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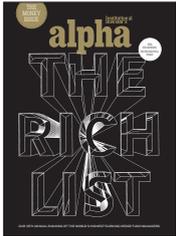
Institutional  
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# alpha

THE  
RECKONING  
ON ROUND HILL  
ROAD

# THE RICH LIST

OUR 16TH ANNUAL RANKING OF THE WORLD'S HIGHEST-EARNING HEDGE FUND MANAGERS



**On the Cover:**  
Illustration by  
Ed Johnson

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**TRUST**

**NO ONE**



**MICHAEL KIMELMAN, A FORMER** Sullivan & Cromwell attorney who started his own hedge fund, Incremental Capital, in 2007, was one of more than 80 people taken down by former U.S. Attorney Preet Bharara in a crackdown on Wall Street insider trading. Convicted in 2011, Kimelman spent 15 months at the federal penitentiary in Lewisburg, Pennsylvania, and six months in a halfway house in the Bronx.

The now-46-year-old Kimelman was among the small-fry investors caught up in Bharara's dragnet. He was convicted along with his partner Zvi Goffer, who had paid bribes to lawyers for information about upcoming M&A deals. But there was no evidence that Kimelman knew about it. After the Court of Appeals for the Second Circuit threw out similar cases in 2014, Kimelman asked the court to set his conviction aside. He also wrote a book on his ordeal, *Confessions of a Wall Street Insider*, which was released in March. Senior Contributing Writer Michelle Celarier recently sat down with Kimelman at his home in Mamaroneck, New York, to discuss the case against him; his high-profile prosecutor, Bharara; and second chances.

**Alpha: Why did you decide to write this book?**

**Kimelman:** I don't believe I got justice in that case. So I am looking for redemption. The experience that I had with the criminal justice system was mind-boggling on almost every level. And remember, I'm not a person who just watched a lot of *Law & Order*. I was a guy who actually went to law school and was a practicing attorney for several years. And my experiences going through the system A to Z were radically different from anything I had been taught in law school, or that I had experienced, had seen on TV, or that we would hope, I think, as a nation, are the ideals that our justice system would live up to.

**In your book you talked a lot about moving from Sullivan & Cromwell to a crazy, alcohol-fueled world of Wall Street trading. Do you regret now that you made that move?**

You can't really live your life with those types of regrets. I mean, just because I moved into finance — I could give you eight other forks in the road where what ended up happening to me wouldn't have happened. Even knowing everything that happened — I wouldn't wish it on my worst enemy — our experiences are sort of what make us. There were things that happened to me by going away that may be a blessing in the long run, whether it was getting sober, whether it was becoming truly grateful and figuring out what was important in my life.

**In the opening chapter you talk about how the feds barged into your home and arrested you. What was going on in your head?**

Raj Rajaratnam [the now-imprisoned founder of former hedge fund Galleon Group] had been arrested two weeks prior. Had he not been arrested, my head would have exploded. But I was a lawyer. So I pulled the criminal complaint on Raj's arrest and I read it. And I noticed that it was the same exact time that Zvi had been working at Galleon with Raj. I looked at the stocks that were charged and I knew at least one of them, Hilton, I had traded, and I had gotten it from Zvi. And I was like, Did he get it from Raj?

**Zvi Goffer was your partner, with his brother Nu, and the three of you were tried together. What was Zvi like?**

He was very charismatic, brash, good-looking — a classic con artist, a classic charmer and grifter. But Zvi was also the dumbest criminal of all time. He was the dumbest defendant of all time. At trial it came out that he was the guy who had burner phones for all his crew but would run out of batteries on them and then say, "Yeah, just call me on the regular phone."

**He was paying lawyers to get these tips.**

He set it up through a middleman. At certain times I would say, "You sure you're not talking to anybody you're not supposed to be talking to, a banker or a lawyer?" And he would say: "Absolutely not. Are you kidding me? You've told me, I know, everybody knows, that's the only way you go to jail in this game. You can't talk to them."

**Let's talk about the one trade that you were arrested for: 3Com, which you bought in advance of a merger announcement.**

With this particular trade Zvi told me at some point, "Hey, I'm hearing on 3Com smart guys buying it aggressively." You know, where there's smoke, there's fire. Actually, it had been in the *Wall Street Journal* two weeks earlier. And the *Journal* had the exact lineup that happened, they had Goldman Sachs, the banker for 3Com, and the name of the acquirer, Bain Capital. Nothing I ever heard from Zvi ever gave me any more details than that. It was just: "Smart guy telling me to be there. He likes it. I'm going to be buying it. You should think about putting it on."

**Didn't the prosecutors say that you had a phone call with Zvi — like, a 20-minute phone call right before you traded? Did they have a wiretap?**

Nope. On that call 3Com was not even men-

tioned. My father-in-law was retiring, so it was, "Hey, I was in DC for the Fed meeting." He had been the president of the Chicago Federal Reserve. I was telling Zvi about the Fed meeting and talking about other stuff. We didn't even talk about 3Com.

**They also had a guy sitting next to you with a wire for some time?**

Eighteen months. And nothing. They didn't even call him at trial. He would try to incriminate me almost every day. You know, "Hey, I ran into my friend who's a board member at Vanda Pharmaceuticals," and he's saying I have to be there.

**So your feeling is that the reason you were convicted was because you were on trial with Zvi?**

Zvi was dead on arrival. Absolutely guilty. Seven informants, 500 hours of tape. Every informant said, "Hey, this guy is guilty, he paid me bribes," or "He gave me inside information." There are multiple tapes that prove that. They sat me right next to him and just said, "Partner/friend, partner/friend, partner/friend."

**Also, you went to trial right after Raj was convicted.**

That entire weekend was *Wall Street Journal*, *New York Times* coverage of the biggest financial criminal ever, Raj Rajaratnam, and pictures of him and us, and the next Galleon trial, coming Monday. The atmosphere and environment were so poisonous, and I think this is something Preet played masterfully: Occupy Wall Street. I mean, you had them burning bankers and people in effigy when we were going to trial, 500 yards from Zuccotti Park. Jurors walked by that.

**Were you stunned by the verdict?**

No. I was . . . resigned to it. They spun the story. We called the FBI lead case agent as our only defense witness, which has to be the most rare thing ever. I don't believe anybody's ever done that before. And we asked her that one question: In two years of body wires, wiretaps, thousands of instant messages and e-mails, can you point to a single call, wire, e-mail, instant message from Mike Kimelman that has passed inside information and traded on it? And she said, after hemming and hawing, "No."

I think the jury hated Zvi. Two days after the trial ended, my wife ran into a juror at Stop & Shop. And she said: "I think I know you. Were you one of the jurors from my husband's trial? Can I ask you a question?" He said sure. "Can you just tell me, why did you convict Mike? What was your reason?"

He said, “Well, you know, there were just a lot of really bad tapes on that Zvi guy.” And she said: “Zvi seemed like a criminal and deserved to go to prison, but why Mike? What was the evidence against Mike?” And the guy said: “Well, you know, I don’t know why he would be in a partnership with that guy. He seemed like a really bad guy.”

#### **Why did you go into business with Zvi?**

I don’t have a great explanation other than I bought into that image of “This guy is tight with Raj. We’re going to get the Galleon research, the Galleon guys. Raj is going to invest \$10 million.” He had an SAC connection. I thought [SAC Capital Advisors founder Steve Cohen] was prepared to invest. There were a lot of things he brought to the table. His brother had a decent amount of capital to kick-start the firm.

#### **At the end of 2014, the Second Circuit Court of Appeals threw out the case of two other convicted inside traders. After that you went back to the court and asked to have your conviction set aside. Why did the appeals decision make you think you had a shot?**

It all comes down to Judge Richard Sullivan being the only judge in the entire circuit that refused to instruct properly on insider trading. For insider trading you need material, nonpublic information, acquired in breach of a fiduciary duty or duty of confidentiality, with knowledge of that breach. And that breach had to have occurred for a pecuniary benefit. Sullivan gave incorrect jury instructions,

and the Second Circuit called him out by name.

#### **Sullivan was also the judge in your case. Three hedge fund portfolio managers — Todd Newman, Anthony Chiasson, and Michael Steinberg — got their convictions thrown out because of those instructions from Sullivan. But you have not been able to get yours tossed.**

That’s the unfortunate part, because both Judge Sullivan and Preet Bharara have admitted that they were wrong. So rather than doing the right thing — justice and truth should be about justice and truth, not winning or hurting your career — they have not vacated the conviction. But having already gone to jail, having already lost my firm, [law, securities and CFA] licenses, three years of supervised release, 21 months in prison, you would think they would say: “You know what? The guy was convicted where they actually omitted an element of the crime. Where the jury instructions were wrong. We’ll overturn it.”

#### **There’s a book out now about Preet Bharara’s failed attempt to indict SAC’s Cohen, titled *Black Edge*. Reading that, how does that make you feel about the justices system?**

There’s always been a rich man’s justice. But that’s not what I think is functioning here. What I think this really boldly illustrates is to what a degree the career calculus plays in deciding what cases to bring and how to bring them. If you’re going to go after real power and real money, there’s a greater chance you won’t win, and if you don’t win, your career prospects are dashed. So in reading that book and then seeing my case, what was so abundantly evident was that there were cases that they brought against other people where there was much less evidence, but this one [Steve Cohen] they feared losing.

There are three tiers. There’s the top tier, who are more or less immune from the law because they are part of this oligarchy or this political class. Prosecutors are never going after those people. The second tier includes people who have some name, some wealth. And they can defend themselves, so occasionally they get off.

Then there’s everybody else, who get royally and utterly effed by the system.

I did a lot of jailhouse lawyer work for inmates while I was away, where I would sit down with a guy and say: “You know what? This is tough because you had a gun.” And he says: “What? I didn’t have a gun.” “It says here you signed a plea that you had a gun.” He goes: “I just signed it, I didn’t read it. My lawyer said sign it.” An 18-, 19-year-old kid getting 15 years for a first-time nonviolent crime. And that’s the tragedy. Now I’m active in prison reform. We’ve heard for 30 years how institutionally racist and biased the system is, and it absolutely is. When you hear it from a 25-year-old African-American male or a black professor, you think, Of course they’re saying it. But how about when I come out saying it, and how biased it is, and how awful it is, and how it’s almost modern-day slavery?

#### **Preet Bharara was fired by Donald Trump. Looking back, what’s your view of him? Was he a good prosecutor or not?**

If I had to sum it up, it would just be missed opportunities. I think he did a lot of good. There was certainly an epidemic of insider trading that was out there. He did a lot on that front to deter that. But he was just bringing a lot of cases to try to run the score up. Had he gone after the political corruption earlier, which he did a lot of good in, too, had he gone after the bad actors in the financial crisis, or at least the people who contributed to it, his legacy would have been gold.

#### **With Preet out now, do you think you have a better chance of having your case thrown out?**

Yes. I mean, it’s still up to the Second Circuit to do the right thing. Sullivan already denied it. But I do have a better chance.

#### **You’re moving on with your life. Besides publishing a book, what are you up to?**

On the creative side, I started work on another book. I just finished a sitcom pilot with a friend. I’m shooting a documentary that I’m producing in the true-crime space that’s going to be nothing short of phenomenal. And then I’m doing real estate investment. I don’t chase money. I realize money is something that lets you do things in your life, but it used to be more of a focus of mine. Now I see it solely as something that will enable me to do certain things. I’ll do things now that I enjoy, even if there’s no money related to them, like prison reform.

#### **I see that you have a t-shirt on that says, “Trust No One.” Is that your motto?**

It should be, if it’s not. 

