From: Ed <[redacted]
Sent: Wednesday, August 14, 2013 6:03 PM
To: Epstein, Jeff
Subject: Steve Cohen vs. the Federal Wrecking Ball

The Federal Wrecking Ball
By Edward Jay Epstein

A bedrock principle of Anglo-Saxon jurisprudence is that there is a =resumption of innocence, This should mean that if the government fails =o find incriminating evidence in an exhaustive investigation, they =annot punish a person for a crime or confiscate his property. Yet, =rosecutors have found ways to bypass the absence of evidence when it =omes to Wall Street, Consider the case of Steven A. Cohen, the founder =nd owner of SAC Capital Advisors, a ten-billion group of hedge funds, =o one can doubt that the six year investigation of him for inside =rading qualifies as exhaustive.

It originated with a highly-plausible theory that his =onsistently high trading profits resulted from an orchestrated scheme =f inside trading. To substantiate it, the SEC and Department of =ustice sought the requisite evidence. They subpoenaed or otherwise =anaged to obtain 375 million pages of the trading records, =orrespondence and other documents of Cohen and his SAC funds. This =assive trove of documents, however, did not yield any usable evidence =hat Cohen was involved in inside trading. The Feds also employed =urreptitious means to attempt to find evidence to substantiate their =heory, including planting court-approved listening devices in =ohen's home to intercept his conversations, including ones with his =op lieutenants used plan his funds' weekly trading strategy, and =lanting a mole in his organization. The mole was Richard C.B Lee, a =ormer SAC employee, who, wearing a wire, proposed various "trading =deas" based on inside information to Cohen (presumably scripted by =is Fed handlers.). Despite the provocations, none of the bugging =roduced any usable evidence against Cohen. Finally, as is not uncommon =n Wall Street cases, prosecutors attempted to induce former and =resent SAC employees to testify against Cohen, including eight who had =een themselves charged with using inside information, Even though =ive of them agreed to cooperate with the government, none were able to =rovide evidence that Cohen had known of their alleged inside trading, =ven wen by proffering it they might have spared them prison sentence. =As a result, the government had no evidence to support its theory in =ourt. Despite this embarrassing absence of evidence against Cohen, the =rosecutors did not give up. Instead, it shifted to plan B: targeting =ohen's corporation, SAC Capital in a two pronged attack.

The first prong was a Grand Jury indictment of Cohen's corporate =lto ego, SAC Capital, for security and wire fraud. It alleged that =AC had encouraged its employees to seek illegally-obtained data by =roviding them with profit-sharing and then not properly enforcing its =wn rules against using inside information. SAC Capital, which denies =his allegation, will have its day in court to defend itself.

The second prong was a civil forfeiture complaint charging that =AC Capital engaged in a money-laundering conspiracy. Such civil =orfeiture complaints began as means of destroying the cash resources =f drug traffickers. It allows the government to seize all the assets =f a suspect without even proving that a crime has been committed. =ince it is technically leveled against the asset itself, the =overnment need only to assert is that the "preponderance of the =vidence" shows that it is subject to forfeiture. When this complaint =s tied to money-laundering it can be disastrous for a financial =nstitution because the government can freeze or seize all its assets, =ncluding those funds loaned to it.. In the case of SAC Capital, the =utative money-laundering stems from the allegation the illegal earning =ere investing in, and thereby intermingled with, SAC Funds. But even =f this occurred, was it the sort of money-laundering in which profits =rom an illegal enterprise are disguised as profits from a legal one? =one of the traders had to disguise their commissions, bonuses and =erformance compensation, nor did they represent them as anything other =han trading profits. But the government does not actually prove there =as money laundering since this a civil forfeiture complaint.

The lethal part of the civil forfeiture complaint was its scope, =eeking not a specific amount but "any and all" assets of SAC =apital. At last count, according to its regulatory filings, SAC funds =eld some $51 billion in securities and loans from counter parties. To =e sure, U.S. Attorney Preet Bharara currently is not seeking to =reeze these assets, a freeze

which could rip a Lehman-size hole in =he counter parties, and he has agreed to a Court Protective order =ying up about $5 billion of SAC's capital. But the government could =hange its mind at any time, since a footnote in the agreement states =hat the protective order does not limit the ability of United States =o proceed with the seizure of all of SAC's assets at some future =oint. So a sword of Damocles l hangs over SAC Capital.

Even if it demolishes his corporate alter ego. Cohen may well =urvive the Federal wrecking ball. He is after all a billionaire many =imes over with an extensive art collection. My concern here is not =he fate of Cohen or SAC Capital. It is with the government's =xpansive use of money-laundering charges in civil forfeiture cases =hen it is unable to find incriminating evidence.

as ever
Ed
www.edwardjayepstein.com


```
<?xml version=.0" encoding=TF-8"?>
<!DOCTYPE plist PUBLIC "-//Apple//DTD PLIST 1.0//EN" "http://www.apple.com/DTDs/PropertyList-1.0.dtd">
<plist version=.0">
<dict>
        <key>conversation-id</key>
        <integer>263056</integer>
        <key>date-last-viewed</key>
        <integer>0</integer>
        <key>date-received</key>
        <integer>1376503387</integer>
        <key>flags</key>
        <integer>8590195713</integer>
        <key>gmail-label-ids</key>
        <array>
                <integer>6</integer>
                <integer>2</integer>
        </array>
        <key>remote-id</key>
        <string>332384</string>
</dict>
</plist>
```