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The Wrongful Conviction of Martha Stewart **by Jacob G. Hornberger**

So what's wrong with the criminal conviction of Martha Stewart? She lied to federal officials, right? And it's against the law to lie to federal officials, right? So what's the problem?

From the standpoint of the U.S. Justice Department, there is, of course, no problem at all. The law was violated and the jury so found, and that's the end of the matter. And from a strictly technical perspective, the Justice Department attorneys seem to be correct.

But from a moral perspective, that's not the end of the matter. The reason? Oftentimes, law collides with morality and justice, a principle that is perfectly exemplified by the immoral and unjust, albeit technically legal, conviction of Martha Stewart.

In fact, the Martha Stewart case is an almost textbook example of the moral rot that inevitably infects any society in which the government's primary role is to serve as a paternalistic caretaker for the citizenry, a rot that has increasingly infected the federal government ever since the advent of the paternalistic state many decades ago. That infectious rot pervades the Martha Stewart case from start to finish.

Begin with the fact that the paternalistic state, through the Federal Drug Administration, is involved with protecting people from the choices they make in the medical arena. Ask yourself: Why aren't American grown-ups sufficiently competent and responsible to make decisions with respect to their health care without the intervention of government bureaucrats? Put another way, what gives a bureaucrat the moral authority to interfere with a decision that a private adult citizen wishes to make regarding his own health care?

How does Martha Stewart's case relate to the FDA and its paternalistic role in American life? When a company named ImClone Systems developed a successful treatment for cancer, federal law required that it secure the permission of federal bureaucrats at the FDA before the company could offer the cancer treatment for sale to the American people. Imagine that!

During the time that the permission was under consideration, FDA officials leaked information indicating that the cancer application was not likely to be approved. That information reached ImClone principal Sam Waksal, and he conveyed the information to family

members, who promptly sold their stock. Soon thereafter, the FDA denied ImClone permission to market the drug, and the stock price plummeted.

In the meantime, and prior to the FDA official announcement, Waksal's broker told Martha Stewart that Waksal was selling his stock, which led her to sell her stock. When federal investigators later interviewed Stewart about the matter, she apparently lied about certain aspects of the transaction.

My response? Big deal! What took place here is what might be called technical violations of the socialist welfare state and the regulated society. The violations are no different in principle from those that people committed in such highly regulated societies as fascist Italy and Nazi Germany and which people commit today in such highly regulated societies as communist China and Cuba. In a regulated society, it is extremely easy to catch people committing all sorts of violations at any point in time. In fact, from the standpoint of the bureaucrat, that's one of the great aspects of the regulated society.

Recall the words of Dr. Floyd Ferris, the slimy bureaucrat at the State Science Institute, in [Atlas Shrugged](#):

“Did you really think that we want those laws to be observed?” said Dr. Ferris. “We *want* them broken. You'd better get it straight that it's not a bunch of boy scouts you're up against — then you'll know that this is not the age for beautiful gestures. We're after power and we mean it. You fellows were pikers, but we know the real trick, and you'd better get wise to it. There's no way to rule innocent men. The only power any government has is the power to crack down on criminals. Well, when there aren't enough criminals, one makes them. One declares so many things to be a crime that it becomes impossible for men to live without breaking laws. Who wants a nation of law-abiding citizens? What's there in that for anyone? But just pass the kind of laws that can neither be observed nor enforced nor objectively interpreted — and you create a nation of law-breakers — and then you cash in on guilt. Now, that's the system, Mr. Rearden, that's the game, and once you understand it, you'll be much easier to deal with.”

So here's the situation that led to Stewart's conviction: a federal agency whose job is to serve as paternalistic caretaker for health-care decisions of American adults had bureaucrats working for it who wrongfully leaked information regarding the status of a pending application. The information fell into the hands of private individuals who capitalized on the information by selling their stock. Those people were then prosecuted and punished by other bureaucrats for trying to cut their losses.

In other words, if there had been no socialistic welfare state or if federal bureaucrats had not wrongfully leaked the information about the cancer treatment application, the Justice Department bureaucrats would never have had reason to go after Martha Stewart in the first place.

Of course, it goes without saying that the matter the feds were investigating — insider trading — ranks right up there with punishments of "middlemen" and "speculators" during the Middle Ages. After all, think about it: What's wrong with a person's trying to cut his losses when he learns that the value of his stock is falling? Duh! If stockholders in Waksal's company want to complain because he's violated his contract of employment, that's their business, but why is it the business of the federal daddy that pervades our lives to punish someone for trying to limit his losses in the marketplace or anywhere else? Or is it somehow important to have a socialist principle of "equality of losses" in American economic affairs?

Moreover, who has Martha Stewart hurt with her stock sale? It was her personal stock and, unlike the case of Sam Waksal, it had no relationship to her company. Why should that be the business of government bureaucrats?

Another perverse irony of all this is that, as writer Marc Da Cunha [pointed out](#), the real reason that stockholders lost money was that the FDA denied ImClone the opportunity to market a cancer drug that would have dramatically improved the lives of many cancer patients. Not surprisingly, the stock price plummeted because of the FDA decision, which cost lots of "little guy stockholders" a lot of money.

Did FDA officials offer to reimburse people who lost money because of its decision? If you believe that, I've got some nice putrid swampland in the middle of Washington, D.C., that I'd like to sell you. "Well," you might say, "the government's job is to take care of us and keep us from choosing the inappropriate cancer drugs." Except for one small problem: Just a few days ago, FDA bureaucrats changed their minds and [granted the application](#) after all. How do you like that perversity? Just think about all the people who sold their stock at a loss and how the stock price soared after the FDA announcement that the cancer drug was being approved after all. I wonder how many crocodile tears the feds are shedding for them. I wonder how Sam Waksal, one of the country's biggest philanthropists, feels as he sits in a jail cell with a false and guilty mindset that he's done something wrong.

Did the Justice Department bureaucrats ever go after the FDA officials who leaked the information regarding the ImClone application in the first place? If you believe that, I'm still holding that nice putrid swampland in the middle of Washington, D.C., that I'd like to sell you.

That's not the only instance of federal hypocrisy involved here. The law under which Stewart was convicted is what is known as Section 1001 of the federal criminal code. It makes it a crime for private citizens to lie to government officials. You're probably thinking, "Well, we don't want people lying to federal agents who are investigating crimes, do we?" But you misunderstood me. I didn't say that it's a crime to lie to federal investigators investigating crimes. I said that it's a federal criminal offense to lie to any federal official.

Don't believe me? Here's the law under which Martha Stewart was convicted:

U.S. Code, Title 18, Part 1, Chapter 47, [Section 1001](#):

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully —

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry; shall be fined under this title or imprisoned not more than 5 years, or both.

Do you see anything about “investigation” in that law? No, you don’t. Here’s another question: What area of American life under the socialistic welfare state and regulated society does not fall “within the jurisdiction of the Government of the United States”? Answer: None.

You might think to yourself, “Why, lying is a terrible thing, and therefore it is entirely appropriate for our federal officials to make it a criminal offense to lie to a bureaucrat.” But life is filled with terrible things that we don’t criminalize. After all, we don’t criminalize private citizens lying to each other, do we? Why criminalize lying to federal bureaucrats? What’s the difference? Are they somehow better or more exalted than the rest of us?

And here's another question to ponder: If lying to federal officials is one of those things that needs to be criminalized, then is the reverse true: Is it a crime for federal officials to lie to the citizenry? Answer: No, it isn’t. All federal officials, from prosecutors to presidents to congressmen to department bureaucrats are free to lie to their hearts’ content — and often often do — without any remorse or regret whatsoever and there is no criminal offense committed when they do so. And, not surprisingly, there is almost never any shock, outrage, or indignation among federal bureaucrats, including those in the Justice Department.

Keep in mind that we’re not talking about perjury, which constitutes lying under oath. Most people know that that’s a crime and most people would agree that it should be a crime.

But plain lying to federal officials when one is not under oath? That should no more be a crime than private individuals lying to each other should be, just as it is not a crime for federal officials to lie to the citizenry.

Now notice this peculiar addition to [Section 1001](#):

“(b) Subsection (a) does not apply to a party to a judicial proceeding, or that party’s counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.”

Interesting subsection, right? Ask yourself: Why would the feds exempt parties to judicial proceedings and their attorneys from the lying law? Take my word for it — it’s not to protect the right of criminal defense attorneys or criminal defendants to lie in court. Instead, the reason is to

protect federal agents and prosecutors who lie in federal proceedings, which unfortunately officials in the U.S. Justice Department have come to do all too often.

Consider, for example, the undisputed fact that FBI agents and Justice Department attorneys knowingly, intentionally, and deliberately lied and obstructed justice in the federal criminal prosecution of Randy Weaver, the man from Ruby Ridge, Idaho, whom the feds falsely accused of crimes and whom the jury ultimately determined was not guilty. (See the following *Freedom Daily* articles by James Bovard on the Ruby Ridge scandal:

[“Kill a Boy, Get a Medal”](#) [June 1996];

[“The Justice Department's Other Criminal Cover-Up”](#) [January 1998]; and

[“Ruby Ridge: The Cover-Up Continues”](#) [November 2001]).

After wrongfully killing Weaver’s wife and minor son (and ultimately using some \$3 million in U.S. taxpayer money to settle the damages arising from the killings), the feds did their best to convict an innocent man through the use of lies and deceptions. And the only federal agent who took a fall for everyone else got a few months in jail, after being given sufficient time to serve out his employment in order to get his pension, compliments of the U.S. taxpayer, of course.

Could those federal officials be prosecuted for lying and obstructing justice, as they did to Martha Stewart? The answer is “No,” because federal officials have conveniently exempted lies told by parties to judicial proceedings. Cool, huh?

Let’s also not forget how the U.S. Justice Department did everything it could to protect the man who killed Vickie Weaver as she held her baby in her arms from state criminal prosecution, under the theory that federal officials who commit such acts should be immune from state prosecution for murder or manslaughter. Cool, huh?

What about federal officials who lie in the course of a federal investigation, as Martha Stewart supposedly did? Are they prosecuted, as she was? Again, no, and a good example, of course, is the federal lies that were issued after the federal massacre at Waco. (See the following *Freedom Daily* articles:

[“The Fires of Waco Are Still Burning”](#) by James Bovard [March 1998];

[“The Re-Igniting of Waco”](#) by James Bovard [February 2000];

[“The Latest Waco Fireball”](#) by James Bovard [July 2001]; and

[“Waco: Lies, Deaths, and Cover-Ups”](#) by Jacob G. Hornberger [*Freedom Daily*, November 1999.]

You’ll recall that federal agents attacked the Branch Davidian compound with flammable gas, which incinerated men, women, and children. The feds then prohibited firemen from entering the premises to save lives, immediately bulldozed the site to prevent a full investigation into the killings, and then lied about firing incendiary devices into the buildings.

Did any federal agents in the Waco massacre receive the same treatment as Martha Stewart, whose “crime” was lying about a small financial loss on the sale of some stock based on third-

hand information that she received from her stockbroker. If you believe that ... well, that putrid swampland in the middle of Washington, D.C., is still on the market.

Now you might say that was ancient history — the Justice Department polices itself and the barrel is no longer filled with rotten apples. Oh? Then maybe you can explain to me why federal prosecutors recently knowingly, intentionally, and deliberately engaged in wrongdoing in the Detroit terrorism case, where the jury nevertheless acquitted two of the defendants and where the presiding judge is deciding whether to overturn the convictions of the other defendants.

Thus, given Ruby Ridge and Waco and the willingness of people to work in a government department that knowingly and consciously permits and tolerates such foul corruption within their midst, one could not help but be amused at U.S. Attorney David Kelly's indignation in the Martha Stewart case when he said with much severity and gravity after her conviction, "When we first indicted this case, we said it was about lies, all about lies. As you saw in the evidence, that's what it was." What was even more amusing is that he was able to keep a straight face when he said it.

Ever since the beginning of the growth of the socialistic welfare state and regulated society in American life, Americans have, by and large, chosen to live a "life of the lie." They do not want to face the fact that the enormous government they have permitted to come into existence to take care of them has a [rotten core](#) to it, and its stench is reaching outward to the various departments and agencies of the federal government, including the Justice Department.

Unfortunately, all too many Americans still do not want to face the fact that something is seriously sick and perverse with a society whose government punishes the likes of Martha Stewart, Sam Waksal, and Bill Gates, people who have done so much to make our lives more enjoyable, rewarding, and fulfilling, while favoring corrupt and putrid government agencies and departments where liars and killers are protected and even admired, as long as as they are federal bureaucrats.

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