As Madoff victims go unpaid, my old rival Richard Breeden has been unmasked for who he is

by Conrad Black

Canadians had a reminder this week of the self-serving corruption that taints much of American financial law, an appreciable part of the bedraggled corporate governance movement, and which is, when it pleases Americans to do so, visited upon this country as well. It emerged that Richard Breeden, who was placed at the head of a fund set up to benefit indirect investors in Bernard Madoff's fund, has taken almost US$39 million for himself and his firm over four years without distributing any money to victims. Thus far, Breeden has only examined the claims relating to US$4 billion that the Justice Department extracted from the estate of one of

Madoff's investors and from his banker, J.P. Morgan Chase. His fees have come from the Madoff Victim Fund itself.

There is another fund for those who invested directly with Madoff, which has been much more successful and has disbursed more than US$9 billion to victims. Breeden's fund was set up four years later for victims who invested in entities that reinvested in the Madoff fund. It has never been entirely clear why all those who lost money when the fund collapsed in 2009 (cash losses of more than US$17.5 billion, but including allegedly fraudulent transactions with third parties, US$64 billion) were segregated at all. Indirect victims could have been paid from the claimant accounts. This divided system set up an unequal competition between two equally deserving categories of victims, which was aggravated by the four-year delay in providing anything for indirect victims, the imbalance in effectiveness of the two managers, and the different methods of payment of them.

The original main victims' fund, run by the court-appointed liquidator of the Madoff firm, Irving Picard, started amassing assets and litigating against some Madoff participants whose gains were legally vulnerable, and seems to have made commendable progress making whole those who were wronged. Picard has cranked his own bills up to almost a billion dollars, but that has been paid from the Securities Investor Protection Corporation, which is paid for by the financial industry itself. Breeden has collected his US$38.8 million in fees straight out of the resources set aside for indirect victims over the course of four years of work. It must certainly be an exacting task to consider the merits of many thousands of claims, but delays on this scale and at this cost are inexplicable and have provoked a good deal of outrage.

> *He is a charmless, humourless effigy of repulsive coldness; a grotesque malignancy of American law and business*

Madoff's was one of the greatest financial scams in history, and at 79, he is eight years into an absurd 150-year prison sentence. Breeden, in my view an unexceptional lawyer in private practice, was an active supporter of George Bush, Sr., who rewarded him with the position of chairman of the Securities and Exchange Commission. From this post, Breeden oversaw the clearing of the president's son, George W. Bush, of suspicion of insider trading at Harken Energy, which specialized in buying distressed energy assets, including the younger Bush's Spectrum-7. (The future president was 34 weeks late filing an insider report on a sale made just before a negative financial disclosure by the company, a transaction that saved the younger Bush between US$140,000 and US$440,000 in 1992.) Breeden retained the goodwill of the Bush family when George W. Bush served as president from 2001 to 2009, and he was officially assisted in establishing himself as a go-to figure for corporate governance issues.

Breeden was chairman of Coopers & Lybrand after the SEC, and went on to be the monitor of WorldCom Inc., which disintegrated after accounting irregularities in an US$80 billion crack-up. He was monitor of KPMG after a tax-shelter controversy and distributed the remains from the Adelphia Communications meltdown (US$728 million). He was a specialist in being the almost automatic agreed or appointed figure in corporate controversies, even serving briefly as a special adviser at Fanny Mae (Federal National Mortgage Association), but quickly withdrew as that vast, semi-publicly guaranteed entity was engulfed by the sub-prime mortgage crisis. For 20 years, Breeden popped up everywhere in the immensely lucrative virtuous corporate clean-up business. And more than anyone else, he has contributed to and benefited from the swiftly expanding business of overseeing legally challenged companies.

To Canadians, Breeden is best known for his cameo appearance as an angel of death in the Hollinger affair, in which I was intimately involved. As a brief refresher, there were

complaints by some institutional investors about compensation at Hollinger, one of the world's largest newspaper companies until my associates and I got a good look at the Internet and started to dismantle the company at great advantage to the shareholders, and we readily agreed to the appointment of the special committee that was requested by a shareholder. Breeden was recruited by one of the independent directors, as they had done business together before. I had nothing to hide. Some irregularities arose in related party transactions arranged by an associate, and what were determined to be clerical errors were exposed in papering off a non-competition fee, from which I received US$285,000, which was approved by the audit committee and independent directors and revealed in the company's public filings.

> *We have crossed swords in libel matters before; he is welcome to return to that fray*

Breeden and I reached what he called a "restructuring agreement." Although he naturally claimed justification, he violated every clause and a considerable struggle ensued. He brought his former colleagues in the SEC down on us, and his committee brought forth a report accusing us of conducting a $400 million "corporate kleptocracy." It was a murderous cascade of malicious lies, but it was obvious from the start that it would succeed in its objective of bringing forth a criminal indictment, after the U.S. authorities had turned the screws to shake out a plea bargain. When my associates and I succeeded in arranging a privatization of our Canadian company, in which outgoing shareholders would retain a pre-funded right to sue us if they thought they had cause, Breeden came to Toronto and "lectured" (his word to The Globe and Mail) the Ontario Securities Commission on the necessity of stopping the privatization. The commission, in one of the vilest and most injurious acts to the public interest in its history, overruled its own staff and prostrated itself to Breeden, disallowing the privatization. The conduct of the OSC

was an unmitigated disgrace, as a number of its officials privately acknowledged then and since. In my subsequent observations, that was not unrepresentative of its continuing general performance.

Ultimately, the entire Hollinger group, which had shareholders' equity of US$2 billion at this time, was driven into bankruptcy while Breeden collected tens of millions for his satanic efforts. The shareholders we wished to pay out handsomely went to the wall. All the later charges against me were abandoned, rejected by jurors, or unanimously vacated by the U.S. Supreme Court, but in the unique American manner, the high court remanded the vacated counts back to a lower court it had severely criticized for "assessment of the gravity of its errors." The clerical oversight of US$285,000 to me (and US$315,000 to associates) was resurrected, as well as a spurious obstruction charge involving removal from our office of some boxes of personal documents, of which the SEC already had copies, under security cameras I had installed. (This occurred in Toronto and the local prosecutors did not consider that any case existed for alleging an offence. The charge was egregious nonsense.) I won 95 per cent of the legal case and at least had the pleasure of gaining by far the largest libel settlement in Canadian history ($5 million) over the publication of the special committee report authored by Breeden and others.

Breeden set up his own fund to invest in companies where value would be added by improved corporate governance practices. It was a fiasco and lost scores of millions of dollars for his gullible investors. (His special committee also promised to extract a billion dollars from me and to lead Hollinger to undreamt of levels of profitability – he did the last, but not in the direction intended.) The wave of criticism of him in the American and Canadian media last week indicates that finally his long masquerade as a positive and important force in American business is coming unstuck. He is an appalling

charlatan; a charmless, humourless effigy of repulsive coldness; a grotesque malignancy of American law and business. We have crossed swords in libel matters before; he is welcome to return to that fray (that he effectively fled on the previous occasion).

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