

CHAPTER 1

For Such a Time as This

We have all experienced those moments when a shattering event overtakes and overwhelms us, changing our lives forever. As a nation, we lived through such a time on September 11, 2001, when nineteen men altered the course of history. Before that, you can point to November 22, 1963, when one individual rocked the foundations of our society, assassinating President John F. Kennedy in Dallas, or June 6, 1944, when thousands of Americans gave their lives in the D-Day invasion of Normandy.

I consider it one of the ironies of history that my particular “day that will live in infamy” occurred on December 7, 2006, exactly sixty-five years after the Japanese launched the sneak attack that took us into World War II. Of course, I’m not comparing what happened to me that afternoon to any such epic date with destiny. At the same time, however, I realize that my personal Pearl Harbor Day is not without its own historic resonance. From that moment on, things were not the same, for me or for the country I’d so proudly served. I’d arrived at a point when my history intersected with America’s history in a way that

would change—and is still changing—both America’s justice system and me.

I hadn’t the slightest clue of what was about to happen as I walked down a long departure corridor at Baltimore-Washington International Airport to catch a flight home to Albuquerque, New Mexico. It was cold outside. The high windows overlooked the busy tarmac, and a winter sun slanted across the crowds of holiday travelers hurrying to their gates. Bright plastic and tinsel decorations hung overhead. I was feeling a bit of yuletide cheer myself, anticipating my return home, where the sunny Southwestern winter stood in sharp contrast to the dreary drizzle of the East Coast urban hub I was gratefully escaping.

New Mexico is a particularly beautiful place to come home to at that time of year. The snow occasionally blankets the steep ascents of the Sandia Mountains, which rise more than ten thousand feet in magnificent relief right outside my front door. I had spent much of my life in the state, in Gallup, Santa Fe, and, finally, Albuquerque, where I had put down roots, started a family, and launched my career. But even after all those years, New Mexico never fails to live up to its billing as the Land of Enchantment.

Home, of course, was where my wife and four daughters—sixteen-year-old Claudia, fifteen-year-old Amanda, thirteen-year-old Marisa, and the youngest, ten-year-old Sophia—would be gearing up for the family’s own seasonal celebration. As Christians, Cyndy and I had always tried to impress on our girls that there was more to the birthday of Jesus Christ than just another opportunity to indulge in conspicuous consumption. But it’s hard to deflect any youngster’s anticipation of presents under the tree, and I looked forward to sharing their excitement. Although Christmas honors the Advent season, happy kids are what Christmas is all about.

Except, as it turned out, on that particular Christmas. Our holiday that year would be filled with confusion, doubt, and rage, and it would begin right at the moment when I took out my BlackBerry for one last check before I boarded my flight. What immediately

caught my eye was a message from my secretary, Lois Golden, the extremely competent assistant whom I'd taken with me through two previous jobs. "Call Mike Battle," was the text, and I stopped as the noisy crowd surged around me. I looked at the words on the glowing screen, wondering exactly what they might mean.

While it was certainly not unprecedented to get a call from Mike Battle, it was nevertheless unusual and just a bit unnerving. Mike had been director of the Executive Office for United States Attorneys (EOUSA) since the summer of 2005, after serving for three years as the U.S. Attorney in the Western District of New York. As the arm of the Justice Department that oversaw the activities and the performance of U.S. Attorneys across the country, the EOUSA served as an intermediary between the field offices and Washington and as a conduit for various policy directives from on high. But neither I nor any other U.S. Attorney reported to Battle. We answered only to the attorney general and the deputy attorney general. As a result, our contacts were minimal with "Main Justice," as we called the DOJ's magisterial headquarters on the corner of Pennsylvania Avenue and 9th Street in the heart of the capital.

I'll never forget the first time I visited that building, which was named after slain attorney general Robert Kennedy. I had come to apply for a position in the Civil Rights Section in 1988—as luck would have it, precisely the same time that the Justice Department announced a hiring freeze. Nevertheless, I was duly impressed with the inspirational aphorisms carved into the building's marble-adorned walls and the stern visages of the men who had spoken those words. They stared down stoically from their commemorative portraits in the offices where more than ten thousand lawyers—an "untouchable" phalanx of world-class prosecutors—work in what the recruitment brochures refer to as the largest law firm in the world. There is a serene and beautiful fountain in the courtyard, which brought to my mind the words

of Martin Luther King Jr., when he quoted the biblical book of Amos and called on justice to “flow on like a river.”

Thirteen years later, I was helping to channel a small tributary of that river and would visit the magnificent edifice at least once every few months. But the reality was that virtually all U.S. Attorney cases involved activity within our individual districts. Main Justice became interested only when a particular prosecution took on national implications, especially the kinds of organized crime and drug cartel cases on which it had earned a wholly justified reputation for breaking the backs of syndicates and conspiracies. At our level, EOUSA, at the behest of the attorney general, would actively monitor our caseloads and conviction rates, primarily through a database system dubbed LIONS—Legal Information Office Network System—which tracked specifics on defendants, criminal charges, court appearances, and so forth. Otherwise, U.S. Attorneys were pretty much left alone to oversee their districts within priorities established by the administration.

Yet for all the distance maintained between Main Justice and the U.S. Attorneys’ far-flung offices, Battle was widely considered to be “one of us.” He’d risen through the ranks, beginning in Buffalo, New York, where he’d worked variously as assistant to the state attorney general and as Assistant U.S. Attorney, as well as helping to found the Federal Public Defender’s Office in the city. I had previously worked with him preparing testimony for an immigration subcommittee, and I knew that he understood the realities of prosecutorial work in the trenches. Ever since we’d met, I’d considered Mike a straight shooter. After all, he had been on the regional council of the Boy Scouts of America.

I’d seen Mike a few months earlier, back in October in his Washington office on the second floor of Main Justice, where I’d stopped by to say hello and chat about the seemingly endless requests I’d made for more staff and an increased budget. He seemed a bit worried when I walked into his office, and with good reason. By that time, about half of George W. Bush’s U.S. Attorneys had left to become federal judges, take other government appointments, or go into lucrative private practice. During

our conversation, I could see that Mike was relieved that I wasn't there to tender my resignation. In fact, his face broke into a wide smile when I told him I was planning to stay. I sympathized with his position: he had a tough job trying to keep ninety-three independent-minded U.S. Attorneys happy. The fact is, I'm not certain that Mike enjoyed all that much job security himself: he was the third full-time EOUSA director in six years.

As I look back, it seems clear to me that Mike had no idea what was about to go down a few short months later. It's ironic to think that I had once been offered the position of director of EOUSA. If I'd taken it, I'd have been the one who would have had to make that fateful phone call.

In any case, I wasn't alone in my incessant entreaties for more resources and personnel. At that time, there was a general belt-tightening underway throughout Washington, and I didn't need Mike to tell me that most of the government's resources were going toward maintaining military operations in Iraq and Afghanistan. It was a priority I certainly understood, but, like every other U.S. Attorney, that didn't stop me from regularly registering pleas for more money and staff to do my job. It was, in fact, *part* of my job. Lobbying for the assets I needed was a very direct way of serving my district.

It occurred to me, as I stood back from the airport's holiday rush and dialed Mike's number on my cell phone, that this was perhaps the reason for his call: maybe he'd been able to shake loose a few more lawyers or a couple more dollars for me. On the other hand, I told myself, as the connection went through and I heard the ring on the other end, it could be something else entirely. Yet if there was a still, small voice deep down inside telling me that I was about to get bad news, I wasn't listening. I consider myself an optimistic person. I hoped for the best. I didn't have a chance to prepare for the worst.

"What's up, Mike?" I asked him as soon as his secretary put me through. To Mike's credit, he got right down to business.

"David," he replied, with the slightest trace of his upstate New York accent, "the administration wants to go a different way."

There was a pause, as the static crackled between us. What does that mean? I wondered to myself, then repeated my question out loud.

If Mike hesitated, it was only for a moment. “We would like your resignation,” he said, “effective the end of January.”

The silence that followed was long and profound, in sharp contrast to the roaring rush of thoughts and emotions that flooded me. The end of January? I remembered thinking, with an involuntary mental calculation. That was seven weeks away. And Christmas was right around the corner.

I felt numb, a hollow sensation that was somewhere between freezing and a fever. I’d been fortunate up to that point in my life not to have ever had a family member or a close friend die, but in that moment I could only too vividly imagine how such a loss might match what I was experiencing. In truth, I felt as if *I* had died, as if some vital, life-sustaining organ had been ripped out of my chest. *I love my job*, I realized in a sudden rush of insight. I’d never appreciated it as much as in that moment. I never understood how much of my identity was bound up with what I did and how much of my self-esteem was tied to doing it well. That might have been a good thing or a bad thing. I wasn’t in the position to judge. All I knew was that in a single instant, everything was different.

“Whoa, Mike,” I said, after I had managed to catch my breath. “What’s going on here?” The silence continued from the far end of the phone. “I’ve received no warning,” I continued, as much to myself as to Mike. I wanted to fill the silence, find an explanation, and somehow turn the clock back. “I was not aware of any problem. If I had been aware of a problem, I would have fixed it.” I took another lungful of air, trying desperately to regain my equilibrium.

“Listen,” I continued after a long silence on the other end of the line. “I don’t think I can line up another job in seven weeks. Is there any way I can get more time?”

“I’ll see what I can do,” Mike replied, but I could tell from the tone in his voice that it was a forlorn hope.

There was nothing left for me to do but lamely repeat the same plaintive question: “What’s going on, Mike?”

When Mike spoke, his voice was barely audible. “I don’t know,” he said, as I strained to hear him over the noise of the airport. “I don’t want to know. All I can tell you, David, is that this came from on high.”

So that was that. He didn’t have to spell it out. Maybe it was the attorney general. Maybe it was the White House. It didn’t really matter. The implications were obvious: there would be no reprieve or appeal.

It was clear—devastatingly clear—from my brief and baffling conversation with Mike Battle that I was not going to get an adequate explanation for the reasons and the rationale behind my precipitous firing, at least not from him. My colleague had made it obvious that much to his own discomfort, he was nothing more than a bearer of bad tidings, a messenger from faceless superiors who had delegated my dismissal as if ordering the trash to be taken out. He was only doing his job.

Which, of course, was exactly the point. We were all just doing our jobs. Comprising an elite corps within the Department of Justice, every incoming U.S. Attorney well understood the premium that had been placed on loyalty to the Bush administration. An implicit qualification of ideological adherence had helped to earn us a chance at our high offices in the first place. No one had ever said as much: with the exception of our positions on the death penalty, we were never subjected to a litmus test to gauge our political purity. It had never been necessary. We were part—a key part—of a major realignment in governmental philosophy and policy, a values-based initiative that depended for its ultimate implementation on team players who understood what they were fighting for and how to win the new war that had started on 9/11.

And it wasn’t only the war against terrorism that roused and rallied us. Ever since the Reagan Revolution, the Republican agenda had been steadily gaining traction with the American electorate. The Moral Majority had become Morning in America,

which had become the Contract with America, which, at least in principle, had become Compassionate Conservatism. It was up to us, as soldiers for an administration that saw itself occupying a unique historical juncture, to take this extraordinary cultural and political groundswell to its vaunted conclusion: a country reawakened to its founding ethical, moral, and religious principles.

There has been much said about the Machiavellian strategies of Karl Rove and others to implement a permanent Republican majority in America. I can't speak for my fellow U.S. Attorneys, much less for the myriad dedicated career professionals who served in the Department of Justice. All I can say with certainty is that for me, I never felt like a cog in some insidious machinery of political ascendancy. It was more personal than that and always had been. I came to the Bush administration with the firm conviction that its values mirrored my values. It was a confidence that naturally commanded loyalty, similar to the feeling I had in the navy, where commitment to core ideals was the bedrock of obedience and the foundation on which the chain of command rested. It had been drilled into me that good leaders always keep as their top priorities the accomplishment of the mission and the safety and the security of the people under their command.

Quite aside from any sense of personal betrayal I might have felt at the dire news that Mike somewhat shamefacedly passed along that afternoon, there was a deeper sense that the link that had been forged between the principles and the practice of my job had been irrevocably severed. I had never questioned the higher purposes to which I had pledged myself or the wisdom of the leaders who articulated the goals I promised to pursue. Yet for reasons I couldn't begin to comprehend, my loyalty was now being called into question. In truly Kafkaesque fashion, I had been tried in an invisible court for a crime I didn't understand and had been handed down a sentence I didn't deserve.

At least, that's the way I felt, as I stood numb and hollow amid the rush of holiday travelers, my BlackBerry now dead and silent in my hand. At that moment, I did what anyone in my position would do if faced with a sudden and complete inversion of

a long-settled and comfortable reality: I reached out to the one person in the world whom I trusted completely, whom I knew had my best interests at heart and had shared my every joy and sorrow as if they were her own.

It's an all-too-familiar truism that behind every successful man there is a dedicated woman, but let me just take this opportunity to add my own heartfelt echo to the old saying. There are, I'm convinced, few men in committed marriages for any length of time who, if they're being honest with themselves, will not admit that their wives are the heart, the soul, and the brains behind any achievement for which the world might give them credit. That goes double for my wife, Cyndy. Loyal in the best sense of the word, fiercely determined, and unfailingly supportive, she has made the well-being of her family the primary purpose of her life. It's a single-minded focus that I had a desperate need for that dark winter afternoon.

Unfortunately, I didn't have a way to reach out. I made an immediate call to Cyndy's cell phone and left a voice mail. By then my plane was scheduled to depart. I had to dash down the terminal to make the flight, and when I had finally settled into my seat, I heard the attendant over the intercom instructing us to turn off all electronic devices. I now had four hours to endure without advice, counsel, or solace and what seemed like an eternity to consider the consequences of what had just happened. Instead, I found myself distractedly mulling over the lyrics to one of my favorite 1970s songs, Bob Seger's "Night Moves"—in particular, the line about "working on mysteries without any clues."

Not that I didn't try my best to unravel those clues in the immediate aftermath of Mike Battle's fateful phone call, during the hours of what I can only describe as the plane ride from hell. An experienced traveler, I had long since cultivated the ability to grab a few hours of sleep literally on the fly and often even before the plane left the tarmac. But not that evening. Like a hamster on a wire wheel, my mind raced in a tight, futile circle as I asked

myself the same questions over and over again: What happened? What did I do? Whom had I made angry? Why wasn't I warned?

In fact, far from being alerted to any potential problem, I had recently received a glowing report from the DOJ team that was charged with gauging the performance of all U.S. Attorneys. The in-depth inspection, dubbed EARS (Evaluation and Review Staff), and the only metric by which U.S. Attorneys are judged, is conducted by twenty to thirty career prosecutors and DOJ administrators. In both 2003 and early 2006, they descended on my office and, over the course of a week, interviewed everyone who worked for me, along with federal judges and agency heads, and they combed through the files of all prosecutions, upcoming, ongoing, and completed. Members of my staff, as well as law enforcement officers and others in the legal community, were polled as to the effectiveness and the efficiency of my office, and a report was submitted on everything from quality of oral advocacy to workload and productivity to administrative operations. "Competent, professional, and dedicated," was a typical comment from the EARS report on the caliber and the morale of my staff, and even though the evaluation went on to point out how "a steadily growing number of immigration cases is straining criminal resources" in New Mexico, to me that was proof that I had taken to heart the administration's marching orders in my district. In the truest sense of the term, Mike's phone call had come like a bolt out of the blue.

I arrived home late that evening, a Thursday night, and confronted the dismal prospect of a long weekend without answers and with no way to get them. My daughters had long since been tucked into bed, and I wasted no time breaking the bad news to Cyndy as I stood in the living room, my suitcase at my feet. I remember looking out through the patio doors to the backyard, where we would be putting in a hot tub. It seemed, in that moment, like an unconscionable indulgence.

The fact was, being a U.S. Attorney was the best job I'd ever had. Our home, in a brand new development, was tucked against the spectacular 6,000-foot-high Albuquerque foothills. Fortunately,

Cyndy and I had been able to put aside savings—money that it now seemed likely we would have to live on in the immediate future.

In the hours that followed my homecoming, deep into that cold night, we tried our best to piece together exactly what had happened. Yet we also struggled with a growing sense of shared outrage and injustice. Whoever had decided my fate had let the ax fall a few weeks before Christmas, a move that was as ice cold as the frost on the desert outside. Issues of immediate personal concern—How would we pay the mortgage? What about our daughters' education, starting with the ballet lessons they loved so much? Could I find another job with this conspicuous blot on my résumé?—slowly yielded to even more painful questions. As agonizing as it was for Cyndy to broach the subject, it was just as clear that there was no way for her to avoid it. She asked, Was there something I wasn't telling her? Was I being investigated? Had I taken bribes or embezzled funds? And although I understood why she needed to know and had to hear directly from me that her worst fears were unfounded, I can't say that it didn't hurt to have to deny her suspicions. More than anything, I resented having a shadow of mistrust fall across my marriage.

I also knew that the doubts wouldn't stop there. Sooner, rather than later, I would have to deal with the same disconcerting accusations from the media and my staff. Why exactly *had* I been fired? Since I had no way to answer that question, there was also no way to forestall the rumors and the speculation that would rush in to fill the void. Added to that was the fact that I was deeply embarrassed by being forced out of a job to which I had given my best efforts and had pinned my professional aspirations. The first assumption about my ouster that most of my colleagues would naturally make—the same one that *I* would have made, had I heard of such a precipitous dismissal from so powerful a post—would be incompetence or corruption or some combination of the two. My years as a prosecutor had demonstrated over and over how hard it was to disprove a negative. From my vantage

point that dire evening, it seemed as if my career in public service could well be over for good. Not only had a door been closed, it had been welded shut.

While Cyndy's and my faith had taught us that setbacks and disappointments could serve a higher purpose and could strengthen resolve, I can't say that we drew much comfort from such reassurances at the time. Neither of us is given to self-pity or fatalism. Nor did we waste time asking God why bad things happen to good people. Instead, what sustained us in those first dark hours, as we emerged from our initial shock and humiliation, was a palpable sense of anger, even rage. This was wrong, and with that indignation came the determination to make it right. I don't think we realized, just then, what that would entail, where it would take us, and how we would get there.

The truth was that as much as we felt that a real injustice had been done, we gave no immediate thought to the character and the quality of the individuals who were behind this totally unexpected blow or even whether it was wise to continue an association, professional or otherwise, with them. Instead, we felt an urgent need to know whether we had any recourse, a way to get back in the good graces of those who, it seemed, held our future in their hands. More than anything, we wanted to find out whether we could turn this around and salvage our comfortable and rewarding lives.

The answer came all too quickly when, over the next few days, I anxiously awaited further word on my dismissal and the reasons behind it. Cyndy and I had decided, for the time being, to keep the news to ourselves, at least until we could get more information and a clearer picture of the circumstances that led to this calamitous turn of events. When Friday morning arrived, I went to work as usual, although I spent most of the day staring out the windows of my tenth floor corner office at the sweeping Southwestern skyline and asking myself the same two questions over and over: What happened? What do I do now? Like most of us, I had heard

of the five steps of grieving, starting with denial and running through anger, bargaining, depression, and, finally, acceptance. I went through them all, stopping just short of the last one. I knew that if it was in my power, I had to try to save my job and with it, in all likelihood, my career and my family's future.

When nothing further was forthcoming from Mike Battle's office or, for that matter, from anyone else at the DOJ, I took it upon myself that morning to contact the one person whom I thought just might have the clout and the inclination to intercede on my behalf.

Johnny Sutton, unquestionably the best-connected, most powerful U.S. Attorney appointed by the Bush administration, served the Western District of Texas from his offices in San Antonio. Widely considered to be a favored protégé of the president, whom he commonly refers to as "my dear friend," Sutton worked on Bush's Texas gubernatorial campaign and later served as criminal justice policy director under Alberto Gonzales, then Bush's general counsel. A coordinator for the Bush-Cheney transition team, again reporting to Gonzales, Sutton was subsequently named associate deputy attorney general before being nominated as a U.S. Attorney. In March 2006, Sutton's role as a key player in the Gonzales Justice Department was consolidated when the attorney general named him the chairman of the Advisory Committee of U.S. Attorneys. It was, all in all, a spectacular career trajectory for an attorney who at the time had just turned forty-one.

Shortly before I called to solicit his support, Sutton had garnered headlines for the controversial conviction of two border agents, Ignacio Ramos and Jose Compean, who had been accused of covering up the shooting of an unarmed drug smuggler and whose resultant sentences had exceeded ten years each. It was later alleged that Sutton, all the while insisting that he had no evidence to prosecute the mule, had granted the smuggler immunity in exchange for his testimony, this despite the fact that the man's van had been found carrying more than eight pounds of marijuana. The case became a cause célèbre for Bush administration opponents, thanks largely to the ruckus raised by

Democratic loose cannon Representative Cynthia McKinney of Georgia. Even conservatives like Glenn Beck of CNN railed about Johnny. One Texas radio station went as far as calling Sutton, "Johnny Satan." The Gonzales Justice Department duly circled the wagons for an old Bush ally, and Sutton weathered the fracas, emerging as a staunch regulator of law and order on the wild Southwest border.

If anyone could make my case in the halls of power, it would be Sutton, whom I had met and worked with on various immigration subcommittees and had even accompanied on official trips to Mexico and Colombia. I knew him to be a committed Christian, a loving father, and, like me, a fan of the writings of C. S. Lewis. I had a lot of respect for him and considered him a friend.

As it turned out, I was in no position to appeal to that friendship. "I've got a sense this is a done deal, David," he flatly told me after listening to my story.

"Based on what?" I asked, swallowing hard. Maybe I should have just hung up then. It was clear from the guarded tone of his voice that he wouldn't, or couldn't, help me.

"Look," he said, in the same matter-of-fact manner. "I've been around a while. This is political. If I were you, I'd just go quietly."

I couldn't believe what I was hearing: a U.S. Attorney all but admitting that a colleague was being hung out to dry for reasons that had nothing to do with performance or misconduct. "How do you know?" was all I could ask.

There was long silence on the other end. "I saw your name," he said at last, in a barely audible voice.

It took a minute for the implications to sink in. "Where?" I finally asked. "You mean, there's some sort of list?"

"I can't speak to that," he answered blandly, and I knew, at that moment, that it was useless to continue. When a lawyer gives you that kind of response, choosing his words that carefully, you might as well begin trying to break through a brick wall with your cranium. These were also, as it turned out, the last words I would hear from Sutton.

But I had learned a few things, I realized as I hung up. One was that in the circles I had been traveling in, loyalty was a flexible concept. But more important was the notion that if, as Sutton had hinted, a list actually existed, maybe that meant I wasn't in this alone.

