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WHO’S GUARDING THE HENHOUSE? (PART II)

The devastating legacy of Al Gore’s reinvention movement

By Julius (Jay) Wachtel. In the wake of a mortgage scandal that brought on the worst economic crisis since the Great Depression, current and retired FBI agents are doing something totally out of character: they’re sniping at their beloved Bureau. In a recently published exposé a former agent charged that the agency’s shift of thousands of agents to counter-terrorism fatally impaired its ability to combat financial crime. “The public thought the administration was resourcing counter-terrorism when in fact they were forcing cannibalization of the criminal program. Now the chickens have come home to roost.”

Crime may be hard to prevent but it’s usually easy to discover. Victims are likely to complain. And for so-called “victimless” crimes such as such as drug dealing and prostitution police can target the settings where these crimes are known to occur and use surveillance and undercover to draw out offenders.

But what the mortgage shysters were doing was different. To all appearances they were conducting a legitimate business. Want to buy a home but lack proof of income? No problem, just tell us what you make, and if it’s enough (wink, wink) you’re in! Everyone got their slice of the pie, from brokers who sealed the deals to supposedly rock-solid financial institutions that bundled the shaky loans into tempting, high-yield securities. In time, as teaser rates expired and homeowners found themselves unable to keep up foreclosures soared, driving down home values and rendering those nifty mortgage-backed investments worthless. Felled by greed, Wall Street’s carefully nurtured façade of invulnerability collapsed. Surprise! The Masters of the Universe had no clothes.

Where were the cops while all this was going on? Even the vaunted FBI is at its best after a crime has occurred and there are witnesses and victims to describe exactly what happened. But borrowers weren’t complaining, at least not until they found themselves on the street. Neither were lenders. As a retired FBI official pointed out, “you had victim banks that would not acknowledge that they were victims. ‘We're not out any money,’ they would say. ‘Nothing has been foreclosed.’ The banks weren't reporting, the regulators weren't regulating, and the FBI was concentrating on external mortgage fraud as opposed to the underlying internal problem.”

Regulators not regulating? What's *that* all about? Rewind to the early 90's, when in a Pollyannish fit of goodwill Vice-president Al Gore sought to bring Government and industry together in a new Great Hug:

> The Vice President introduced the idea of customer service for regulated industries -- that "good players" who want to comply with federal regulations often need information and assistance... Most importantly, the Vice President called on federal regulators to form partnerships with the community they regulated to explore even more groundbreaking ways to achieve goals like clean air and safe food. In February 1995, to reinforce the work of the Vice President and his regulatory workgroup, the President met with regulators. He directed them to cut obsolete regulations, reward results, not red tape, get out of Washington-create grass roots partnerships, and negotiate, don't dictate.

Within a year *sixteen-thousand* pages of "unnecessary federal regulations" fell to the knife. By 2000, when the National Performance Review had run its course, a glowing self-assessment boasted that agency rule books had been thinned by an astounding 640,000 pages. But the NPR's most tangible accomplishment was its impact on the Federal civilian workforce, where it supposedly eliminated a whopping 426,000 positions. (That turns out to be a bit of an exaggeration, as the government had been steadily shrinking since at least 1990. Still, Congressional Budget Office statistics reveal there were 225,900 fewer non-Postal civilian employees in 2000 than 1995, a not-inconsequential decrease of eleven percent.)

Perhaps more significantly, the worker bees who remained on the job got hammered with a New-Ageish ideology that redefined the relationship between industry and government as a "partnership", with the former becoming the latter's "customer". Traditional Government performance measures such as the number of times that regulators slapped an industry's hands were eschewed in favor of a kinder and gentler approach:

> The use of regulatory partnerships has become the preferred approach for getting results. NPR worked with five key regulatory agencies (EPA, FDA, FSIS, OSHA and FAA) to pilot new approaches, to deploy information technology, and to do a better job measuring what matters— namely their impact on their mission (e.g. clean air) as opposed to historical process measures (e.g. the number of tickets written for regulatory violations). As a result, food-borne illness, toxic emissions, and worker injury rates are dropping. And the regulated community has better information and tools to help with compliance.

Naturally, boosters of government reinvention declared the effort a resounding success. Meanwhile no one seemed to notice that regulatory agencies had turned into mere shadows of their former selves. “The regulators are the ones embedded in the banks,” a former FBI agent pointed out. “They would be able to see [financial fraud] if they were looking. They were the first line of defense in detecting it.” Unfortunately, the canaries in the coal mine had lost their voice. Demoralized by reductions in staffing and political interference, the S.E.C. and its sister agencies demonstrated little interest in pursuing the examples of “pervasive financial corruption” that kept popping up. Lacking victims or demonstrable evidence of serious harm, it’s no surprise that the FBI chose to allocate its resources in a different direction.

Yes, we trusted. We trusted the system to police itself. We trusted brokers, dealmakers and investment bankers to watch out for the public interest. Yet thanks to “reinvention” no one was looking over their shoulders. There was nothing to deter profit mongers from tying up their consciences alongside their yachts. And it’s not over. Only the other day our new Prez chastized Wall Street bankers for shamelessly awarding themselves bonuses even as the government was rushing to prop up their institutions with Federal funds.

Like they say, “what’s new”?