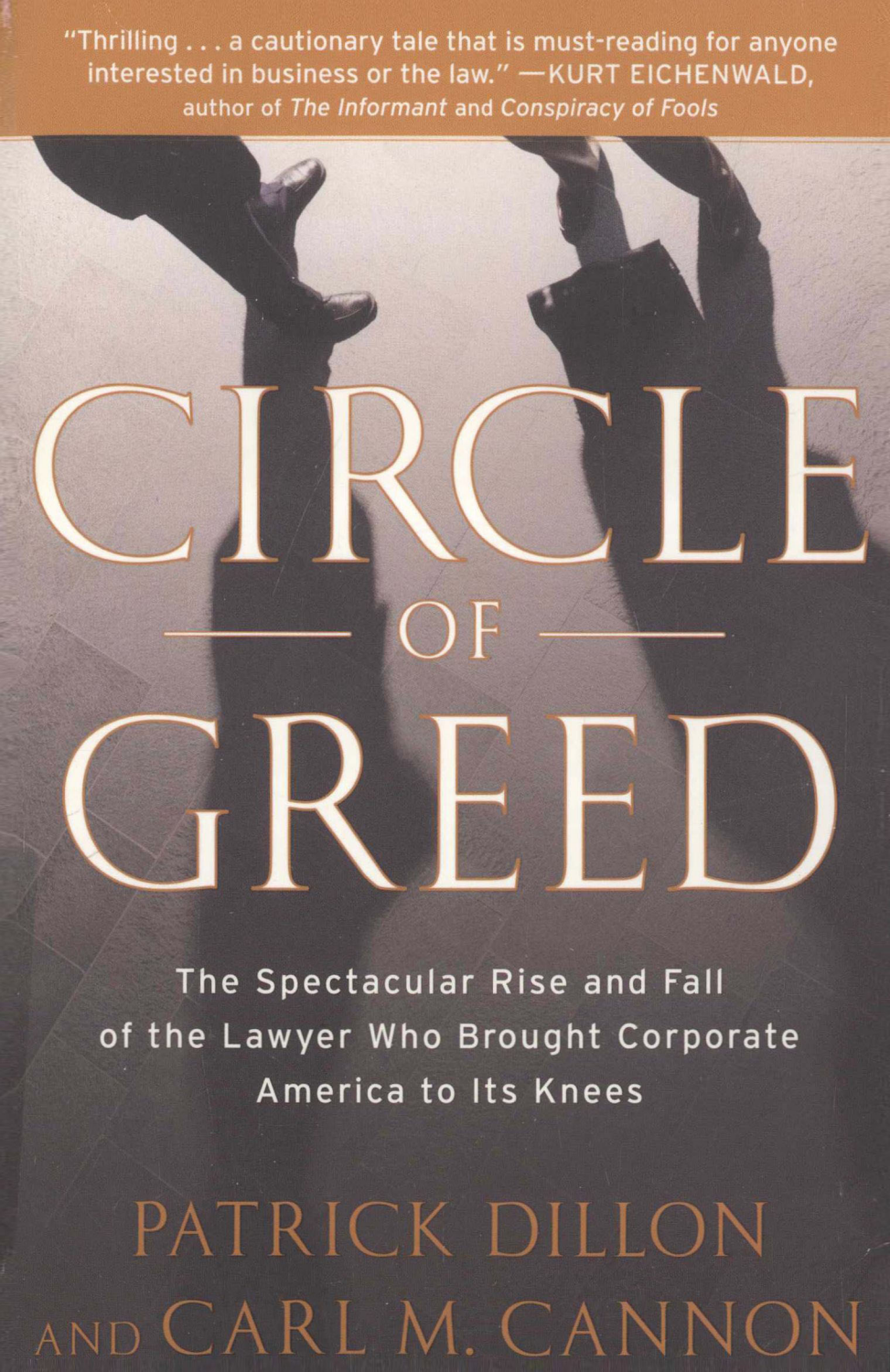


"Thrilling . . . a cautionary tale that is must-reading for anyone interested in business or the law." —KURT EICHENWALD,
author of *The Informant* and *Conspiracy of Fools*



CIRCLE — OF — GREED

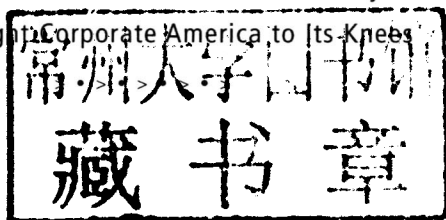
The Spectacular Rise and Fall
of the Lawyer Who Brought Corporate
America to Its Knees

PATRICK DILLON
AND CARL M. CANNON

CIRCLE *of* GREED

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The Spectacular Rise and Fall of the Lawyer
Who Brought Corporate America to Its Knees



PATRICK DILLON
AND CARL M. CANNON

Broadway Paperbacks
NEW YORK



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Published in the United States by Broadway Paperbacks,
an imprint of the Crown Publishing Group, a division of
Random House, Inc., New York.
www.crownpublishing.com

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Originally published in hardcover in the United States by
Broadway Books, an imprint of the Crown Publishing Group,
a division of Random House, Inc., New York, in 2010.

Library of Congress Cataloging-in-Publication Data

Dillon, Patrick, 1945–

Circle of greed: the spectacular rise and fall of the lawyer
who brought corporate America to its knees / By Patrick
Dillon and Carl M. Cannon.

1. Lerach, William S. 2. Lawyers—United States—Biography.
I. Cannon, Carl M. II. Title.

KF373.L46D55 2010

340.092—dc22

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2009024787

ISBN 978-0-7679-2995-0

eISBN 978-0-307-58917-0

Printed in the United States of America

Cover design by Pete Garceau

Cover photograph by Jetta Productions/Getty Images

10 9 8 7 6 5 4 3 2 1

First Paperback Edition

PRAISE FOR
CIRCLE of GREED

"John Grisham would have to struggle to invent a character as brilliant and unethical as Bill Lerach. It is a credit to the reporting talents of Patrick Dillon and Carl M. Cannon that, in *Circle of Greed*, they capture the felon-lawyer in all his charm and ruthlessness. Along the way they show how the plaintiffs' bar has transformed the process of class actions into big business."

—*Wall Street Journal*

"[A] revelatory yarn . . . In *Circle of Greed*, the authors do justice to their subject and have produced a book that proves the adage that truth can be stranger than fiction."

—*Washington Times*

"Patrick Dillon and Carl M. Cannon, who met Lerach early in their careers, do a professional job tracing the arc of their subject's story and are especially good at providing the legal context for the rise of shareholder lawsuits during the 1970s and '80s."

—*Washington Post*

"In *Circle of Greed*, this compelling narrative becomes an irresistible metaphor for the hubris at the heart of capitalism . . . Lerach is lucky to have Pulitzer Prize-winning journalists Patrick Dillon and Carl Cannon as his chroniclers. They tell his tale with an authority and depth that comes from having followed his career since the late 1970s. . . . Amid the entertaining knockabout and big personalities, the authors raise important questions about how the rule of law should work in a capitalist democracy."

—*Financial Times*

“[R]iveting . . . Telling this complex story is a tricky business, but *Circle of Greed* is up to the task: it is impressively researched and well paced, and offers reporting, not editorializing, leaving the reader to form his or her own judgments.”

—*Washington Monthly*

“A well-reported, densely written saga.”

—*Kirkus Reviews*

“[A] tale worth telling . . . what the authors do best, and what makes this book worth reading, is the way they weave the story of the criminal investigation through the massive corporate scandals, which were unfolding at the same time.”

—*The DeO Diary*

“In modern corporate America, the swashbuckling captains of industry have long been the primary characters exposed in the public storytelling. But now, Patrick Dillon and Carl Cannon have stripped away the veneer of a lawyer who made his name as the business world’s chief adversary, Bill Lerach. In *Circle of Greed*, Dillon and Cannon present a painstakingly researched and entertaining tale of a legal dynamo who seemed able to root out any corporate crime, but then became enmeshed in frauds of his own. Lerach had it all, then lost it all because of his own greed and arrogance. In this thrilling book, Dillon and Cannon have unwound the character of this perplexing man, presenting a cautionary tale that is must-reading for anyone interested in business or the law.”

—Kurt Eichenwald, author of *The Informant*
and *Conspiracy of Fools*

Acknowledgments

Before we begin tipping our hats to those who made our work possible, a word of explanation about how this book came to be written. Carl Cannon first came across William Lerach in 1977 while covering courts for the *San Diego Union*, a newspaper where Patrick Dillon often edited stories dispatched from the courthouse, a beat he had once covered himself. It didn't take Cannon long to interest Dillon and other editors in the emerging saga of Bill Lerach, a flashy newcomer to the San Diego legal scene. In time, Carl and Pat became friends as well as colleagues, keeping a running conversation about life and current events going for three decades even as Carl left his native California and made a career as a political writer in Washington, and Pat moved to the San Francisco Bay Area, where he held a number of editorial positions.

Cannon kept track of Lerach's legal activities over the years, weighing in occasionally with an article about Lerach's effect on the nation's legal, business, and political landscape. Meanwhile, as an editor and columnist, Pat found himself writing and commissioning articles about the long shadow Lerach cast over Silicon Valley and the high-rolling founders of the New Economy. At one point, Pat and Bill intended to write a book together

entitled “Plundering America,” about Lerach’s war of attrition against corporate fraud in America. Those plans were put on hold for reasons now revealed in our book, produced a decade after “Plundering America” was scratched. After it became apparent that the Justice Department was in the process of terminating Lerach’s legal career, Dillon called Lerach to inform him that there was still a book to be done, but it would be *about* Lerach, not coauthored *by* him.

Pat subsequently called Carl and invited him to be his coauthor. Carl, who had just days before finished a book with his father, Lou Cannon, comparing the presidencies of George W. Bush and Ronald Reagan, gave his friend a succinct initial response: “No.” Obviously, that answer was not the last word. Pat subsequently informed Bill Lerach that he and Carl had signed a contract to write a book about Lerach’s life and career. Lerach’s response was, “Well, I guess if someone is going to do it, I’m glad it’s going to be you two. I may not love some of it but you guys will be fair.”

When friends and acquaintances learned of this project, they would invariably ask if Lerach was cooperating. Informed that he was indeed, most people would ask why he was doing so. This is a question we asked ourselves over the course of reporting and writing this book. And make no mistake, Bill Lerach’s level of cooperation was extraordinary. He literally opened his house to the authors on separate reporting trips to San Diego throughout the winter and spring of 2008. He opened the files of old cases. He directed his longtime secretary, Kathy Lichnovsky, to provide documents, phone numbers, or source material. Bill met Carl in Pittsburgh on a nostalgic trip to see his old haunts—and his family—before heading to prison. Once in prison, he met with Pat on three separate occasions. Still, the question of “why?” remains, especially considering that Lerach never asked for—nor was he offered—any approval over the manuscript. He never saw a word of it prior to publication, and did not try to shape this book in either its conception or execution. So what was in it for him?

The authors believe that Lerach cooperated for two reasons. First, the rationale he cited himself: He knew our work and trusted it, even though he knew we did not necessarily share his political views or his mostly dark vision of publicly held corporations. Secondly, and we think this is more

significant: Lerach was and is convinced he has a compelling story to tell. Not necessarily about the particulars of the government's criminal case against him, but a larger story—the one about the defects and failures of entrepreneurial capitalism, and Lerach's attempts, however flawed his methods may have been, to hold corporate executives to account. We think that Bill Lerach believed he'd get a fair shake on that theme. We will leave it to the reader to decide if we delivered on that score.

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OF COURSE, MANY OTHERS helped us as well. Even though she was following her boss's wishes, Kathy Lichnovsky's assistance and forbearance was above and beyond the call of duty. Bill Lerach's brother Richard and his cousin Jim Kerr were open-hearted and generous with their time. So was Bill's wife, Michelle, who, if she had any misgivings about this book, kept them to herself. Star Soltan, Bill's third wife, patiently answered queries as well.

Bill's boyhood chums, as well as his high school and college friends, many of whom are quoted in Chapters 2 and 3, answered all our queries cheerfully and in a timely way. One sad note, however: Gene Carney, a faithful friend of Bill's who played sandlot baseball and football with him when they were grammar school age—and who came to his sixtieth birthday party in San Diego—died last summer as this book was being edited. Gene was a gentleman who had developed into a fine baseball writer as his second career. His help was greatly appreciated, and he was a national treasure.

Former FBI special agent Virginia Curry, who lost her husband at age thirty-nine to melanoma, yet who remained dedicated to her job, was instrumental in helping the authors piece together the art-theft case that tripped up Lerach confederate Steven Cooperman and subsequently Lerach himself. Likewise, we owe a great debt to Richard Robinson, the diligent federal prosecutor who stayed with this investigation for eight long years—and who was still willing to revisit the case in order to assist our efforts at re-creating the events inside the U.S. Attorney's Office in Los Angeles. We are equally grateful to his colleagues, Douglas Axel and Robert McGahan,

tenacious government lawyers who shared valuable details and insights—and to John Keker, the irrepressible and incomparable defense lawyer who represented Bill Lerach in his long battle with the government.

Two of Lerach's friends and allies, lawyers Jonathan W. Cuneo and Patrick Coughlin, also provided essential assistance. Pat Coughlin, Lerach's principal partner in the San Diego law firm that bore both men's names, helped Pat Dillon negotiate the thicket of the Enron litigation and the tobacco wars, as well as intra-firm politics and history. Meanwhile, Jon Cuneo helped Carl Cannon re-create the political backstory behind the "Get Lerach Act" in mid-1995 in Congress, and its counterpart referendums in California the following year. Sean Coffey, whom the authors came to see as heir-apparent to Lerach in securities class action law—albeit an Eagle-scout version of Lerach—helped the authors to understand the epic WorldCom litigation, as well as the rivalries within the plaintiffs' bar created by Lerach's omnipresence. And former U.S. solicitor general Paul G. Clement, provided expert guidance through the actions of the Bush administration as it prepared for a landmark Supreme Court decision on class action lawsuits. We thank him for his generous gift of time.

San Diego lawyers Colin W. Wied and James J. Granby assisted the authors—as they had assisted Lerach three decades ago—in the details of the Pacific Homes case, Lerach's breakthrough trial. So did an advocate on the other side in that long-ago litigation, a gracious Chicago attorney named Samuel W. Witwer, Jr. Speaking of Chicago lawyers, while Lerach nemesis Daniel R. Fischel declined to speak to us, his attorney Alan Salpeter was accessible, and the help he provided was simply indispensable. We would also like to thank retired federal judge Lawrence Irving, in whose courtroom Bill Lerach experienced a crushing defeat and who also offered numerous insights on subsequent cases, including Lincoln Savings and Enron, that resulted in some of Lerach's greatest victories. Thanks, too, to Helen Hodges, Lerach's colleague who furnished the blueprints of the Enron case, as well as Paul Howes, another Enron litigator and Lerach colleague, who furnished the intricate detail so valuable to our story. Thanks also to Richard Borow, a civil-defense lawyer who opposed Lerach in court and ultimately became his friend.

We attempted to interview everyone who figured prominently in this narrative and, thankfully, most reciprocated. Gerald Parsky, despite being active in Republican Party politics, wouldn't return calls for some reason. Mel Weiss, Lerach's mentor, after weighing his options, regrettably decided not to cooperate. For those who participated in these events but didn't consent to assist us, we hope we got it right anyway.

In cases in which court transcripts or other official records existed, we used them. If such records were not available, the dialogue quoted is dependent on the memory of the participants—and source-noted accordingly. We relied on Lerach's recollections for some of his ex-parte conversations, as well as conversations with his friends and adversaries. Where possible, we checked his quotations with other participants. Often, and gratifyingly for the authors' peace of mind, his recall closely matched that of others, including Howard B. Turrentine, a retired San Diego judge in his nineties, who recalls his old cases with great clarity and was happy to share his memories of two litigators he never forgot, Bill Lerach and Mel Weiss.

The authors also owe a debt of gratitude to the superb efforts of business reporters who have written about Lerach previously, most especially Peter Elkind, a senior writer for *Fortune* magazine, whose insightful and groundbreaking coverage foreshadowed much of what was to come. The list of other journalists whose work informed our own also includes Jeffrey Toobin of *The New Yorker*, whose profile of Lerach left an indelible impression on friends and foes alike; Stephen Pizzo, Mary Fricker, and Paul Muolo, whose 1989 groundbreaking book, *Inside Job*, remains the clearest view of the savings and loan crisis, the antecedent to our recent financial meltdown; *Fortune* writer Bethany McLean, who along with Elkind, authored the captivating book *The Smartest Guys in the Room*, about the Enron debacle; and to Kurt Eichenwald, for showing us the way with his impeccably reported *Conspiracy of Fools*. Finally, to legions of reporters from *The Wall Street Journal* and *New York Times* and others whose bylines appeared in *Forbes*, *Business Week*, the *Financial Times*, and numerous local newspapers, journals, white papers, and websites.

Andrew Stuart, our agent, believed in the book from the moment Pat Dillon suggested it to him. We also thank Phyllis Grann, who, after decades

of stardom in the New York publishing galaxy, remains undimmed, demonstrating her formidable powers of persuasion to get us to trim some 70,000 extraneous words from the manuscript. Random House lawyer Matthew Martin, who politely challenged our authority by patiently combing the source notes with us; Broadway Books assistant editor Annie Chagnot cheerfully attended to the tedious details preparing the book for publication; and our meticulous copy editor Janet Biehl comprised a highly professional team.

This book was shaped concurrently in a house on Lombard Street in San Francisco, and another located across the country in Arlington, Virginia. We thank Anne Dowie and Sharon Cannon, our wives, for patiently indulging our obsession and for accepting the conversion of their dining rooms into document and record repositories. Much of the first half of the book was also written in Bozeman, Montana, where we were hosted by our good friend Tom Mickel and generously ministered to by Sue Doss and Dudley Lutton. We polished the second half of the manuscript in adjacent offices at the Hoover Institution at Stanford University, courtesy of Professor David Brady and Mandy MacCalla, his able assistant.

Writing a book is both a solitary pursuit and a collaborative effort. This one couldn't have been written without the assistance of all we've named. And to those we haven't, you are not lost in our memories. You have the authors' gratitude, and although it goes without saying, we'll say it anyway: Any mistakes, omissions, or misinterpretations are the fault of the authors, not those who lent their help.

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PROLOGUE

At 7:25 A.M. on October 29, 2007, Frank Cucinotta, a fifty-year-old third-generation Italian-American, eased a jumbo white SUV passenger limousine out of the cobbled parking court of the Beverly Wilshire Hotel, a venerable fourteen-story Italianate property with a tradition of pampering Hollywood stars, players, movers-and-shakers, and anybody else who could afford to see and be seen. When the stoplight turned in Cucinotta's favor, he guided the vehicle onto Wilshire Boulevard; turned right, away from the Rodeo Drive shopping mecca; and joined the traffic already bunching east toward downtown Los Angeles, a ten-mile route he knew would require no less than an hour.

On this day, on the way to a nine A.M. appointment at the federal courthouse, riding in the rear seat—and rifling and tearing pages from the *Los Angeles Times*, the *Financial Times*, the *New York Times*, and *The Wall Street Journal*—was attorney William S. Lerach, his exclusive employer for more than eight years. Now sixty-one, Lerach was known as the kneecapper of corporate America. For three decades, as Americans created the greatest gain of wealth in the history of the world, the vengeful, fearless, abrasive, tactically brilliant Lerach had shaken down the “who’s who” of the Fortune

500 list. No one had been immune—not Disney, not Drexel Burnham, not Citibank, Goldman Sachs, Bank of America, Merrill Lynch, Credit Suisse First Boston, Global Crossing, AT&T, Hewlett-Packard, Apple Computer, Exxon, Time Warner, R.J. Reynolds, Arthur Andersen, WorldCom, Enron. Not Michael Milken or T. Boone Pickens. Not Charles Keating, Ivan Boesky, Al Dunlap, Michael Ovitz, Ron Perelman, Bernard Ebbers. Not Kenneth Lay or even Dick Cheney. During those thirty years Bill Lerach, and the firm Milberg, Weiss, Bershad, Hynes & Lerach—for whom he had been the shrewdest and most aggressive legal strategist, its boldest negotiator, its star litigator—returned more than \$45 billion in fraud judgments and settlements to millions of shareholders, small and large, and institutional investors—minus his own cut, which was not inconsiderable.

Acting outside the regulatory agencies that he routinely mocked as weak and politically beholden, this self-appointed legal Robin Hood peered at life roguishly through his signature oversize glasses, which his enemies and the newspaper and magazine illustrators parodied almost as often as his grayish blond Brillo hair. His sandpaper-textured, profane-laced megaphone voice also came in for notice. It wasn't really the voice that offended; rather, it was the invective that hurtled from it. "I'll own your fucking house in Maui and the diamonds on your wife's fingers," he'd tell an outwardly defiant but secretly quaking corporate captain. Or he'd snarl at opposing counsel: "This case is going to bring an ignominious end to your mediocre career!" Anyone who stood in his way was, in his mind, fair game; hence Lerach was a staple for *Fortune*, *Forbes*, and *Business Week* covers and for the pages of the *New York Times*, the *Financial Times*, and *The Wall Street Journal*.

The reason he generated such fear, and attention, was not merely his tactics—it was his results. To hear both his admirers and detractors tell it, Lerach had evolved into a fourth force in American capitalism, adding the *Lerach factor* to supply and demand and competition. He did it by building a 180-attorney colossus and employing dozens of private investigators, including former FBI agents and assistant U.S. attorneys, who prowled for vulnerable companies by monitoring their volatile stock and financial performances through his law firm's technically advanced software systems.

When he spotted a precipitous drop in earnings followed by a sharp drop in the stock price, he and his colleagues would search the database for the company's prior public statements talking up its financial performance, usually on what turned out to be bogus revenue recognition. If these optimistic statements were soon followed by a pattern of insider selling—"footprints in the snow," he called it—just before the stock crashed, Lerach and his team would outpace other law firms to find plaintiffs and file court complaints, anointing his firm and himself as lead counsel, while determining which other firms, if any, would be allowed to join the action and share the spoils, ranging as high as 30 percent of a judgment or settlement. Initiating, managing, attacking, counterattacking, bullying, bluffing, and even inventing new avenues for shareholder lawsuits; allowing investors, no matter how small, to take on corporate giants and the titans who guided and managed them, Lerach and his colleagues would litigate hundreds of cases, more than all other securities law firms combined. His tactics even helped corporate insurers, who were able to up their premiums for "Lerach protection." His opponents, including competing law firms and prominent politicians of both parties, compared him to a Mafia don. He secretly liked that, and he didn't even mind letting anyone know that his two favorite movies were *The Godfather* ("One lawyer with a briefcase can cause more damage than a thousand men with guns") and *Godfather II*. In his telling, Lerach was feared for a reason and in furtherance of a good cause. If he made himself rich in the process—and estimates of Lerach's own fortune ran upward of \$700 million—that was the reward for exposing corporate fraud, incompetence, and greed. The greed was epitomized by the astronomical executive compensation packages he railed against—*by-products*, he told wide-eyed judges, mediators, and congressional panels, of the fraud he continuously targeted and exposed. He often compared his firm to an enforcement arm of the Securities and Exchange Commission, with three essential differences: his firm was more perspicacious ("Watch next for bad loans from banks," he told an interviewer in 2002); it was more aggressive; and it was more efficient, because it put its own resources at risk by asking only for contingent fees, meaning it had to win the case to win the fees.

What's more, he delighted in rubbing himself in Corporate America's

face. Once when he was appearing before a hostile but morbidly curious crowd of business executives, Lerach swaggered to the podium and declared: "What enforcement do you really want at work regulating your marketplace? You want government bureaucrats, not subject to the economic discipline of the marketplace? Or do you want guys like me? I may be rancid butter, but you know I'm on your side of the bread."

Naturally, he had made enemies—in competing law firms, on Capitol Hill, and especially in boardrooms from Silicon Valley to Wall Street, where he existed in a parallel corporate subconscious as a modern Vandal or Visigoth. Buttoned-down and otherwise sober executives would vehemently denounce Lerach as a "bloodsucking scumbag," or an "economic pirate." (One Silicon Valley executive went so far as to publicly wish him out of human existence.) A verb had even been given his name. In boardrooms, to be "Lerached" meant being threatened with having to surrender more than a million documents and risk testimony from CEOs on down to the lowliest document clerks in order to fend off a \$100 million lawsuit. More often than not, CEOs and the boards they served would decide against fighting these Lerachian wars of attrition and would enter out-of-court settlements. They were expensive but not as costly as litigation—especially a lost trial. The circumspect executives would chalk it up to the cost of doing business and turn to their insurance carriers to bail them out, but they came to believe that what Lerach was doing was nothing less than legalized extortion. They weren't alone in this assessment. When Lerach came to Washington, D.C., in 1995 to lobby unsuccessfully against a Newt Gingrich-driven tort reform intended to put him out of business, California congressman Christopher Cox likened him to Al Capone. Silicon Valley venture capitalist L. John Doerr, who helped raise more than \$40 million in a 1996 statewide "Get Lerach Initiative" aimed at clipping his wings in California courts, referred to him as "a cunning economic terrorist." When George W. Bush talked in two presidential campaigns about "frivolous lawsuits," he was referring in large part to the class-action securities litigation that Lerach and his colleagues brought against businesses Bush had championed, including those of his longtime friends.

Among them was Enron chairman Kenneth Lay, who oversaw the