

## **We are Rooting for You, Loretta Lynch. And for Justice.**

by

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As readers of this website know, we are hardly fans of Eric “too rich to jail” Holder. Indeed, the impetus for our book, “JP Madoff: The Unholy Alliance Between America’s Biggest Bank and America’s Biggest Crook” was Holder's refusal as Attorney General to prosecute a single criminal banker for the litany of indisputable crimes committed in the last eight years and his sale of get-out-of-jail-free cards to senior officers of JPMorgan Chase so that they were not prosecuted for their complicity in Madoff's crimes and for their dishonesty with respect to the "London Whale" scandal. We are by no means sorry to see Holder go and to welcome the new Attorney General, Loretta Lynch.

Predictably, Mr. Holder exited office by giving a Christmas present in April to Deutsche Bank traders for their role in the LIBOR interest rate scandal—a guilty plea and a \$2.5 billion dollar settlement by the bank, but no jail time for anyone—despite the fact that the Justice Department had emails in which Deutsche Bank traders revealed that they knew they were committing crimes and they boasted about it. Not since Bill Clinton pardoned Mark Rich on Clinton’s last day in office has there been such a disheartening example of the power of big money. But bank fraud is not a victimless crime and one would hope that someone in our country 'tis of thee would want to protect innocent Americans against ruthless criminal bankers. No such person has yet appeared in the Obama administration.

While we therefore welcome Ms. Lynch’s ascension to the office, in candor, we probably would say that anyone short of Jamie Dimon as Attorney General would likely be an improvement over Mr. Holder. Nonetheless, in addition to a natural tendency to give Ms. Lynch the benefit of the doubt and sincere good wishes, there are some things that give hope. In addition to an impressive resume, Ms. Lynch handled her confirmation hearings superbly, her answers being both thoughtful and well reasoned.

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On the other hand, she served as a director of the New York Federal Reserve Board from 2003 to 2005, where she worked with people like former Citigroup Chairman Sandy Weill and ex-Lehman Brothers CEO Richard Fuld. Not men to be proud of. And, as United States Attorney from the Eastern District of New York, she was involved in two high profile financial fraud cases, one in which Citicorp paid \$7 billion in settlement for its role in the mortgage- backed securities fraud, and one in which HSBC paid \$1.7 billion and took a deferred prosecution agreement for facilitating money-laundering. Both cases are hallmarked by a too common refrain: no one went to jail. In this respect, these two prosecutions were an insult to the American public.

Of course, knowing thy enemy from the inside may not be a bad thing and Ms. Lynch may plausibly say that, as a U.S. Attorney, she had to follow the policies of the Attorney General concerning whom she did and did not prosecute. But therein lies the rub. No Attorney General is completely free of the policies imposed by the President. To the extent President Obama is the problem, neither Ms. Lynch nor anyone else is likely to be the solution.

Ms. Lynch's words at her confirmation hearing were politically correct, but she will ultimately be judged by her deeds. And, because most new Presidents appoint a new Attorney General, Ms. Lynch's time for action is short. One of the biggest obstacles to Ms. Lynch's ability to pursue any policy agenda will be the question of whether she is effectively a caretaker, treading water under a lame duck President. And one of her biggest challenges will be to dispel that image as soon as possible.

With that in mind, we issue an urgent public plea to Ms. Lynch: while the road to redemption may be long, it starts with a single step. Here are three steps she can take in her first month in office that will establish her bona fides.

First, seek the indictment of at least one senior bank officer and announce that any plea deal will entail significant jail time. It is really very simple: one prosecution is worth a thousand settlements. Settlements get paid for by the shareholders; but not even Jamie Dimon can buy a proxy to serve his jail time. Once Wall Street sees that someone like Jamie Dimon can be put in jail, the ethical standards of America's bankers will rise sharply.

Second, seek legislation requiring that if a federally insured financial institution is required to pay fines to or settlements with any regulatory agency aggregating more

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than \$2.5 billion in any two year period based on conduct that, if established, would constitute a crime under any law, then the CEO, President, and all Board members must step down, disgorge all of the bank's stock they own, and they are disqualified from holding any office at any federally-insured institution for the rest of their lives. The shareholders of JPMorgan Chase may want Jamie Dimon to be CEO because he has proven that crime does pay, but since federally insured financial institutions are gambling with taxpayers' money, the government should take a much stronger role in assuring that we don't have criminals controlling our financial institutions.

Third, seek legislation establishing a permanent special prosecutor's office that will have the authority to prosecute major bank frauds independently of the Justice Department. Just as Clemenceau observed that war is too important to be left to the generals, so we observe that politically sensitive prosecutions are too important to be left to politically appointed prosecutors—as Eric Holder's dismal record shows. As we set out in Chapter 3 of our book, the link between the big banks and the politicians to whom they contribute is much too close for comfort. It is not surprising and it is not avoidable. Willy Sutton robbed banks because that's where the money was; politicians cater to banksters because that's where the money is. You don't bite the hand that feeds your campaign kitty. The appointment of the special prosecutor will not be done by the President or the Attorney General but by a panel of three federal judges, one from the District Court, one from the Court of Appeals and one from the Supreme Court, to be chosen by lot, with the composition of the panel to be changed with each new appointment.

There are, of course, many more things on our wish list, but above all, we wish Ms. Lynch good luck because as Eric Holder proves, if the Attorney General fails, the American people suffer. Ms. Lynch offers the promise of hope and a new beginning. It would be both tragic and a tragedy if she turns out to be just a place holder, or worse yet, an Eric Holder.