

THE PEOPLE VS. GOLDMAN SACHS

A Senate committee has laid out the evidence. Now the Justice Department should bring criminal charges

By MATT TAIBBI

THEY WEREN'T MURDERERS or anything; they had merely stolen more money than most people can rationally conceive of, from their own customers, in a few blinks of an eye. But then they went one step further. They came to Washington, took an oath before Congress, and lied about it.

Thanks to an extraordinary investigative effort by a Senate subcommittee that unilaterally decided to take up the burden the criminal justice system has repeatedly refused to shoulder, we now know exactly what Goldman Sachs executives like Lloyd Blankfein and Daniel Sparks lied about. We know exactly how they and other top Goldman executives, including David Viniar and Thomas Montag, defrauded their clients. America has been waiting for a case to bring against Wall Street. Here it is, and the evidence has been gift-wrapped and left at the doorstep of federal prose-

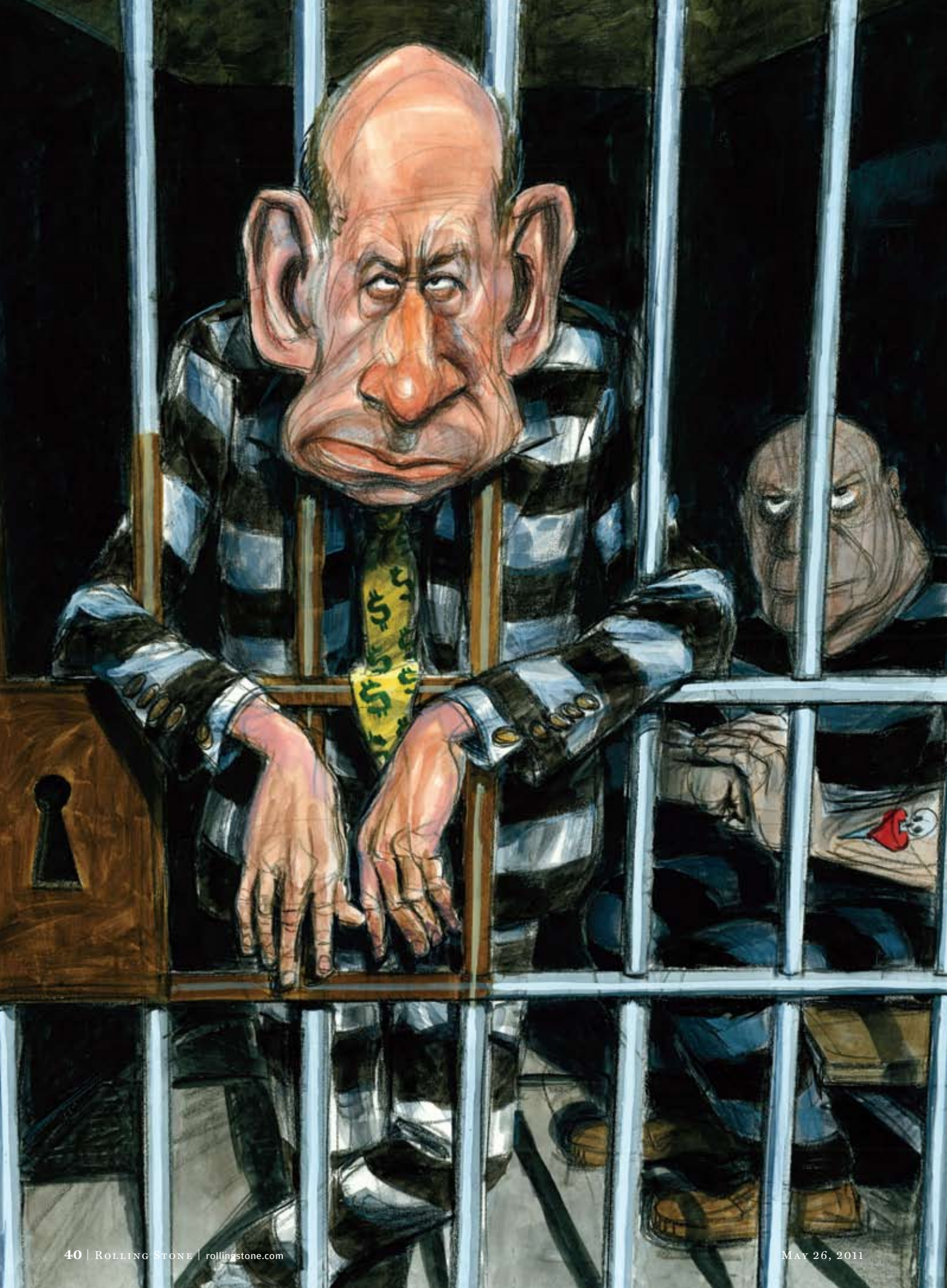
cutors, evidence that doesn't leave much doubt: Goldman Sachs should stand trial.

The great and powerful Oz of Wall Street was not the only target of *Wall Street and the Financial Crisis: Anatomy of a Financial Collapse*, the 650-page report just released by the Senate Subcommittee on Investigations, chaired by Democrat Carl Levin of Michigan, alongside Republican Tom Coburn of Oklahoma. Their unusually scathing bipartisan report also includes case studies of Washington Mutual and Deutsche Bank, providing a panoramic portrait of a bubble era that produced the most destructive crime spree in our history — “a million fraud cases a year” is how one former regulator puts it. But the mountain of evidence collected against Goldman by Levin's small, 15-desk office of investigators — details of gross, baldfaced fraud delivered up in such quantities as to almost serve as a kind of sarcastic challenge to the curiously impassive Justice Department — stands as the most important symbol of Wall Street's aristocratic impuni-

ty and prosecutorial immunity produced since the crash of 2008.

To date, there has been only one successful prosecution of a financial big fish from the mortgage bubble, and that was Lee Farkas, a Florida lender who was just convicted on a smorgasbord of fraud charges and now faces life in prison. But Farkas, sadly, is just an exception proving the rule: Like Bernie Madoff, his comically excessive crime spree (which involved such lunacies as kiting checks to his own bank and selling loans that didn't exist) was almost completely unconnected to the systematic corruption that led to the crisis. What's more, many of the earlier criminals in the chain of corruption — from subprime lenders like Countrywide, who herded old ladies and ghetto families into bad loans, to rapacious banks like Washington Mutual, who pawned off fraudulent mortgages on investors — wound up going belly up, sunk by their own greed.

But Goldman, as the Levin report makes clear, remains an ascendant company pro-



cisely because it used its canny perception of an upcoming disaster (one which it helped create, incidentally) as an opportunity to enrich itself, not only at the expense of clients but ultimately, through the bailouts and the collateral damage of the wrecked economy, at the expense of society. The bank seemed to count on the unwillingness or inability of federal regulators to stop them – and when called to Washington last year to explain their behavior, Goldman executives brazenly misled Congress, apparently confident that their perjury would carry no serious consequences. Thus, while much of the Levin report describes past history, the Goldman section describes an *ongoing* crime – a powerful, well-connected firm, with the ear of the president and the Treasury, that appears to have conquered the entire regulatory structure and stands now on the precipice of officially getting away with one of the biggest financial crimes in history.

Defenders of Goldman have been quick to insist that while the bank may have had a few ethical slips here and there, its only real offense was being too good at making money. We now know, unequivocally, that this is bullshit. Goldman isn't a pudgy housewife who broke her diet with a few Nilla Wafers between meals – it's an advanced-stage, 1,100-pound medical emergency who hasn't left his apartment in six years, and is found by paramedics buried up to his eyes in cupcake wrappers and pizza boxes. If the evidence in the Levin report is ignored, then Goldman will have achieved a kind of corrupt-enterprise nirvana. Caught, but still free: above the law.

TO FULLY GRASP THE CASE against Goldman, one first needs to understand that the financial crime wave described in the Levin report came on the heels of a decades-long lobbying campaign by Goldman and other titans of Wall Street, who pleaded over and over for the right to regulate themselves.

Before that campaign, banks were closely monitored by a host of federal regulators, including the Office of the Comptroller of the Currency, the FDIC and the Office of Thrift Supervision. These agencies had examiners poring over loans and other transactions, probing for behavior that might put depositors or the system at risk. When the examiners found illegal or suspicious behavior, they built cases and referred them to criminal authorities like the Justice Department.

This system of referrals was the backbone of financial law enforcement through the early Nineties. William Black was senior deputy chief counsel at the Office of Thrift Supervision in 1991 and 1992, the last years of the S&L crisis, a disaster whose pansystemic nature was comparable to the mortgage fiasco, albeit vastly smaller. Black describes the regulatory MO back then. "Every year," he says, "you had thousands of criminal referrals, maybe 500 enforcement actions, 150 civil suits and hundreds of convictions."

But beginning in the mid-Nineties, when former Goldman co-chairman Bob Rubin served as Bill Clinton's senior economic-policy adviser, the government began mov-



THE FIRST OF MANY?

Lee Farkas is the only big financial crook to go to prison so far – but unlike Goldman, he didn't help cause the crisis.

ing toward a regulatory system that relied almost exclusively on voluntary compliance by the banks. Old-school criminal referrals disappeared down the chute of history along with floppy disks and scripted television entertainment. In 1995, according to an independent study, banking regulators filed 1,837 referrals. During the height of the financial crisis, between 2007 and 2010, they averaged just 72 a year.

But spiking almost all criminal referrals wasn't enough for Wall Street. In 2004, in an extraordinary sequence of regulatory rollbacks that helped pave the way for the financial crisis, the top five investment banks – Goldman, Merrill Lynch, Morgan Stanley, Lehman Brothers and Bear Stearns – persuaded the government to create a new, voluntary approach to regulation called Consolidated Supervised Entities. CSE was the soft touch to end all soft touches. Here is how the SEC's inspec-

tor general described the program's regulatory army: "The Office of CSE Inspections has only two staff in Washington and five staff in the New York regional office."

Among the bankers who helped convince the SEC to go for this ludicrous program was Hank Paulson, Goldman's CEO at the time. And in exchange for "submitting" to this new, voluntary regime of law enforcement, Goldman and other banks won the right to lend in virtually unlimited amounts, regardless of their cash reserves – a move that fueled the catastrophe of 2008, when banks like Bear and Merrill were lending out 35 dollars for every one in their vaults.

Goldman's chief financial officer then and now, a fellow named David Viniar, wrote a letter in February 2004, commending the SEC for its efforts to develop "a regulatory framework that will contribute to the safety and soundness of financial institutions and markets by aligning regulatory capital requirements more closely with well-developed internal risk-management practices." Translation: Thanks for letting us ignore all those pesky regulations while we turn the staid underwriting business into a Charlie Sheen house party.

Goldman and the other banks argued that they didn't need government supervision for a very simple reason: Rooting out corruption and fraud was in their own self-interest. In

the event of financial wrongdoing, they insisted, they would do their civic duty and protect the markets. But in late 2006, well before many of the other players on Wall Street realized what was going on, the top dogs at Goldman – including the aforementioned Viniar – started to fear they were sitting on a time bomb of billions in toxic assets. Yet instead of sounding the alarm, the very first thing Goldman did was tell no one. And the *second* thing it did was figure out a way to make money on the knowledge by screwing its own clients. So not only did Goldman throw a full-blown "bite me" on its own self-righteous horseshit about "internal risk management," it more or less instantly sped way beyond inaction straight into craven manipulation.

"This is the dog that didn't bark," says Eliot Spitzer, who tangled with Goldman during his years as New York's attorney general. "Their whole political argument for a decade was 'Leave us alone, trust us to regulate ourselves.' They not only abdicated that responsibility, they affirmatively traded against the entire market."

BY THE END OF 2006, GOLDMAN was sitting atop a \$6 billion bet on American home loans. The bet was a byproduct of Goldman having helped create a new trading index called the ABX, through which it accumulated huge holdings in mortgage-related securities. But in December 2006, a series of top Goldman executives – including Viniar, mortgage chief Daniel Sparks and senior executive Thomas Montag – came to the conclusion that Goldman was overexposed to mortgages and should get out from under its huge bet as quickly as possible. Internal memos indicate that the executives soon became aware of the host of scams that would crater the global economy: home loans awarded with no documentation, loans with little or no equity in them. On December 14th, Viniar met with Sparks and other executives, and stressed the need to get "closer to home" – i.e., to reduce the bank's giant bet on mortgages.

Sparks followed up that meeting with a seven-point memo laying out how to unload the bank's mortgages. Entry No. 2 is particularly noteworthy. "Distribute as much as possible on bonds created from new loan securitizations," Sparks wrote, "and clean previous positions." In other words, the bank needed to find suckers to buy as much of its risky inventory as possible. Goldman was like a car dealership that realized it had a whole lot full of cars with faulty brakes. Instead of announcing a recall, it surged ahead with a two-fold plan to make a fortune: first, by dumping the dangerous products on other people, and second, by taking out life insurance against the fools who bought the deadly cars.

The day he received the Sparks memo, Viniar seconded the plan in a gleeful cheerleading e-mail. "Let's be aggressive distributing things," he wrote, "because there will be very good opportunities as the markets [go] into what is likely to be even greater distress, and we want to be in a position to take advantage of them." Translation: Let's find as many suckers as we can as fast as we can, because we'll only make more money as more and more shit hits the fan.

By February 2007, two months after the Sparks memo, Goldman had gone from betting \$6 billion on mortgages to betting \$10 billion *against* them – a shift of \$16 billion. Even CEO Lloyd "I'm doing God's work" Blankfein wondered aloud about the bank's progress in "cleaning" its crap. "Could/should we have cleaned up these books before," Blankfein wrote in one e-mail, "and are we doing enough right now to sell off cats and dogs in their books throughout the division?"

How did Goldman sell off its "cats and dogs"? Easy: It assembled new batches of risky mortgage bonds and dumped them on their clients, who took Goldman's word that they were buying a product the bank believed in. The names of the deals Goldman used to "clean" its books – chief among them Hudson and Timberwolf – are now notorious on Wall Street. Each of the deals appears to represent a different and innovative brand of shamelessness and deceit.

In the marketing materials for the Hudson deal, Goldman claimed that its interests were "aligned" with its clients because it bought a tiny, \$6 million slice of the riskiest portion of the offering. But what it left out is that it had shorted the entire deal, to the tune of a \$2 billion bet against its

Goldman dumped its crappy mortgages on its own clients, lied about where the deals came from – and then bet \$2 billion against the suckers who bought the crap.

own clients. The bank, in fact, had specifically designed Hudson to reduce its exposure to the very types of mortgages it was selling – one of its creators, trading chief Michael Swenson, later bragged about the "extraordinary profits" he made shorting the housing market. All told, Goldman dumped \$1.2 billion of its own crappy "cats and dogs" into the deal – and then told clients that the assets in Hudson had come not from its own inventory, but had been "sourced from the Street."

Hilariously, when Senate investigators asked Goldman to explain how it could claim it had bought the Hudson assets from "the Street" when in fact it had taken them from its own inventory, the bank's head of CDO trading, David Lehman, claimed it was accurate to say the assets came from "the Street" because Goldman was *part of* the Street. "They were like, 'We are the Street,'" laughs one investigator.

Hudson lost massive amounts of money almost immediately after the sale was completed. Goldman's biggest client, Morgan Stanley, begged it to liquidate the investment and get out while they could still salvage some value. But Goldman refused, stalling for months as its clients roasted to

death in a raging conflagration of losses. At one point, John Pearce, the Morgan Stanley rep dealing with Goldman, lost his temper at the bank's refusal to sell, breaking his phone in frustration. "One day I hope I get the real reason why you are doing this to me," he told a Goldman broker.

Goldman insists it was only required to liquidate the assets "in an orderly fashion." But the bank had an incentive to drag its feet: Goldman's huge bet against the deal meant that the worse Hudson performed, the more money Goldman made. After all, the entire point of the transaction was to screw its own clients so Goldman could "clean its books." The crime was far from victimless: Morgan Stanley alone lost nearly \$960 million on the Hudson deal, which admittedly doesn't do much to

tug the heartstrings. Except that quickly after Goldman dumped this near-billion-dollar loss on Morgan Stanley, Morgan Stanley turned around and dumped it on taxpayers, who within a year were spending \$10 billion bailing out the sucker bank through the TARP program. It is worth pointing out here that Goldman's behavior in the Hudson scam makes a mockery of standards in the underwriting business. Courts have held that "the relationship between the underwriter and its customer implicitly involves a favorable recommendation of the issued security." The SEC, meanwhile, requires that broker-dealers like Goldman disclose "material adverse facts," which among other things

includes "adverse interests." Former prosecutors and regulators I interviewed point to these areas as potential avenues for prosecution; you can judge for yourself if a \$2 billion bet against clients qualifies as an "adverse interest" that should have been disclosed.

But these "adverse interests" weren't even the worst part of Hudson. Goldman also used a complex pricing method to turn the deal into an impressive *triple* screwing. Essentially, Goldman bought some of the mortgage assets in the Hudson deal at a discount, resold them to clients at a higher price and pocketed the difference. This is a little like getting an invoice from an interior decorator who, in addition to his fee for services, charges you \$170 a roll for brand-name wallpaper he's actually buying off the back of a truck for \$63.

To recap: Goldman, to get \$1.2 billion in crap off its books, dumps a huge lot of deadly mortgages on its clients, lies about where that crap came from and claims it believes in the product even as it's betting \$2 billion against it. When its victims try to run out of the burning house, Goldman stands in the doorway, blasts them all with gasoline before they can escape, and then

BRUCE ACKERMAN/OCALIA STAR BANNER

has the balls to send a bill overcharging its victims for the pleasure of getting fried.

Timberwolf, the most notorious of Goldman's scams, was another car whose engine exploded right out of the lot. As with Hudson, Goldman clients who bought into the deal had no idea they were being sold the "cats and dogs" that the bank was desperately trying to get off its books. An Australian hedge fund called Basis Capital sank \$100 million into the deal on June 18th, 2007, and almost immediately found itself in a full-blown death spiral. "We bought it, and Goldman made their first margin call 16 days later," says Eric Lewis, a lawyer for Basis, explaining how Goldman suddenly required his client to put up cash to cover expected losses. "They said, 'We need \$5 million.' We're like, what the fuck, what's going on?" Within a month, Basis lost \$37.5 million, and was forced to file for bankruptcy.

In many ways, Timberwolf was a perfect symbol of the insane faith-based mathematics and blackly corrupt marketing that defined the mortgage bubble. The deal was built on a satanic derivative structure called the CDO-squared. A normal CDO is a giant pool of loans that are chopped up and layered into different "tranches": the prime or AAA level, the BBB or "mezzanine" level, and finally the equity or "toxic waste" level. Banks had no trouble finding investors for the AAA pieces, which involve betting on the safest borrowers in the pool. And there were usually investors willing to make higher-

odds bets on the crack addicts and no-documentation immigrants at the potentially lucrative bottom of the pool. But the unsexy BBB parts of the pool were hard to sell, and the banks didn't want to be stuck holding all of these risky pieces. So what did they do? They took all the extra unsold pieces, threw them in a big box, and repeated the original "tranching" process all over again. What originally were all BBB pieces were diced up and divided anew – and, presto, you suddenly had new AAA securities and new toxic-waste securities.

A CDO, to begin with, is already a highly dubious tool for magically converting risky subprime mortgages into AAA investments. A CDO-squared doubles down on that lunacy, taking the waste products of the original process and converting them into AAA investments. This is kind of like taking all the kids who were picked last to play volleyball in every gym class of every public school in the state, throwing them in a new gym, and pretending that the first 10 kids picked are varsity-level players. Then you take all the unpicked kids left over from that process, throw them in a gym with similar kids from all 50 states, and call the first 10 kids picked All-Americans.

Those "All-Americans" were the assets in the Timberwolf deal. These were the recycled nightmare dregs of the mortgage craze – to quote Beavis and Butt-Head, "the ass of the ass."

Goldman knew the deal sucked long before it dinged the Aussies in Basis Capital for \$100 million. In February 2007, Goldman mortgage chief Daniel Sparks and senior executive Thomas Montag exchanged e-mails about the risk of holding all the crap in the Timberwolf deal.

MONTAG: "CDO-squared – how big and how dangerous?"

SPARKS: "Roughly \$2 billion, and they are the deals to worry about."

Goldman executives were so "worried" about holding this stuff, in fact, that they quickly sent directives to all of their sales-

In one internal e-mail, a Goldman sales rep mocked a client who bought \$100 million in toxic assets: "I think I found white elephant, flying pig and unicorn all at once."

people, offering "ginormous" credits to anyone who could manage to find a dupe to take the Timberwolf All-Americans off their hands. On Wall Street, directives issued from above are called "axes," and Goldman's upper management spent a great deal of the spring of 2007 "axing" Timberwolf. In a crucial conference call on May 20th that included Viniar, Sparks oversaw a PowerPoint presentation spelling out, in writing, that Goldman's mortgage desk was "most concerned" about Timberwolf and another CDO-squared deal. In a later e-mail, he offered an even more dire assessment of such deals: "There is real market-meltdown potential."

On May 22nd, two days after the conference call, Goldman sales rep George Maltezos urged the Australians at Basis to hurry up and buy what the bank knew was a deadly investment, suggesting that the "return on invested capital for Basis is over 60 percent." Maltezos was so stoked when he first identified the Aussies as a target in the scam that he subject-lined his e-mail UTOPIA.

"I think," Maltezos wrote, "I found white elephant, flying pig and unicorn all at once."

The whole transaction can be summed up by the now-notorious e-mail that Montag wrote to Sparks only four days after they sold \$100 million of Timberwolf to Basis. "Boy," Montag wrote, "that timeberwof [sic] was one shitty deal."

LAST YEAR, IN THE ONE significant regulatory action the government has won against the big banks, the SEC sued Goldman over a scam called Abacus, in which the bank "rented" its name to a billionaire hedge-fund viper to fleece investors out of more than \$1 billion. Goldman agreed to pay \$550 million to settle the suit, though no criminal charges were brought against the bank or its executives. But in light of the Levin report, that SEC action now looks woefully inadequate. Yes, it was a record fine – but it pales in comparison to the money Goldman has taken from the government since the crash. As Spitzer notes, Goldman's reaction was basically, "OK, we'll pay you \$550 million to settle the Abacus case – that's a small price to pay for the \$12.9 billion we got for the AIG bailout." Now, adds Spitzer, "everybody can just go home and pretend it was only \$12.4 billion – and Goldman can smile all the way to the bank. The question is, now that we've seen this report, there are a bunch of story lines that seem to be at least as egregious as Abacus. Are they going to bring cases?"

Here is where the supporters of Goldman and other big banks will stand up and start wanding the air full of confusing terms like "scienter" and "loss causation" – legalese mumbo jumbo that attempts to convince the ignorantly enraged onlooker that, according to American law, these grotesque tales of grand theft and fraud you've just heard are actually more innocent than you think. Yes, they will say, it may very well be a prosecutable crime for a corner-store Arab to take \$2 from a customer selling tap water as Perrier. But that does not mean it's a crime for Goldman Sachs to take \$100 million from a foreign hedge fund doing the same thing! No, sir, not at all! Then you'll be told that the Supreme Court has been limiting corporate liability for fraud for decades, that in order to gain a conviction one must prove a conscious intent to deceive, that the 1976 ruling in *Ernst and Ernst* clearly states. . . .

Leave all that aside for a moment. Though many legal experts agree there is a powerful argument that the Levin report supports a criminal charge of fraud, this stuff can keep the lawyers tied up for years. So let's move on to something much simpler. In the spring of 2010, about a year into his investigation, Sen. Levin hauled all of the principals from these rot-

ten Goldman deals to Washington, made them put their hands on the Bible and take oaths just like normal people, and demanded that they explain themselves. The legal definition of financial fraud may be murky and complex, but everybody knows you can't lie to Congress.

"Article 18 of the United States Code, Section 1001," says Loyola University law professor Michael Kaufman. "There are statutes that prohibit perjury and obstruction of justice, but this is the federal statute that explicitly prohibits lying to Congress."

The law is simple: You're guilty if you "knowingly and willfully" make a "materially false, fictitious or fraudulent statement or representation." The punishment is up to five years in federal prison.

When Roger Clemens went to Washington and denied taking a shot of steroids in his ass, the feds indicted him – relying not on a year's worth of graphically self-incriminating e-mails, but chiefly on the testimony of a single individual who had been given a deal by the government. Yet the Justice Department has shown no such prosecutorial zeal since April 27th of last year, when the Goldman executives who oversaw the Timberwolf, Hudson and Abacus deals arrived on the Hill and one by one – each seemingly wearing the same mask of faint boredom and irritated condescension – sat before Levin's committee and dodged volleys of questions.

Before the hearing, even some of Levin's allies worried privately about his taking on Goldman and other powerful interests. The job, they said, was best left to professional prosecutors, people with experience building cases. "A senator's office is not an enormous repository of expertise," one former regulator told me. But in the case of this particular senator, that concern turned out to be misplaced. A Harvard-educated lawyer, Levin has a long record of using his subcommittee to spend a year or more carefully building cases that lead to criminal prosecutions. His 2003 investigation into abusive tax shelters led to 19 indictments of individuals at KPMG, while a 2006 probe fueled insider-trading charges against the notorious Wyly brothers, a pair of billionaire Texans who manipulated offshore investment trusts. The investigation of Goldman was an attempt to find out what went wrong in the years leading up to the financial crash, and the questioning of the bank's executives was not one of those for-the-cameras-only events where congressmen wing ad-libbed questions in search of sound bites. In the weeks leading up to the hearing, Levin's team carefully rehearsed the moment with committee members. They knew the possible answers that Goldman might give, and they were ready with specific counterquestions. What ensued looked more like a good old-fashioned courtroom grilling than a photo-op for grinning congressmen.

LYING SACHS

The Senate testimony of Goldman's top executives didn't jibe with the truth



Lloyd Blankfein

Chief executive officer

WHAT HE TOLD CONGRESS: "We certainly did not bet against our clients."

WHAT HE SAID AT WORK: Specifically asked subordinates about progress unloading crappy assets on clients. "Are we doing enough right now to sell off cats and dogs?"



David Viniar

Chief financial officer

WHAT HE TOLD CONGRESS: Insisted that Goldman's massive bet against mortgages was "not a large short."

WHAT HE SAID AT WORK: Wrote a confidential e-mail in which he called Goldman's bet "the big short."



Daniel Sparks

Former partner and mortgage chief

WHAT HE TOLD CONGRESS: Claimed that Goldman expected deadly mortgage deals like Timberwolf "to perform."

WHAT HE SAID AT WORK: Approved an internal document warning that Goldman expected such deals "to underperform."



Michael Swenson

Managing director of structured products

WHAT HE TOLD CONGRESS: Said that Goldman had forfeited profits by refusing to bet against mortgages: "We left money on the table."

WHAT HE SAID AT WORK: Bragged about the "extraordinary profits" he made while betting against mortgages.

Sparks, who stepped down as Goldman's mortgage chief in 2008, cut a striking figure in his testimony. With his severe crew cut, deep-set eyes and jockish intransigence, he looked like a cross between H.R. Haldeman and John Rocker. He repeatedly dodged questions from Levin about whether or not the bank had a responsibility to tell its clients that it was betting against the same stuff it was selling them. When asked directly if he had that responsibility, Sparks answered, "The clients who did not want to participate in that deal did not." When Levin pressed him again, asking if he had a duty to disclose that Goldman had an "adverse interest" to the deals being sold to clients, Sparks fidgeted and pretended not to comprehend the question. "Mr. Chairman," he said, "I'm just trying to understand."

OK, fine – non-answer answers. "My guess is they were all pretty well coached up," says Kaufman, the law professor. But then Sparks had a revealing exchange with Sen. Jon Tester of Montana. Tester calls the Goldman deals "a wreck waiting to happen," noting that the CDOs "were all downgraded to junk in very short order."

At which point, Sparks replies, "Well, senator, at the time we did those deals, we expected those deals to perform."

Tester then cannily asks if by "perform," Sparks means go to shit – which would have been an honest answer. "Perform in what way?" Tester asks. "Perform to go to junk so that the shorts made out?"

Unable to resist the taunt, Sparks makes a fateful decision to defend his honor. "To not be downgraded to junk in that short a time frame," he says. Then he pauses and decides to dispense with the hedging phrase "in that short a time frame."

"In fact," Sparks says, "to not be downgraded to junk."

So Sparks goes before Congress and, under oath, tells a U.S. senator that at the time he was selling Timberwolf, he expected it to "perform." But an internal document he approved in May 2007 predicted exactly the opposite, warning that Goldman's mortgage desk expected such deals to "underperform." Here are some other terms that Sparks used in e-mails about the subprime market affecting deals like Timberwolf around that same time: "bad and getting worse," "get out of everything," "game over," "bad news everywhere" and "the business is totally dead."

And we indicted *Roger Clemens*?

Another extraordinary example of Goldman's penchant for truth avoidance came when Joshua Birnbaum, former head of structured-products trading for the bank, gave a deposition to Levin's committee. Asked point-blank if Goldman's huge "short" on mortgages was an intentional bet against the market or simply a "hedge" against potential losses, Birnbaum played dumb. "I do not know whether the shorts were a hedge," he said.

But the committee, it turned out, already knew that Birnbaum had written a memo in which he had spelled out the truth: “The shorts were not a hedge.” When Birnbaum’s lawyers learned that their client’s own words had been used against him, they hilariously sent an outraged letter complaining that Birnbaum didn’t know the committee had his memo when he decided to dodge the question. They also submitted a “supplemental” answer. Birnbaum now said, “Having reviewed *the document the staff did not previously provide me*” – his own words! – “I can now recall that . . . I believed . . . these short positions were not a hedge.” (Goldman, for its part, dismisses Birnbaum as a single trader who “neither saw nor knew the firm’s overall risk positions.”)

When it came time for Goldman CEO Lloyd Blankfein to testify, the banker hedged and stammered like a brain-addled boxer who couldn’t quite follow the questions. When Levin asked how Blankfein felt about the fact that Goldman collected \$13 billion from U.S. taxpayers through the AIG bailout, the CEO deflected over and over, insisting that Goldman would somehow have made that money anyway through its private insurance policies on AIG. When Levin pressed Blankfein, pointing out that he hadn’t answered the question, Blankfein simply peered at Levin like he didn’t understand.

But Blankfein also testified unequivocally to the following:

“Much has been said about the supposedly massive short Goldman Sachs had on the U.S. housing market. The fact is, we were not consistently or significantly net-short the market in residential mortgage-related products in 2007 and 2008. We didn’t have a massive short against the housing market, and we certainly did not bet against our clients.”

Levin couldn’t believe what he was hearing. “Heck, yes, I was offended,” he says. “Goldman’s CEO claimed the firm ‘didn’t have a massive short,’ when the opposite was true.” First of all, in Goldman’s *own internal memoranda*, the bank calls its giant, \$13 billion bet against mortgages “the big short.” Second, by the time Sparks and Co. were unloading the Timberwolves of the world on their “unicorns” and “flying pigs” in the summer of 2007, Goldman’s mortgage department accounted for 54 percent of the bank’s risk. That means more than half of all the bank’s risk was wrapped up in its bet against the mortgage market – a “massive short” by any definition. Indeed, the bank was betting so much money on mortgages that its executives had become comically blasé

about giant swings on a daily basis. When Goldman lost more than \$100 million on August 8th, 2007, Montag circulated this e-mail: “So who lost the hundy?”

This month, after releasing his report, Levin sent all of this material to the Justice Department. His conclusion was simple. “In my judgment,” he declared, “Goldman clearly misled their clients, and they misled the Congress.” Goldman, unsurprisingly, disagreed: “Our testimony was truthful and accurate, and that applies to all of our testimony,” said spokesman Michael DuVally. In a statement to *ROLLING STONE*, Goldman insists that its behavior throughout the period covered in the Levin report was consistent with responsible business practice, and that its machinations in the mortgage market were simply an attempt to manage risk.

It wouldn’t be hard for federal or state prosecutors to use the Levin report to make a criminal case against Goldman. I ask Eliot Spitzer what he would do if

and took a multibillion-dollar bet against its clients, a bet that incidentally made them enormous profits. Are we all missing something? Is there some different and higher standard of triple- and quadruple-lying that applies to bank CEOs but not to baseball players?

This issue is bigger than what Goldman executives did or did not say under oath. The Levin report catalogs dozens of instances of business practices that are objectively shocking, no matter how any high-priced lawyer chooses to interpret them: gambling billions on the misfortune of your own clients, gouging customers on prices millions of dollars at a time, keeping customers trapped in bad investments even as they begged the bank to sell, plus myriad deceptions of the “failure to disclose” variety, in which customers were pitched investment deals without ever being told they were designed to help Goldman “clean” its bad inventory. For years, the soundness of America’s financial

system has been based on the proposition that it’s a crime to lie in a prospectus or a sales brochure. But the Levin report reveals a bank gone way beyond such pathetic little boundaries; the collective picture resembles a financial version of *The Jungle*, a portrait of corporate sociopathy that makes you never want to go near a sausage again.

Upton Sinclair’s narrative shocked the nation into a painful realization about the pervasive filth and corruption behind America’s veneer of smart, robust efficiency.

But Carl Levin’s very similar tale probably will not. The fact that this evidence comes from a U.S. senator’s office, and not the FBI or the SEC, is itself an element in the worsening tale of lawlessness and despotism that sparked a global economic meltdown. “Why should Carl Levin be the one who needs to do this?” asks Spitzer. “Where’s the SEC? Where are any of the regulatory bodies?”

This isn’t just a matter of a few seedy guys stealing a few bucks. This is America: Corporate stealing is practically the national pastime, and Goldman Sachs is far from the only company to get away with doing it. But the prominence of this bank and the high-profile nature of its confrontation with a powerful Senate committee makes this a political story as well. If the Justice Department fails to give the American people a chance to judge this case – if Goldman skates without so much as a trial – it will confirm once and for all the embarrassing truth: that the law in America is subjective, and crime is defined not by what you did, but by who you are.



INTERROGATOR IN CHIEF

Sen. Carl Levin has referred his findings to the Justice Department: “Goldman clearly misled their clients and misled Congress.”

he were still attorney general and he saw the Levin report. “Once the steam stopped coming out of my ears, I’d be dropping so many subpoenas,” he says. “And I would parse every potential inconsistency between the testimony they gave to Congress and the facts as we now understand them.”

I ask what inconsistencies jump out at him. “They keep claiming they were only marginally short, that it was more just servicing their clients,” he says. “But it sure doesn’t look like that.” He pauses. “They were \$13 billion short. That’s big – 50 percent of their risk. It was so completely disproportionate.”

Lloyd Blankfein went to Washington and testified under oath that Goldman Sachs didn’t make a massive short bet and didn’t bet against its clients. The Levin report *proves* that Goldman spent the whole summer of 2007 riding a “big short”