

Judge Orders HSBC to Make Money-Laundering Report Public

By Kevin Jones, J.D. Candidate 2018 | February 22, 2016

In December 2012, the Department of Justice [filed](#) to prosecute HSBC Bank for violating the Bank Secrecy Act, Emergency Economic Powers Act, and Trading with the Enemy Act. The Department of Justice's investigation revealed significant evidence showing HSBC officers engaged in business protocol that allowed drug cartels in several different nations to launder money internationally. Before taking the case to trial, the Department of Justice agreed on a settlement with HSBC.

HSBC agreed to pay a \$1.92 billion dollar fine and bring in an outside corporate compliance monitor for five years. In exchange for these penalties, federal prosecutors allowed HSBC to enter into a deferred agreement instead of a guilty plea and conceded to prosecute any individuals for their illegal behavior. Judge Gleeson openly expressed reluctance to approve the deal but ultimately [signed](#) off on the settlement in July 2013, with the condition that quarterly reports would be filed.

Many legal and political experts have debated the merits of the plea bargain. While Attorney General Loretta Lynch (U.S. attorney in Brooklyn at the time of this case) [announced](#) the settlement as a victory over egregious corporate conduct, others [criticized](#) the deal, claiming the failure to prosecute demonstrated the U.S. Government's inability to regulate egregious corporate conduct by international financial powerhouses. Currently, the focus of scrutiny has shifted to a debate as to whether the records of HSBC should be released to the public. Both the Department of Justice and HSBC have objected to disclosure of records.

However, on January 28, 2016, Judge Gleeson ruled that HSBC's filed reports must be [publicly](#) revealed as part of the official judicial record. Judge Gleeson took note of Monitor Michael Cherkasky's 1000-page report, in which he [cited](#) how HSBC had been fighting compliance. The prosecution argued for record concealment, because it believed that the report would provide information that could be used to develop a [roadmap](#) that would enable other banks to work around anti-laundering efforts. If Gleeson's order is upheld on appeal, this will have a major impact on the future landscape of prosecution dealings with financial corporations.

This case conveys the complexities inherent in policies related to the disclosure of corporate compliance reports. On one hand, the revealing of records could perversely incentivize corporations to fight the government in lengthy litigation battles and refuse outside monitors. The records could also serve as a guide on how to better operate illegal financial practices. Conversely, if the courts choose to reveal records, this practice may incentivize the Department of Justice to develop non-prosecution deals with institutions in order to circumvent judicial power. Regardless, unless an alternative regulatory process can be developed, the current prosecutorial system may be toothless in its efforts to effectively protect the defenseless communities largely impacted by illegal corporate behavior.