

### ***In Fed We Trust: Ben Bernanke's War on the Great Panic***

By David Wessel

*Crown Business, New York, NY, 2009. 323 pages, \$26.99.*

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#### REVIEWED BY HENRY S. COHN

In *In Fed We Trust*, *Wall Street Journal* reporter David Wessel provides information essential to understanding the financial crisis of 2008. He joins a growing number of authors who have written on the subject, including Andrew Ross Sorkin, whose *Too Big To Fail* was reviewed in the February 2010 issue of *The Federal Lawyer*. Wessel's book not only thoroughly explores the Federal Reserve Board's role in attempting to end the economic downturn but also is a fine biography of Ben Bernanke, the Fed's controversial chairman.

*In Fed We Trust* depicts the almost godlike reverence that the public and the financial markets held for the Fed's prior chairman, Alan Greenspan, who served from 1987 to 2005. But Greenspan missed the signals that the housing market was a bubble, blown into exorbitant size by subprime loans, and about to burst. After becoming Fed chairman in February 2006, Bernanke cautiously monitored world economic conditions and directed some adjustments in interest rates. In March 2008, however, he oversaw more aggressive action in engineering the rescue of the brokerage house, Bear Stearns.

Wessel's book first turns dramatic as he describes the unsuccessful effort to find a stable partner for Bear Stearns, the provision of a temporary infusion of cash by the Federal Reserve, and then the sale of the firm to JPMorgan Chase. In fall 2008, policy-makers as well as their critics would, again and again, raise as a precedent the Fed's extraordinary exercise of its powers in cleaning up the Bear Stearns debacle in the spring of that year. If the Fed was willing to cross the Rubicon to help this brokerage house, why shouldn't it act as aggressively to save other institutions in desperate shape?

The Bush administration, however, resisted departures from the free mar-

ket system. When Lehman Brothers appeared on the brink of collapse in September 2008, Secretary of the Treasury Henry Paulson signaled that the administration would support at most a takeover of Lehman Brothers by another firm. When no bank or brokerage house would purchase Lehman Brothers, which was weighed down with toxic assets, the government refused to take any other steps. On Sept. 15, 2008, Lehman Brothers filed for bankruptcy.

This event triggered what has become known as the Great Panic of 2008. Economists advised that the U.S. market system—and indeed the world economy—was about to self-destruct, with numerous other companies failing as Lehman Brothers had. Bernanke and Paulson realized that the Treasury Department and the Fed would have to take immediate action. Consequently, when the mega-giant AIG reported that it was in imminent danger, the Fed stepped in and purchased AIG for the federal government for \$80 billion. The U.S. government also purchased the semi-public mortgage lending institutions, Fannie Mae (Federal National Mortgage Association) and Freddie Mac (Federal Home Loan Mortgage Corporation).

Just after these developments, on Sept. 25, 2008, the two presidential candidates, John McCain and Barack Obama, met with President Bush and his staff and congressional leaders in the oval office. Bush played no role at the meeting, which was dominated by sharp exchanges between Treasury Secretary Henry Paulson and Speaker of the House Nancy Pelosi (D-Calif.).

The next event in the drama took place when Congress passed the Emergency Economic Stabilization Act of 2008 (the bailout) and the Troubled Asset Relief Program (TARP) in October 2008—a month before Obama won the presidential race. This legislation led to another series of bailouts for banks, including Washington Mutual, Wachovia, and Golden West. The bailout of Bank of America, scheduled for the morning of inauguration day, was hastily re-arranged by the Bush administration to take place on the Friday before Jan. 20, 2009.

The architect of the Fed's role as rescuer was its chairman, Ben Bernanke.

David Wessel relates the Bernanke family's Southern roots; talented Ben's "escape" from the small town of Dillion, S.C.; his years as a professor at Princeton University; and his appointment as a member of the Fed in 2002, followed by his chairmanship in 2006.

Bernanke came to his chairmanship keenly aware of the Fed's failures in the 1920s and 1930s first to prevent the Depression and then to involve itself in fixing it. He knew that, with the New Deal, the Fed had taken on a much more active role in managing the country's money supply and ensuring against the fall of financial institutions. Bernanke was determined to prevent what he labeled "Depression 2." His motto, at least after the Lehman debacle, was do "whatever it takes." This attitude, according to Wessel, has turned the Fed into, in effect, a fourth branch of government.

The recession of 2008 officially ended in 2010, but the debate over buyouts and the Fed's actions continue. In January 2010, Bernanke became eligible for a second term as Fed chairman, and he underwent a bruising confirmation process in the Senate. Bernanke faced one group that argued that the buyouts and stimulus packages had not hastened the end of the recession. On the other side, some argued that, as a Bush appointee, Bernanke had not reacted quickly enough to the warning signs in the housing and stock markets as the Great Panic of 2008 unfolded. On Jan. 28, 2010, Bernanke was reconfirmed by a vote of 70 to 30, the weakest endorsement of a chairman in the Fed's 96-year history.

*In Fed We Trust* is an excellent primer on the latest developments at the Federal Reserve Board. Bernanke, newly re-appointed, has made it clear that he will continue to do "whatever it takes" to stabilize the economy and speed the recovery. He recently put in place steps for a gradual increase of interest rates and the elimination of the drastic measures adopted during the crisis. On Mar. 1, 2010, Donald L. Kohn, Bernanke's deputy, whom Wessel also profiles, announced that he was resigning. On April 29, 2010, President Obama nominated Janet L. Yellen as Kohn's replacement; her confirmation by the Senate would align the Fed even

more closely with his administration's economic program. **TFL**

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## **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  
*Broadway Books, New York, NY, 2010. 532 pages, \$28.00.*

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### REVIEWED BY CHRISTOPHER C. FAILLE

Bill Lerach, an extraordinarily talented and ferocious plaintiffs' lawyer, made a fortune representing shareholders who had bought high and sold low. Much of *Circle of Greed* is about his successes in such lawsuits, and some of the book describes the seamy side of the business model he followed in the process.

### **Cooperman and Tierney**

A class-action law firm needs plaintiffs. Accordingly, there has developed a class of "professional plaintiffs," who purchase shares in companies that they believe will become the target of lawsuits. It was an excess of largesse toward members of this class, and dishonesty about that largesse, that caused the downfall of Bill Lerach and the law firm, Milberg Weiss, in which he was a partner for almost 30 years, and of which he was the public face—its alter ego—for much of that time.

One of the plaintiffs favored by Milberg Weiss' largesse was a Beverly Hills ophthalmologist named Steven Cooperman, with whom Lerach first made contact in 1988. By summer 1993, Cooperman had become notorious as a professional plaintiff. Dillon and Cannon quote an opinion issued that summer by U.S. District Judge Joe Kendall (Northern District of Texas), who, in dismissing a certain class action, noted somewhat sardonically, "Plaintiffs ... have among their ranks one of the unluckiest and most victimized investors in the history of the securities business, Mr. Steven G. Cooperman. ..."

Milberg Weiss would not simply or blatantly give Cooperman a kickback

for bringing them a lucrative class action case for which he qualified as a plaintiff. The firm's arrangements were of necessity more complicated than that. They had Cooperman bring in a third-party lawyer (often James Tierney) to serve as an intermediary. The bargained-for kickback to Cooperman would go first to Tierney and would be accounted for on Milberg Weiss' books as a "referral fee." Of course, Tierney, an entertainment lawyer who represented Timothy Hutton and Gloria Estefan, had contributed neither the referral nor anything else in these Cooperman lawsuits, but he would dutifully pass along the money after taking his own cut.

There were other favored plaintiffs in the Milberg Weiss stable—and other lawyer intermediaries as well. Still, Cooperman and Tierney acquired great significance through the misfortunes of one of Tierney's partners, J.J. Little. In early 1996, for reasons that need not concern us, Little left his practice in California and moved to Rocky River, Ohio, a town near Cleveland. There he romanced and moved in with Pamela Davis. In August of that year, two officers of the Rocky River police department responded to a call reporting a domestic disturbance and walked into a heated argument between Little and Davis. In her fury, Davis told the police, "He's a meth addict, a drunk, he's assaulted me before. He's sitting on stolen art worth millions, in a secret location." The officers decided they had no basis for action—in response to either the domestic disturbance or Davis' accusations. They warned the couple to calm down and went on their way. But a police record of someone making that statement about J.J. Little now existed.

### **Picasso and Monet**

In early 1997, Pamela Davis took up with a new acquaintance, Dennis Drabek. She told Drabek what she had told the police—what her former lover, Little, had told her—that there were two valuable works of art, stolen from somewhere in California, sitting in a nearby self-storage facility. Drabek was intrigued and ended up scanning news clippings and calling friends in California. He discovered that a Picasso and a Monet had been stolen from a Los Angeles area home five years before and were still missing. He called the Art Loss

Register (ALR), an organization that, acting on behalf of the insurance companies involved, was offering a reward. Drabek's questions led the director of the ALR, Anna Kisluk, to believe that Drabek knew something about the case, and she informed the Federal Bureau of Investigation of the conversation.

In time, FBI agents followed the bread crumbs back to Little. Little wanted to make a deal, so he showed them the missing masterpieces in the Mill River Indoor Self-Storage facility in Olmstead Falls, Ohio. He had been keeping them at the urging of his former law partner, James Tierney, because a client of Tierney's had falsely claimed to police and insurers alike that these paintings had been taken off his walls by a burglar. The client engaged in that insurance fraud was Steven G. Cooperman.

So it was that, in July 1998, a Los Angeles grand jury indicted Steven Cooperman on 18 felony counts, including insurance fraud and tax fraud. By this time, Cooperman had received a total of more than \$6 million from his relationship with Milberg Weiss, and he decided that his knowledge of the modus operandi of that law firm was his best—and perhaps his only—bargaining chip in hopes of a tolerable plea deal.

Over the course of the following few years, Bill Lerach and his West Coast team became too big to be contained within the New York-centered partnership of Milberg Weiss. Lerach spun his own team off from the mother ship formally in May 2004 and called the new partnership Lerach Coughlin Stoia & Robbins LLP. It was another two years after that spin-off that a grand jury brought in indictments related to Milberg Weiss' activities.

### **Fischel and Keating**

All of that is fascinating and could make the plot of a film noir. Still, much of this book and perhaps the more intriguing parts involve neither Milberg Weiss' illegal methods of recruiting and retaining the loyalty of plaintiffs nor the bizarrely indirect way in which that system unraveled on the shores of Lake Erie. No, the really good material turns out to be about Daniel R. Fischel, a professor of law, a one-time clerk for Supreme Court Justice

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Potter Stewart, and a man of free market convictions. Through the 1980s and 1990s, Fischel served as an expert witness for a wide range of prominent defendants in securities-fraud lawsuits. Not surprisingly, he crossed paths with Bill Lerach in that capacity. (In the interests of full disclosure, I should mention that I wrote a favorable review in *The Federal Lawyer* of *Payback*, Fischel's 1995 book on insider trading and the Michael Milken case.)

The good material also necessarily focuses on Charles Keating, the man who ended up at the center of the great late-1980s savings and loan scandal. Keating was the principal of American Continental Corporation (ACC), a land development company that purchased Lincoln Savings and Loan in 1984. In 1987–1988, Keating paid Lexecon, an economic consulting firm in which Daniel Fischel was a principal, to prepare reports on the soundness of Lincoln. Keating then used these reports to persuade federal and state regulators to leave him alone.

In 1988–1989, the real estate bubble burst, leading to the failure of both ACC and Lincoln. Although Lincoln's depositors were insured, it soon became clear that Lincoln had been steering some of its depositors into noninsured and highly speculative ACC-sponsored investments. Many of those depositors-turned-investors were of modest means, unsophisticated, and elderly. They lost their money, and Keating was indicted by both the state of California and the United States.

In 1990, Milberg Weiss sued Lincoln Savings and Loan, Charles Keating, and dozens of other entities on behalf of the class of investors injured by the demise of ACC. The firm named both Lexecon and Fischel himself as defendants. Lerach was apparently crucial in the firm's decision to include Fischel, and Dillon and Cannon believe that this decision arose from frustration over Fischel's excessive effectiveness as a defense witness. Milberg Weiss' complaint included the allegation that Lexecon's submissions to federal regulators had hidden the fact that Lexecon itself had received funds from Keating. In June 1992, though, Milberg Weiss accepted a disposition of the case as against Lexecon and Fischel. As part of that disposition, those particular defendants agreed to forfeit the equivalent of the Lexecon fee from Keating

(\$700,000) in service to the plaintiffs.

### Hansen and Lerach

The next crucial bit can be told in the authors' words:

After being dogged for months by allegations that he was a crook, after being tainted as a potential expert witness, possibly costing his consulting company millions of dollars in fees, Daniel Fischel was in the clear. But one matter was overlooked. Even though the resolution was untraditional [a disposition rather than a settlement], a traditional exercise normally follows. It requires a release, meaning both parties agree not to subsequently sue the other. The concluding documents in the case of the plaintiffs versus Lexecon did not contain a release document.

Oops!

In November 1992, Lexecon sued Milberg Weiss on a variety of grounds, which, after years of pretrial maneuverings, boiled down to tortious interference with Fischel and Lexecon's business relationships. This lawsuit came to trial in March 1999.

Dillon and Cannon describe the trial in some detail, focusing on a showdown in which Lerach took the stand and subjected himself to questioning by Fischel's attorney, Mark Hansen. Hansen zeroed in on the statement, in the class action complaint against various Keating-related parties, that Fischel and Lexecon had hidden from federal regulators the fact that they were actually working for Lincoln Savings and Loan when they submitted their report.

"Exhibit 100 is before you, Mr. Lerach. Take a moment to look at it," said Hansen. "This is the letter that accompanied the report to the [Federal Home Loan Bank Board], correct?" Lerach claimed not to have seen the cover letter, Exhibit 100, in which Lexecon had informed the FHLBB that it was submitting a report as *an advocate for* Lincoln Savings and Loan. It had clearly disclosed, then, the point that Milberg Weiss had accused it of hiding. "But the allegation is clearly a mistake, isn't it?" Hansen pressed, to which Lerach replied, "If I had had this letter, I would have al-

leged it differently." That is a moment for Hollywood: and the trial appears to have had other such moments.

On Friday, April 9, 1999, the jury retired to deliberate. Soon thereafter, the jury sent the judge a request asking to review the reports Lexecon had done on behalf of Keating and Lincoln. Lerach and his colleagues at the defense table were happy to hear this request, because they thought it meant that the jurors were coming around to the view that there was a close enough link between Lexecon and Lincoln to have warranted Lexecon's inclusion in the 1990 complaint. But the defendants had misread the jury, which returned to the courtroom Monday afternoon with a verdict of \$45 million compensatory damages. Judge Zagel ordered a hearing to determine punitive damages to begin the following morning.

That hearing never took place. The two sides settled on a total of \$50 million, with the proviso that the plaintiffs receive it by 5 p.m. Tuesday. Milberg Weiss didn't have \$50 million sitting in a petty cash drawer, and the firm's liability insurance would cover only \$5 million. Therefore, the law firm had to raise the sum in a single day by getting partners to pitch in and by obtaining any short-term loans they could manage to get. Communications and wire transfers flew about hectically, and by the end of that day, Chicago time, Lexecon had its \$50 million.

### Final Irony

The two plot lines on which this review has focused represent significant parts—but much less than the whole—of the narrative arc of this fact-crowded book. I commend the authors for their industry and for the clarity with which they have told a complicated tale.

On May 18, 2006, about two years after Lerach had left Milberg Weiss, the federal grand jury in Los Angeles indicted that firm and two of its partners on 20 counts. One of the named partners, David Bershada, pleaded guilty, and it appears to have been Bershada's cooperation that helped authorities zero in on what they regarded as a bigger fish—Bill Lerach.

In time, Lerach would negotiate a plea deal, pleading guilty to one count of obstructing justice by obtaining false material declarations under oath. Specif-

ically, Milberg Weiss as a firm had solicited clients to serve as the lead plaintiffs in class action lawsuits alleging securities fraud and had paid the lead plaintiffs well beyond what other members of the class would ever receive, while encouraging these lead plaintiffs to deny to the court that they were getting any such favorable treatment.

Lerach's one-time mentor, Melvyn Weiss, was also caught in the prosecutorial net and imprisoned. What was for so long known as Milberg Weiss is now known simply as Milberg LLP.

Another fish caught in the net was John Torkelson, who had frequently testified as an expert witness on the issue of the measurement of plaintiffs' damages in securities class actions brought by Milberg Weiss or Lerach Coughlin. Torkelson was convicted of perjury essentially for refusing to help the government against Lerach, and he entered a federal penitentiary in August 2006. Meanwhile, the California-based firm that for a long time was a branch of Milberg Weiss, but in 2004 became Lerach Coughlin Stoia & Robbins LLP, continues as Coughlin Stoia Geller Rudman and Robbins LLP.

Dillon and Cannon conclude their book with a delightful irony. Coughlin Stoia Geller Rudman and Robbins have recently begun using an old face as an expert witness to give the sort of measurement-of-damages testimony they could once have gotten from Torkelson: Daniel R. Fischel. **TFL**

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*Christopher Faille, a member of the Connecticut bar since 1982, writes on a variety of financial issues, and is the co-author, with David O'Connor, of a user-friendly guide to Basic Economic Principles (2000).*

### **What Happened: Inside the Bush White House and Washington's Culture of Deception**

By Scott McClellan

*Public Affairs, New York, NY, 2008. 326 pages, \$27.95 (cloth), \$16.95 (paper).*

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#### REVIEWED BY JOHN C. HOLMES

Scott McClellan was a longtime friend, admirer, and trusted adviser

of his fellow Texan, George W. Bush. McClellan was White House press secretary from 2003 to 2006, after having served as deputy press secretary. During his tenure, he did not lose his appreciation and fondness for the President nor his agreement with Bush's aspirations, but McClellan's belief that the Bush administration was playing a positive role in domestic and foreign affairs dwindled. He came to believe that the administration's continuing in a campaign mode—engaging in manipulation, secrecy, and self-deception—was contrary to the President's stated goals of bipartisanship, transparency, and good governance. McClellan had expected Bush to fulfill these goals, because he had witnessed him doing so when Bush was governor of Texas.

Of course, the tragedy of Sept. 11, 2001, to which the new President initially reacted powerfully and gracefully, was a significant factor in Bush's decision to launch a pre-emptive attack on Saddam Hussein's regime in Iraq. McClellan reports that Bush despised Saddam's cruelty and evil nature, which Bush saw as having been demonstrated by Saddam's mass murders of his own citizens and aggression against oil-rich neighboring nations in the Middle East. However, in preparing the United States and its allies to accept the military incursion, the administration relied far too heavily on the rationale that Saddam possessed concealed weapons of mass destruction.

Although the American military action against Saddam was swift and decisive, keeping the peace in a fractured nation was elusive. As stability in Iraq deteriorated and weapons of mass destruction were not found, opposition to and distrust of Bush and his administration increased. Rather than admit his mistakes and demonstrate transparency, according to McClellan, Bush became more stubborn in his pronouncements about Iraq, and the administration became more secretive. By avidly seeking to expose the administration's blunders, the media stirred up controversy in which increasingly strident Democratic politicians joined, and this helped cause the administration to develop a fortress mentality.

McClellan candidly discusses the roles and interactions of key adminis-

tration players—such as Karen Hughes, Karl Rove, Andy Card, Condoleezza Rice, Dick Cheney, Colin Powell, and Donald Rumsfeld—and gives his opinion of their characters and personalities. McClellan also describes the role of press secretary, the frustrations that accompany the job, and his own approach to it.

McClellan's departure after six loyal years was precipitated by the Valerie Plame affair. Bush had asked McClellan to defend statements made by Karl Rove, Bush's chief of staff, by Lewis "Scooter" Libby, Vice President Cheney's chief of staff, that they had not disclosed that Plame was an undercover CIA agent; both Rove and Libby had assured McClellan that they had not. When the truth proved otherwise, McClellan was forced into the uncomfortable position of either admitting that he had been duped or suffering in silence. Already reaching burnout, McClellan resigned.

As with most autobiographies, *What Happened* attempts to burnish the author's image. Although McClellan offers mea culpas on minor matters, he claims that some of the administration's major blunders might have been avoided if his advice had been followed. A recurring theme of the book is that governing by continuing in the campaign mode works against the national interest. But the suggestions that McClellan offers for improving the situation appear as much a patina for better book sales as a serious pursuit. Nevertheless, *What Happened* is a readable and balanced examination of the inner workings of the Bush administration and should interest political junkies regardless of their opinions of the former President and his policies. **TFL**

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*John C. Holmes served as a U.S. administrative law judge for 30 years, retiring in 2004 as chief administrative law judge at the U.S. Department of the Interior. He currently works part time as a legal and judicial consultant and can be reached at [trvlnterry@aol.com](mailto:trvlnterry@aol.com).*