

A flagrant attempt to scapegoat bankers for the last crisis collapses.

The End of the Libor Fraud Persecution

REVIEW & OUTLOOK

Remember Libor? Prosecutors on both sides of the Atlantic would prefer you forget, after the collapse last week of most of the remaining criminal cases arising from an epic financial "fraud" that wasn't.

British courts overturned the convictions of six men across two cases for charges related to alleged rigging of the London Interbank Offered Rate, or Libor, during the 2008 financial panic. Libor at the time was a benchmark interest rate set by polling more than a dozen global banks once a day. In a series of cases starting in 2012, prosecutors on both sides of the Atlantic Ocean claimed employees at several banks had tried to joke those daily submissions.

In the case of former Barclays traders Philippe Moryoussef, Jay Merchant, Colin Bermingham, Jonathan Mathew and Alex Pabon, the U.K. Court of Appeal ruled the jury instructions at trial were defective. Britain's Serious Fraud Office declined to contest their appeal, after its earlier case against two other bankers on similar charges was overturned on appeal for the same reason.

Separately, the same court quashed the conviction of Christian Bittar. The former Deutsche Bank trader was accused of manipulating the Euro Interbank Offered Rate, Libor's continental cousin. Mr. Bittar had pleaded guilty, making his successful appeal all the more remarkable. The crux of his case was that prosecutors misinterpreted the law so he pleaded guilty to a crime that didn't exist.

For those keeping score at home, this means that of the 19 or so traders convicted in Libor-related cases, only one hasn't (yet) had his conviction overturned. In America, one prosecution case melted on appeal due to violations of the Fifth Amendment rights of the accused against self-incrimination. Another case fell apart when appellate judges on the Second Circuit Court of Appeals ruled there was no evidence their Libor submissions had been false or fraudulent. That leaves one case still outstanding. Peter Johnson, formerly of Barclays, pleaded guilty in Britain for fear that mounting a defense would bankrupt him. He has filed an appeal now, too, and stands an excellent chance of success.

These columns foresaw all of this. As soon as the ruckus over Libor rigging started in 2012, it was obvious politicians and prosecutors were on the prowl for scapegoats to cover their embarrassment at failing to avert the 2008 panic and amid political blowback over the ensuing bailouts. The financial press quickly fell for the pat story about "greedy bankers."

Yet within months of the scandal breaking, it was clear that at least one of the banks involved, Barclays, had told the New York Federal Reserve Bank its Libor quote was more a guess than a reality. The New York Fed had winked and nodded. This is hardly the behavior of an institution that thinks it's committing a crime, or a supervisor that thinks fraud is happening under its nose.

At the same time, it emerged that in the depth of the crisis an official at the Bank of England had hinted to Barclays that it might be prudent to fudge its Libor submissions. The concern apparently was that Libor readings that were perceived to be too high could stoke market worries about the stability of the banks.

Libor fraud was billed by prosecutors, politicians and much of the press as the financial crime of the century. Instead these cases have become an embarrassment for the ages. It's a case study in how financial fraud allegations become a convenient political diversion for politicians and regulators eager to distract from their own blunders. Something to remember after the next crisis.

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