

It's Time to Break Up the JPMorgan Chase Mafia

by

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Remember Robert Kennedy's war on organized crime? Those were petty skirmishes compared to our present day **non**-war on organized banksterism.

What are all the news commentators thinking when they spout Eric Holderisms about too big to jail?² Are they kidding?

When officers of the world's largest financial institutions form a cartel to rig the currency markets and write emails like "If you ain't cheating, you ain't trying," are the people of this country really going to sit back and allow our government to let these people keep their jobs?

If our government is going to allow hardened criminals to simply be reassigned to other activities within their financial institutions, it's time to rise up. We need a new government.

The May 20, 2015 "Forex" settlements of criminal violations of the antitrust laws³ by five major banks—including of course JPMorgan Chase—are another slap on the wrist to the modern day Mafiosi, whose illegal businesses are supported by taxpayer dollars. Remember, when we talk about Forex, we are talking about a conspiracy to rig a \$5.3 trillion a day market—that's \$ 5,300,000,000,000.⁴ This is not exactly a peccadillo. Not that the Justice Department seems to care. Even though Eric Holder is gone,⁵ his spirit lingers on—to the detriment of every taxpayer, everyone with a bank account, and everyone with a credit card.

So, long story short, JPMorgan Chase intentionally breaks the law; its shareholders pay a fine; Jamie Dimon gets a raise; and business goes on. The criminals

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² Roger Parloff, *Eric Holder's business legacy: 'Too big to jail'?*, Fortune, (Sept. 26, 2014), <http://fortune.com/2014/09/26/eric-holders-business-legacy-too-big-to-jail/>.

³ Aruna Viswanatha, *Banks to Pay \$5.6 Billion in Probes*, The Wall Street Journal, (May 20, 2015), <http://www.wsj.com/articles/global-banks-to-pay-5-6-billion-in-penalties-in-fx-libor-probe-1432130400>.

⁴ *TABLE-Global FX volume reaches \$5.3 trillion a day in 2013*, Reuters, (Sept. 5, 2013), <http://www.reuters.com/article/2013/09/05/bis-survey-volumes-idUSL6N0GZ34R20130905>.

⁵ Michael D. Shear, *Eric Holder Resigns, Setting Up Fight Over Successor*, The New York Times, (Sept. 25, 2014), http://www.nytimes.com/2014/09/26/us/politics/eric-holder-resigning-as-attorney-general.html?_r=0.

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get reassigned to another activity where they can figure out how to break a different law and enrich JPMorgan Chase and themselves in the process. JPMorgan Chase will pay a half billion dollar penalty, with no disclosure of how many billions of dollars in profits the bank made by criminally violating the antitrust laws. And, of course, the government has not disclosed the trillions of dollars that innocent people have lost because of the banks' criminal violations.⁶ In other words, once again, under the law of my country 'tis of thee, the innocent, hard working citizens get punished while the slick, smart, Wall Street banksters get chauffeured around in their limousines.

Obama's presidency will go down in the history books as the era of “Crime and No Punishment.” The team of Obama/Holder has rejected one of the fundamental precepts of our society. In their view: “Crime Pays” bigtime.⁷

If Carlo Gambino were alive, he'd be kissing the toes of Jamie Dimon out of abject admiration. Gambino and his cronies were like small-time pickpockets by comparison; and they went to prison for their crimes. They could never have foreseen that America would be run by the Obama/Holder team. As we demonstrated in Chapter 4 of *JP Madoff*,⁸ it is no exaggeration to say that JPMorgan operates like a crime syndicate. That's why we suggested in Chapter 5 that it be criminally prosecuted under RICO—and punished like the members of other crime syndicates have been punished. And, believe it or not, even the participants in the Forex scheme knew they were acting like organized crime does. In its plea agreement with JP Morgan, the DOJ recites it had evidence sufficient to prove that:

In furtherance of the conspiracy, the defendant [JPMorgan] and its co-conspirators engaged in communications, including near daily conversations, some of which were in code, in an exclusive electronic chat room which chat room participants, as well as others in the [relevant] Market referred to as “The Cartel” or “The Mafia.”

Plea Agreement Para. 4 (h).

While we are loathe to admit defeat in our efforts to teach criminal law 101 to Obama/Holder, it is perfectly clear—as Richard Nixon used to say—that it is not going to

⁶ See *JP Madoff: The Unholy Alliance Between America's Biggest Bank and America's Biggest Crook.*

⁷ See Chapter 5 of *JP Madoff: The Unholy Alliance Between America's Biggest Bank and America's Biggest Crook*” at jpmadoff.com.

⁸ See jpmadoff.com

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happen. The DOJ will hold to the principle of “Too big to jail.” But there is a simple solution: if something is too big to jail, then make it smaller. And how do you make a criminal enterprise smaller without putting its leaders in jail? Ironically, you use the same antitrust laws under which the DOJ got its plea from JPMorgan Chase in the Forex case; the federal antitrust laws.

The federal antitrust laws were originally enacted in 1890 as criminal statutes and they still are criminal statutes.⁹ In fact, in 1975, Congress reaffirmed our nation's condemnation of antitrust crimes by upgrading them from misdemeanors to felonies, and significantly increasing the penalties, providing for fines of up to \$1 million for corporations and up to \$100,000 for individuals, and jail sentences of up to three years for individuals.¹⁰ In 1990, Congress raised the maximum fines to \$10 million for corporations and \$350,000 for individuals.¹¹ And courts have the power of imposing fines equal to twice the harm suffered by the crime's victims or twice the gain enjoyed by the perpetrators.¹²

But since the DOJ seems to be allergic to criminal prosecutions of the big-time criminals, the more important aspect of the antitrust laws is this, in civil cases brought by the Government under Sections 1 and 2 of the Sherman Act, which proscribe combinations in restraint of trade and monopolistic practices, one of the remedies is “divestiture,” that is, forcing the violator to sell off or exit certain lines of business.

Divestiture has been an important component in the banking industry for 30 years, but typically in the merger context. The Federal Reserve Board may require, as the price of approval for a proposed merger, that one or both of the banks involved sell off offices or divisions to lessen the market power of the combined entity. Forced divestitures after the fact as a remedy for a Sherman Act violation is a much less frequent occurrence, but they do happen. Poetically enough, one of the very first uses of the antitrust divestiture

⁹ *The Sherman Antitrust Act*, <http://www.linfo.org/sherman.html>

¹⁰ Donald C.Klawiter and Jennifer M.Driscoll, *Sentencing Individuals in Antitrust Cases: The Proper Balance*, Antitrust, (Spring 2009), <http://lawprofessors.typepad.com/files/spring09-klawiterc-1.pdf>

¹¹ Scott D. Hammond, *The Evolution of Criminal Antitrust Enforcement Over the Last Two Decades*, Department of Justice, (Feb. 25, 2010), <http://www.justice.gov/atr/public/speeches/255515.htm>

¹² Anne K. Bingaman, & Gary R.Spratling, *Criminal Antitrust Enforcement*, Department of Justice, (Feb.23, 1995), <http://www.justice.gov/atr/public/speeches/0103.htm>

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remedy was against—you guessed it—old JP Morgan himself, when in 1904 he was forced to split up his Northern Securities railroad trust into three separate companies.¹³

Using the antitrust laws to combat criminal enterprises is not as incongruent as it may sound. In April 1969, three months after he assumed office, then President Richard Nixon proposed using the antitrust laws to cripple the Mafia by going after the legitimate businesses the mobsters took over.¹⁴ That proposal (referred to then as a “novel idea”) never took hold because, in the following year, Congress passed the RICO Act¹⁵, which is specifically applicable to organized crime (and to organized banksters). In considering what ultimately became the RICO statute, the Senate and the House mused about utilizing the antitrust laws to combat organized crime. They ultimately rejected the idea in favor of RICO. Some have argued this means that antitrust laws have no place in the process of combating organized crime. But in a civil RICO action titled, appropriately enough, *US v The Bonnano Organized Crime Family*, 879 F.2d 20 (2d Cir. 1989), the court noted that in many respects the RICO statute was modeled on the federal antitrust laws, and that antitrust decisions could thus be useful precedent in a RICO case.

The different views on this point need not be reconciled. We are quite sure that when it enacted RICO, Congress expected the DOJ would use it against criminal enterprises. And once upon a time it did. As we explain in Chapter 6 of *JPMadoff*, the RICO statute was applied in the 1989 against financial institutions like Drexel Burnham. And not to belabor the point, we would be all in favor of the more direct route, *i.e.*, having JPMorgan Chase prosecuted under RICO. But at the intersection of law and politics, just as in non-Euclidian geometry, sometimes a straight line is not the shortest distance between two points. The DOJ could clean up Wall Street in a few years, by simply prosecuting the actual individuals who committed the Forex antitrust violations, along, of course, with their superiors. The banksters have figured out how to control Congress, but they have not yet figured out how to pay someone else to serve their prison sentences.

¹³ *Northern Securities Co. v. United States*, [193 U.S. 197](#) (1904),

¹⁴ *Nixon Asks New Drive on Mafia*, Pittsburgh Post Gazette, (Apr. 23, 1969), available at <https://news.google.com/newspapers?nid=1129&dat=19690424&id=KsdaAAAAIBAJ&sjid=z2wDAAAAIBAJ&pg=6448,3796408&hl=en>

¹⁵ *RICO Law*, HG.org, <http://www.hg.org/rico-law.html>

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Divestiture under the antitrust laws is a remedy used against companies that collude¹⁶—like the five banks in the Forex criminal plea. And when you look at the power JPMorgan Chase has actually wielded in perpetrating multiple criminal acts¹⁷ and becoming the largest bank in the United States¹⁸ in the process, that sounds like a pretty good case for a jury. So take just one look at “The Wheel of Misfortune” on jpmadoff.com and tell us if we should re-name it JPMafia.com.

¹⁶ Robert L. Webb, *Divestiture: A Prescription for Healthy Competition*, Federal Reserve Bank of St. Louis, (Jan.2001), <https://www.stlouisfed.org/publications/regional-economist/january-2001/divestiture-a-prescription-for-healthy-competition>.

¹⁷ See JP Madoff: The Unholy Alliance Between America's Biggest Bank and America's Biggest Crook.”

¹⁸ Stephen Grocer, *Ranking the 50 Biggest Banks From J.P. Morgan to FirstMeri*, The Wall Street Journal – Moneybeat, (Mar. 3, 2014), <http://blogs.wsj.com/moneybeat/2014/03/03/ranking-the-50-biggest-banks-from-j-p-morgan-to-firstmerit>.