

Prosecution + Persecution = Injustice?

When Communication Becomes a Crime

BY JAMES E. LUKASZEWSKI, APR, FELLOW PRSA

America's criminal justice system has been working overtime to convict anyone they target, and it seems they can, with or without an actual crime. The Martha Stewart case is a prime example.

We're talking about taking away someone's liberty and destroying her life for telling a lie and publicly defending herself.

This is how *The National Law Journal* explained it in its March 22 edition, under the headline, "Prosecutors Tell Lies, Too."

"Martha Stewart stands convicted primarily of lying to federal officials in informal interviews about a matter that did not result in her prosecution for substantive criminal wrongdoing. As a result of her lies, she will lose her liberty, her reputation and her financial empire. One lesson from this case is that it's bad to lie, particularly to a federal prosecutor, because he will catch you and punish you. But many, especially those who follow criminal justice issues, will appreciate the irony in such a prosecution. That is, sometimes prosecutors lie, too. But when prosecutors lie, usually nothing happens to them."

This is where PR professionals

come in. Martha Stewart was essentially convicted of communication crimes — lying and conspiracy — not insider trading, stock fraud, stealing, murder or anything we usually think of as criminal. (On March 5, a jury found Stewart guilty of all four charges against her: conspiracy, obstruction of justice and two counts of making false statements. Her sentencing is set for June 17.)

If we step back from the collective media satisfaction of seeing someone so prominent getting persecuted and prosecuted, some serious questions need to be addressed:

- How can one not be guilty of a crime, yet be guilty of "criminal" actions underlying a nonexistent illegal act?
- How can it become a crime to voluntarily talk to the prosecutor, presumably in the interest of being cooperative?
- How can it be a crime to publicly profess your innocence?

In theory, PR professionals and journalists are both fundamentally enabled by, and protectors of, the First Amendment. Any laws or government behaviors that infringe on or punish speech should raise an immediate alarm, and be examined and fixed. Anything that alters our basic freedoms needs serious exploration, analysis and legal or legislative remediation.

If I remember American history, some of the reasons that we started this country were because people came here to escape being oppressed by a king — the searches, seizures, haphazard incarcerations, false imprisonments and the dilution of basic day-to-day rights as citizens.

America was founded on making it difficult for the state to prosecute, persecute and incarcerate. We have the First Amendment, the Fourteenth Amendment and the Fifth Amendment. Many of these protections have been abridged by special laws, especially laws that require telling the truth to the government whether you are under oath or not.

As it stands now, either tell the truth the prosecution wants to hear or you must remain silent. This is speech deprivation.

Many of the laws that virtually deify government agencies like the Department of Justice were put on the books to entrap drug dealers, murderers and gangsters — people who committed real crimes with victims. The Stewart decision creates victims — her company's stockholders and employees, for instance. The government's goal, it seems, is to discredit her and decimate the company.

Originally, when the behavior of criminals became so egregious and created so many victims, society cried out for some kind of extra state power to protect public safety and peace of

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mind. America did just that, finding “noncriminal” behaviors to prosecute. That power just keeps on building.

Stewart’s conviction is clearly the current justice system at work. The jurors undoubtedly followed the law and the judge’s instructions. Most of the legal pundits and experts one hears feel that a successful appeal is unlikely. That’s another reason to look at these laws — to see if they really

Listed there are interesting documents such as “Bringing Criminal Charges Against Corporations.”)

After you read these memos and consider the Stewart verdict, you’ll better understand the determination we have to jail people. According to the International Centre for Prison Studies at King’s College London, “The United States currently has the largest documented prison population

talking about. It’s about losing liberty and how easy it is for the state to take it away. So whether it’s Martha Stewart, a rich, white woman from Connecticut, or, say, Martha Smith, a hypothetical person from an under-privileged area, being behind bars is the common factor.

In Stewart’s case, is being arrogant a crime? Is being a tough boss a crime? Is being stubborn a crime? Is being successful and building a business empire out of nothing in our country a predicate criminal behavior? Lying should not be a liberty-depriving crime if the government can’t prove an actual criminal act has been committed.

To again quote from *The National Law Journal* editorial, “Although we are taught not to lie, lying permeates our culture. Presidents, politicians, executives, the media lie. Indeed, almost everybody lies sometimes, with varying consequences.” The government defends itself by saying that cases like these are selected to send messages to potential criminals.

You may not feel sorry for Stewart, but you may want to reconsider when you realize that what you say as opposed to what you do can land you in jail. If our country and our society are built on the notions of life, liberty and the pursuit of happiness, you have to ask yourself, What is the real message of this case? ■

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Martha Stewart: What is the real message of this case?

achieve what society needs. Yes, Stewart did lie. But to quote *The National Law Journal* editorial, “In actuality, her lies hurt nobody, and hardly ‘obstructed’ federal criminal justice. It is inconceivable that she would have been prosecuted if her name were Martha Smith.”

When a big executive falls, glee and joy overcome analysis and inquiry. We choose satisfaction over serious, critical analysis and study. If you work for a corporation, you’ll want to read the U.S. Attorney General’s memorandums on the prosecution of corporations. (You’ll find them at www.usdoj.gov. Search for “corporate prosecution policies.”

in the world, both in absolute and proportional terms.” You may want to consider the validity of this formula: prosecution + persecution = injustice.

The International Centre estimates, “[The United States has] roughly 2.05 million people (average 40,000 per state) behind bars, or 701 per 100,000 of the population. The U.S. imprisonment rate is growing faster than any recorded in the world to date.”

One could argue that bringing up incarceration rates is hardly relevant when Stewart — a white, privileged individual — seems so vastly different from the majority of those already behind bars. But remember what we’re



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