BILL MOYERS: Welcome to the JOURNAL and WILLIAM K. BLACK

http://www.pbs.org/moyers/journal/04232010/watch.html

April 23, 2010

BILL MOYERS: Welcome to the JOURNAL. We'll get to two big battles in Washington in just a moment -- financial reform and the future of the internet. But first, I want to thank those of you who wrote after you heard me say last week that the JOURNAL will come to an end with next Friday's broadcast. It's true, and all of us here were touched by your messages of regret.

I will miss the virtual community of kindred spirits that has grown up around this broadcast -- viewers like you, as we say, whose unseen but felt presence reminds me of why I have kept at this work so long. But it has been a long time, and that's why I can assure you that my departure is entirely voluntary. Many of you wrote to say you were alarmed at the possibility that we are being pushed off the air -- that higher ups or dark powers pointed to the door and said, "Go."

You can relax; it didn't happen. I'm leaving for one reason and one reason alone: it's time. Believe me, it wasn't an easy decision: I like what I do, cherish my colleagues and enjoy your company. But I'll be 76 in a few weeks, and there are some things I want to do that the deadlines and demands of a weekly broadcast make impossible. So for me, it's now or never. I informed public television of my decision more than a year ago, intending to leave back in December. But my colleagues at PBS asked me to extend the series four more months to give them time to prepare a new public affairs series. More on that next week.

Now to the big rumble of this week -- and I'm not talking about that volcano in Iceland. I'm talking about the fight to reform our financial system.

PRESIDENT BARACK OBAMA: There is no dividing line between Main Street and Wall Street.

BILL MOYERS: You probably heard the President speaking in New York yesterday, stumping for more regulation of Wall Street:

You've also probably heard about the government's charge that Goldman Sachs committed a highly sophisticated fraud. The claim is that this kingpin of Wall Street made a bundle by packaging mortgage debt as exotic investments some in the firm knew would fail.

That word "fraud" pops up more and more as we dig deeper into Wall Street's outrageous behavior during the run up to the great collapse of 2008. We heard it right here on the Journal, one year ago.

WILLIAM K. BLACK Fraud is deceit. And the essence of fraud is, "I create trust in you, and then I betray that trust, and get you to give me something of value." And as a result, there's no more effective acid against trust than fraud, especially fraud by top elites, and that's what we have.

BILL MOYERS: That was Bill Black, who's no stranger to bank investigations. He was a senior regulator for the Federal Home Loan Board who cracked down on banking during the Savings & Loan crisis of the 1980s.

Just this week, he was on Capitol Hill testifying about another failed financial firm, Lehman Brothers.

WILLIAM K. BLACK Lehman's failure is a story in large part of fraud. And it is fraud that begins at the absolute latest in 2001.

BILL MOYERS: Bill Black is with me now. One of the country's leading experts on crimes in high places he teaches economics and law at the University of Missouri-Kansas City, and wrote this book, THE BEST WAY TO ROB A BANK IS TO OWN ONE.

Welcome back to the JOURNAL.

WILLIAM K. BLACK Thank you.

BILL MOYERS: What did you think of the President's speech late this week?

WILLIAM K. BLACK It's a good speech. He's a very good spokesman for his causes. I don't think substantively the measures are going to prevent a future crisis. And I was disappointed that he wasn't willing to be blunt. He used a number of euphemisms, but he was unwilling to use the F word.

BILL MOYERS: The F word?

WILLIAM K. BLACK The F word's fraud in this. And it's the word that explains why we have these recurrent, intensifying crisis.

BILL MOYERS: How is that? What do you mean when you say fraud is at the center of it?

WILLIAM K. BLACK Well, first, when you deregulate or never regulate, mortgage bankers were never regulated, you effectively have decriminalized that industry, because only the regulators can serve as the sherpas, that the FBI and the prosecutors need to be able to understand and prosecute these kind of complex frauds. They can do one or two or maybe three on their own, but when an entire industry is beset by wide scale fraud, you have to have the regulators. And the regulators were the problem. They became a self-fulfilling prophecy of failure, because they, President Bush appointed people who hated regulation. I call them the anti-regulators. And that's what they were.

BILL MOYERS: This hearing that, where you testified this week, looking into the bankruptcy at Lehman Brothers, had something on this.

TIMOTHY GEITHNER: And tragically, when we saw firms manage themselves to the edge of failure, the government had exceptionally limited authority to step in and to protect the economy from those failures.

BEN BERNANKE: In September 2008, no government agency had sufficient authority to compel Lehman to operate in a safe and sound manner and in a way that did not pose dangers to the broader financial system.

ANTON VALUKAS: What is clear is that the regulators were not fully engaged and did not direct Lehman to alter the conduct which we now know in retrospect led to Lehman's ruin.

BILL MOYERS: The regulators were not fully engaged. I mean, this is an old story. We all know about regulatory capture where the regulated take control of the regulators.

WILLIAM K. BLACK Yeah, but this one is far worse. That's not very candid testimony on anybody's part there. The Fed had unique authority. And it had it since 1994 to regulate every single mortgage lender in America. And you might think the Fed would use that authority.

And you might especially think that, if you knew that Gramlich, one of the Fed members, went personally to Alan Greenspan and said, there's a housing bubble. And there's a terrible crisis in non-prime. We need to send the examiners in. We need to use our regulatory authority. And Greenspan refused. Lehman was brought down primarily by selling liar's loans. It was the biggest seller of liar's loans in the world.

And when we look at these liar's loans, we find 90 percent fraud. 90 percent. And we find that most of the frauds are not induced by the borrower, but they're overwhelmingly done by the loan brokers.

BILL MOYERS: And liar's loans are?

WILLIAM K. BLACK A liar's loan is we don't get any verified information from you about your income, your employment, your job history or your assets.

BILL MOYERS: You give me a loan, no questions asked?

WILLIAM K. BLACK No real questions asked. Certainly no answers checked. In fact, we just had hearings last week about WaMu, which is also a huge player--

BILL MOYERS: Washington Mutual--

WILLIAM K. BLACK --in these frauds. Washington Mutual, which used to make, run all those ads making fun of bankers who, because they were stuffy and looked at loan quality before they made a loan. Well, WaMu didn't do any of that stuff. And of course, WaMu had just massive failures. And who got in trouble at WaMu? Who got in trouble at Lehman? You got in trouble if you told the truth.

They fired the people who found the problems. They promoted the people that caused the problem, and they gave them massive bonuses.

BILL MOYERS: I watched the testimony where you were present the other day in the Lehman hearings. And there was a very moving moment with a former vice-president of Lehman Brothers who had gone and tried to blow the whistle, who tried to get people to pay attention to what was going on. Take a look.

MATTHEW LEE: I hand-delivered my letter to the four addressees and I'll give a quick timeline of what happened, May 16th was a Friday, on the Monday I sat down with the chief risk officer and discussed the letter, on the Wednesday I sat down with the general counsel and the head of internal audit, discussed the letter. On the Thursday I was on a conference call to Brazil. Somebody came into my office, pulled me out, and fired me on the spot with out any notification. I stayed, sorry.

BILL MOYERS: Matthew Lee, vice-president of Lehman Brothers, fired because he tried to blow the whistle. What does that say to you?

WILLIAM K. BLACK Well, it tells me that they were covering up the frauds, that they knew about the frauds and that they were desperate to prevent other people from learning.

BILL MOYERS: Matthew Lee told the accounting firm Ernst & Young what was going on. Isn't the accounting firm supposed to report this, once they learn from somebody like him that there's fraud going on?

WILLIAM K. BLACK Yes, they're supposed to be the most important gatekeeper. They're supposed to be independent. They're supposed to be ultra-professional. But they have an enormous problem, and it's compensation. And that is, the way you rise to power within one of these big four accounting firms is by being a rainmaker, bringing in the big clients.

And so, every single one of these major frauds we call control frauds in the financial sphere has been-- their weapon of choice has been accounting. And every single one, for many years, was able to get what we call clean opinions from one of the most prestigious audit firms in the world, while they were massively fraudulent and deeply insolvent.

BILL MOYERS: I read an essay last night where you describe what you call a criminogenic environment. What is a criminogenic environment?

WILLIAM K. BLACK A criminogenic environment is a steal from pathology, a pathogenic environment, an environment that spreads disease. In this case, it's an environment that spreads fraud. And there are two key elements. One we talked about. If you don't regulate, you create a criminogenic environment because you can get away with the frauds. The second is compensation. And that has two elements. One is the executive compensation that people have talked about that creates the perverse incentives. But the second is for these professionals. And for the lower level employees, to give the bonuses. And it creates what we call a Gresham's dynamic. And that just means cheaters prosper. And when cheaters prosper, markets become perverse and they drive honesty out of the market.

BILL MOYERS: You also wrote that the New York Federal Reserve knew about this so-called three-card monte routine. But that, the man who led it, at the time, Timothy Geithner, now the treasury secretary, testified that there was nothing he could do.

TIMOTHY GEITHNER: In our system the Federal Reserve was a fire station, a fire station with important, if limited, tools to put foam on the runway, to provide liquidity to markets in extremis. However, the Federal Reserve, under the laws of this land was not given any legal authority to set or enforce limits on risk-taking by large financial institutions like the independent investment banks, insurance companies like AIG, Fannie and Freddie, or the hundreds of non-bank financial firms that operated outside the constraints of the banking system.

BILL MOYERS: Now, what I hear is the gentleman who was then chairman of the New York Fed, saying, I, we had this job to do, but we didn't have the authority to do it.

WILLIAM K. BLACK Yeah.

BILL MOYERS: We were the fire truck, but we didn't have any water in our hose.

WILLIAM K. BLACK Yeah, this was pretty disingenuous, because other portions of his testimony, he explained why there was this gap. And he said it was because we repealed Glass-Steagall. Well, the Fed pushed for the repeal of Glass-Steagall.

BILL MOYERS: Glass-Steagall was the act that was repealed in the late nineties that separated regular banks from investment banks, right?

WILLIAM K. BLACK Correct. So this is a deliberately created regulatory black hole, created by the Fed. And then the Fed comes into the hearing, eight years later, and said, we were helpless. Helpless to do anything, because of a black hole we designed.

BILL MOYERS: Well, it doesn't stop there, because as I listened the other day, I heard that the Securities and Exchange Commission knew that Lehman was repeatedly ignoring its own risks, but it did nothing. Here's what the new chairman of the SEC, Mary Schapiro, had to say the other day, about why the commission fell down on the job. Take a look.

MARY SCHAPIRO: The SEC didn't have the staff, the resources, or quite honestly, in some ways, the mindset to be a prudential regulator of the largest financial institutions in the world. It was such a deviation from our historic disclosure-based and rules-based approach to regulation to come in and be a prudential supervisor. The staff was never given the resources. This program peaked at 24 people for the entire universe of the five largest investment banking firms in the world.

WILLIAM K. BLACK Well, this is another example, the self-fulfilling failure. This wasn't done under Mary Shapiro's watch.

BILL MOYERS: Right--

WILLIAM K. BLACK This was Chris Cox, who was Bush's appointment. And he's the one who decided, we're only going to send 24 people to deal with all of the largest investment banks in the world. Now that's a farce. And everybody knows it's a farce. He didn't want effective regulation. We both spent time, considerable time, in Texas. And you know, the joke, one riot, one ranger, right?

BILL MOYERS: Texas ranger, right.

WILLIAM K. BLACK Treasury Secretary Geithner testified that in the circumstances they were dealing with at Lehman, "We were on the brink of the destruction of the entire global financial system." And then Chairman Bernanke testified how many people the Fed sent to Lehman to prevent us on the brink of global collapse.

BILL MOYERS: And how many?

WILLIAM K. BLACK Two. They have a staff of thousands. This is criminal negligence except, because he's a federal employee, we can't charge him with a crime.

BILL MOYERS: Let's talk a moment about the government's allegations against Goldman Sachs. I mean, I get dizzy just reading about it. But the Wall Street Journal reporters did a terrific job this week of trying to sort it out. And they say, "It centers on a deal Goldman Sachs crafted, so that the hedge fund king, John Paulson, could bet on a collapse in housing prices." Is that your reading of it?

WILLIAM K. BLACK Yes, I mean, the complaint actually focuses on lying to investors. So it's a very traditional securities fraud complaint.

BILL MOYERS: Not about Paulson, by the way. He's not mentioned in the complaint.

WILLIAM K. BLACK No, but that's really interesting. And as to whether he will be mentioned eventually in this complaint, because Paulson has lots of potential liability on this one. John Paulson was allowed by Goldman, indeed encouraged by Goldman, to create a "Most Likely to Fail" list. So he took, within a particular category, the absolute worst stuff, because he wanted to bet that the stuff would fall in value. And they were certain to fall in value in terms of the economics.

BILL MOYERS: Wasn't he betting that people wouldn't be able to pay their mortgages?

WILLIAM K. BLACK Not even necessarily that, because most of these are liar's loans, again. And they will not pay, right? It's not an issue of liar's loans, will it work or will it not work. It's only when will it blow up. A liar's loan will blow up. If housing prices keep going up for three years hugely, then they will blow up in the fourth year.

But they will blow up. So he was betting against something that he knew was going to blow up. He didn't necessarily know the timing, but he proved to be right about the timing, because we know from the SEC complaint that he was in a rush to get this. He knew that the housing collapse was imminent. And he had to get this deal done right away. And Goldman Sachs felt the same thing. So they went and they got themselves a dupe, ACA. And they told the -- ACA is a group that puts together and supposedly checks the quality of mortgages. Not very well, as it turned out, of course. An investor would obviously want to know that this portfolio was picked to fail. Instead, they were told, according to the SEC complaint, "No, no, no, no. There's no John Paulson out there. There's only ACA, and it's in your corner. And it's picking a portfolio most likely to succeed." Now if John Paulson knew that Goldman was making those representations, then John Paulson knew those representations were false. And that could make him an aider and abettor.

BILL MOYERS: So tell me where the fraud might be in there, if the government proves its case.

WILLIAM K. BLACK Well, the fraud is, I'm representing to you, the potential investor, that a competent professional independent firm, ACA, looking after your interests, has picked this portfolio because they believe it's most likely to succeed. When in fact, the portfolio was selected overwhelmingly by Paulson and was selected because it was deliberately chosen to fail.

BILL MOYERS: The complaint names only one person, Fabrice Tourre, if I get the name correct.

WILLIAM K. BLACK That is correct.

BILL MOYERS: Who was 27 at the time. Would he have been acting without supervision on a deal of that enormity?

WILLIAM K. BLACK Oh, not even close. And this was-- this was part of a package of about 18 deals as well. So as big as this package was, and it was huge, the overall package was absolutely the type of thing that received personal attention of the leaders, the absolute top leaders at Goldman Sachs. So it's very curious to me that the SEC has failed to name the higher-ups.

BILL MOYERS: Why did it take so long for the Securities and Exchange Commission, the SEC, to kick into gear on this? I mean, have they kicked into gear?

WILLIAM K. BLACK Well, they haven't kicked into gear fully, or they'd be naming Blankfein and other senior leaders of Goldman. And they've, as you just mentioned, they've only gone after a junior person. And there would be, if they were really in gear, there would be criminal charges here. And if they were really in gear, there'd be a broad investigation, not just of Goldman, but of all of these major entities.

In the last three weeks, we have finally done a half-baked investigation, mind you. Not -- nothing like we did in the Savings & Loan days -- of Washington Mutual (WaMu), Citicorp, Lehman, and Goldman. And we have found strong evidence of fraud at all four places.

And we have looked previously at Fannie and Freddie and found the same thing. So the only six places we've looked, at really elite institutions, we've found strong evidence of fraud. So where are the other investigations? Why are there no arrests? Why are there no convictions?

BILL MOYERS: Well, Bill, where are the other investigations? Why have there been no arrests? Why have there been no convictions?

WILLIAM K. BLACK Because we have still Bush's wrecking crew in charge of the key regulatory agencies. Why are they still in place? They have abysmal records as major causes of this crisis.

BILL MOYERS: You talk about the Bush appointees still being there, but Goldman's former lobbyist, his treasury secretary, Timothy Geithner's chief of staff, the head of the Commodity Futures Trading Commission, Gary Gensler, who may soon have new power over derivatives, worked for Goldman.

So did the deputy director of the White House National Economic Council, the under Secretary of State is a former Goldman employee. Goldman's hired Barack Obama's recent chief counsel from the White House on his defense team. I mean--

WILLIAM K. BLACK Don't forget Rubin.

BILL MOYERS: Robert Rubin, whose influence is all over the place, who used to be--

WILLIAM K. BLACK It's his protégés that are in charge of economic policy, under Obama.

BILL MOYERS: So is this administration, which still has some Bush holdovers in it, and now has a lot of Goldman people in it, is this administration going to be able to pass judgment on Goldman Sachs?

WILLIAM K. BLACK Well, so far, they haven't been able to do it. They can't even get themselves to use the word fraud.

There's a huge part that is economic ideology. And neoclassical economists don't believe that fraud can exist. I mean, they just flat out -- the leading textbook in corporate law from law and economics perspective by Easterbrook and Fischel, says -- I'll get pretty close to exact quotation. "A rule against fraud is neither necessary nor particularly important." Right?

Notice how extreme that statement is. We don't need laws. We don't need an FBI. We don't need a justice department. We don't even need rules like the SEC. The markets cleanse themselves automatically and prevent all frauds. This is a spectacularly naïve thing. There is enormous ideological content. And it fits with class. And it fits with political contributions.

Do you want to look at these seemingly respectable huge financial institutions, which are your leading political contributors as crooks?

BILL MOYERS: TheHill.com website says Goldman Sachs is uniquely positioned to fight this case, that it spent $18 million over the last decade lobbying members of Congress, and put millions more in their campaigns. I mean, you've said elsewhere. That's smart business, right, to invest in the politicians who are going to be investigating you?

WILLIAM K. BLACK I would tell you, the Savings & Loan crisis, our phrase was, "The highest return on assets is always a political contribution."

BILL MOYERS: Well, all right. You're a member of Congress. The Supreme Court has said, "Goldman Sachs can spend all it wants in November to defeat you." Are you going to take them on?

WILLIAM K. BLACK Absolutely, but I would never be elected to Congress because of that. So let me -- in terms of that Supreme Court decision, if corporations are going to be just like people, let me tell you my criminologist hat. Then let's use the three strike laws against them. Three strike laws, you go to prison for life, if you have three felonies. How many of these major corporations would still be allowed to exist, if we were to use the three strike laws, given what they've been convicted of in the past?

And in most states, they remove your civil rights when you're convicted of a felony. Well, let's take away their right to make political contributions that they're found guilty of a violation.

BILL MOYERS: Bill, are you describing a political culture, that is criminogenic?

WILLIAM K. BLACK It's deeply criminogenic. And this ideology that both parties are dominated by that says, "No, big corporations wouldn't cheat. Fraud can't happen. Market's automatically excluded," is insane. We now have the entitlement generation as CEOs. They just plain feel entitled to being wealthy as Croesus with no responsibility, no accountability. They have become literal sociopaths. So one of the things is, you clean up business schools, which right now are fraud factories at the senior levels, right?

They create the new monsters that take control and destroy massive enterprises and cause global economic crises, cause the great recession. And very, very close to causing the second Great Depression. We just barely missed that. And there's no assurance that we've missed it five years out.

BILL MOYERS: This brings us back to what the president said this week. He said the crisis was born of a failure of responsibility from Wall Street to Washington. You've just described that. That brought down many of the world's largest financial firms and nearly dragged our economy into a second Great Depression. But he didn't name names. He doesn't say who specifically was responsible. You have. But the president doesn't name names.

WILLIAM K. BLACK No, and one of the most important things a president has is the bully pulpit. We have not heard speeches by the president demanding that the frauds go to prison. We have not heard speeches from the attorney general of the United States of America, Eric Holder. Indeed, we haven't heard anything. It's like Sherlock Holmes, the dog that didn't bark. And that's the dog that is supposed to be our guard dog. It must bark. And it must have teeth, not just bark.

BILL MOYERS: Bill Black, thank you for being back on the Journal.

WILLIAM K. BLACK Thank you.