

The recent revelation that Attorney General Eric Holder and Justice Department Criminal Division head Lanny Breuer were, prior to joining the Justice Department (DOJ), partners in a law firm with ties to financial institutions at the forefront of the foreclosure fraud scandal has added to skeptics' suspicions that close personal ties between the Obama administration and Wall Street are obstructing efforts to hold America's top financiers to account. In the context of the rumored impending mortgage fraud settlement between major banks and the federal government - critics have denounced it as a sweetheart deal for major banks - these suspicions seem well-founded. Despite candidate Obama's message of change, his is a well-connected administration that appears willing to allow America's most vulnerable citizens to bare the burden of the 2008 financial crisis.

DOJ Tax Division Assistant Attorney General Kathryn Keneally seems to be pursuing offshore assets disclosure vigorously in Switzerland, and has said in recent interviews in the German press that she has her eyes on other countries, but so far not much action has been reported.

Kathryn Keneally was a partner at New York-based firm Fulbright and Jaworski and a decorated tax law specialist who has represented a diverse array of clients, including the estate of Bob Marley and Ferdinand Marcos. That clientele also includes well-heeled financial institutions with a less than stellar record of adhering to federal tax law. In financial disclosure forms, Keneally revealed that since January 1, 2010, she has, in separate instances, performed "legal services" worth over \$5,000 for AIG, Citibank and HVB Group.

To underscore how checkered these financial institutions' taxpaying histories are, in September 2011, AIG was described by ProPublica as a "pioneer" in using foreign tax credits to dodge taxes. In 2006, Citibank reached a \$20 million tax evasion settlement with the DOJ, and has been described by Tax Justice Network ("an independent organisation launched in the British Houses of Parliament in March 2003") as engaging in "repeated, aggressive tax evasion ... g]oining back decades." And HVB Group was found guilty of having helped KPMG set up a tax evasion scheme throughout the last decade.

Keneally said, at her November 2011 Senate Judiciary Committee confirmation hearing, that while past clients include those in IRS amnesty programs, she has never helped a client construct a tax evasion scheme, nor has she ever helped financial firms with tax planning. She also said that she has encouraged clients to bring assets into compliance with US tax laws, and stressed her awareness of the revolving door and her experience wrestling with ethical issues as a member of the American Bar Association Ethics Committees. She also emphasized her belief that the Tax Division's offshore tax compliance initiative is a "very important priority," and said that the "IRS and Tax Division should be commended."

But comments she has made in articles she has written over the past few years - before she was considered for any federal position - would cause any federal official serious about enforcing tax laws to look at her record askance.

At her confirmation hearing, Sen. Charles Grassley (R-Iowa), one of two senators present for the question and answer part of the hearing, asked how she could reconcile the subtitle of a 2007 article she co-wrote - "The War On Tax Shelters Will Give Rise to an Entrenched Enforcement Mindset" - with the responsibilities of a Tax Division chief, when, he said, "me and others believe just the opposite." Sen. Carl Levin (D-Michigan) also submitted questions for the record probing her past criticism of [IRS crackdowns](#).

And in a February 2010 New York Law Journal article, "[The Taxman Cometh](#)," (p. 21 of the pdf) the very first justification Keneally offered for the maintenance of "foreign bank accounts" is that "[i]n many cases, the accounts were set up in safe havens, such as Switzerland, at a time when horrific events were occurring in other countries, such as Nazi Germany."

Keneally also said in "[Eager For the Battle](#)," a 2009 Careers in Tax Law article (p. 45 of the pdf), that she "most enjoyed disputes with the government," and that "[m]any of my favorite matters are those that will never become tax controversies if I can help it.... In these cases ... There may be, to use the vernacular, 'accounting irregularities'; statements, perhaps, that are music to the ears of any banking executive who wants intimate knowledge of the Tax Division's decision-making process in a few years time

Also of note, Keneally did not disclose in either article that she worked for the IRS at the time, as liaison to the director of the Office of Professional Responsibility.

At her confirmation hearing, Keneally defended her criticism of IRS crackdowns, telling Senator Grassley that they represented a belief that IRS initiatives "were maybe a bit much in the average examination of the ordinary taxpayer," and that "the IRS has made some changes along the lines that were suggested in that [2007] article." And in "Eager For the Battle," Keneally said that, as a defense attorney, she viewed the IRS and the federal government as "fair," and "noble adversaries." She also said that she is "happiest," as a lawyer, "when I can vindicate someone's rights."

Nonetheless, Keneally's comments, especially considering her relationship to those who have made hiring decision for tax-dodging financial behemoths, could reasonably concern those anxious about Republicans (and Democrats) chomping at the bit to use federal fiscal woes as an excuse to drown social safety nets and regulatory organizations in a bath tub. The Tax Division is tasked with overseeing civil and criminal tax-related prosecutions in concert with the IRS and US attorneys' offices, as well as defending the federal government in tax-related lawsuits. In 2008, the Tax Division defended the federal government in cases

worth \$9.5 billion. And every year, the division recoups its budget many times over by bringing in around \$1 billion annually in penalties and settlements.

The amount the division brings in might constitute a drop in the ocean, but without a division committed to credible deterrence, the amount lost to offshore havens and other forms of tax evasion, and the amount lost by the government in lawsuits could all increase, putting additional pressure on the federal budget. Earlier this year, the IRS estimated that 15 percent of all federal taxes went unpaid in 2006. That figure - \$385 billion - exceeded the federal deficit that year by about \$137 billion. And the Senate Permanent Subcommittee on Investigations estimated in 2008 that US tax revenue lost to offshore havens was \$100 billion.

Thus, Keneally's past is a matter of intrigue - evidenced by senators' line of questioning (although none publicly mentioned clients she disclosed). At the very least, if her appointment is confirmed by the Senate, Keneally will have to make a number of recusals during her tenure - she also disclosed that she has been paid over \$5,000 each by 28 different individuals/married couples, two partnerships and two corporations for "legal services" involving "grand jury or other non-public matters and the client name was not made public." At the worst, she could end up swaying - even if only implicitly - the Tax Division's decision-making process.

When asked to comment on behalf of Keneally, Adora Andy, a spokesperson for the DOJ, said in an email that the nominee "is on the record before the Judiciary Committee in which she said that her work has been to keep her clients in compliance with tax law and also that she has committed to adhere strictly to the applicable conflict of interest standards."