WHAT COOKED THE WORLDS' ECONOMY? NOT YOUR OVERDUE MORTGAGE
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By James Lieber

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[In this succinct article, James Lieber presents a clear and concise saga of the global economic crisis and demonstrates its origin in fraud, from liar loans to hedge funds on life support--all implemented through incomprehensible FRAUD.--CB]

It's 2009. You're laid off, furloughed, foreclosed on, or you know someone who is. You wonder where you'll fit into the grim new semi-socialistic post-post-industrial economy colloquially known as "this mess."

You're astonished and possibly ashamed that mutant financial instruments dreamed up in your great country have spawned worldwide misery. You can't comprehend, much less trim, the amount of bailout money parachuting into the laps of incompetents, hoarders, and miscreants. It's been a tough century so far: 9/11, Iraq, and now this. At least we have a bright new president. He'll give you a job painting a bridge. You may need it to keep body and soul together.

The basic story line so far is that we are all to blame, including homeowners who bit off more than they could chew, lenders who wrote absurd adjustable-rate mortgages, and greedy investment bankers.

Credit derivatives also figure heavily in the plot. Apologists say that these became so complicated that even Wall Street couldn't understand them and that they created "an unacceptable level of risk." Then these blowhards tell us that the bailout will pump hundreds of billions of dollars into the credit arteries and save the patient, which is the world's financial system. It will take time—maybe a year or so—but if everyone hangs in there, we'll be all right. No structural damage has been done, and all's well that ends well.

Sorry, but that's drivel. In fact, what we are living through is the worst financial scandal in history. It dwarfs 1929, Ponzi's scheme, Teapot Dome, the South Sea Bubble, tulip bulbs, you name it. Bernie Madoff? He's peanuts.

Credit derivatives—those securities that few have ever seen—are one reason why this crisis is so different from 1929.

Derivatives weren't initially evil. They began as insurance policies on large loans. A bank that wished to lend money to a big, but shaky, venture, like what Ford or GM have become, could hedge its bet by buying a credit derivative to cover losses if the debtor defaulted. Derivatives weren't cheap, but in the era of globalization and declining American competitiveness, they were prudent. Interestingly, the company that put the basic hardware and software together for pricing and clearing derivatives was Bloomberg. It was quite expensive for a financial institution—say, a bank—to get a Bloomberg machine and receive the specialized training required to certify analysts who would figure out the terms of the insurance. These Bloomberg terminals, originally called Market Masters, were first installed at Merrill Lynch in the late 1980s.

Subsequently, thousands of units have been placed in trading and financial institutions; they became the cornerstone of Michael Bloomberg's wealth, marrying his skills as a securities trader and an electrical engineer.

It's an open question when or if he or his company knew how they would be misused over time to devastate the world's economy.

Fast-forward to the early years of the Clinton administration. After an initial surge of regulatory behavior in favor of fair markets, especially in antitrust, that sort of behavior was abandoned, and free markets triumphed. The result was a morass of white-collar sociopathy at Archer Daniels Midland, Enron, and WorldCom, and in a host of markets ranging from oil to vitamins.

This was the beginning of the heyday of hedge funds. Unregulated investment houses were originally based on the questionable but legal practice of short-selling—selling a financial instrument you don't own in hopes of buying it back later at a lower price. That way, you hedge your bets: You cover your investment in a company in case a company's stock price falls.

But hedge funds later diversified their practices beyond that easy definition. These funds acquired a good deal of popular mystique. They made scads of money. Their notoriously high entry fees—up to 5 percent of the investment, plus as much as 36 percent of profits—served as barriers to all but the richest investors, who gave fortunes to the funds to play with. The funds boasted of having genius analysts and fabulous proprietary algorithms. Few could discern what they really did, but the returns, for those who could buy in, often seemed magical.

But it wasn't magic. It amounted to the return of the age-old scam called "bucket shops." Also sometimes known as "boiler rooms," bucket shops emerged after the Civil War. Usually, they were storefronts where people came to bet on stocks without owning them. Unlike their customers, the shops actually owned blocks of stock. If customers were betting that a stock would go up, the shops would sell it and the price would plunge; if bettors were bearish, the shops would buy. In this way, they cleaned out their customers. Frenetic bucket-shop activity caused the Panic of 1907. By 1909, New York had banned bucket shops, and every other state soon followed.

In the mid-'90s, though, the credit-derivatives industry was hitting its stride and argued vehemently for exclusion from all state and federal anti-bucket-shop regulations. On the side of the industry were Federal Reserve Chairman Alan Greenspan, Treasury Secretary Robert Rubin, and his deputy, Lawrence Summers. Holding the fort for the regulators was Brooksley Born, who headed the Commodity Futures Trading Commission (CFTC). The three financial titans ridiculed the virtually unknown and cloutless, but brilliant and prophetic Born, who warned that unrestricted derivatives trading would "threaten our regulated markets, or indeed, our economy, without any federal agency knowing about it." Warren Buffett also weighed in against deregulation.

But Congress loved Greenspan—a/k/a "the Maestro" and "the Oracle"—and Clinton loved Rubin. The sleepy hearings received almost no public attention. The upshot was that Congress removed oversight of derivatives from the CFTC and preempted all state anti-bucket-shop laws. Born resigned shortly afterward.

Soon, something odd started to happen. Legitimate big investors, often with millions of dollars to place, found that they couldn't get into certain hedge funds, despite the fact that they were willing to pay steep fees. In retrospect, it seems as if these funds did not want fussy outsiders looking into what they were doing with derivatives.

Imagine that a person is terminally ill. He or she would not be able to buy a life insurance policy with a huge death benefit. Obviously, third parties could not purchase policies on the soon-to-be-dead person's life. Yet something like that occurred in the financial world.

This was not caused by imprudent mortgage lending, though that was a piece of the puzzle. Yes, Fannie Mae and Freddie Mac were put on steroids during the '90s, and some people got into mortgages who shouldn't have. But the vast majority of homeowners paid their mortgages. Only about 5 to 10 percent of these loans failed—not enough to cause systemic financial failure. (The dollar amount of defaulted mortgages in the U.S. is about $1.2 trillion, which seems like a princely sum, but it's not nearly enough to drag down the entire civilized world.)

Much more dangerous was the notorious bundling of mortgages. Investment banks gathered these loans into batches and turned them into securities called collateralized debt obligations (CDOs). Many included high-risk loans. These securities were then rated by Standard & Poor's, Fitch Ratings, or Moody's Investors Services, who were paid at premium rates and gave investment grades. This was like putting lipstick on pigs with the plague. Banks like Wachovia, National City, Washington Mutual, and Lehman Brothers loaded up on this financial trash, which soon proved to be practically worthless. Today, those banks are extinct. But even that was not enough to cause a worldwide financial crisis.

What did cause the crisis was the writing of credit derivatives. In theory, they were insurance policies for investors; in practice, they became a guarantee of global financial collapse.

As insurance, they were poised to pay off fabulously when these weak bundled securities failed. And who was waiting to collect? Well, every gambler is looking for a sure bet. Most never find it. But the hedge funds and their ilk did.

The mantra of entrepreneurial culture is that high risk goes with high reward. But unregulated and opaque derivatives trading was countercultural in the sense that low or no risk led to quick, astronomically high rewards. By plunking down millions of dollars, a hedge fund could reap billions once these fatally constructed securities plunged. Again, the funds did not need to own the securities; they just needed to pay for the derivatives—the insurance policies for the securities. And they could pay for them again and again. This was known as replicating. It became an addiction.

About $2 trillion in credit derivatives in 1989 jumped to $8 trillion in 1994 and skyrocketed to $100 trillion in 2002. Last year, the Bank for International Settlements, a consortium of the world's central banks based in Basel (the Fed chair, Ben Bernanke, sits on its board), reported the gross value of these commitments at $596 trillion. Some are due, and some will mature soon. Typically, they involve contracts of five years or less.

Credit derivatives are breaking and will continue to break the world's financial system and cause an unending crisis of liquidity and gummed-up credit. Warren Buffett branded derivatives the "financial weapons of mass destruction." Felix Rohatyn, the investment banker who organized the bailout of New York a generation ago, called them "financial hydrogen bombs."

Both are right. At almost $600 trillion, over-the-counter (OTC) derivatives dwarf the value of publicly traded equities on world exchanges, which totaled $62.5 trillion in the fall of 2007 and fell to $36.6 trillion a year later.

The nice thing about public markets is that they act as canaries that give warnings as they did in 1929, 1987 (the program trading debacle), and 2001 (the dot-com bubble), so we can scramble out with our economic lives. But completely private and unregulated, the OTC derivatives trade is justly known as the "dark market."

The heart of darkness was the AIG Financial Products (AIGFP) office in London, where a large proportion of the derivatives were written. AIG had placed this unit outside American borders, which meant that it would not have to abide by American insurance reserve requirements. In other words, the derivatives clerks in London could sell as many products as they could write—even if it would bankrupt the company.

The president of AIGFP, a tyrannical super-salesman named Joseph Cassano, certainly had the experience. In the 1980s, he was an executive at Drexel Burnham Lambert, the now-defunct brokerage that became the pivot of the junk-bond scandal that led to the jailing of Michael Milken, David Levine, and Ivan Boesky.

During the peak years of derivatives trading, the 400 or so employees of the London unit reportedly averaged earnings in excess of a million dollars a year. They sold "protection"—this Runyonesque term was favored—worth more than three times the value of parent company AIG. How could they have not known that they were putting at risk the largest insurer in the world and all the businesses and individuals that it covered?

This scheme that smacks of securities fraud facilitated the dreams of buyers called "counterparties" willing to ante up. Hedge fund offices sprouted in Kensington and Mayfair like mushrooms after a summer shower. Revenue from premiums for derivatives at AIGFP rose from $737 million in 1999 to $3.26 billion in 2005. Cassano reportedly hectored ever-willing counterparties to "play the power game"—in other words, gobble up all the credit derivatives backing CDOs that they could grab. As the bundled adjustable-rate mortgages ballooned, stretched home buyers defaulted, and the exciting power game became about as risky as blasting sitting ducks with a Glock.

People still seem surprised to read that hedge principals have raked in billions of dollars in a single year. They shouldn't be. These subprime-time players knew how to score. The scam bled AIG white. In mid-September, when it was on the ropes, AIG received an astonishing $85 billion emergency line of credit from the Fed. Soon, that was supplemented by another $67 billion. Much of that money, to use the government's euphemism, has already been "drawn down." Shamefully, neither Washington nor AIG will explain where the billions went. But the answer is increasingly clear: It went to counterparties who bought derivatives from Cassano's shop in London.

Imagine if a ring of cashiers at a local bank made thousands of bad loans, aware that they could break the bank. They would be prosecuted for fraud and racketeering under the anti-gangster RICO Act. If their counterparties—the debtors—were in on the scam and understood that they didn't have to pay off the loans, they could be charged, too. In fact, this scenario played out at subprime-pushing outlets of a host of banks, including Washington Mutual (acquired last year by JP Morgan Chase, which itself received a $25 billion bailout); IndyMac (which was seized by FDIC regulators); and Lehman Brothers (which went belly-up). About 150 prosecutions of this type of fraud are going forward.

The top of the swamp's food chain, where the muck was derivatives rather than mortgages, must also be scrutinized. Apparently, that is the case. AIGFP's Cassano has hired top white-collar litigator and former prosecutor F. Joseph Warin (profiled in the 2004 Washingtonian piece, "Who to Call When You're Under Investigation!"). Neither Cassano nor his attorney responded to interview requests.

AIG's lavishly compensated counterparties were willing participants and likewise could be considered for prosecution, depending on what they knew. Who were they?

At a 2007 conference, Cassano defined them as a "global swath" that included "banks and investment banks, pension funds, endowments, foundations, insurance companies, hedge funds, money managers, high-net-worth individuals, municipalities, sovereigns, and supranationals." Abetting the scheme, ratings agencies like Standard & Poor's gave high grades to the shaky mortgage-backed securities bundled by investment banks such as Goldman Sachs and Lehman Brothers.

After the relative worthlessness of these CDOs became clear, the raters rushed to downgrade them to junk status. This occurred suddenly with more than 4,000 CDOs in the first quarter of 2008—the financial community now regards them as "toxic waste." Of course, the sudden massive downgrading raises the question: Why had CDOs been artificially elevated in the first place, leading banks to buy them and giving them protective coloring just because the derivatives writers "insured" them?

After the raters got real (i.e., got scared), the gig was up. Hedge funds fled in droves from their luxe digs in London. The industry remains murky, but some observers feel that more than half of all hedges will fold this year. Not necessarily a good sign, it seems to show that the funds were one-trick ponies living mainly off the derivatives play.

We know that AIG was not the only firm that sold derivatives: Lehman and Bear Stearns both dealt them and died. About 20 years ago, JP Morgan, the now-defunct investment bank, had brought the idea to AIGFP in London, which ran with it. Seeing the Cassano group's success, Morgan jumped in with both feet. Specializing in credit default swaps—a type of derivative triggered to pay off by negative events in the lives of loans, like defaults, foreclosures, and restructurings—Morgan had a distinctive marketing spin. Its "quants" were classy young dealers who could really do the math, which of course gave them credibility with those who couldn't. They abjured street slang like "protection." They pitched their sophisticated swaps as "technologies." The market adored them. They, in turn, oversold the product, made huge commissions, and wounded Morgan, which had to sell itself to Chase, becoming JP Morgan Chase—now the country's biggest bank.

Today, the real question is whether the Morgan quants knew the swaps didn't work and actually were grenades with pulled pins. Like Joseph Cassano, such people should consult attorneys.

Secrecy shrouds the bailout. The 21 banks that each received more than $1 billion from the Fed won't disclose how, or even if, they're lending it, which hardly quells fears of hoarding. The Treasury says it can't force disclosure because it took only preferred (non-voting) stock in exchange for the money.

If anything, the Fed had been less candid. It stonewalls requests to reveal the winners (mainly banks and corporations) of $1.5 trillion in loans, as well as the securities it received as collateral. A Freedom of Information Act (FOIA) suit to obtain this information by Bloomberg News has been rebuffed by the Fed, which insists that a loophole in FOIA exempts it. Bloomberg will probably lose the case, but at least it's trying to probe the black hole of bailout money. Of course, Barack Obama could tell the Fed to release the information, plus generally open the bailout to public eyes. That would be change that we could believe in.

As for Bloomberg, its business side, Bloomberg L.P., has been less than forthcoming. Requests to interview someone from the company—and Michael Bloomberg, who retains a controlling interest—about the derivatives trade went unanswered.

In his economic address at Cooper Union last spring, Obama argued for new regulations, which he called "the rules of the road," and for a $30 billion stimulus package, that now seems quaint. In the OTC swaps trade, the Bloomberg L.P.'s computer terminals are the road, bridges, and tunnels for "real-time" transactions. The L.P.'s promotional materials declare: "You're either in front of a Bloomberg or behind it." In terms of electronic trading of certain securities, including credit default swaps: "Access to a dealer's inventory is based upon client relationships with Bloomberg as the only conduit." In short, the L.P. looks like a dominant player—possibly, a monopoly. If it has a true competitor, I can't find it. But then, this is a very dark market.

Did Bloomberg L.P. do anything illegal? Absolutely not. We prosecute hit-and-run drivers, not roads. But there are many questions—about the size of the derivatives market, the names of the counterparties, the amount of replication of derivatives, the role of securities ratings in Bloomberg calculations (in other words, could puffing up be detected and potentially stop a swap?), and how the OTC industry should be reported and regulated in order to prevent future catastrophes. Bloomberg is a privately held company—to the chagrin of would-be investors—and quite private about its business, so this information probably won't surface without subpoenas.

So what do we do now? In 2000, the 106th Congress as its final effort passed the Commodity Futures Modernization Act (CFMA), and, disgracefully, President Clinton signed it. It opened up the bucket-shop loophole that capsized the world's economic system. With the stroke of a presidential pen, a century of valuable protection was lost.

Even with that, the dangerous swaps still almost found themselves subjected to state oversight. In 2000, AIG asked the New York State Insurance Department to decide if it wanted to regulate them, but the department's superintendent, Neil Levin, said no. The question was not posed by AIGFP, but by the company's main office through its general counsel, a reminder that not long ago, AIG was a blue chip with a triple-A rating that touted its integrity.

We can't know why Levin rejected the chance to regulate the tricky trade. He died in the restaurant at the top of the World Trade Center on the morning of 9/11. A Pataki-appointed former Goldman Sachs vice president, Levin may have shared other Wall Streeters' love of derivatives as the last big-money sure thing as the IPO craze wound down. Or maybe he saw swaps as gambling rather than insurance, hence beyond his jurisdiction. Regardless, current Insurance Superintendent Eric Dinallo told me, "I don't agree with his answer." Maybe the economic crisis could have been averted if Levin had answered otherwise. "How close we came . . ." Dinallo mused.

Deeply occupied with keeping AIG, the parent company, afloat since the bailout, Dinallo saw the carnage that the swaps caused and, with the support of Governor Paterson, pushed anew for regulatory oversight, a position also adopted by the President's Working Group (PWG), which includes the Treasury, Fed, SEC, and CFTC.

But regulation isn't enough to stop a phenomenon called "de-supervision" that occurs when officials can't, or won't, oversee a market. For instance, the Fed under Greenspan had authority to regulate mortgage bankers and brokers, the industry's cowboys who kicked off this fiasco. Because

Greenspan's libertarian sensibilities prevented him from invoking the Fed's control, the mortgage market careened corruptly until the wheels came off. Notoriously lax and understaffed, the SEC did nothing to limit investment banks that bundled, pitched, and puffed non-prime mortgages as the raters cheered. It's doubtful that any agency can be relied on to control lucrative default swaps, which should be made illegal again. The bucket-shop loophole must be closed. The evil genie should go back in the bottle.

Will Obama re-criminalize these financial weapons by pushing for repeal of the CFMA? This should be a no-brainer for Obama, who, before becoming a community organizer in Chicago, worked on Wall Street, studied derivatives, and by now undoubtedly knows their destructive power.

What about the $600 trillion in credit derivatives that are still out there, sucking vital liquidity and credit out of the system? It's the tyrannosaurus in the mall, the one that made Henry Paulson, the former Treasury Secretary who looks like Daddy Warbucks, get down on his knees and beg Nancy Pelosi for a bailout.

Even with the bailout, no one can get their arms around this monster. Obviously, the $600 trillion includes not only many unseemly replicated death bets, but also some benign derivatives that creditors bought to hedge risky loans. Instead of sorting them out, the Bush administration tried to protect them all, while keeping the counterparties happy and anonymous.

Paulson has taken flack for spending little to bring mortgages in line with falling home values. Sheila Bair, the FDIC chief who often scrapped with Paulson, said this would cost a measly $25 billion and that without it, 10 million Americans could lose their homes over the next five years. Paulson thought it would take three times as much and balked. Congress is bristling because the Emergency Economic Stabilization Act (EESA) could provide mortgage relief—and some derivatives won't detonate if homeowners don't default. Obama's nominee for Treasury Secretary, Timothy Geithner, could back such relief at his hearings.

The other key appointment is Attorney General. A century ago, when powerful trusts distorted the market system, we had AGs who relentlessly tracked and busted them. Today's crisis is missing, so far, an advocate as dynamic and energetic as the mortgage bankers, brokers, bundlers, raters, and quants who, in a few short years, littered the world with rotten loans, diseased CDOs, and lethal derivatives. During the Bush years, white-collar law enforcement actually dropped as FBI agents were transferred to antiterrorism. Even so, according to William Black, an effective federal litigator and regulator during the 1980s savings-and-loan scandal, by 2004, the FBI perceived an epidemic of fraud. Now a professor of law and finance at the University of Missouri–Kansas City, Black has testified to Congress about the current crisis and paints it as "control fraud" at every level. Such fraud flows from the top tiers of corporations—typically CEOs and CFOs, who control perverse compensation systems that reward cheating and volume rather than quality, and circumvent standard due diligence such as underwriting and accounting. For instance, AIGFP's Cassano reportedly rebuffed AIG's internal auditor.

The environment from the top of the chain—derivatives gang leaders—to the bottom of the chain—subprime, no-doc loan officers—became "criminogenic," Black says. The only real response? Aggressive prosecution of "elites" at all stages in this twisted mess. Black says sentences should not be the light, six-month slaps that white-collar criminals usually get, or the Madoff-style penthouse arrest.

As staggering as the Madoff meltdown was, it had a refreshing side—the funds were frozen. In the bailout, on the other hand, the government often seems to be completing the scam by quietly passing the proceeds to counterparties.

The advantage of treating these players like racketeers under federal law is that their ill-gotten gains could be forfeited. The government could recoup these odious gambling debts instead of simply paying them off. In finance, the bottom line is the bottom line. The bottom line in this scandal is that fantastically wealthy entities positioned themselves to make unfathomable fortunes by betting that average Americans—Joe Six-Packs and hockey moms—would fail.

Black suggests that derivatives should be "unwound" and that the payouts cease: "Close out the positions—most of them have no social utility." And where there has been fraud, he adds, "clawback makes perfect sense." That would include taking back the ludicrously large bonuses and other forms of compensation given to CEOs at bailed-out companies.

No one knows how much could be clawed back from the soiled derivatives reap. Clearly, it's not $600 trillion. William Bergman, formerly a market analyst at the Chicago Fed in "netting"—what's left after financial institutions pay each other off for ongoing deals and debts—makes a "guess" that perhaps only 5 percent could be recouped, which he concedes is unfortunately low. Still, that's $30 trillion, a huge number, more than 10 times what the Fed can deploy and over twice the U.S. gross domestic product. Such a sum, if recovered through the criminal justice process, could ease the liquidity crisis and actually get the credit arteries flowing. Not everyone would like it. What's left of Wall Street and hedge funds want their derivatives gains; so do foreign banks.

A tangle of secrecy, conflicts of interest, and favoritism plagues the process of recovery.

Lehman drowned, but Goldman Sachs, where Paulson was formerly CEO, was saved. The day before AIG reaped its initial $85 billion bonanza, Paulson met with his successor, Lloyd Blankfein, who reportedly argued that Goldman would lose $20 billion and fail unless AIG was rescued. AIG got the money.

Had Goldman bought from AIG credit derivatives that it needed to redeem? Like most other huge financial traders, Goldman has a secretive hedge fund, Global Alpha, that refuses to reveal its transactions. Regardless, Paulson's meeting with Blankfein was a low point. If Dick Cheney had met with his successor at Halliburton and, the very next day, written a check for billions that guaranteed its survival, the press would have screamed for his head.

The second most shifty bailout went to Citigroup, a money sewer that won last year's layoff super bowl with 73,000. Instead of being parceled to efficient operators, Citi received a $45 billion bailout and $300 billion loan package, at least in part because of Robert Rubin's juice. While Treasury Secretary under Clinton, Rubin led us into the derivatives maelstrom, deported jobs with NAFTA, and championed bank deregulation so that companies like Citi could mimic Wall Street speculators. After he joined Citi's leadership in 1999, the bank went long on mortgages and other risks du jour, enmeshed itself in Enron's web, tanked in value, and suffered haphazard management, while Rubin made more than $100 million.

Rubin remained a director and "senior counselor" at Citi until January 9, 2009, and is an economic adviser to Obama. In truth, he probably shouldn't be a senior counselor anywhere except possibly at Camp Granada. Like Greenspan, he should retire before he breaks something again, and we have to pay for it. (Incidentally, the British bailout, which is more open than ours and mandates mortgage relief, makes corporate welfare contingent on the removal of bad management.)

The third strangest rescue involved the Fed's announcement just before Christmas that hedge funds for the first time could borrow from it. Apparently, the new $200 billion credit line relates to recently revealed securitized debts including bundled credit card bills, student loans, and auto loans. Obviously, it's worrisome that the crisis may be morphing beyond its real estate roots.

To say the bailout hasn't worked so far is putting it mildly. Since the crisis broke, Washington's reaction has been chaotic, lenient to favorites, secretive, and staggeringly expensive. An estimated $7.36 trillion, more than double the total American outlay for World War II (even correcting for inflation), has been thrown at the problem, according to press reports. Along the way, banking, insurance, and car companies have been nationalized, and no one has been brought to justice.

Combined unemployment and underemployment (those who have stopped looking, and part-timers) runs at nearly 20 percent, the highest since 1945. Housing prices continue to hemorrhage—last fall's 18 percent drop could double. Holiday shopping fizzled: 160,000 stores closed last year, and 200,000 more are expected to shutter in '09. Some forecasts place eventual retail darkness at 25 percent. In 2008, the Dow dropped further—34 percent—than at any time since 1931. There is no sound sector in the economy; the only members of the 30 Dow Jones Industrials posting gains last year were Wal-Mart and McDonald's.

Does Obama's choice for Attorney General, Eric Holder, have the tenacity and will to tackle the widest fraud in American history? Parts of his background don't necessarily augur well: He worked on a pardon for Marc Rich, the fugitive billionaire tax evader once on the FBI's Most Wanted List whom Clinton cleared. After leaving the Clinton era's Justice Department, Holder went to work for Covington & Burling, a D.C. firm that represents corporate heavies including Big Tobacco. He defended Chiquita Brands in a notorious case, in which it paid a $25 million fine for using terrorists in Columbia as security. Holder fits well within the gaggle of elite D.C. lawyers who move back and forth between government and defending corporate criminals. He doesn't exactly have the sort of résumé that startles robber barons.

Can Holder design and orchestrate a muscular legal response, including prosecution and stern punishment of top executives, plus aggressive clawbacks of money? There seems little question that he has the skill, so the decision on how aggressive the Justice Department will be is up to Obama.

Holder could ask for and get well-organized FBI white-collar teams. The personnel hole caused by shifts to antiterrorism would have to be more than filled to their pre-9/ll staffing if the incoming administration decides to break this criminogenic cycle rather than merely address it symbolically.

Black contends that aggressive prosecution would be good for the economy because it may help prevent cheating and fraud that inevitably cause bubbles and destroy wealth. The Sarbanes-Oxley law passed in Enron's wake, for instance, is supposed to make corporations now keep the kinds of documents necessary to assess criminality. Whether the CEOs, CFOs, and others who controlled the current frauds will do so is another matter.

"Don't count on them keeping records for long," Black warns. "It's time to get out the subpoenas."
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