

Obama's Legacy: Too Rich to Jail

by

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When Attorney General Eric Holder announced his resignation last September, The Daily Curreant headlined: “Eric Holder Takes \$77 Million Job With JP Morgan Chase.”¹ As with all good satire, it had the ring—or is that the sting—of truth. You had to read a couple of paragraphs before you realized it was a joke; and after that the laughs kept coming in almost geometric increments.

Then again, the joke is on the American people. Although he is still on the public payroll, and certainly has not yet announced he is taking a job with JPMorgan Chase, Holder continues to act as if he is in Jamie Dimon's employ. This is an Attorney General who has never grasped what his job is. Instead of enforcing the criminal laws against our nation's biggest criminals, he squanders money persecuting impoverished welfare recipients for alleged welfare fraud and allows the bankers who steal billions of dollars to get off scot-free. Despite the fact that it is obvious to every literate American that Wall Street banksters caused the 2008 financial meltdown, Holder hasn't brought a single indictment against a banker for the sub-prime mortgage fraud, for the Madoff fraud, for the manipulation of the foreign exchange markets, for the manipulation of the commodities markets, for fraudulent debt collection practices, for fraudulent foreclosure practices.

The list goes on and on but the Number 1 lawyer in this country claims he just doesn't see the crimes. “Responsibility remains so diffuse, and top executives so insulated,” Holder said in 2014, “that any misconduct could again be considered more a

¹ <http://dailycurreant.com/2014/09/26/eric-holder-takes-77-million-job-with-jpmorgan-chase/>

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symptom of the institution's culture than a result of the willful actions of any single individual." So individuals at banks like JPMorgan Chase aren't responsible for their crimes? Small wonder Holder's administration has been a criminals-free time zone for all of the big time crooks.

In public comments he gave last month at the National Press Club, Holder mentioned that he has given his staff 90 days to come up with evidence to support prosecutions of Wall Street bankers for wrongdoing involving the sale of mortgage-backed securities in the years leading up to the financial crisis. Holder has had seven years but now he's in a hurry. He explained to his audience that "To the extent that individuals have not been prosecuted, people should understand it is not for lack of trying."

Excuse me? The man must be having a senior moment. Holder is sitting on evidence supplied by whistleblower Alayne Fleischmann that JPMorgan Chase officers knowingly and deliberately misrepresented the quality of loans they packaged into mortgage-backed securities. As reported in Chapter 5 of *JPMadoff: The Unholy Alliance Between America's Biggest Bank and America's Biggest Crook*, Ms.

Fleischman is a graduate of Cornell University Law School and, in 2006, after several years of practice at a large Wall Street law firm, she was hired by JPMorgan Chase as a transaction manager. In that position, she was responsible for quality control on the mortgages JPMorgan Chase packaged and sold to investors. In late 2006, Ms.

Fleischman saw that loan officers were being pressured by their superiors to package loans that were not creditworthy and to lie to their prospective customers about the quality of these loans. Bank officers instructed the people in Ms. Fleischman's group not to put anything in writing about the loans. Ms. Fleischman reported this to a managing

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director at JPMorgan Chase. When he did nothing to address her ethical concerns, in January 2007 she filed a written complaint with another managing director, who does not appear to have done anything about it either. She was let go by the Bank in February 2008.

In 2012-13, Ms. Fleischman discussed the fraud she witnessed with the Securities and Exchange Commission and the United States Attorney's Office in California, both of which said they were investigating JPMorgan Chase's role in the mortgage crisis. She fully cooperated and gave the government attorneys both anecdotal and documentary evidence of the fraud and how JPMorgan Chase ignored her warnings.

In Ms. Fleischman, the government had a perfect witness. She is poised and articulate; she has no ax to grind against JPMorgan Chase; she was not suing the Bank or seeking money for her story; and she had done everything right: most particularly, filing her complaints in writing for, while witnesses die or lie, documents do not. And the defendant was not exactly sympathetic; it was the "great white whale" you would think any prosecutor would swoon to bring down—for prosecutors are lawyers and lawyers like to do their jobs—with the notable exception of Eric Holder.

Holder's expected September 2013 announcement of civil fraud charges against JPMorgan Chase never happened. According to investigative reporter Matt Taibbi in *The Rolling Stone*, JPMorgan President/CEO Jamie Dimon stepped in to negotiate with the Justice Department personally and offered \$ 3 billion to settle out of court. Fleischmann's evidence was reportedly used by the Department of Justice to push Dimon up to \$13 billion as a settlement (which Taibbi explained was really only \$9

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billion). (Once a fraudster, always a fraudster).² No one went to jail; no one lost his job; no one had to disgorge his bonuses. Now isn't that the American way a la Eric Holder?

The mortgage crisis caused trillions of dollars of losses to honest, hard-working Americans and nearly brought down the world banking system. But as large and destructive as that fraud was, it is rivaled, if not exceeded, by what Holder is doing. Indeed, the Obama administration has positioned Wall Street to pull off an even bigger scam than it pulled off in the years leading up to 2008.

For Holder to suggest that there have been no prosecutions because, despite his Department's best efforts, he has not been able to come up with sufficient evidence to prosecute would, but for the fact he is Attorney General of the United States, constitute a misprison of felony. It is also a slap in the face to whistleblowers like Ms. Fleishmann, and while it will have no deterrent effect on the banksters, it is likely to deter future whistleblowers: why go through the agony of being a whistleblower if prosecutors aren't going to enforce the law?

Eric Holder is the only U.S. Attorney General to have been found in criminal contempt of Congress.³ But Holder's misdeeds are far greater than contempt of Congress. Holder has shown contempt for the laws of this country and contempt for honest, hard-working Americans who want to live in a country that is not ruled by Wall Street banksters. His instructions to his subordinates to put together a case against banksters in the next 90 days is a patent demonstration of that contempt. No one can put together a criminal prosecution of a complex commercial fraud case in 90 days. It takes months, if not years, of careful preparation. Whatever may be the talents of his

² Matt Taibbi, The \$9 Billion Witness: Meet JPMorgan Chase's Worst Nightmare, Rolling Stone, (Nov. 6, 2014), <http://www.rollingstone.com/politics/news/the-9-billion-witness-20141106>

³ <http://www.cnn.com/2012/06/28/politics/holder-contempt/>

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subordinates, many of whom are real, as distinct from paper, prosecutors, Holder might as well have told them to build Rome in a day. It is surprising that Holder could not have come up with a much better lie.

Perhaps Holder has reached that stage in his public career where he just does not care anymore. He will undoubtedly leave office with platitudinous paeans from President Obama, his successor, Loretta Lynch, and the Democratic leaders of Congress who are on the Wall Street dole. And while he may not immediately take a job at JPMorgan Chase for \$77 million, he will likely land at a large law firm or corporation with a banker's compensation package. So why bother to make enemies of people with deep pockets?

One answer is: "You swore to enforce the laws of the United States." Obviously, that did not motivate Holder. And, unfortunately, the Attorney General's office was, historically, more often than not a political sinecure. Presidents made their campaign managers either Postmaster General or Attorney General. Once in a blue moon it worked well: think of Robert Kennedy, America's legendary Attorney General. Most of the time it did not: Harry Daugherty was Warren Harding's campaign manager turned Attorney General; John Mitchell was Richard Nixon's. The former will forever be linked to the Teapot Dome scandal, the latter to Watergate.

If they do not get appointed to the Supreme Court, former Attorneys General lead lives of well-remunerated anonymity. If one were asked to choose from the following five names and identify the one that is not a former Attorney General, how many would get it right: Herbert Brownell, Abram Chayes, Edward Levi, James McGranery, and

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William Saxbe. The question is not biased toward a by-gone era, as the four who did serve as Attorney General all served in 1950 or later.⁴

Except for the rarities who shine positively or negatively, Attorneys General have no legacy; that prerogative belongs to the President, whose legacy ultimately can be elevated or decimated by the actions of the soon to be anonymous people working under him. Ulysses S. Grant, Warren Harding and even Harry Truman, were all regarded as having corrupt administrations, though none of them was ever thought to be personally corrupt.

One President, in his time, may be associated with several major issues that make his historical image, for better or worse, and this has certainly been true of recent incumbents: Lyndon Johnson: Vietnam and Civil Rights; Richard Nixon: opening China and Watergate; George W. Bush: 9/11 and the wars in Iraq and Afghanistan. Much of the darker side of each of these issues, again for better or worse, was shaped by the President's advisors. So, we have to blame President Obama for this disgrace. Eric Holder is not playing with his own legacy but with Obama's.

There is still time for Holder to mitigate the damage he has caused; to say publicly that, having reviewed Ms. Fleischman's evidence, he is directing the immediate prosecution of senior officers of JPMorgan Chase. If Eric Holder cannot be a crime busting prosecutor in the mold of Thomas Dewey or Rudolph Guiliani, he at least should not be a Brutus. It is not Holder who will go down in history as "Mr. Too Rich To Jail." That is Barack Obama's legacy.

⁴ Herbert Brownell was Attorney General in the Eisenhower Administration from 1953 to 1957; Abram Chayes was Legal Advisor to the State Department from 1960-63; Edward Levi was Attorney General in the Ford Administration from 1975 to 1979; James McGranery was Attorney General in the Truman Administration from 1952-53; William Saxbe was Attorney General in the Nixon Administration from 1974-75.