

Martha Stewart: the indictment of an American icon

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On June 5, Martha Stewart and her former broker were indicted by federal prosecutors on charges of obstruction of justice and securities fraud. If convicted, this icon of American middle-class homemaking could face prison time. A parallel civil case filed by the Securities and Exchange Commission (SEC) charges Stewart with insider trading.

Both Stewart and the broker, Peter Bacanovic, pled not guilty to the charges, which stem from Stewart's December 2001 sale of nearly 4,000 shares of ImClone Systems stock. The SEC is charging that Stewart sold the shares after receiving insider information from Bacanovic, who at that time worked as a Merrill Lynch broker for both Stewart and ImClone founder Samuel Waksal. Stewart is a long-time friend of Waksal, who is due to be sentenced this week, having pled guilty to criminal charges of securities fraud.

The day after both Waksal and Stewart unloaded their shares, the US Food and Drug Administration (FDA) announced that it would not review the regulatory filing for one of ImClone's chief new drugs, Erbitux. This was a serious financial blow to the pharmaceutical firm.

According to the criminal indictment, Bacanovic told Stewart on the eve of the FDA announcement that Waksal was selling his shares, prompting Stewart to do likewise. The stock fell sharply on the market following public disclosure of the FDA decision. Had Stewart sold her shares one day later than she did, she would have lost some \$40,000.

In the criminal case against Stewart, the Justice Department has decided not to bring charges of insider trading, which are difficult to prove in court. Instead, it is alleging that Stewart's and Bacanovic's statements in reaction to the government inquiry, which was announced shortly after their stock sale, constituted obstruction of justice. In an unprecedented move, the government is also charging that these allegedly false statements constitute securities fraud, because they helped keep up the share values of Stewart's company, Martha Stewart Living Omnimedia.

It is the last charge that has received the most attention.

Richard A. Serafini, a former economic crimes prosecutor in New York, noted the oddity of the charge when he told the Associated Press, "There's kind of a natural tendency when you're confronted with something to deny it. Now they're charging it as market manipulation."

All of the federal criminal charges stem from the claim that Stewart lied to the government and her shareholders about a crime, insider trading, for which she has not been convicted.

The SEC's civil suit is also unprecedented. According to most analysts, this would be the first time that an individual has been charged with insider trading on the basis of information passed by a broker about another client.

The Justice Department alleges that Stewart and Bacanovic conspired to cover up their actions by falsely claiming that they had a prior deal to sell the stock once it hit \$60 a share, and that the sale had nothing to do with Waksal. Stewart, according to the indictment, made false statements to investigators as to her innocence and temporarily altered a phone record in order to corroborate her story. Bacanovic allegedly altered a different document to include an indication of the \$60 agreement.

Much of the case is expected to hinge on the testimony of Bacanovic's assistant, Douglas Faneuil, who has pled guilty to a misdemeanor charge in return for fingering his former boss and Stewart.

The right-wing press, including the *Wall Street Journal*, has come out in defense of Stewart on the grounds that the trial is politically motivated and unfounded. However, it is not necessary to adopt the position of the right wing, nor to have a great deal of sympathy for Ms. Stewart, the billionaire head of the company that bears her name, to note the glaring contradiction between the Justice Department's pursuit of her case and the manner in which the Bush administration has handled the cases of more serious corporate criminals.

For years, Stewart has been presented as the paradigm of American middle-class perfection. Her public persona—including a television program and magazine,

Martha Stewart's Living—has been sold to millions of American women as the ideal of family life and home décor.

In spite of the obligations of work, it is possible and necessary, according to the image of Martha Stewart, for women to maintain an idyllic household. All that is required is patience and work, whether this involve the meticulous preparation of food, the crafting of knickknacks, or the color coordination of furniture, draperies and table napkins. To a family with two working parents, burdened by financial obligations—that is, for the real American family—this unattainable ideal has served as something of a diversion from crushing social and political problems.

Stewart was one of six children born into a working-class Polish family in New Jersey. If Martha could make the climb to wealth and domestic bliss, then, presumably, could everyone else. Her wares are marketed to ordinary working class people, through her product line sold by the discount store Kmart.

Stewart's image has always been a fiction. She was herself a stock broker for a number of years, and through her company amassed a fortune. The \$40,000 she allegedly acquired unfairly is pocket change compared to her salary of over \$2 million.

Undoubtedly the government is attempting to capitalize on Stewart's celebrity status to bolster its own credibility. Stewart is a relatively safe target, for she has no intimate ties to the Bush administration. By prosecuting Stewart, the Justice Department can claim to be taking a stand against favoritism and the privileges of the rich. By bringing down a media icon, the government can all the better distract attention from its failure to go after business tycoons whose criminal dealings far outstrip the misdeeds for which she is being prosecuted.

"This case is about lying," said US Attorney Jim Comey, "lying to the FBI, lying to the SEC and lying to investors." The damage done to Stewart's shareholders and employees is "a tragedy that could have been averted if these two people [Stewart and Bacanovic] had only done what parents have taught their children for eons: Even if you are in a tight spot, don't lie."

These pious words could with at least equal justice be applied to the Bush administration—a government whose entire *modus operandi*—from war abroad to tax cuts for the rich and attacks on democratic rights at home—is based upon lies and deception.

Moreover, if Stewart can be charged with lying about a crime for which she has not been found guilty, what is stopping the administration from doing the same with Kenneth Lay, the former head of collapsed energy giant Enron and long-time political and financial booster of George W. Bush? The government's response to the Stewart

case is in glaring contradiction to how it has handled individuals like Lay.

In the weeks preceding the explosion of the Enron scandal in 2001, Lay and other Enron executives talked up the company's massively overvalued stock and prohibited workers from selling their shares, even as the executives unloaded their own. The excuse that the Justice Department has given for not prosecuting Lay over the course of the past two-and-a-half years is the supposed difficulty in proving his guilt under current corporate liability laws. Even if this were true, it would not explain why Lay has not been charged with the same crime being leveled at Stewart—namely, making false statements in order to defraud investors.

If Stewart can be charged for merely declaring her own innocence, then certainly Lay can be charged for actions that led to the decimation of thousands of workers' pensions and savings, not to mention the thousands of jobs and billions of dollars that were lost as a consequence of Enron's collapse.

What about Bush himself? In June 1990, Bush sold over \$800,000 of stock in Harken energy, a company on whose board of directors he served. Shortly afterward, Harken announced publicly a large profit loss—information that Bush was almost certainly aware of—sending the stock down nearly 75 percent by the end of the year.

Bush failed to file promptly the proper SEC forms regarding his sale. He could therefore be charged with attempting to defraud investors. Bush has given every imaginable excuse—or lie—for why the filing was late, first blaming it on the SEC, then on his lawyers, then proclaiming his ignorance of the whole matter.

The giant Wall Street banks were let off last year with a slap on the wrist for massive fraud involving the artificial promotion of stock to benefit their own business interests and help corporate CEOs—such as WorldCom chief Bernie Ebbers—with whom they had close ties. Ebbers himself has yet to be charged in relation to the collapse of his company in the wake of revelations of \$14 billion in accounting fraud.

The entire corporate establishment in America, of which the Bush administration is the political expression, is rife with corruption and criminality. Without excusing or minimizing any malfeasance on Stewart's part, there is little doubt that her prosecution is an attempt to throw dust in the eyes of the public while far greater crimes that implicate leading figures in the Bush administration, including the president, are covered up.



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