

FOREWORD

This story, Jay Cohen's story, is one that we should all read, and it should strike fear into our souls.

In more than forty years as a well-known criminal defense trial lawyer and before that, serving four years as a prosecutor, I do not believe I have ever been involved in any other case where the defendant was treated more unfairly than Jay Cohen.

I remember this case vividly as it still haunts me today, more than twenty years later. This book is a cautionary tale, as it is a true and frightening story.

The saga against Jay Cohen began in Antigua, where Jay and his partners at the time developed an internet gambling site that, according to our government, was "illegal" in the United States despite its legality in the country where it was based.

You see, Jay Cohen is not today and never was a criminal. Nevertheless, at the end of this stupid case, Jay was sentenced to twenty-one months in prison, despite taking great pains to avoid intentionally violating US law. One of the principal reasons for basing World Sports Exchange (WSEX) in Antigua is because, there, internet gambling was completely, 100 percent legal and regulated.

As a practical matter, Jay is the father or grandfather of internet gambling. Today, it is a trillion-dollar business available in virtually every state in the country, after this case was tried and he was convicted of violating the Wire Act. How bitter Jay is to see his genius

exploited by so many amateurs, who simply took Jay's master plan and now reap *billions* of dollars from using the internet to allow people to bet on professional sports and so many other events.

In fact, we have since learned how a hugely powerful and politically connected law firm that had been retained by the professional sports leagues to stop WSEX in its tracks and prosecute its principals had the audacity to help create a vehicle through which the leagues could now promote gambling on their own games!

Looking back, I vividly recall how I begged Jay to stay in Antigua, explaining that defending his position might prove difficult as the Wire Act that Jay was accused of violating was a non-intent crime, and accordingly, Jay could be convicted even if he never intended to violate US law. A lot might depend on which judge would be assigned to the case. As I explained to Jay at the time, in the Southern District of New York, the assignment of a trial judge would not take place until after Jay entered a plea of not guilty at his arraignment. Jay, however, insisted on returning to the US, as he believed that he was capable of defending his case on its merits.

Indeed, Jay honestly believed that he was doing nothing illegal and that our criminal justice system would treat him fairly.

To be candid, I, too, naively believed that Jay's case was defensible before most of the federal judges in the Southern District of New York. Then the late Judge Thomas Griesa was randomly assigned to Jay's case. Having tried cases where Judge Griesa presided, however, I believed deep in my heart that the intricacies and complexities of Jay's case were beyond Judge Griesa's capacity, and I knew he had very conservative personal beliefs that gambling was a real vice that could, as the professional sports leagues argued through counsel, corrupt their football games.

I was right, but even I did not foresee how much Judge Griesa was opposed to gambling and considered it a sinister vice. For example, Jay testified in compelling fashion that he voluntarily came back to the US because he wanted to testify in his own defense that he

“never intended to violate US law and ran his business in a purely legal fashion with all winners being paid in full and no gamblers filing any complaints whatsoever.” Although Jay’s testimony was indeed compelling, clear, and to the point, it did not seem to matter to Judge Griesa, as after Jay’s testimony was completed, he struck his testimony from the trial record and even went so far as to instruct the jury that they “should disregard Jay’s testimony completely.” In more than forty years of trying cases, I have never seen any judge strike a defendant’s testimony, especially when in this case, Jay’s testimony was completely truthful.

Before WSEX, Jay was a young man killing it on Wall Street, and yet with his two colleagues, he moved to Antigua to start a business that the professional sports leagues were apparently intimidated by and viewed as a threat to their business. Jay was adamant about coming back to the US after he was indicted.

What mattered most to me and to Jay was getting assigned to a judge who would understand the nuance of our argument. Jay ultimately won this argument with me, and he came back to the US to have his day in court. After he pled not guilty, however, the case was practically over as soon as it began. Then, after an unfair trial that you will read about in this book, he was sentenced to prison as a felon, and after all appeals were unsuccessful, Jay served his prison sentence honorably.

As a respected and successful criminal defense lawyer, I have done more than my share of trials, and at times I have lost some cases where, despite my best efforts, the client got what he or she deserved. In Jay’s case, however, despite my best efforts, Jay was convicted and then shamefully sentenced to prison, an outcome that he truly did not deserve.

The sheer hypocrisy of what has since developed would be hysterical if it had not literally destroyed Jay’s life and led directly to the suicide of one his partners, while the very leagues that fought tooth and nail to stop WSEX now reap huge profits by partnering with



J A Y C O H E N

internet gambling sites that thrive by following an innovative and pioneering business model originated in Jay Cohen's genius.

Benjamin Brafman

