

The Milken Story Revisited

When you digest the reality of the case the government made against Michael Milken, you find that much of it was nonsense.

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By Charles Gasparino

In the popular perception of the typical white-collar case, a judicious government prosecutes a mendacious executive on a mountain of incontrovertible evidence. Think Bernie Madoff or Sam Bankman-Fried. Then there's Michael Milken, the former "junk bond king" from the infamous "decade of greed." If there were a Mount Rushmore of white-collar crime, all three men might have a place.

Thanks to Richard Sandler, however, you can now scratch one of those names off that list. In "Witness to a Prosecution," Mr. Sandler, a childhood friend who was Mr. Milken's personal lawyer at the time, walks the reader through Mr. Milken's 30-plus year legal odyssey, beginning in 1986 with the federal government's investigation, followed by his indictment, plea bargain, and prison term, right through to his pardon by President Donald Trump in 2020. The author tells a convincing and concerning story of how the government targeted a largely innocent man and, when presented with proof of that innocence, refused to turn away from a bad case.

I have always been more than a bit skeptical about Mr. Sandler's underlying thesis—and the thesis of many of Mr. Milken's supporters on this page. After all, Mr. Milken served nearly two years in jail, pleaded guilty to six felonies and paid a large fortune to settle with the government.

I have also read books, chief among them James B. Stewart's "Den of Thieves" (1991), that seem to make the case for Mr. Milken's culpability—the methods he employed as head of Drexel Burnham Lambert's high-yield department, the alleged epicenter of the destructive "leveraged buyout" mania of the 1980s that cratered companies and led to mass unemployment; his alliances with smarmy corporate raiders; his supposed insider trading with the notorious arbitrageur Ivan Boesky. The list goes on.

After reading Mr. Sandler's account, I no longer believe in Mr. Milken's guilt, and neither should you. The author argues that most of what we know about Mr. Milken's misdeeds is grossly exaggerated, if not downright wrong. What the government was able to prove in the court of law, as opposed to the court of public opinion, were mere regulatory infractions: "aiding and abetting" a client's failure to file an accurate stock-ownership form with the SEC, a violation of broker-dealer reporting requirements, assisting with the filing of a false tax return. There was no insider-trading charge involving Mr. Boesky or anyone else, because the feds couldn't prove one.

The witnesses against Mr. Milken, among them Mr. Boesky, led investigators on a wild-goose chase that turned up relatively little. One key piece of evidence linking the two men: A \$5.3 million payment to Drexel from Mr. Boesky for what turned out to be routine corporate finance work that the Feds thought looked shady.

When you digest the reality of the case against Mr. Milken, you find that much of it was nonsense. As Mr. Sandler puts it: "The nature of prosecution and the technicality and uniqueness of the regulatory violations . . . certainly never would have been pursued had Michael not been so successful in disrupting the traditional way business was done on Wall Street."

That gets us to why Mr. Milken was prosecuted so viciously. The lead prosecutor on the case, Rudy Giuliani, was the U.S. Attorney for the Southern District of New York. It's hard to square the current Mr. Giuliani, fighting to keep his law license while being enmeshed in Mr. Trump's election-denying

imbroglio, with the man who was then the nation's foremost crime fighter, taking on mobsters, corrupt politicians and those targeted as unscrupulous Wall Street financiers.

Mr. Giuliani's ambition for political office—he would later become mayor of New York City—made Mr. Milken an enticing target, Mr. Sandler tells us. The author suggests that Mr. Giuliani made up for his weak legal case by crafting an image of the defendant as an evil bankster and feeding it through leaks to an all-too-compliant media. "Michael Milken became the subject of intensive newspaper articles, press leaks, rumors, and innuendo for years before he was charged with anything," the author writes. "I am sure Giuliani and his team of prosecutors believed that Mike would succumb to the pressure and quickly settle and cooperate and implicate others. When this did not happen, the prosecutors became more committed to using their immense power to pressure Michael and try to win at all costs."

Mr. Sandler, who is also the chair of Milken Community School, hasn't exactly compiled a traditional narrative; his writing moves but at times the book reads like a legal brief. He has obvious contempt for Mr. Giuliani. Ditto for Mr. Stewart, whom Mr. Sandler believes played a significant role in convicting Mr. Milken in the media. Mr. Sandler should have spoken to both men. Mr. Giuliani probably would have agreed to a meeting. As Mr. Sandler points out, Mr. Giuliani and Mr. Milken recently reconciled, first over their shared battle with prostate cancer, then more recently given Mr. Giuliani's efforts to help Mr. Milken get a pardon from President Trump.

Mr. Milken has come a long way from those dark days in his life. He has rebuilt his wealth. His eponymous Milken Institute conference is one of the best confabs of thought leaders from business, politics and even sports. His philanthropy, particularly in the area of cancer research, is legendary. The junk-bond market he helped create has opened up cheaper and more efficient financing to many more companies than it ever destroyed. What started as a \$10 billion market is now standing at around \$1.4 trillion.

None of that will erase what Mr. Sandler calls "the pain Michael Milken went through" and what Mr. Sandler himself experienced by being there every step of the way. "Was it worth it?" he asks, as he concludes his book. He explains that he was 38 years old when the case started in the mid-1980s, and that defending Mr. Milken has been a nearly all-consuming task over the next four decades. His own family has suffered through the ordeal.

Yet he'd do it again, he writes. The reason is friendship, but also, he says, because Mr. Milken "is a historical figure, whether he wants to be one or not, and history needs to know the truth about the Michael Milken case."

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