

Department of Justice Won't Prosecute Banks

The announcement by Attorney General Eric Holder's Justice Department of agreement with Barclays Bank on a fine for Libor-rigging, indicates how Holder will protect these banks from prosecution. Note particularly that the DoJ considers it "mitigating" against criminal punishment, that other banks committed the same Libor-rigging Barclays did, and may have been more egregious at it. Would this "comparative standard" be applied, for example, to home break-ins and robberies? Here was robbery on a grander scale.

Reports already have Holder's DoJ offering immunity to two other megabanks, HSBC and UBS.

From the DoJ's announcement June 27: "Barclays has implemented a series of compliance measures and will implement additional internal controls regarding its submission of LIBOR and EURIBOR contributions, as required by the Commodity Futures Trading Commission (CFTC). Barclays will also

continue to be supervised and monitored by the FSA.

"The agreement and monetary penalty further recognize certain mitigating factors to Barclays' misconduct. At times, Barclays employees raised concerns with the British Bankers Association, the United Kingdom Financial Services Authority (FSA), the Bank of England, and the Federal Reserve Bank of New York in late 2007 and in 2008 that the Dollar LIBOR rates submitted by contributing banks, including Barclays, were too low and did not accurately reflect the market. Further, during this time, notwithstanding Barclays's improperly low Dollar LIBOR submissions, those submissions were often higher than the contributions used in the calculation of the fixed rates.

"As a result of Barclays's admission of its misconduct, its extraordinary cooperation, its remediation efforts and certain mitigating and other factors, the department agreed not to prosecute Barclays for providing false LIBOR and EURIBOR contributions, provided that Barclays satisfies its ongoing obligations under the agreement for a period of two years. The non-prosecution agreement applies only to Barclays and not to any employees or officers of Barclays or any other individuals."