NYC DA MORGENTHAU BLASTS FEDS ON FINANCIAL INVESTIGATIONS

The Wall Street Journal has a fascinating and free ranging interview of New York City District Attorney Robert Morgenthau in today's edition. Morgenthau, as you may know, is the real live template for the original DA on NBC's Law & Order, Adam Schiff. Still young at age 90, Morgenthau will retire next Thursday after over 35 years as the chief District Attorney for New York.

The entire piece is well worth the read, but of particular interest, in light of the financial meltdown we have just lived through, and may yet again the way the Wall Street Banksters are cranking their same old casino back up, is the broadside Morgenthau lands on the Federal oversight and investigation of financial fraud.

> These big criminal forfeitures support his $80 million budget, but they are also the product of Mr. Morgenthau's unique legacy among district attorneys: his national and global reach. Such resources have allowed him to prosecute complex international business cases. Combined with his jurisdiction in the world's financial capital, he has become in a sense the world's district attorney.
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> Thomas Jefferson would have liked this bastion of local power as part of a federal system, but it is not always celebrated by federal officials. "I'm sure it [annoys] the hell out of them," Mr. Morgenthau observes.
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> The feeling is mutual. The D.A. says that while he's had to deal with the federal bureaucracy for decades, "it has

> just gotten worse" and "they ought to burn it down and start all over again. It's extremely worrisome."
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> For example, he says, "We had a lot of trouble with the Treasury Department" in his recent case against Credit Suisse, in which the bank coughed up $536 million and admitted to aiding Iran and other rogue nations in violating economic sanctions. **The feds, as they did in a similar settlement with the British bank Lloyds, wanted only civil penalties.**
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> Mr. Morgenthau would have none of it. He says Credit Suisse had been "stonewalling us" and only struck a deal after he threatened to bring criminal charges to a grand jury. "We would have gotten an indictment," he says. (emphasis added)

It is a great snapshot of a one of a kind force of legal nature, Robert Morgenthau, and there are several other interesting topics; I recommend reading the entire article.

As to the portion of Morgenthau I quoted though, "Feds only wanted civil penalties and not interested in using criminal charges" to crack open the case and bring accountability for the Wall Street Banksters; sound familiar? It should, it is the exact same conclusion that blew the mind of SDNY Judge Jed Rakoff in the BofA stockholder fraud matter. In that case, Rakoff blistered the Federal enforcement of potential financial crimes and said in his decision:

> It is not fair, first and foremost, because it does not comport with the most elementary notion of justice and morality, in that it proposes that the shareholders who were the victims of the Bank's alleged misconduct now pay the penalty for that misconduct.

> …..
> Overall, indeed, the parties submissions, when carefully read, leave the distinct impression that the proposed Consent Judgment was a contrivance designed to provide the S.E.C. with the façade of enforcement and the management of the Bank with a quick resolution to an embarrassing inquiry…

Rakoff went on subsequently to question the competence and good faith of the SEC for refusing to make referrals to DOJ for criminal investigations, on top of the sweetheart mere civil penalty deal they were trying to slide through for the Bankster BofA.

And here is where Mogenthau's pointed criticisms, Judge Rakoff's dismay and anger, and the complicit coddling of Master of The Universe Banksters (MOTUs) by the SEC all come to a focal point in current news. In an in-depth article detailing malevolent practices and schemes by Goldman Sachs bringing huge profits to the firm at the expense of their clients, Gretchen Morgenson and Louise Story report in the December 24 edition of the New York Times:

> Pension funds and insurance companies lost billions of dollars on securities that they believed were solid investments, according to former Goldman employees with direct knowledge of the deals who asked not to be identified because they have confidentiality agreements with the firm.
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> Goldman was not the only firm that peddled these complex securities — known as synthetic collateralized debt obligations, or C.D.O.'s — and then made financial bets against them, called selling short in Wall Street parlance. Others that created similar securities and then bet they would fail, according to Wall Street traders, include Deutsche

Bank and Morgan Stanley, as well as smaller firms like Tricadia Inc., an investment company whose parent firm was overseen by Lewis A. Sachs, who this year became a special counselor to Treasury Secretary Timothy F. Geithner.

How these disastrously performing securities were devised is now the subject of scrutiny by investigators in Congress, at the Securities and Exchange Commission and at the Financial Industry Regulatory Authority, Wall Street’s self-regulatory organization, according to people briefed on the investigations. Those involved with the inquiries declined to comment.

While the investigations are in the early phases, authorities appear to be looking at whether securities laws or rules of fair dealing were violated by firms that created and sold these mortgage-linked debt instruments and then bet against the clients who purchased them, people briefed on the matter say.

One focus of the inquiry is whether the firms creating the securities purposely helped to select especially risky mortgage-linked assets that would be most likely to crater, setting their clients up to lose billions of dollars if the housing market imploded.

Some securities packaged by Goldman and Tricadia ended up being so vulnerable that they soured within months of being created.

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But Goldman and other firms eventually used the C.D.O.’s to place unusually large negative bets that were not mainly for hedging purposes, and investors and industry experts say that put the firms at odds with their own clients’ interests.

> "The simultaneous selling of securities to customers and shorting them because they believed they were going to default is the most cynical use of credit information that I have ever seen," said Sylvain R. Raynes, an expert in structured finance at R & R Consulting in New York. "When you buy protection against an event that you have a hand in causing, you are buying fire insurance on someone else's house and then committing arson."

Again, the full tale in Morgenson and Story's article is stunning and worth the full read. And who will investigate this malevolent behavior that has the clear appearance of potentially criminal conduct? The SEC of course; the same bunch that Jed Rakoff excoriated as incompetent and complicit. This is incredibly significant, especially in light of Morgenthau's criticisms as well, because the SEC is the gatekeeper on the submission for a competent criminal investigation by the DOJ.

The "normal" chain of events is for SEC to investigate, if there is any wrongdoing of a civil or administrative nature found, then SEC takes care of it itself. If the SEC finds either something criminal, or something civil but exacerbated beyond their in house capability, they then refer the case over to the DOJ via submission to the US Attorney's Office for that jurisdiction (for Wall Street crimes, that would be SDNY). Even when a US Attorney's Office receives a tip directly and opens its own case from the start, the protocol is for it to *still* go to SEC for a "referral" in order to proceed. So the questionable Securities and Exchange Commission is right in the middle, as Robert Morgenthau adroitly complained of, even on the type of galaxy scale conduct such as Goldman Sachs is reported to have committed.

"Does not comport with the most elementary notion of justice and morality" were the words of the eminent Judge Jed Rakoff as to the complicity of the SEC with BofA. What are the odds it happens again with Goldman Sachs?

UPDATE: Much of the New York Times piece cited in the post is either based on, or parallel to, an ongoing investigative series by McClatchy that has been ongoing since November. The McClatchy series deserves praise and credit, not to mention a look. I had not seen the McCaltchy work at the time I originally wrote the post.

(photo h/t investorsally.net)