Unbowed and Unquestioned Politically

Installment I

By Neil Thomas Proto

We put aside long ago the illusion that the banker and financier had a reasoned empathy for the public interest or even for some specie of principled conduct beyond fundamental greed however congenially displayed. “I am fully mindful of the quasi-public position which the National City Bank must hold,” Charles E. Mitchell announced when he became Bank Chairman in 1921, and proceeded to create the largest bank in America.[1] His announcement was an insidious yet commanding prevarication that defined the public expectation of reliability and sound ethics until Ferdinand Pecora, the Senate Banking Committee’s counsel during the 1933 hearings into the stock market crash exposed Mitchell’s unmitigated devotion to the acquisition of personal and corporate wealth for an exploited nation to witness. Mitchell was hardly the worse of the crowd, ethically or practically.

The stunning revelations, not rhetorically flavored but fact-based, were covered by hundreds of newspapers and national magazines daily. Lawyer-crafted personal and bank “affiliates” and shade-covered foreign “partnerships” had been knowingly created to manipulate bank finances, ensure personal money making, and rationalize as acceptable to the banker’s darkened conscience glaring conflicts of interests with the bank’s depositors, investors, and any definition of “free-market.” The metaphor of “gambling” and the mentality of the

Ferdinand Pecora

organized thief was raised by senators, Pecora, and subsequent government officials, and acknowledged periodically by the bankers albeit in the polite language they’d learned from their lawyers and embed in their mindset.[2] Even Wall Street’s more obstinate defenders, including The New York Times and famed journalist Walter Lippmann, finally recognized the horrifically damaging greed and mindset of those men it considered friends and ethically respectable.[3]

The bared, sordid underbelly of men at City Bank, Chase, and JP Morgan that Pecora’s questioning revealed was permanently solidified into the face that still haunts any predictability or prospect

of an ethical-driven normalcy. The current apprehension of what such men are capable of doing, only randomly uncovered to no one's surprise and rarely rectified to even less surprise, remains fairly constant in America. For this generation, the 2008 financial debacle and the shameless irresponsibility—and lack of accountability—of the bankers and financiers who led or acquiesced in it, is only the latest episode neither the bankers nor government could keep from the broader public. Numerous, unexceptional examples of wrongdoing and bold daring to test the limited resources of even the most responsible government official, are reported daily.[4]

"[S]uch an institution," Pecora wrote, "might be a formidable rival to government itself."

"Too big to fail," "too big to jail," "too big to be held accountable," all encapsulate a contemporary and legitimate economic, ethical, and cultural fear but not the complete rationale for the acknowledgment of government and private failure implicit in the jargon. Failure will continue until the complete rationale is questioned and exposed. Ferdinand Pecora sought to examine that rationale in 1933: The bankers' *political influence* through the use of institutional money and the extension of control of other corporate, industrial, and banking interests and in the formation of pubic policy. How that exercise of influence seeped into decisions made about lending and to whom and for what purpose, the fate of workers and communities, and the manner in which elected and appointed officials made choices. "The problems raised by such an institution," Pecora wrote in an assessment of what the hearings yielded, "go far beyond banking regulation in any narrow sense. It might be a formidable rival to government itself."[5]

At each of those hearings, the Wall Street law firm stood complicit in such conduct, reaching the moment when Senator James Couzens of Michigan, witnessing Charles Mitchell's lawyer regularly whispering to his client in manner approximating a ventriloquist, questioned who really was answering Pecora's questions. The colloquy came down to essentially this: Senator Couzens. "Is Mr. Winston your attorney?" Mr. Mitchell. "He is counsel for the institution.... He is of the firm of Shearman & Sterling... Mr.Winston is not employed by us directly." Senator Couzens. "You say he is not? I thought if he was, he might take the witness stand himself.... "[6]

Today the bankers and financiers are only one of the culprits. In 2014, the "Wall Street" law firm extends well beyond the emblematic "Wall Street" in size, location, and geographical reach.[7] Individual lawyers may serve purposes (e.g., on bank or an affiliate's board, owning bank stock, lobbying executive or legislative officials, engaging in certain public relations or approving certain accounting practices, making or raising political contributions) in a manner that can hardly be defined as providing "legal advice" or being protected by the attorney-client privilege. Perhaps the Pecora hearings began to establish a new paradigm in who should be held accountable for the next "Too big to fail" episode and the conduct, rationalized and supported by the lawyer, that leads to it.

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Installment II in next Newsletter: What was the practical and legal reasoning behind Ferdinand Pecora's concern about *political influence*? What questions did he ask to uncover the facts? What were the bankers' answers? And what, really, does "big" mean? Then? And now?

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[1] Michael Perino, *The Hellhound of Wall Street,* The Penguin Press (2010), 79.
[2] Senator Peter Norbeck (R.SD, and Committee Chair (""Wall Street Gamblers," *The Hellhound of Wall Street,* 19); William O. Douglas, Securities and Exchange Commission ("[N]o element of the Casino be allowed;" Time (Dec. 6, 1937); Herbert Hoover, ("[T[hey are banksters who rob the poor, drive the innocent to poverty.... Traitors to our institutions..." *Hoover Presidential Papers*, Vol. 4(January 1934); Pecora ("[M]erciless exploitation of the vicious possibilities of intricate corporate chicanery." Pecora, *Wall Street Under Oath, The Story of Our Modern Money Changers.* Kelley Pub. (1939), 283 (1968 ed.).
[3]Ronald Steel, *Walter Lippmann and the American Century*, Atlantic Brown (1980), 289.
[4] Jamie Dimon, chief executive of JP Morgan Chase ("I love America"), and Lloyd Blankfein, chief executive of Goldman Sachs ("Investing in America still produces the best return"), while encouraging their clients to move their headquarters' address abroad to pay less taxes here (at an estimated cost of $20 billion dollars to US taxpayers, and with hundreds of millions in bank-earned and lawyer's fees). "Banks Cash in on Mergers Intended to Allude Taxes," New York Times (July 29, 2014);"Private Equity's Free Pass," New York Times (July 27, 2014); "Easy Credit, Hard to Repay, Exorbitant Rates in a Subprime Boom for Used Cars," New York Times (July 20, 2014); "Hedge Fund's Chief Testifies at Tax Avoidance Hearing," New York Times (July 23, 2014); 3 private Equity Firms Agree to Settle Suit on Collusion," New York Times (Aug. 8,2014). In *Stress Test* (Crown, 2014), former Treasury Secretary Timothy Geithner posits that requiring banks, made much larger by government persuasion in order to "save" the nation's financial system, would function safely with the proscribed, periodic "stress test" and mandatory capital reserves to cover losses during the next crisis. Yet another illusion already pierced. "Big Banks Still a Risk," Gretchen Morgenson, New York Times, (Aug. 3, 2014);"Regulator's Fault Banks 'Living Wills,'" New York Times, (Aug. 6, 2014); "Did Dodd-Frank Work?" Joe Nocera, New York Times (July 21,2014); "Both Sides See Positive Signs in Report on Financial Industry," New York Times (Aug. 1, 2014).
[5] Pecora, *Wall Street Under Oath*, 40.
[6] Hearings, Sub. of the Com. on Banking and Currency, United States Senate. 72nd Cong. 2nd Sess. (February 21, 1933, 1773-1774.)

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[7] Baker and McKenzie (74 offices in 46 countries, revenue in excess of $2 billion), and DLA Piper (offices in US, Asia, Europe, and Middle East, revenue in excess of $2 billion), Chicago based, each has more than 4000 lawyers; a dozen other law firms exceeded 1000 lawyers. These firms have substantial banking and financial institutional relationships, including as borrowers. Size and reach have another effect that has warranted strained "legal" and ethics interpretations and manipulated arrangements intended to ensure no revenue opportunity is lost: conflict of interests among its clients. These are not your grandfather's or even father's law firms. USAttorneyLegalServices.com; *The Lawyer*; and each firm's web site.

Charles E. Mitchell

Senator James Couzens (R.Michigan)(l), Ferdinand Pecora(r), Committee Chair Duncan Fletcher (D.Florida) (late 1933)

"Big Banks Still A Risk" Gretchen Morgenson (NY Times photo)