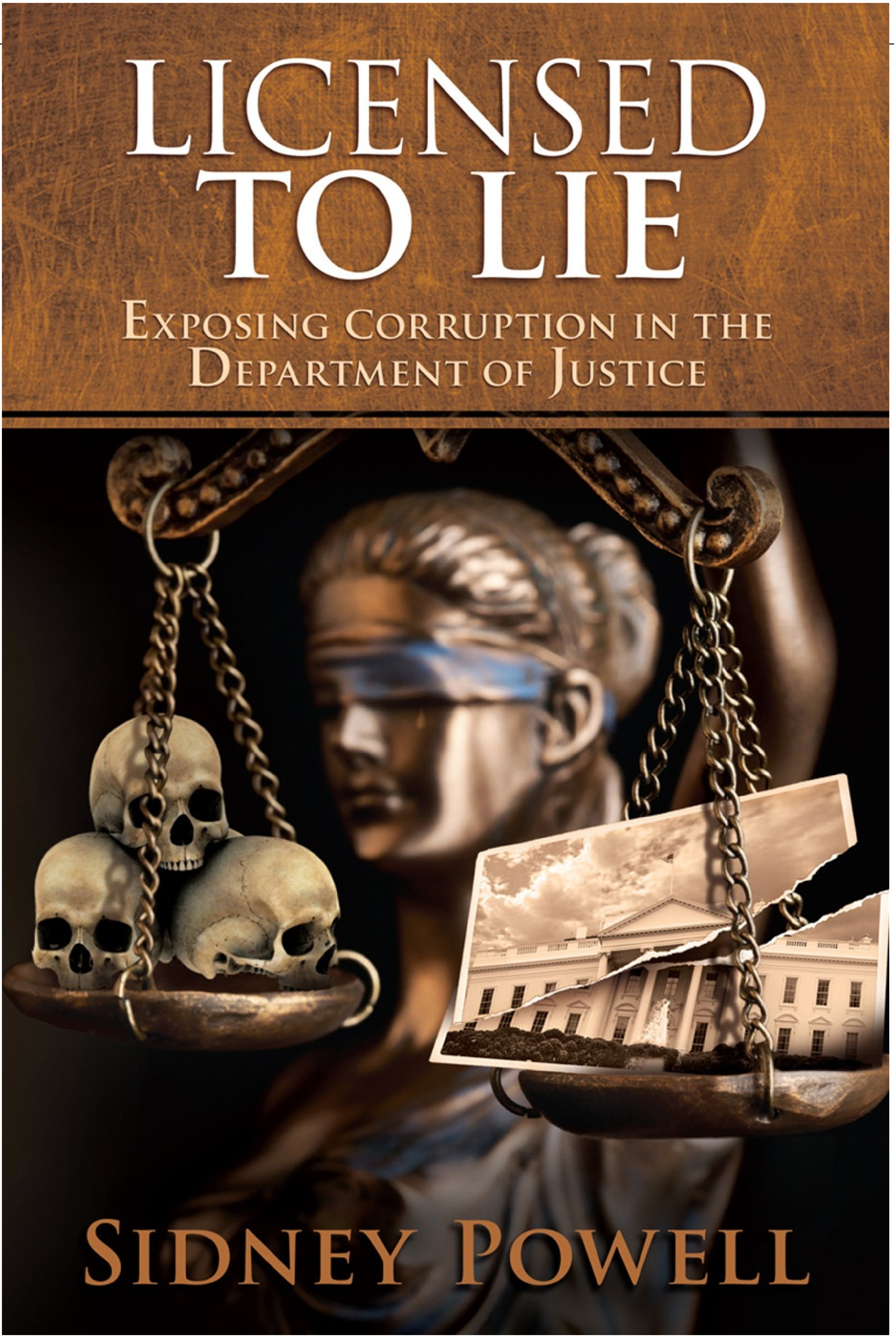
LICENSED TO LIE
EXPOSING CORRUPTION IN THE DEPARTMENT OF JUSTICE
SIDNEY POWELL

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Sidney Powell

Brown Books
Publishing Group

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Brown Books Publishing Group
16250 Knoll Trail Drive, Suite 205
Dallas, Texas 75248
www.BrownBooks.com
(972) 381-0009

A New Era in Publishing™

ISBN: 978-1-61254-191-4
LCCN 2014934165

Printed in the United States
10 9 8 7 6 5 4 3 2 1

For more information or to contact the author, please go to
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To all those who seek, hallow, and do Justice.

Contents

Licensed to Lie: Exposing Corruption in the Department of Justice is a disturbing, enlightening, and superb presented account of one of the most dramatic and chilling examples of injustice in American judi history. Written with the skill of a novelist, the keen eye of a memoirist, and the passion of an ea American pamphleteer, Powell takes readers on a journey through an institutional landscape created protect the innocent and punish the guilty. She reveals a house of "legal" horrors characterized by sacrifici an innocent man, concealing and altering evidence, ignoring the law, and constantly displaying an ego-driv desire to win at all costs. Her message resonates throughout the book: *The greatest human ideal of Justice is o as good as the character of those who administer it, existing only if its guardians are devotees to integrity and fairness.*

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Foreword

We Americans are extremely proud of our criminal justice system. We believe it to be the best ar fairest in the world. And in many ways it is. We guarantee every criminal defendant an imparti judge, a fair jury and a defense lawyer—at public expense for the many who can't afford one. Th prosecution must prove guilt beyond a reasonable doubt, and must do so in a speedy, public trial. And w have a variety of rules governing the collection and presentation of evidence, all designed to ensure t justice is done in every case. But the system only works if the participants follow the rules.

Prosecutors have a particularly strong duty to act fairly because, as the Supreme Court has explaine they are the representatives "not of an ordinary party to a controversy, but of a sovereignty whose obligati to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in criminal prosecution is not that it shall win a case, but that justice shall be done." In the words of fabl defense lawyer Brendan Sullivan, "[i]f the government is not honest, it can trump even the best efforts those of us who work in the system."

Sullivan uttered those words in the case against former Senator Ted Stevens, who was convicted aft federal prosecutors concealed evidence favorable to the defense and lied about it in court. The convictio was vacated once the government's deception was revealed, but this occurred long after Stevens had lost a election—ending a 40-year Senate career and changing the balance of power in the Senate—as a direct res of the wrongful conviction.

The Stevens case is just one of several high-profile criminal prosecutions engineered by a small cadre high-ranking United States Department of Justice lawyers. Most of the convictions obtained by t government have been set aside, but not before wasting countless millions of taxpayer dollars and wreaki havoc on the lives and businesses of those charged with federal crimes. The venerable accounting firm Arthur Andersen was destroyed by a prosecutorial decision to charge the firm, not merely individu partners, with criminal conduct. While the Supreme Court eventually held that the "crime" of whi Andersen was convicted was no crime at all—in other words, that Andersen had acted lawfully—th exoneration came too late to save the business or the 85,000 jobs it provided in its various offices worl wide. Other defendants were exonerated after spending time behind bars for conduct that turned out to b entirely lawful.

The Center for Prosecutor Integrity lists the following as some of the most serious types of prosecutor misconduct:

- Charging a suspect with more offenses than is warranted
- Withholding or delaying the release of exculpatory evidence
- Deliberately mishandling, mistreating, or destroying evidence
- Allowing witnesses they know or should know are not truthful to testify

- Pressuring defense witnesses not to testify
- Relying on fraudulent forensic experts
- During plea negotiations, overstating the strength of the evidence
- Making statements to the media that are designed to arouse public indignation
- Making improper or misleading statements to the jury
- Failing to report prosecutor misconduct when it is discovered.

And why do prosecutors engage in misconduct? The Center provides an answer:

> Prosecutors are subjected to a variety of powerful incentives that serve to reward zealous advocacy: the gratitude of victims, favorable media coverage, career promotions, appointment to judgeships, and the allure of high political office.

Much of this behavior is illustrated in the pages of this book, and requires no elaboration. However, t items on the Center for Prosecutor Integrity's list merit a few additional words, as their significance may n be immediately apparent to readers unfamiliar with the criminal justice process.

The first is the growing practice of over-charging, particularly with crimes of dubious validity. One of bedrock principles of our criminal law is that citizens are entitled to fair notice of what is criminal and w is legal. People can then avoid prosecution by engaging in lawful activities. The right to do what the law do not prohibit, without fear of harassment or punishment, is one of the hallmarks of a free society. One of fundamental responsibilities of a prosecutor is to charge defendants only with conduct that is clea criminal. And yet, time and again in these high-profile prosecutions, the United States Department of Justi charged multiple defendants with crimes that simply weren't crimes. In addition to the so-called crime th destroyed Arthur Andersen, the Supreme Court held in rapid succession that the government had obtain convictions in three other cases where the charged conduct wasn't criminal. Nevertheless, the governme insisted—and the judges supinely agreed—that the defendants must start serving their time behind bars ev as their challenges to their convictions upon these alleged violations were being considered on appeal.

Another important responsibility of prosecutors is to disclose to the defense any exculpatory informati of which the government is aware. The Supreme Court announced this as a constitutional requirement in t 1963 case of *Brady v. Maryland*, and it has confirmed its underlying principles many times since. It may not obvious to the lay reader why the government must provide the defendant with evidence that m undermine the prosecution, so it's worth a brief explanation. Most fundamental is the fact that t government is not an ordinary litigant whose interest lies in winning at all costs. Rather, the governmen legitimate interest lies in convicting only those defendants who are proven guilty beyond a reasonable doul If the government has evidence that casts doubt on the defendant's guilt, it has every interest in produci that evidence for the jury to consider in reaching its decision. As the Supreme Court noted in *Brady*, "[a inscription on the walls of the Department of Justice states the proposition candidly for the federal doma 'The United States wins its point whenever justice is done its citizens in the courts.'"

Beyond this theoretical justification are important practical reasons for the *Brady* rule: Governme agents usually have unimpeded and exclusive access to the crime scene, so they can easily remove and conce evidence that might contradict the prosecution's case. Police also generally talk to witnesses first and ca pressure them to change their story to conform to the prosecution's theory of the case. Prosecutors can, a often do, threaten to charge witnesses as accomplices or co-conspirators if they testify favorably to t defense. As a result, potential exculpatory witnesses invoke the Fifth Amendment to avoid getti themselves into trouble. The government has virtually unhampered control over forensic evidence, as well its analysis and presentation by experts. Too often these experts turn out to be sloppy or dishonest; mar defendants have spent long years behind bars because of incompetent or corrupt forensic scientists employ by law enforcement. Many of those convictions could have been avoided if the jury had been shown evidence casting doubt on the validity of the expert reports.

While no one openly disputes the validity of the *Brady* rule, many prosecutors see it as a thorn in th sides—an obstacle to overcome rather than a welcome responsibility to be scrupulously observe Prosecutors want to win, for all the reasons mentioned by the Center for Prosecutor Integrity Report abov and they see *Brady* as an impediment to obtaining a conviction. While there are certainly many honest a fair-minded prosecutors, a disturbing number fail to disclose exculpatory evidence to the defense. Sor prosecutors affirmatively and knowingly conceal it.

There was such knowing concealment of exculpatory evidence in the case against Senator Stevens, and h conviction was vacated and the charges against him dismissed. But Senator Stevens was doubly lucky: Fir an honest FBI agent broke ranks with his colleagues and the prosecutors in the Department of Justice, a disclosed the government's willful *Brady* violations and lies to the district court. And, second, Emm Sullivan, the district judge presiding over the case, took the matter seriously and ordered an investigation the lawyers who had conducted the prosecution. Deeply troubled that "[a]gain and again . . . the Governme was caught making false representations"—a polite term for telling bald-faced lies—Judge Sullivan bristle "The United States Government has an obligation to pursue convictions fairly and in accordance with t Constitution, and when the Government does not meet its obligations to turn over evidence, the syste falters."

But what happened in Stevens's case is vanishingly rare. *Brady* violations are extremely difficult discover because the prosecution has complete control over the evidence gathered by its investigato Prosecutors know that if they fail to produce exculpatory evidence, no one is likely to find out. Even wh the evidence is fortuitously disclosed after the defendant is convicted, judges are very reluctant to order new trial, so they sweep the evidence under the rug as "immaterial" or "cumulative." Sanctions again prosecutors who violate *Brady* are practically unheard-of and professional discipline is non-existent. As consequence, there is, as I've said elsewhere, "an epidemic of *Brady* violations abroad in the land."

The author of this book is a former prosecutor turned private practitioner who represented a defend in one of the high-profile cases discussed in the pages that follow. She was called in by the defense team aft the client had been convicted. As she describes her first meeting with the client and his lawyers, they we "[t]raumatized, exhausted, wrung out, meek, and broken" as a result of what had been a brutal trial. seemed to have more testosterone than all of them put together," she quips. In truth, Sidney Powell h more testosterone than pretty much any roomful of lawyers, be they men or women. Writing a book like th more than proves it. Not only does she take on, by name, prosecutors and former prosecutors who contin to serve in powerful and responsible positions, she is also relentless in criticizing judges before whom s has practiced for years. Few lawyers have the stones to do this.

Some of what Powell recounts—such as the concealment of evidence and lies told to the court in t Stevens case—is in the public record and not subject to reasonable dispute. As to other matters, she dra on her own experience, the trial record and evidence later uncovered to level serious accusations malfeasance against the lawyers and judges involved in the high-profile criminal cases she discusses. Reade can make up their own minds as to whether those accusations are supported. It is hoped that those at who she points the finger will answer the charges. One way or another, however, this book should serve as t beginning of a serious conversation about whether our criminal justice system continues to live up to vaunted reputation. As citizens of a free society, we all have an important stake in making sure that it does.

Alex Kozins
Chief Judg
United States Court of Appeals for the Ninth Circu

Judge Kozinski's Foreword is written in his personal capacity and does not represent the views of the Cou

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The Ultimate Toll

Sunday, September 26, 2010, began as a typical autumn day in Washington, DC. The trees were dressing their finery, and the air was becoming crisper by the day. It was time for apples, sweaters, sweatshirt and football games. In a quiet, northwest corner of the city, there was a mixed neighborhood of constructi from the 1950s and older, small bungalows. The bungalows were almost all refurbished now and occupied young professionals working their way up through the gray bureaucracy we call our national governme Indeed the brick and Cape Cod gray frame cottage on 8th Street Northwest was completely unremarkable anyone on the outside until midafternoon.

Nick was flopped on the sofa in the downstairs recreation room watching the endless football gam Actually he didn't even know what he was watching. It didn't matter anymore. Around 2:00 p.m., Nick g up and trudged to the laundry room where piles of clothes were lying on the floor. He found a loose raz blade and slashed his left wrist. Then he closed his eyes and slashed his right wrist.

He opened his eyes and watched the blood run down his hands and onto the floor. He felt faint a nauseous, but he didn't think he had cut himself deeply enough to die—at least not quickly. He bled acro the basement floor as he looked around for something else to use. He found a heavy-duty power cord, ma a noose, and hanged himself.

Not even that worked instantly. His neck did not snap. He was suffocating.

When his wife came downstairs, she found Nick hanging by the power cord, unconscious and bleedi She called 911, struggled to cut him down, and feverishly administered CPR.

Police cars, a fire truck, and an ambulance arrived at the house by 2:25 p.m. Nicholas Marsh, age thirt seven, a prosecutor who had worked in the elite Public Integrity Section of the Criminal Division of the Department of Justice, lay on his basement floor in a pool of blood, a power cord around his neck. He pronounced dead by the DC coroner at 2:30 p.m. He died of asphyxiation.

Six weeks earlier, in the great state of Alaska, a group of friends, several with their teenage childr boarded a red and white striped, single-engine amphibious de Havilland DHC-3 Otter airplane for a day Alaska's finest fishing. It was August 9, 2010—the sky was gray with light rain in the morning, but t weather improved in the afternoon. At take-off, visibility was good with some clouds and patches of b sky. The friends had enjoyed a hearty lunch at the GCI lodge on Nerka Lake and were ready for an afterno in the amazing Alaskan outdoors. Some already had on their hip waders. The plane took off about 3:00 p.

for a nearby fishing camp.

~~Former NASA Chief Sean O'Keefe and his son Kevin were on board. Young Kevin had the honor~~ sitting in the copilot's seat, where he went to sleep. He was already exhausted from this outdoor adventu with his dad and their friends. The prominent parents and teenagers in the cabin were busy talking about t day and their plans to bring more business to Alaska. A couple more dozed off as the plane flew beneath t clouds and above the varied terrain. Suddenly the plane banked to the left.

Around 6:00 p.m., the folks at the lodge called the camp to find out when the group planned to retu for dinner. The plane had never arrived. With full knowledge that Alaska is the most dangerous state f aircraft, they alerted all rescue services immediately. Other planes and helicopters were dispatched to loo for the small plane. Severe weather was coming in fast.

About 7:30 p.m., one of the volunteer searchers in a Cessna plane spotted the aircraft about fifte minutes from the lodge. The plane had crashed onto a thirty-degree slope of a heavily forested mountainsi A nearby helicopter crew arrived and reported that the aircraft appeared mostly intact. There was no fire, b the left wing was torn off, leaving a gaping hole in the side of the fuselage that was visible from the air. T helicopter crew saw one survivor waving. The chopper landed about 1,000 feet above the accident si dropped off a technician, and went to pick up a doctor.

Shortly thereafter, the helicopter managed to drop off a doctor and then two emergency medi technicians with medical supplies and equipment. The small rescue team hiked down the mountain difficult conditions, carrying all they could before the Alaska night and weather closed in on them. When t rescuers reached the crash site, they found five people had died, including the pilot. Sean and Kevin O'Kee and two others were still alive. The rescue team spent the night helping the four survivors and trying to ke them warm. It took twelve hours for more rescuers to get to the site and evacuate everyone.

The plane was equipped with a terrain awareness warning system (TAWS) that would have visually a audibly notified the pilot to pull up if he was too close to the terrain. The TAWS had been "inhibited" disabled. There was no cockpit voice recorder or flight data recorder. Three autopsies of the pilot provid no discernable reason for the crash.

The breaking news on every channel hit Alaska and then the entire country like an 8.9 earthquake:

> FORMER SENATOR TED STEVENS, BELOVED CHAMPION of ALASKA, HAS BEEN KILLED NEAR DILLINGHAM, ALASKA, in the CRASH of a PRIVATE PLANE WHILE HE WAS on a FISHING TRIP WITH LONGTIME FRIENDS.

Ted Stevens, a decorated World War II hero, a former US attorney, and living legend in Alaska, had los his seat of more than forty years in the US Senate after being found guilty by a jury a year earlier for faili to report alleged gifts on senate forms. It turned out that Senator Stevens was innocent, and the prosecuto from the Public Integrity Section of the Department of Justice had broken ethical rules, disregarded co orders, and violated constitutional law while they hid evidence favorable to his defense—called "*Bra* material."

The defense had caught a few of these shenanigans—enough that US District Judge Emmet Sullivan h become irate. The judge's refusal to ignore or excuse the prosecutors' misconduct dealt a whopping black e to the Department of Justice in the media. When it became obvious that Judge Sullivan was going to dism the indictment against Stevens, Attorney General Eric Holder swooped in, proclaimed he would clean u the department, and moved to dismiss the indictment against Stevens. Holder's pledge, however, was to little and too late for Judge Sullivan.

~~Holder's proclamations notwithstanding, Judge Sullivan could no longer trust the Department of~~ Justic The elite prosecutors had lied to him time and time again, often with Deputy Assistant Attorney Gener Rita Glavin—Acting Attorney General Matthew Friedrich's eyes and ears—observing in the courtroo Judge Sullivan took the extraordinary step of appointing a special prosecutor, DC attorney Henry Schue III, to investigate the prosecutors for possible charges including contempt. This was unprecedented.

Former Senator Stevens, a vigorous and powerful advocate long beloved in Alaska, had publicly pledg to advocate tirelessly for new legislation that would require the government to produce *Brady* information a defendant in every case and to impose clear penalties for any failure to do so. Stevens didn't want what ha happened to him to happen to anyone else. Remarkably the Department of Justice vehemently oppos Stevens's proposal.

The news of the senator's untimely death brought attention once again to his corrupt prosecution a dominated the news for the next several days. Editorials abounded, virtually all of which extolled form Senator Stevens's accomplishments on behalf of Alaska, and they all mentioned the injustice of prosecution and the misconduct of his prosecutors. Stevens's defense attorneys, led by Brendan Sullivan ar Rob Cary of Williams & Connolly, lauded the senator's accomplishments and mourned the toll the corru prosecution had taken on him, his career, and his family. "The verdict against him was based on fabricate evidence," Brendan Sullivan reminded everyone. Notably Judge Sullivan had appointed Schuelke, who investigation into the misconduct of the prosecutors was ongoing "fallout" from the case that "devastat the reputation of the Justice Department's Public Integrity Section. . . ."

"Stevens was innocent, and insisted on fighting the charges," the partners declared. "He remaine profoundly affected by the government's misconduct and its implications for others. His fervent hope w that meaningful change would be brought to the criminal justice system so that others would not mistreated as he was by the very officials whose duty it is to represent the United States justly and fairly."

The senator's death and the tsunami of renewed publicity of prosecutorial and government miscondu was drowning Nick Marsh. He could hardly breathe. It was all he could do to get up in the mornings and to the back office to which he had been relegated at the Department of Justice. Nick felt heavier and heavi He was on the verge of losing his career and possibly his liberty, and he felt as if he had lost his soul. didn't recognize himself anymore. He needed peace, but he knew it would only get worse for him.

At age thirty-five, the handsome, angular-jawed, dark-haired young prosecutor had been one of t youngest attorneys in the prestigious Public Integrity Section of the Justice Department, nicknamed "PIN His office was in "Main Justice," the impressive building that occupies a block of expensive real esta between Pennsylvania and Constitution Avenues. He was just a couple of blocks from the White House ar next door to the National Archives, which houses the Constitution and the Declaration of Independence.

In the four years Marsh had been a federal prosecutor in PIN, he had led the investigation into publ corruption in Alaska. He and his team of fellow PIN prosecutor Edward Sullivan and Alaska Assistant Attorneys Joseph W. Bottini and James A. Goeke, along with FBI agents, had begun the "Polar Pen investigation in Alaska in 2004. They had tried and convicted seven high-profile legislators and businessme using much of the same evidence that they later used to indict and convict Senator Ted Stevens.

PIN attorneys were the best of the best. They were supposed to adhere to the highest standards. After they investigated public officials for public corruption. They had to be above reproach. At the same tin there was so much pressure to win—especially in the high-profile and political prosecutions. These were t cases that would make or break a prosecutor's career. A win in these cases was a first-class ticket to seve

figure incomes in the most prestigious national or international law firms or promotions up the ladder in t
Department of Justice, the White House, or the leadership of the FBI.

The pressure had been bad enough two and one-half years ago, before Matthew Friedrich h skyrocketed from his position as an Enron Task Force prosecutor to acting assistant attorney general of t Criminal Division of the Department of Justice. Within days of the arrival of Friedrich and his deputy, I Glavin, they intruded heavily into the Stevens case. They began weekly—sometimes daily—meetings wi PIN management—Section Chief Bill Welch and Deputy Chief Brenda Morris. Friedrich and Glav demanded a chart of evidence and defenses, and they summoned all the prosecutors, including the tw assistant US attorneys from Alaska, for a presentation to them. For unknown reasons, they rushed to indi Senator Stevens, the longest-serving Republican in the senate.

Friedrich and Glavin took control of the Stevens prosecution and micromanaged it to absurd detail. C the eve of the indictment, they demoted Marsh from first chair to third chair for Stevens's trial. Af Friedrich and Glavin took over, the prosecution had nothing but problems, yet no one outside of a sm circle within the department would know that until long after it all started to unravel.

Nick knew the truth. When it all fell apart, he and his fellow trial team members became the targets both an internal department investigation and the independent Schuelke investigation ordered by Judg Sullivan. Nick just knew that the life he loved as a federal prosecutor was over. He feared that everythin that went wrong in the Stevens prosecution was going to be hung around his neck. Friedrich and Glav were way too politically connected and savvy to take the fall. The judge did not name them in his ord authorizing Schuelke's investigation. There was no apparent reason to do so. They were not the tri attorneys.

Nick came to realize that being a target of a criminal investigation felt very different from running o The Schuelke and internal investigations seemed to be taking forever. It had already been more than a yea Six weeks after Senator Stevens's plane crash and death, Nick was numb.

The gruesome suicide of one of Senator Stevens's prosecutors, who was himself under investigation corruption, dishonesty, and misconduct, sent another shock wave of distress through the department le than two months after the senator's plane crash. Yet again, the department and the wrongful prosecution o Stevens were in the national news.

Virtually everyone who saw the breaking news and knew anything about the Stevens prosecution and t investigation of the prosecutors viewed it as a message: Nicholas Marsh was guilty of hiding evidence t would have exonerated Senator Stevens or he knew more than he had said.

Patton Boggs attorney Robert Luskin was Marsh's lawyer. Luskin spoke to reporters shortly after th news broke, calling Nick's suicide a "terrible tragedy." He spoke of how Nick "loved being a prosecutor" b was "incredibly fearful" that the investigation would end his career with the Justice Department. Lusk claimed they were "on the verge of a successful resolution." He said he expected Schuelke to "exonerat Marsh.

Luskin's optimistic proclamation was far from the reality Nicholas Marsh had felt and that insiders kne Maybe Nick's friends and family believed it. Maybe they had to believe it. Maybe it was the only way th could protect their own feelings for the Nick they believed him to be—the Nick they thought they knew, th Nick they had always loved. Publicly, Nick's friends, and Luskin, blamed the pressure and the length of th investigations for his suicide. Luskin added, "The whole process imposed an unbelievable burden on Nick burden that in the end, he couldn't bear."

The *Wall Street Journal* reported that "Joshua Berman, a former prosecutor and friend," said that Ni "was anxious that the probe had dragged on but that friends never realized the depth of his worry." Berm said ~~that the delay exacerbated Nick's stress and belief that the result would be "something bad."~~

No one ever seemed to consider the stress the wrongful prosecution had put on Senator Stevens and h family—for substantially longer than eighteen months—and the continuing effects it had on the remaind of his life and on his family.

Lawyers in the defense bar saw Marsh's suicide as an admission of his own guilt. Lawyers know all t well that prosecutors are almost never punished in any way—regardless of how egregious their conduct is. is extremely difficult for a wronged defendant to sue a prosecutor. They have immunity from lawsu because they work on behalf of the "sovereign." They can hide evidence of a defendant's innocence w impunity. They have little concern that it will ever be discovered, and even if it is, they know they will suf no consequences.

Judges routinely believe prosecutors when they say "we've produced all *Brady* evidence." Judges rare push back on that assertion, no matter how much the defense complains or what suspicions are raised. Or on the rarest of occasions have prosecutors even been suspended by their bar association for hiding evide favorable to the defense. And here, Marsh and each of his fellow prosecutors had the luxury of be represented—at the taxpayers' expense—by the best criminal defense lawyers in the country.

Ironically Schuelke's investigation was moving quickly by federal standards. Many people, especially tho prosecuted by Acting Attorney General Friedrich and his colleagues when they were on the Enron Ta Force, lived with the torment of investigations, criminal charges, repeated prosecutions, and imprisonme for years, even a decade. No one in the department, including Marsh, gave any thought to the toll the tactics and decisions took on others—until, perhaps, Judge Sullivan turned the tables. Being investigated w very different from being the investigator. It was as different as being on opposite ends of a high-power rifle with a laser sight.

The news reports that afternoon of September 26 and even the headlines the next morning all said alm the same things—not much: "GOVT. PROSECUTOR IN TED STEVENS CASE COMMITS SUICIDE."

They all quoted Robert Luskin's charitable assertion that Marsh would be exonerated by th investigations. Most quoted Assistant Attorney General Lanny Breuer's expression of sympathy at the loss "this dedicated young attorney" on behalf of the "community of the Department of Justice." Some quo Marsh's friends. No details were provided from any office investigating the unusual death. The repor seemed canned, and the story faded quickly.

Nicholas Marsh, a brilliant, capable young man, paid the ultimate price for something that should nev have happened. He was shattered—by his own choices and those imposed upon him. Either way, he, Senat Stevens, and their families were needlessly sacrificed on opposite sides of the altar of injustice because of deplorable failure of a system that is supposed to protect all of us.

Before and after the senator's death and Marsh's suicide, Special Prosecutor Schuelke and his partne William Shields, were working diligently to pull back the cobalt-blue curtain bearing the impressive seal the Department of Justice. Ultimately Schuelke would reveal shocking facts with ramifications of their own

As thorough as Schuelke was, he was barely scraping the surface. The illegal and unethical tactics th unseated Senator Stevens, changed the balance of power in the senate, and had now claimed two lives we orchestrated above Nicholas Marsh. Narcissistic and terrifying tacticians were ascending to great power or foundation and legacy of lies, corruption, and injustice that would take years to uncover. They had lo practiced to win at any cost and skillfully buried the truth deep.

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The Dangerous Fuel of Public Outrage

By the end of 1999, Houston, Texas, was booming, and the international titan Enron Corporation w consummating more than $20 billion a year in financings on more than one hundred transactions a yea The new baseball stadium in Houston was "Enron Field," and a big "E" gleamed over every entrance. Th new Enron skyscraper—rising beside the company's first glass tower—marked the heart of the busine district in Houston. Working at Enron meant you were a superstar. Enron's reputation was that it hired onl the best and the brightest. It could do things no other company could.

On the inside, however, in the 1990s and accelerating toward the new millennium, Enron had gone fro a hard-asset pipeline company to an "energy trading" company. Led primarily by the ambitious Jeffre Skilling, who eventually became chief executive officer, and Chief Financial Officer Andrew Fastow, Enr pushed for and adopted aggressive "mark to market" accounting methods to value assets instantly. I financial statements seemed impenetrable. Behind the scenes, Skilling and Fastow also devised extreme creative ways of "monetizing assets"—even when they were just ideas. The world and Wall Street looked o in wonder, and Enron's stock took off.

Viewed as a financial wizard, Enron's young Chief Financial Officer Andy Fastow made the cover *CFO* magazine in October 1999 because Enron had maintained a growth rate of 15 to 20 percent a ye Fastow received the magazine's award for excellence in capital structure management. By February 200 Enron was the seventh largest company in the world and had its tentacles in numerous countries and many areas of business. It bought and sold natural gas; it was constructing power plants; it owned a operated pipelines, but it went far beyond that. Enron was at the cutting edge of everything. Rumo abounded that Enron was building a broadband network. It was already providing telecommunicatio services and trading commodities. Everything the wonder boys at Enron touched seemed to turn to gold.

Enron Chairman Ken Lay was the most popular man in Houston. Actually he was a celebrity. He and h wife, Linda, were active in many charities, and the "BIG E" itself was funding numerous charities. L watched baseball games at Enron Field with past and future presidents. This "son of a preacher man" w riding the biggest wave of his life. He became the largest supporter of and a friend to the president of United States.

Enron's billions in financings translated into many millions in fees to banks and to its accounting firm Arthur Andersen LLP. Enron had relationships with more than 120 major financial institutions worldwid

Jeff McMahon, Enron's treasurer since April 1998, coordinated the transactions so that the banks could n cherry-pick the most lucrative deals and shun the lower-value transactions.

In reality, however, the treasurer's office was little more than a front for dealing with the banks. Whi McMahon might make the initial introduction of a proposed transaction to a financial institution, he did n negotiate or consummate the deals for Enron. The real decisions were made by Fastow and the vario divisions, which structured their own transactions to keep Chief Executive Officer Skilling happy.

It didn't hurt any that Andy Fastow's wife, Lea, was from an extremely wealthy Houston family, and the were happily ensconced in a mansion in River Oaks. Fastow, who was close to Skilling, was by far the mo "creative" when it came to structuring deals. Fastow handed out so much business that he had a death gr on all the major banks. As Fastow's power within Enron rose, and as its stock price rose with his creativit he put extraordinary pressure on the banks Enron dealt with to "lend their balance sheets" to help Enr complete deals.

The outside world didn't know it, and even many at Enron were clueless in their cubicles, but McMaho and Fastow were on a collision course. They butted heads regularly over policies and deals and came loathe each other. Skilling sided with Fastow. Although Skilling was armed with a Harvard business degr and consulting experience with the highly regarded McKinsey think tank, and he undisputedly loved Enr sound business judgment was not his forte. Painfully narcissistic, Skilling and Fastow enjoyed exaggerat opinions of their omniscience and their omnipotence. They understood neither reasonable limits n morality. They fed each other's weaknesses in a sick symbiosis.

Fastow was on a roll. He had secretly created what he called the "Raptors," special entities to hide muc of Enron's debt—even from many others at Enron. Then he successfully created a separate private equi fund, LJM, which would do business alongside Enron. LJM, named after Fastow's wife and childre appeared to the world to be a separate and lawful entity, with its own board, lawyers, and accountants. An it could have been a lawful entity—had Fastow and his protégé, Michael Kopper, not completely corrupt it for their own gain. To Fastow, it was like having his own $100 million piggy bank. He had accomplished so easily and successfully, why not do it again—only bigger this time? So he formed LJM2.

Remarkably Enron's board approved Fastow's dual roles as chief financial officer of Enron and manager of the two LJM funds. The board also approved his extraordinary compensation by the LJM fund

Merrill Lynch, although a thriving and prestigious financial institution, was not even within the top ti of banks to which Enron turned. Merrill was more conservative and careful than many of its counterpart the financial industry. However, upon Fastow's insistence, Merrill formed a partnership as a show of supp for its client Enron and encouraged its own managing directors to invest in the Merrill partnership, whic in turn, invested in LJM2, along with other major corporations, banks, and huge pension funds. Fasto represented to everyone that LJM2 would invest alongside Enron in energy transactions. That seemed lik good idea—at the time—and, from Enron's perspective, a way to hedge or reduce its own risks in i ventures ranging from pipelines and power plant construction to power trading and weather futures.

Behind the scenes within Enron, McMahon remained concerned about Fastow's dual roles and wh McMahon saw as a blatant conflict of interest. In the spring of 2000, McMahon mentioned as much to R Furst, Merrill's relationship manager with Enron. Word of McMahon's criticism of Fastow's conflict interest got back to Fastow, who blew a fuse. McMahon went to Skilling about the problem, thinking th Skilling would back him up. Instead, the next thing McMahon knew, Skilling removed McMahon as Enron treasurer and reassigned him as the chief commercial officer at a start-up business within Enron, call Enron Networks. Skilling named a new treasurer of Enron, replacing the rules-oriented McMahon with t substantially younger and more "flexible" Ben Glisan, in whom Fastow had already sunk his hooks.

Enron's stock price hit $90 a share in August 2000, and it was in the $80s in early 2001. To most, Enro was an unstoppable titan that led all things innovative. It just grew bigger and bigger. The Wall Stre analysts loved it. It always met or exceeded its quarterly earnings projections.

A few who were paying close attention, however, began asking questions. By February 2001, rumors we circulating that something was amiss. Hedge fund manager Jim Chanos had studied Enron's financials, sa trouble, and shorted the stock in a big way. The stock price was edging down. Any rumblings of trouble Camelot should have been very unsettling, but most dismissed them as corporate jealousy, if not a form corporate espionage emanating from Enron's competitors.

The word was that Chanos tipped off *Fortune* reporter Bethany McLean. In March 2001, McLean bro away and stepped in front of the pack with a prescient article in *Fortune* magazine. This was the first maj news source to challenge the titan and ask the hard question: "Is Enron Overpriced? It's in a bunch complex businesses. Its financial statements are nearly impenetrable. So why is Enron trading at such a hu multiple? Of fifty-five times its earnings?!"

McLean quoted analysts who jokingly admitted in various ways that they had no clue how Enron actua made its money. They referred to its financials as "impenetrable" or a "black box." McLean reported th Chris Wolfe, the equity market strategist at J.P. Morgan's private bank, who was actually an Enron fa described Enron as "an earnings at risk story." Prophetically he noted: "If it doesn't meet earnings, [t stock] could implode." McLean reported that in the first nine months of 2000, Enron added $3.9 billion its debt, raising its debt-to-capital ratio to 50 percent with a total debt of $13 billion, at the same time cash flow was dropping. No one knew it at the time, but McLean had launched a mortar that started avalanche.

Fastow and Skilling flew into a rage. McLean had pricked their narcissistic egos. Meanwhile the pressu on them mounted daily. The fabric of fallacy they had so carefully woven was unraveling. "The Goldm Sachs of energy trading" was losing its grip on its publicity, the analysts, and its luster. One question led another. Fastow knew how bad it really was, and he was increasingly terrified of being exposed—his lies l bare.

Not even Ken Lay's wheeling and dealings with the Astros Major League Baseball club and friendshi with past and current presidents could solve Enron's problem. Fastow had vehemently declared back March, as reported in McLean's article, "We are not a trading company." Meanwhile the pressure questions about performance continued to mount as Enron struggled to meet earnings under its n business model. Enron was creating a trading market in virtually anything it could imagine—not just ener related but soon excess broadband capacity and even weather derivatives.

More questions came from Wall Street. Analysts began changing their views. Then in a conference c with investors and analysts, Skilling lost it completely. He called one of them an "asshole" for questioni Enron's release of financial information. That outburst came to haunt Enron, Lay, and Skilling. Somethi was going on inside the black box, and it couldn't be good. Enron's stock price was dropping.

Too much just didn't add up. Veteran *Wall Street Journal* reporter John Emshwiller was determined to to the bottom of it. In his many years of reporting, he had learned there was no substitute for doing homework. Enron had been the darling of Wall Street and the media for several years, but no one cou figure out exactly what it was that the company did anymore. It was becoming increasingly clear that its ch financial officer was also heading up a number of related entities that were doing business with Enr Enron's board had approved Fastow's dual roles, despite what seemed an obvious conflict of intere Enron's stock price had fallen by half since January—just in the last six months or so.

Then on Tuesday, August 14, 2001, the first bombshell exploded. Skilling, who had been at Enron f eleven years, announced that he was leaving after only six months as chief executive officer. Lay had to st back in as chief executive officer. Analysts began wondering when the next bomb was going to drop. L promised that Enron would be more humble and informative than it had been under Skilling.

~~Emshwiller and fellow reporter Rebecca Smith had been digging. In the August 16, 2001, edition~~ of t *Wall Street Journal*, a headline read: "Enron's Skilling Cites Stock-Price Plunge as Main Reason for Leavir CEO Post." Emshwiller and Smith reported that Skilling's unexpected departure from the compan ostensibly "for personal reasons," was "deeply enmeshed with feelings that he had failed in a crucial busine area during his brief tenure as CEO. Calling the company's stock performance a 'kind of ultimate sco card,' Mr. Skilling noted that Enron's share price had fallen by some 50% this year." Indeed it had toppe $84 a share on the New York Stock Exchange (NYSE) in January, dropped to $40-ish in the last sever months, and with Skilling's resignation, fell to $37 during the day, before closing back around $40.

On August 28, Emshwiller and Smith wrote again about Enron's opaque financials, Lay's reassurance and the billions of dollars in off-balance-sheet transactions that Enron had done in the last two years wi Fastow's partnerships. Fastow "quietly ended his ownership and management ties with certain limite partnerships." Lay had said that the "transactions involving Fastow had become a 'lightning rod' fo criticism so 'we're better off not doing it.'" Their article concluded with a quote from UBS Warburg analy Ron Barone that Enron was "certainly under a new kind of pressure." That was the understatement of t year.

With the unfathomable tragedy of September 11, 2001, Enron became irrelevant to the media and t country when the terrorist attacks shocked the world and knocked the United States to its knees. The face New York City—and the very fabric of this country—were changed forever. It was beyond comprehensio Virtually everyone in New York lost friends or family that day. The trauma of what people experienced person, or even just saw on television, was more than many could process. The world was stunned.

The NYSE closed for four days, the longest shutdown since 1933. When it reopened on September 1 everything was being sold. On the first day of trading after 9/11, the NYSE fell 684 points, a 7.1 perce decline, setting a record for the biggest loss in exchange history for one trading day. At the close of tradi that Friday, September 21, the Dow Jones was down almost 1,370 points, representing a loss of more than 1 percent. Enron stock fell off a cliff.

To paraphrase Warren Buffet: the tide went out, and Enron was caught swimming naked.

The next explosion rocked the financial world just a few weeks later. Enron announced a $1.01 billio write-down on soured investments, resulting in a $618 million third-quarter loss. At least $35 million of was tagged to the troublesome Fastow partnerships, involving the "early termination . . . of certa structured finance arrangements." That announcement thoroughly shook "the Street" and confirm McLean's, Emshwiller and Smith's, and others' worst fears. This wasn't over yet. Fastow declined to be interviewed.

Moody's put Enron's long-term debt "on review for a possible downgrade."

Emshwiller and Smith dug into Enron's Securities and Exchange Commission filings and obtaine copies of the private partnership documents, confusing as they were. They reported what they saw: Fasto was getting a management fee of 2 percent of the private funds, and as general partner he was eligible f millions more depending on the funds' performance. Lay had claimed earlier that the LJM arrangemen didn't produce any conflicts of interest, but the reporters found the LJM2 offering document and report that it stated "that the responsibilities of Mr. Fastow and other partnership officials to Enron could 'fro time to time conflict with fiduciary responsibilities owed to the Partnership and its partners.'" Equal troubling was the number and nature of those companies and large pension funds that had invested heav in Fastow's partnerships, especially LJM2.

Enron was back in the headlines every day, and all the news was bad.

Emshwiller and Smith's research disclosed that Fastow and "possibly a handful of . . . associates realiz more than $7 million last year in management fees and about $4 million in capital increases on a ~~investment" of approximately $3 million that was set up in December 1999. Enron's stock dropped 9~~ percent to $29 a share. Fastow refused to comment.

Within five days, the SEC had requested information from Enron about its dealings with Fastow partnerships. The sharks smelled blood in the water.

With Enron stock under $20, Lay scheduled a conference call with investors and analysts, but he an Fastow refused to answer any questions concerning the Fastow partnerships. On this October 24 call, CE Ken Lay proclaimed "we continue to have the highest faith and confidence in Andy."

Another day and the headlines read, "ENRON REPLACES FASTOW AS FINANCE CHIEF MCMAHON TAK OVER POST; MOVE FOLLOWS CONCERNS OVER PARTNERSHIP DEALS." With that, the stock of eve company that did business with Enron took a beating also.

Enron tapped $3 billion from its bank lines of credit, trying to ensure its liquidity, and let everyone kno it had the money to pay its debts. McMahon's move to CFO, though, was too little too late. McMahon wa working day and night trying to restore confidence in the company. He was working every connection h could find to get an additional line of credit. He had not been in the position a week when Mood downgraded Enron's debt, and the SEC moved the investigation of the company to a higher level Washington. Although no one had voiced it yet, Enron was in a death spiral.

On November 1, 2001, the SEC announced it was making a formal investigation into the Fasto partnerships and Enron's dealings with them. It was obtaining subpoenas to force the disclosure o information from third parties who had dealt with Enron, including Enron's accounting firm, Arthu Andersen. This was serious. Enron added University of Texas School of Law Dean William Powers to board to try to sort things out and bring in some credibility. McMahon was still working to pull out all th stops to try to save the company, seeking another billion-dollar credit line because the $3 billion he ha drawn in the last week was already gone.

The November 5 *Wall Street Journal* headline was worse: "Enron Transaction Raises New Questions— Company Executive Ran Entity that Received $35 Million in March." That executive was none other tha Michael Kopper, protégé and partner of Fastow in many of the "partnerships," including the $400 milli LJM2 fund and another entity—CHEWCO—with another $383 million in debt. Kopper was also in t middle of JEDI, a limited partnership created back in 1993 between Enron and the California Pub Employees' Retirement System. Fastow's partnerships appeared more and more like a billion-dollar she game running between themselves and Enron, and Fastow and Kopper had been siphoning funds wi impunity from underneath the shells.

There were talks and hopes of another company buying Enron—maybe even energy company Dynegy but talks of a merger or buyout were mixed with antitrust worries, regulatory issues, and concerns of furt unknown Enron liabilities. Frankly no one had a grip on Enron's real liabilities. McMahon found himself new nightmares that sprang to life every day. Enron announced it would have to restate its financials fro 1997 through the third quarter of 2001—decreasing income and increasing debt by hundreds of millions dollars. Its stock slid below $7. Dynegy was under increasing pressure to walk away. Enron's stock fell t $5.01. Dynegy's stock started sliding by association.

By November 29, credit ratings agencies had downgraded Enron's bonds to junk status. Dynegy walke away, accusing Enron of "misrepresentations." Other companies stopped doing business with Enron reduce their own risks, which dried up any cash flow. All the energy companies were in panic mode. Enro stock dived to $0.61. McMahon was still trying—"reviewing all of our options." Many of the 120 ban Enron dealt with were feeling the pain also. All the utility companies were calling. Enron assembled a w room of lawyers on its once-packed trading floor.

Plaintiffs' lawyers swarmed and filed a shareholders' suit against twenty-nine current and former Enr ~~board members and officers. The lawyers alleged a conspiracy to conceal Enron's financial problems~~ and th true condition of the company from other investors, while the insiders profited personally by selling th stock at an inflated price.

The thread by which Enron was hanging snapped. On December 2, 2001, within 120 days of Skillin departure, the once $400 billion international titan declared bankruptcy, imploding in a wave of accounti scandals, mysterious partnerships, and outright thievery.

Financial devastation, human pain, rage, and anguish rolled through Houston. The city was in shoc Everyone was touched in some way by the crash of this commercial giant. Thousands lost their jo Countless individuals, state and teacher pension plans, and organizations across the country lost all or pa of their retirement savings.

The once gleaming "E" adorning the ballpark now looked like an ugly brand burned onto the face of t city. The *Houston Chronicle* published front-page stories every day about the company, vilifying those who ra it and recounting the damage they caused. The new Enron skyscraper, still under construction, became monstrous skeleton, casting a pall over the city. The ramifications of Enron's implosion were so far and wid that the entire US Attorney's Office for Houston had to recuse itself and not participate in any investigatio

By this time, the *New York Times* was in hot pursuit as well. Kurt Eichenwald and Richard Oppel J reported that Enron had paid out $55 million in "retention bonuses" to five hundred people just before declared bankruptcy. That just fomented the outrage.

It seemed as though everyone in the city had suffered some loss related to Enron. Houstonians rang between livid and sick. The ripple effect was more than could have been anticipated. Every industry Houston had benefited in some way from Enron's massive operations and philanthropic contributions. Wit Enron's downfall, other businesses soon collapsed: restaurants, small shops—any business that did busine with Enron suffered. The public was screaming for heads to roll.

In a matter of days, by December 13, 2001, Arthur Andersen partners were testifying in congressio hearings that they had warned Enron about "possible illegal acts" because the company was failing provide crucial information.

President George W. Bush, with whom Enron Chief Executive Officer Ken Lay had often be photographed, vowed to ferret out and prosecute "those white-collar crooks."

Ken Lay was the leading candidate for *Texas Monthly*'s "Bum Steer of the Year" in early 2002. Th publication quoted California Attorney General Bill Lockyer, who blamed Enron for the Californ brownouts and power failures. Lockyer said, "I would love to personally escort Lay to an eight-by-ten cell. ."

The *Houston Chronicle*, the eighth largest newspaper in the country, threw fuel on the already raging fi The newspaper assigned as many as twelve reporters to Enron, and during the next three years, th generated more than four thousand negative articles, most of them extremely caustic. The local televisi stations piled on. Enron and those anyone deemed responsible for its downfall were denigrated a denounced publicly and profusely.

Incited by public outrage, political pressure, and cries for vindication from Enron shareholders, t Department of Justice promptly assembled the Enron Task Force—a joint effort of the department, t SEC, the FBI, and the Internal Revenue Service. Because of the Bush connection to Ken Lay, the Enr Task Force was untethered from the department. Deputy Attorney General Larry D. Thompson and h assistants in the criminal division handpicked prosecutors from across the country to staff this task for and they gave it unlimited resources.

Assistant Attorney General Michael Chertoff, head of the criminal division, chose Leslie Caldwell head the task force because she was extremely well-credentialed for the job and known as a “terror” as ~~prosecutor. A summa cum laude graduate of Penn State with a law degree from George Washingto~~ University, Caldwell was chief of the criminal division in the US Attorney’s Office in San Francisco wh she was selected to lead the task force. She and her handpicked team of Ivy League pit bulls set about “send a message to Wall Street.”

This prestigious team of prosecutors, IRS agents, FBI agents, and SEC agents, along with a bankrupt examiner and endless congressional investigators and hearings, put virtually everyone who did anything wi Enron under scrutiny. There were thousands of people involved with Enron, and 120 or so banks, includi J.P. Morgan, Citibank, and most investment or commercial banks of any significance here or abroad.

Business professionals who had always been highly regarded and prominent in their communities we now surrounded by federal agents, walked down long dark corridors, and interviewed in barren interrogati rooms. Their offices were searched, and their documents were subpoenaed or seized. They were hauled front of Congress and grand juries, and they were threatened with indictment and imprisonment. Most these businesspeople had led stellar lives, done their jobs honestly, supported their churches ar communities, and volunteered with charities. They had always believed in the American system of justice a confidently believed that the system would recognize their innocence.

In early January 2002, Arthur Andersen accountants testifying before Congress admitted shreddi documents from Andersen’s Enron files. By January 15, Andersen fired Houston partner David Dunca who was in charge of Enron’s account. Congress had Duncan in front of them the next day, and Enron fir Andersen the day after that.

Carl Levin’s senate committee on investigations was issuing subpoenas for documents and testimor right and left, including to former Enron Vice Chairman Cliff Baxter, who had left Enron six months befo its collapse. Baxter, along with several others, had sold the last of his Enron stock near its highs in Janua 2001, making about $22 million on the deals. The rumor was that Baxter, believed to be a man of integri had resigned because he was unhappy with the way the company was conducting its business. Some said had objected repeatedly to Skilling about Enron’s dealings with Fastow’s LJM partnerships. Representative of the senate committee badgered Baxter and had subpoenaed documents from him. Baxter, not a targ himself, had finally agreed to testify.

On January 25 at 2:23 a.m., a patrol officer spotted a new Mercedes parked between two medians on t edge of a posh neighborhood in Sugarland, Texas, a quintessential suburb just outside of Houston. T officer circled back around and saw that the car was still there. The lights were on, and the engine w running. One man was inside. The officer called for backup.

Upon closer inspection, the officer saw a white male, approximately forty years old, in the driver’s seat– his head slumped forward. Blood was running down the side of his face and head, and from his mou There appeared to be a gunshot wound to his head.

His hands were lying in blood on his lap, palms up. The black handle of a revolver rested in his op right hand, and the barrel lay across the palm of his open left hand. The barrel pointed toward the drive door. He was barefoot.

The officers broke into the car through the passenger side rear window. They called paramedics ar searched the man’s pockets for identification.

They found a driver’s license and an Enron ID badge.