (online at <http://www.nytimes.com/2016/09/23/business/wells-fargo-tests-justice-departments-get-tough-approach.html>).

<sup>7</sup> See, e.g., Transcript of Q1 2013 Wells Fargo Earnings Conference Call, April 12, 2013, *available at* [http://www.warren.senate.gov/files/documents/2013Q1\\_WellsFargoEarningsCall.pdf](http://www.warren.senate.gov/files/documents/2013Q1_WellsFargoEarningsCall.pdf) ("Our growth reflects the benefit of our relationship model, as demonstrated by achieving record Retail Banking cross-sell of 6.1 products per household."); Transcript of Q2 2013 Wells Fargo Earnings Conference Call, July 12, 2013, *available at* [http://www.warren.senate.gov/files/documents/2013Q2\\_WellsFargoEarningsCall.pdf](http://www.warren.senate.gov/files/documents/2013Q2_WellsFargoEarningsCall.pdf) ("We achieved record retail cross-sell of 6.14 products per household."); Transcript of Q3 2013 Wells Fargo Earnings Conference Call, Oct. 11, 2013, *available at* [http://www.warren.senate.gov/files/documents/2013Q3\\_WellsFargoEarningsCall.pdf](http://www.warren.senate.gov/files/documents/2013Q3_WellsFargoEarningsCall.pdf) ("We deepened relationships across our Company achieving record retail banking cross-sell of 6.15 products per household."); Transcript of Q4 2013 Wells Fargo Earnings Conference Call, Jan. 14, 2014, *available at* [http://www.warren.senate.gov/files/documents/2013Q4\\_WellsFargoEarningsCall.pdf](http://www.warren.senate.gov/files/documents/2013Q4_WellsFargoEarningsCall.pdf) ("By focusing on meeting our customers' financial needs, we achieved record cross-sell across the company with retail banking cross-sell growing to 6.16 products per household."); Transcript of Q1 2014 Wells Fargo Earnings Conference Call, April 11, 2014, *available at* [http://www.warren.senate.gov/files/documents/2014Q1\\_WellsFargoEarningsCall.pdf](http://www.warren.senate.gov/files/documents/2014Q1_WellsFargoEarningsCall.pdf) ("We deepened relationships across our Company, achieving record retail banking cross-sell of 6.17 products per household."); Transcript of Q2 2014 Wells Fargo Earnings Conference Call, *available at*

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."<sup>8</sup>

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.

Sincerely,



MAZIE K. HIRONO  
United States Senator



TAMMY BALDWIN  
United States Senator



RICHARD J. DURBIN  
United States Senator



ELIZABETH WARREN  
United States Senator



RICHARD BLUMENTHAL  
United States Senator



AL FRANKEN  
United States Senator

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[http://www.warren.senate.gov/files/documents/2014Q2\\_WellsFargoEarningsCall.pdf](http://www.warren.senate.gov/files/documents/2014Q2_WellsFargoEarningsCall.pdf) ("We deepened relationships across our company. Retail banking cross-sell was 6.17 products per household."); *see also* United States, Congress, Senate Banking, Housing, and Urban Affairs Committee, "An Examination of Wells Fargo's Unauthorized Accounts and the Regulatory Response," 114<sup>th</sup> Congress, 2<sup>nd</sup> Session, Accessed September 29, 2016. Available at: <http://www.banking.senate.gov/public/index.cfm/hearings?ID=B80F9B81-4331-4F95-91BC-718288EC9DA0> (questions from Senator Elizabeth Warren).

<sup>8</sup> James B. Stewart, "Wells Fargo Tests Justice Department's Get-Tough Approach," *New York Times* (September 22, 2016) (online at <http://www.nytimes.com/2016/09/23/business/wells-fargo-tests-justice-departments-get-tough-approach.html>).



*Kirsten Gillibrand*

KIRSTEN GILLIBRAND  
United States Senator

*Angus King*

ANGUS S. KING Jr  
United States Senator

*Patrick Leahy*

PATRICK LEAHY  
United States Senator

*Edward J. Markey*

EDWARD J. MARKEY  
United States Senator

*Jeffrey A. Merkley*

JEFF MERKLEY  
United States Senator

*Bernard Sanders*

BERNARD SANDERS  
United States Senator

*Ron Wyden*

RON WYDEN  
United States Senator

*Amy Klobuchar*

AMY KLOBUCHAR  
United States Senator