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Harvard Law professor Ronald Sullivan Jr. Courtesy photo

COMMENTARY

What Is It About a Successful Black Entrepreneur That So Threatens the Establishment?

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White Collar Crime

Ronald S. Sullivan Jr.

It's a given that our jails are disproportionally full of Black people who are more apt to be charged, convicted and sentenced to a longer prison term than any other racial or ethnic group in America. Black male offenders are incarcerated in prisons at nearly 5 times the rate of white Americans and serve prison sentences 19% longer than white defenders found guilty of the same crimes.

Yet, less discussed in the corridors of Main Justice and Wall Street is that Black entrepreneurs face the same bias and injustice.

Too often the conduct of Black entrepreneurs is criminalized while their white counterparts who engage in the same conduct are held harmless or lauded for their business acumen. What is it about a successful black entrepreneur that so threatens the establishment?

Racial bias extends far beyond income inequality and has seeped into investment and funding ecosystems. About 60% of small business loans sought by white people are approved by large banks, compared with 29% for Black people (Latino or Hispanic small business owners fare significantly better, but still lag, with a 50% loan approval rate).

Silicon Valley founders are known for selling a vision to investors and prospective customers, and then laboring to turn it into a reality. Business literature contains dozens of examples of wildly profitable ventures built on claims that never materialized, from Bill Gates' notorious Microsoft "vaporware"; to Proxicom's "Potemkin Village" of non-working computers to impress a customer; to Elon Musk's 2019 market-moving claim that a million Tesla "robo taxis" would be on the road by 2020.

Black entrepreneurs are rarely afforded the same benefit of the doubt. Instead, their efforts are deemed unethical and even criminal. For example, look at the cases of Franklin Raines and Richard S. Fuld Jr., two leaders at the center of the 2008 financial crisis.

Raines, a former director of the Office of Management and Budget in the Clinton administration, was blamed for the 2008 financial meltdown. Despite federal investigations and civil suits lasting years, a federal district court judge found that "plaintiffs have not identified any evidence that Raines intentionally misled investors through his statements concerning the implementation and operation of these accounting policies," despite producing nearly 67 million pages of documents, deposing 123 fact witnesses, and engaging 35 expert witnesses.

His white counterpart at Lehman Brothers, Fuld, faced no repercussions. Fuld was the last CEO of Lehman Brothers before it went bankrupt in 2008. After the bankruptcy, a bank examiner said claims against Fuld could be justified due to Lehman making "false claims of having billions of dollars in available cash to repay counterparties when in reality, significant portions of the reported amounts were, in fact, encumbered or otherwise unavailable for use." Shortly after Lehman's bankruptcy, Fuld sold a house he bought four years earlier for $13.75 million to his wife for $100. Fuld never faced criminal or civil charges.

Other examples are numerous: in 1998, San Francisco financier Calvin Grigsby was accused of bribery by federal prosecutors. A jury acquitted him on those charges, but he was no longer able to lead the investment

bank he founded, the largest minority-owned investment bank in America at the time. Fast forward 20 years, and nothing has changed: instead, the richest Black man in America, investor and philanthropist Robert Smith, had to pay $139 million to the IRS and enter into a nonprosecution agreement with the Department of Justice after being accused of tax evasion.

Compare that to the treatment of the white founder of WeWork. At the time of its near collapse and the loss of $47 billion in investor money, it was widely reported that CEO Adam Neumann engaged in self-dealing and used personal loans from the company at below-market rates to support his high-flying lifestyle. He never suffered any professional consequences, criminal charges or scrutiny, and was in fact rewarded last year with an astounding $350 million in a new business venture. A second chance like that is unheard of for a black executive.

In another case in which I represent Carlos Watson, the CEO of OZY Media, a Black entrepreneur now facing charges for misrepresentations to investors, we dug into the track record of prosecutors in the Eastern District of New York who have targeted him. We quickly found a troubling pattern of pervasive racial bias.

The prosecutorial track record of the three white prosecutors managing his case demands an investigation by the Department of Justice. Combined, they have pursued charges against 193 defendants since 2019—and only 6% are white, according to Bureau of Prisons data reviewed and verified by Quest Research and Investigations.



Carlos Watson, CEO of OZY Media. Courtesy photo

It's one thing to not know about this bias and therefore not act. It's quite another to know about it and ignore it. And that's the dilemma the Biden

Justice Department faces. It knows there is a bias against black entrepreneurs.

Each case tells a bigger story, and reminds us that even if you play by the rules, go to the right schools, and work hard, you still run the risk of being too black for business. For the sake of every young black person growing up in America, that cannot continue.

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