



**Your on the
Street Reporter**



Uyless Black

**Epilogue VII to *The Nearly Perfect Storm*
Freedom of Speech and Freedom from Responsibility**

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Preface

My intent in writing *The Nearly Perfect Storm: An American Financial and Social Failure*, and these epilogues is to spark your ire. I am not one to compose inflammatory compositions. I began my studies of the 2008 financial crisis with a neutral view of the subject, perhaps even skewed toward the financial world (specifically, the investment banking industry), reflecting my former employment at the Federal Reserve.

No longer. The more I learned about the institutions and individuals who were involved in the meltdown, the more disgusted I became. I wish this turn of events had not come about. I wish I had found the Great Recession occurred because of a downturn in a conventional business cycle. It did not.

Do not expect this series to be light-hearted, although I will attempt some gallows humor to lighten the load.

The Nearly Perfect Storm: An American Financial and Social Failure
Epilogue VII: Freedom of Speech and Freedom from Responsibility

November 10, 2013

These epilogues are written on occasion as follow ups to *The Nearly Perfect Storm: An American Financial and Social Failure*, available at Amazon, Barnes & Noble, and local book stores. Epilogue VII discusses recent legal settlements or potential settlements that represent aftermaths of the 2008 financial meltdown.

Quotes from *The Nearly Perfect Storm* about the issue (paraphrased).

Page 314:

Unequal Campaign Contributions

Until recently, I had given no thought to the notion of a company having the right of free speech in the context of the First Amendment. It hit home after reading about the United States Supreme Court ruling (January 21, 2010) that corporate funding of independent political broadcasts in candidate elections cannot be limited under the First Amendment right of free speech. The ruling:

"If the First Amendment has any force, it prohibits Congress from fining or jailing citizens, or associations of citizens, for simply engaging in political speech." The court said it was not possible to distinguish between media and other corporations and a restriction would allow government to suppress political speech in newspapers, books, television, and blogs.

The heart of this issue comes down to this fact: The amount of money given to a campaign is a significant factor in determining the outcome of an election. (Supporting statistics are cited later in this chapter.)

The Supreme Court opinion states that spending is a form of free speech. Thus, a heretofore fictional being of commerce (the corporation) is given the patina of a private citizen. Corporations are speakers who have the same constitutional rights as you and me.

Corporations should not be vested with the same constitutional rights of individuals. We will witness backlash in the future, because the ruling means the definition of a republic is now, "A state in which supreme power is held by those who have the deepest pockets."

Page 317:

If corporations are granted citizen rights, they should also be granted citizen responsibilities. But how do you put a corporation in jail? With rare exceptions, the malfeasance of corporations results only in puny fines (relative to their net worth), with none of the guilty people spending any time behind bars. Quite the opposite occurs. The money for the fines is taken from the pockets of the stockholders. The guilty parties' incomes stay intact, often even increasing as bonuses continue to accrue. As described in later chapters, these legal fees may be taken on by taxpayers.

This week, SAC Capital Advisors agreed to pay a record penalty and plead guilty to *civil* charges for insider trading. The *Wall Street Journal* (WSJ) had this to say about the matter in its editorial column:¹

¹ "It's Only Money," *The Wall Street Journal*, November 5, 2013, A16.

But in this settlement, assuming it is approved by a judge, no individuals will plead guilty to anything. SAC will pay \$18 billion. ...Few people expect criminal charges to be filed against SAC founder and CEO Stephen A. Cohen.

Therefore, after a multiyear investigation, the legal conclusion seems to be that Mr. Cohen is a noncriminal running a criminal enterprise. [The WSJ occasionally tosses some satiric comments into its pages.]

As the WSJ said, these machinations of finance are “crimes without criminals.” Not exactly, as six former SAC employees have pleaded guilty to insider trading. But the point of the WSJ editorial (and that of mine in these epilogues) is that “The buck stops *there*.” That is, *there*, at the low-level trader desk.

The saying, “The buck stops *here*” means it stops at the executive and/or ownership level. (Such as the United States President’s desk during Harry Truman’s time in office.) But these high-level people remain exempt from their ineptitude and/or outright theft. This practice exonerates those who should be held responsible for the operations in which they are paid enormous amounts of money to properly manage.

I recognize it is usually difficult to snare a high-level crook in the financial industry. He or she is shielded by the white-collar felons below them, who often operate as their own private enterprises. And the bosses’ millions of dollars year-end bonuses encourage the superfluous supervision of their money-making subordinates. *Out of sight, out of mind, and keep those transactions going!*

A further shield is the corporation. In previous *The Nearly Perfect Storm* epilogue reports, I have written about the inability or reluctance of the government to penalize individuals for their crimes, but to go after the corporation and its (innocent and clueless) stockholders. For this SAC Capital sacking, the \$1.2 billion fine “...will come out of his [Cohen’s] pocket, rather than public shareholders. With a fortune estimated at \$9 billion, Mr. Cohen will still be a billionaire many times over...”²

The Supreme Court has ruled that corporations’ campaign contributions are a form of free speech, akin to that of a private citizen. But the corporations are inoculated against associated responsibilities that a citizen must carry.

Some of the high-level citizens at SAC Capital must have known about the insider trading. (If they did not, they should be banned from Wall Street for their stupidity.) Yet, they remain untouched. Some traders have been indicted. Those high-level officers on the back row of the chessboard remain untouched.

² James. B. Stewart, “After a Decade, SAC Capital Blinks. A Textbook Case for Prosecuting Corporate Crime,” *The New York Times*, November 5, 2013, B4.

The firm itself has been severely shackled. It is on probation and (for a while?) cannot manage money for outside investors. Whew! No business with the outside world? That must surely be the death-knell for the company.

The WSJ clarified the situation: The SAC officials "...told employees this week that it would transform into a so-called family office, managing Mr. Cohen's roughly \$9 billion fortune."³ The Journal was not tongue-in-check with this comment; no gallows humor. SAC will exist for Mr. Cohen alone.

Let's finish on a positive note. At the rate corporations are being fined for their illegal activity that helped the Great Recession come about, Uncle Sam should be making a dent in the national debt; but Uncle is not. Crime does pay.

³ Ben Protess, "Hedge Fund Pleads Guilty, Then Judge Calls a Timeout," *The New York Times*, November 9, 2013, B2.