LIBOR - the world's largest and most elite banks guilty. Who's going to jail?

Summary:
The 14-year sentence handed to Tom Hayes, the Yen trader at the centre of the Libor-fixing scandal in the UK, is the longest sentence yet in a scandal that has cost his former employer UBS, and others, US$17 billion in fines. This is the biggest banking financial scandal in history and plenty of people don't want you to know about it.

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LIBOR: History's Largest Financial Crime That The Wall St Journal And New York Times Would Like You To Forget

I read a BBC story about the LIBOR criminal trial in the UK and was going to write to criticize its woeful analytics. In preparation I checked the New York Times and the Wall Street Journal to see how they reported the devastating testimony in the trial. I could not, however, find any coverage in my electronic searches and viewing their web pages.

To review the bidding, **the LIBOR bid rigging cartel was the largest cartel in history, manipulating the prices of an estimated $300+ trillion in assets. That is a figure considerably larger than the world's combined GDP.** Here are typical statements by the Department of Justice (DOJ) about the LIBOR cartel.

"For years, employees at Deutsche Bank illegally manipulated interest rates around the globe – including LIBORs for U.S. Dollar, Yen, Swiss Franc and Pound Sterling, as well as EURIBOR – in the hopes of fraudulently moving the market to generate profits for their traders at the expense of the bank's counterparties," said Assistant Attorney General Caldwell. "Deutsche Bank is the sixth major financial institution that has admitted its misconduct in this wide-ranging criminal investigation, and today's criminal resolution represents the largest penalty to date in the LIBOR investigation."

"Deutsche Bank secretly conspired with its competitors to rig the benchmark interest rates at the heart of the global financial system," said Assistant Attorney General Baer. "Deutsche Bank's misconduct not only harmed its unsuspecting counterparties, it undermined the integrity and the competitiveness of financial markets everywhere."

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Until recently, I called the LIBOR cartels the largest in history by at least three orders of magnitude. The rigging of foreign exchange (FX) "markets," however, is so large that that I now have to say that they represent the two largest cartels in history by roughly three orders of magnitude. Both cartels consisted of most of the world's largest and most elite banks. Indeed, UBS has admitted that after it signed its anti-prosecution agreement with DOJ for its massive LIBOR frauds it violated that deal by continuing to rig the FX "markets" as a member of a group that called itself "the Cartel." Contrary to theoclassical ideology, both cartels persisted for many years and were ended only by (desultory) government action.

Naturally, DOJ and the UK's Serious Frauds Office (SFO) have refused to prosecute any of the elite bank officers that led the Libor and FX cartels. The SFO is, however, prosecuting Tom Hayes, a low-level trader who confessed (then changed his mind) to being part of the conspiracy to rig LIBOR. Hayes worked at two of the recidivist criminal banking organizations – UBS and Citigroup. The two useful things about prosecuting low-level employees are that it often reveals that the senior managers knew of and supported the fraud – and that the prosecutors knew this to be true and nevertheless refused to prosecute the senior managers' crimes. The BBC story is so embarrassing because it misses both points. But the title of the BBC article shows why the NYT and WSJ's failure to report on the trial revealing details of the largest financial crime in world history is particularly bizarre because the trial is revealing facts that real journalists would be thrilled to report. The BBC title is: "Libor rates could be changed for a Mars bar, court hears." Now, that is a title that could make a journalist famous, and it reveals graphically to the general reader just what "the corrupt culture of banking" in the City of London means. So, we have a news event of surpassing substantive importance plus testimony that sells newspapers. This explains why the NYT and the WSJ ignored the story (irony).

The BBC story about the LIBOR trial starts strong.

Tom Hayes, who worked for UBS and Citigroup, told a fellow trader: "Just give the cash desk a Mars bar and they'll set wherever you want."

Mr Hayes is the first person to face a jury trial for manipulating the key interest rate, used to set trillions of pounds of investments.

Better yet, Hayes' statement was not one he made after his confession in hopes of getting a lighter sentence. The BBC story continues powerfully by showing the context of Hayes' remark and why it is so incriminating about the City of London's corrupt culture and the criminality that existed at all of the elite banks involved in fixing LIBOR.

Throughout Wednesday's session, the court was shown dozens of pages of transcripts of exchanges between traders using UBS's internal messaging system.

The conversations – matey in tone – all related to moving Libor rates, said Mr Hayes, to assist the traders' and banks' commercial interests, something he said he found it hard to see as wrong.

In one chat, Mr Hayes suggests the market is rife with dealers attempting to influence rates: "Very, very hard to price stuff with the fixes so manipulated and inconsistent."

His correspondent replies: "The fixes are manipulated?"

"Yes, of course they are," says Mr Hayes. "Just give the cash desk a Mars bar and they'll set wherever you want."

Another chat session described Libor as "literally a joke".

And note the moral-free zone that is the City of London (and Wall Street). (The BBC thinks the "tone" is "matey." The "tone" is "criminal" – the people involved sound exactly like what they are – blatant, privileged crooks. Hayes cannot see anything wrong in aiding the largest criminal cartel in history because what he was doing increased UBS' profits.

The BBC's key failures were missing the two giant points that emerged from Hayes' statements and the documents the prosecutors and defense counsel introduced into evidence – the senior managers at UBS knew of the fraud and aided it – and the SFO knew that they did but has refused to prosecute them. Reuters' article about the trial is even more embarrassing than the BBC's on these two points because it tries to spin what is in substance an admission by senior UBS managers of criminal culpability into a "warning" to Hayes to stop rigging LIBOR. The problem begins with the article's title: "Former trader Hayes ignored 2009 warning, Libor trial hears." The lede is crafted to mislead.

Tom Hayes, the former trader on trial on Libor interest rate rigging charges, told a London court on Wednesday he ignored a 2009 warning to stop trying to influence rates in part because he was pre-occupied with moving jobs.

The sentence is nonsensical for multiple reasons I will soon explain, but it is also carefully crafted by the prosecution to mislead. The article inadvertently begins the process of exposing why the claim is miseading. First, the article correctly describes the SFO's preposterous theory that the largest financial conspiracy in his history was created by the crude machinations of a single trader at UBS without the knowledge of any senior bank officers at any of the roughly 17 banks that formed the real world conspiracy being aware that they were routinely rigging the LIBOR rates.

Prosecutors allege Hayes, a former star trader at UBS (UBSG.VX) and Citigroup (C.N), set up network of brokers and traders that spanned some of the world's most powerful financial institutions to rig Libor for profit, cheating counterparties.

Hayes has pleaded not guilty to eight counts of conspiracy to defraud between 2006 and 2010, saying he was open about trying to influence rates, that his managers knew what he was doing and that the practice was widespread in the industry.

By "star trader" they mean that Hayes was a "slime trader." He made money in financial trades the old-fashioned way that requires only minimal business skills – he cheated. When he made bad trades and UBS would have suffered a loss he worked with other UBS personnel and personnel from over a dozen elite banks to manipulate LIBOR so that his bad trade would become a profitable trade. No one who knows anything about how LIBOR was set and rigged (which required the coordinated, criminal actions of many of the world's largest banks nearly every business day) believes that Hayes masterminded this real world conspiracy – and hid it successfully for five years. Under the prosecution's theory, this one trader rigged the rates on over one-thousand trillion dollars in financial transactions – and successfully hid that fact from every high level officer at roughly 17 of the world's most sophisticated financial institutions.

Hayes' testimony is that "his managers" knew about the criminal conspiracy and "that the practice was widespread in the industry." The obvious question, which the BBC and Reuters fail to ask, much less analyze, is: why have none of these senior managers been prosecuted by the SFO and DOJ? Hayes' lawyers promptly documented one of the reasons that the prosecutors' claim that Hayes was the "idiot-savant" responsible for the world's largest financial conspiracy was a myth. The rigging of LIBOR was widespread before Hayes even joined UBS.

Prosecutors say Hayes bullied and cajoled fellow traders and brokers to move benchmark rates to make his positions more profitable. Hayes's lawyers say the practice was widespread.

Conversations between traders and submitters pre-dating Hayes's arrival at UBS in 2006 were read by Hayes's lawyers, which they said showed the bank was already setting Libor according to its trading positions.

"Do we have fixings?" the yen rate-setter asked a trader in a September 9, 2006, chat.

"Net -50bio 6m today let's go lower 6m Libor," the trader replied, referring to the six-month yen Libor submission.

Hayes's lawyers produced another e-mail from March 2006, months before he joined Zurich-based UBS.

A trader asked submitters for a specific rate on a six-month position. "6m fra we're long we want high Libor fixing," referring to a position in forward rate agreements.

Hayes' nickname at UBS was "Rain Man" – after the idiot-savant character in the movie of that name. Hayes' lawyers presented a medical opinion that he has Asperger's Syndrome. People with that syndrome are particularly unlikely to be able to recruit dozens of officials at over a dozen banks to join a vast conspiracy.

Second, we know that senior managers at UBS knew of the LIBOR fraud schemes – and advised their traders to hide their rigging of LIBOR more carefully. We also know that the SFO has conclusive evidence of that fact. Bloomberg reports these two key points of documentation.

Lawyers for Hayes on Wednesday also read transcripts from other UBS employees about Libor rates. In one exchange from 2008, senior manager Panagiotis Koutsogiannis told a trader to "JUST BE CAREFUL DUDE."

The trader responded "I agree we shouldn't ve been talking about putting fixings for our positions on public chat."

Koutsogiannis hasn't been accused of wrongdoing by prosecutors.

With these facts in mind, we can return to the fake meme pushed by the prosecutors and accepted so naively by Reuters. The claim is that UBS' senior managers were innocent babes deceived by the cunning and bullying Hayes. As soon as UBS' senior managers learned of Hayes' actions in creating and leading the largest financial conspiracy in the history of the world they were shocked and immediately acted to stop his crimes. The same senior managers were then distressed to learn years later that Hayes "ignored a 2009 warning to stop trying to influence rates" and continued to run that same conspiracy.

I promised to explain why that claim is nonsensical. One, it confirms rather than refutes that UBS's senior officers knew of Hayes' (and many others') criminal actions. Two, the phrase "trying to influence" is crafted to deceive. Hayes wasn't part of a process that was "trying to influence" LIBOR – he was part of a real life conspiracy by the largest banks of the world to actually, effectively, and routinely rig the LIBOR rate to create large profits for the banks and the traders (and avoid large losses) through cheating.

Third, Hayes and his counterparts at the other firms that were part of the immensely successful conspiracy to rig LIBOR left (as the prosecutor's own case shows, and the defense has supplemented) one of the most obvious "paper" trails in history of how and why the bankers engaged in this scheme and documents that the scheme was routinely successful in rigging LIBOR. Internal audit should have documented these crimes easily by simply reviewing the "IM" messages.

Fourth, that arrogance and sense of assurance that no one at the firm or the City of London's anti-regulators would look, so there was no need for the traders to even attempt to hide what they were doing from their bosses, from internal audit, and from regulators and prosecutors tells us how corrupt the largest City of London banks became. Banks, of course, can only be corrupted by their senior bankers, who have to create the corrupt "tone at the top" and must suborn normal internal and external controls.

Fifth, we know from the contemporaneous record that senior managers at UBS did know that their bank and bankers were part of a vast conspiracy to rig LIBOR. We also know their response – to offer advice on how to continue to commit the crimes without leaving such an obvious "paper" trail.

Sixth, the purported warning in 2009 to Hayes to comply with the law makes no sense under its own supposed terms. Instead, it makes sense only if it is interpreted (as Hayes testified he in fact interpreted it) as another warning to stop creating such an obvious "paper" trail. Here is Reuter's account of "the warning."

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On his second day in the witness box at Southwark Crown Court, Hayes said his UBS boss, Mike Pieri, telephoned him in August 2009 to warn him against sending emails to try to influence UBS's own Libor rate submission.

Hayes, 35, said he was surprised by the request, but interpreted it as meaning: "carry on doing it but don't send any emails"

Assume for purposes of analysis that you are an honest senior officer of UBS back in 2009. Under the fable crafted by the prosecutors, you learn (and how you learn would be a vital point) for the first time in 2009 that your "star trader" has made UBS a key participant in the largest criminal conspiracy in world history for at least three years. As an honest senior officer you have several choices on how to proceed. In the U.S., you would have a regulatory obligation to promptly make a criminal referral to the FBI and DOJ. In the UK, you could make a criminal referral to the SFO. You would definitely pick up the phone and call the bank's General Counsel and the CEO. You would fire Hayes and begin an investigation that would look immediately at the "IM" "paper" trail. That would quickly lead you to fire Koutsogiannis. You would realize that Hayes could only act through changing the LIBOR submissions of UBS and many of the other largest banks in the world, so you would start an investigation that would promptly lead you to fire the UBS LIBOR submitter.

Or, you could do what Pieri actually did – none of the above. No honest manager would proceed to give a "warning" that could only logically be interpreted by Hayes as a warning to stop leaving such an obvious "paper" trail.

The BBC article also failed to note an instructive part of Hayes' defense. He claimed that he confessed in the UK because he was desperate to be prosecuted in the UK rather than face extradition and U.S. prosecutors. (Hayes is a Brit who was primarily based in Tokyo.) From the U.S. perspective, we are justly enraged at the failure of DOJ to prosecute any of the elite bankers who led the three fraud epidemics that drove our financial crisis. The sad truth is that as pathetic as the DOJ has been in this sphere, UK bankers know that the SFO is even more farcical. Hayes' "revealed preference" in desperately seeking to avoid prosecution in the U.S. is a powerful demonstration of one of the reasons that the City of London "won" the regulatory and prosecutorial "race to the bottom" in finance and made the City the financial cesspool of the world. The SFO's refusal to prosecute any of the City's elite bankers and its creation of the fable of the innocent senior UBS managers deceived by the wily "Rain Man" are further proofs of why an external review of the SFO concluded that it had, de facto, largely decriminalized elite financial crimes. As weak as it already was, one of the Tories early acts was to slash the SFO's funding to ensure that it would not prosecute the party's corrupt banking patrons who are the party's leading contributors.

Websites For More Information: LIBOR: History's Largest Financial Crime that the WSJ and NYT Would Like You to Forget
http://neweconomicperspectives.org/2015/07/libor-historys-largest-financial-crime-that-the-wsj-and-nyt-would-like-you-to-forget.html
Lie-bore: powerful bank regulators running out of excuses
https://theconversation.com/lie-bore-powerful-bank-regulators-running-out-of-excuses-45756

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