

A Presidential Campaign Pledge: Restore the Rule of Law in the Financial Sector

It is apparent that there was criminal and near-criminal activity involved with the creation of the financial crisis from the explosion of mortgage-backed securities, credit default swaps, and the like.

In some cases, regulators were willingly blind; in others, they were hobbled. Rating agencies contributed mightily to the carnage. Not all of these actions were criminal, but some clearly were.

There is a widespread view that immediate action was necessary to create the Troubled Asset Relief Program (TARP) and actions by the Federal Reserve in order to maintain a functioning financial sector. But now that the dust has settled, and the financial industry is in seemingly good health (although many small U.S. banks seem to have been left in the dust), it is time to reopen the question of wider criminal prosecution. As head of the Office of the Special Inspector General of TARP (SIGTARP), Neil M. Barofsky initiated many prosecutions, with recovery of hundreds of millions of dollars. On April 20, SIGTARP announced the conviction of Lee Farkas in a \$2.9 billion fraud scheme [Floyd Norris NY Times column of 04/22/11]. The broader prosecutions, not limited to TARP, would be based on investigations by the Department of Justice and by State Attorneys General.

Such prosecutions should be directed against individuals, and not against corporations. To indict and convict a corporation simply means that the stockholders and eventually the public will pay, adding to the original damages.

In response to those who might ask what social good would be served by punishing those guilty of a crime, after the fact, I reply that our whole system of criminal justice is based on such punishment. It is grounded in the belief that such punishment will deter further such acts by that same individual and by other individuals.

Instead, we seem to have created an Ueberklass that, immune to punishment from criminal deeds in the past, seems assured of such immunity in the future. Does fairness require that such immunity carry over to people newly attracted to this profitable field of stealing from society and of the destruction of our institutions? Rather, fairness and justice require that the administration and the Congress support such criminal prosecutions.

So important to the future of America is the rule of law and its contribution to a sound financial system, that this should be not an issue, but a pledge for the 2012 Presidential campaign: Restore the Rule of Law.

*Richard L. Garwin
Scarsdale, NY 10583*

The author is a physicist who has worked for many years to improve U.S. security.

Information on the author at his web page, www.fas.org/RLG/