

Federal Judge: Why No Wall Street Execs have been Prosecuted for Fraud during the Financial Crisis

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As the financial crisis recedes, one nagging question remains: Why have no high-level executives been prosecuted for fraud in the way Charles Keating was brought to justice after the savings-and-loan debacle in the late 1980s?

After first swatting away the excuses put forward by prosecutors to date, Judge Jed Rakoff of the Federal District Court in Manhattan, has put forward his own answer to this quandry that might not be easy to swallow.

Rakoff argues in an essay in the latest issue of The New York Review of Books that government prosecutors have been leery of bringing Wall Street bosses to trial because high-level government officials might be dragged into the mix.

Rakoff, who has previously made a name for himself as being a thorn in the side of both Wall Street and Washington, said he was not suggesting that the government participated in any fraud.

“But what I am suggesting is that the government was deeply involved, from beginning to end, in helping create the conditions that could lead to such fraud, and that this would give a prudent prosecutor pause in deciding whether to indict a CEO who might, with some justice, claim he was only doing what he fairly believed the government wanted him to do,” Rakoff said.

It was the government that repealed Glass-Steagall, encouraged deregulation and weakened oversight of the watchdog agencies, Rakoff noted.

The Office of Thrift Supervision ran a successful campaign to preempt state regulation for thrift underwriting and then terminated its own mortgage underwriting regulations entirely, he said.

And if mistakes were made and liabilities not disclosed during the “shotgun marriages” of Bank of America with Merrill Lynch and J.P. Morgan with Bear Stearns, was it not partly the government’s fault? he asked.

Another factor which Rakoff calls maybe the most important, is that there has been a shift over the past 30 years from focusing on prosecuting individuals to prosecuting companies.

He said that this practice “has led to some lax and dubious behavior on the part of prosecutors, with deleterious results.”

Companies are happy to enter into deferred prosecution agreements under which they agree to pay fines and accept prophylactic measures.

“But perhaps happiest of all with this trend are the executives or former of the companies who committed the underlying misconduct for they are left untouched,” he said.

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