

May 6, 2018 – STEWART v COMEY

Now that we have a better understanding of James Comey and his career, [Mary Katharine Ham](#) thinks it's time for Martha Stewart to be pardoned.

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There's a reason "don't make a federal case out of it" is a phrase for blowing something out of proportion, and this case is a perfect example. It shouldn't have been a federal case, and Stewart shouldn't have lost her freedom, her executive position, and a bunch of earning potential over it.

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Last June, [Mollie Hemingway](#) details the excesses of Comey's career.

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Before he was indicted, Comey [made false statements about Quattrone and his intent](#). The first trial ended in a hung jury but the second one got a conviction.

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Quattrone has [noted with interest](#) the disparities in how he was treated by Comey for a single email [compared to](#) his handling of the Hillary Clinton email server scandal.

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You might remember Martha Stewart being sent to jail. You might not remember that James Comey was the man who put her there, and not because he was able to charge her for anything he began investigating her for. The original investigation was into whether Stewart had engaged in insider trading. They didn't even try to get her on that charge. Gene Healy wrote about it in 2004, [warning about federal prosecutorial overreach](#):

Comey didn't charge Stewart with insider trading. Instead, he claimed that Stewart's public protestations of innocence were designed to prop up the stock price of her own company, Martha Stewart Living Omnimedia, and thus constituted securities fraud. Stewart was also charged with making false statements to federal officials investigating the insider trading charge — a charge they never pursued. In essence, Stewart was prosecuted for "having misled people by denying having committed a crime with which she was not charged," as Cato Institute Senior Fellow Alan Reynolds put it.

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The Federalist

Seven Reasons Donald Trump Should Pardon Martha Stewart

At every turn in the case, she defied the stereotype of a rich celebrity getting special treatment. For that alone, she should officially be forgiven.

by Mary Katharine Ham

Martha Stewart was released from federal prison March 4, 2005. She exited the pen more hard-as-nails and more admired than the day she entered the facility, where she earned the nickname "M. Diddy" while serving a five-month sentence for felony convictions of conspiracy, obstruction of an agency proceeding, and making false statements to investigators.

Her six-week trial had enthralled the nation and national media. She was put in a West Virginia penitentiary where she endeared herself to fellow prisoners and took on a role as liaison between them and the prison administration. She went on to serve another two years under house arrest, while mounting a hit-and-miss comeback that more than 10 years later has secured her place among America's iconic entrepreneurs and badasses.

Also, she is friends with Snoop Dogg.

For all she's given us, she deserves a pardon. And I know just the guy to do it. Here are seven reasons Donald Trump should pardon Martha Stewart.

1. The Whole Thing Was Nonsense

If you ask an average American why Stewart went to jail, they'd probably tell you "insider trading." In fact, that is not what brought her down. She was never charged with insider trading over the [2001 sale of ImClone stock that started the whole affair](#). She was charged with conspiring to lie about the crime with which she was never charged.

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3. They're Both Famous New Yorkers

As long as we have a celebrity president, let's commence with some real celebrity justice. Stewart was arguably targeted aggressively because she was famous, [despite Comey's protestations otherwise at the time](#), so if she gets a break for the same reason because Trump is president, so be it.

“This criminal case is about lying. Lying to the FBI, lying to the SEC and lying to investors,” Comey, then the U.S. attorney in Manhattan, said at a 2003 press conference. “That is conduct that will not be tolerated by anyone. Martha Stewart is being prosecuted not because of who she is, but because of what she did.”

Trump often does the right thing for the wrong reasons, and he’s now considering a pardon for heavyweight boxer [Jack Johnson based on Sylvester Stallone’s recommendation](#). Good. Stewart’s a model-turned-hard-nosed-businesswoman-and-TV-personality. She sounds like a perfect candidate for piquing Trump’s fleeting interest and impulsive decision-making.

Stewart isn’t a native New Yorker, but the city has been home to her or her business since her marriage to Andrew Stewart in 1961 (they divorced in the ’80s and have one child). She recently revisited her old Upper East Side penthouse for a feature in *New York Magazine*, during which she was stripped once again of her rightful belongings when a pie plate went missing after the photoshoot [in a scandal that set the world on fire](#).

One of the hallmarks of a Trump administration has been to introduce us to [quintessentially New York characters](#) and their special brand of famous rich people infighting. Give me Stewart over Cohen any day.

4. Because She Took Her Punishment With Dignity

One of the reasons Stewart is compelling is that despite the knock on her as cold and privileged, she took her lumps without complaint. She requested a sentence in a Connecticut or Florida prison so that her elderly mother could more easily visit her, but she was denied and ended up in West Virginia — a move even the Department of Justice worried looked “vindictive.” Her attorneys planned to appeal, but she decided to go ahead with her sentence, and she did it with the grace and aplomb she applies to every pie crust (whether she has her purloined pie plate or not). The appeal later failed.

In an era of Lindsay Lohans and Paris Hiltons sobbing their way through [day-long jail stays](#), when they weren’t missing court appearances for drunk driving, Stewart was a dignified breath of fresh air. She didn’t really do much of a crime, but she did the time. At every turn in the case, she defied the stereotype of a rich celebrity getting special treatment. For that alone, she should be officially forgiven.

5. Maybe We’ll Get To See Someone Refuse a Pardon

Is Martha Stewart badass enough to refuse a pardon? Now, *that* would be a power move. The woman has ice in her veins. I wouldn’t put it past her. Given the odd politics of the Trump era, there’s always a chance she calculates her crime and comeback are a long-completed chapter in her life and the optics of being given a pass by Trump aren’t worth her reinstatement as a non-felonious American in good standing. But the way this week is going, her bestie Snoop may be sporting a MAGA hat by Friday and he and Martha will show up at the White House with a perfect apple pie for Melania.

Either way, it’ll make great TV.

But it wouldn’t be the first time in history someone had turned down a pardon. George Wilson, convicted of robbing the U.S. Mail in Pennsylvania in 1829, was lobbied for by friends and awarded a pardon by President Andrew Jackson. He refused it, spurring a Supreme Court case to consider the odd turn of events. The Supreme Court ruled a pardon is a deed [“the validity of](#)

[which delivery is essential and delivery is not complete without acceptance.](#)” Subsequent rulings determined accepting a pardon can be an admission of guilt and therefore must not compel a recipient to accept.

6. To Make His Own Point About Lying To Investigators

We’re in the middle of a bit of a national conversation about “lying to federal investigators.” Special Counsel Robert Mueller has slapped former Trump aides Gen. Michael Flynn and George Papadopoulos and lawyer Alex van der Zwaan on counts of “making false statements.” The charge of making false statements was added to Paul Manafort’s indictment. That’s entirely within Mueller’s purview, but should it be?

When there’s no underlying crime with which a person is charged, as in the Stewart case, the false statement can simply stand in as a way to prosecute, [because the government couldn’t make its original case](#). Ken White writes in Reason:

In the old westerns, rather than take the trouble of hauling mustachioed miscreants to desultory trials, lawmen would often provoke them into drawing first, thus justifying shooting them down where they stood. A modern federal interview of a subject or target is like that. One purpose, arguably the primary purpose, is to provoke the foolish interviewee into lying, thus committing a new, fresh federal crime that is easily prosecuted, rendering the original investigation irrelevant. Title 18, United States Code, Section 1001, which makes it a felony to lie to the feds, is their shiny quick-draw sidearm. This result not an exception; it is the rule. It happens again and again.

Consider George Papadopoulos. The special counsel secured his guilty plea not for improper contact with the Russians but for lying about that contact to the FBI. Consider Michael Flynn. He too pled guilty not to unlawful contact with Russians but to lying to the FBI about that contact. Consider Scooter Libby, or Martha Stewart, or Dennis Hastert, or James Cartwright, all taken down by the feds not for their alleged original misconduct but for lying about it.

[Leaving aside whether making a false statement should be a crime](#), it should at least be pursued evenly. Instead, there are different reactions in the court of public opinion and the actual court for McCabe vs. Flynn. ([McCabe’s case has been referred for criminal prosecution, so we’ll see what happens.](#))

Comey himself is quite serious about the value of truth-telling, as he has indicated on his book tour innumerable times, but he’s more serious about it for some than others.

On Martha Stewart, he writes in the book:

The Stewart experience reminded me that the justice system is an honor system. We really can’t always tell when people are lying or hiding documents, so when we are able to prove it, we simply must do so as a message to everyone.

There was once a time when most people worried about going to hell if they violated an oath taken in the name of God. That divine deterrence has slipped away from our modern cultures. In its place, people must fear going to jail. They must fear their lives being turned upside down. They must fear their pictures splashed on newspapers and websites. People must fear having their name forever associated with a criminal act if we are to have a nation with a rule of law. Martha Stewart lied, blatantly, in the justice system. To protect the institution of justice, and

reinforce a culture of truth-telling, she had to be prosecuted. I am very confident that should the circumstance arise, Martha Stewart would not lie to federal investigators again.

But on Clinton aides Cheryl Mills and Huma Abedin, he struck a different tone in testimony before Congress, “Having done many investigations myself, there’s always conflicting recollections of facts, some of which are central [to the investigation], some of which are peripheral.”

And on Andrew McCabe, he tweeted: “Special Agent Andrew McCabe stood tall over the last 8 months, when small people were trying to tear down an institution we all depend on. He served with distinction for two decades. I wish Andy well. I also wish continued strength for the rest of the FBI. America needs you.”

He also said of McCabe, “Good people lie.”

7. Lots of Worse People Have Been Pardoned

I mean, come on. Mark Rich. [Oscar Lopez Rivera](#). Joe Arpaio. Chelsea Manning’s clemency.

Give us Martha.

And, if they want to make a federal case out of something, [maybe focus on the pie plate](#). Now, *that* is a crime worth sending a message about.

Mary Katharine Ham is a senior writer at The Federalist.

The Federalist

[James Comey Has A Long History Of Questionable Obstruction Cases](#)

From Martha Stewart to Frank Quattrone to Steven Hatfill, former FBI director James Comey has left a long trail of highly questionable obstruction of justice cases that he used to make a name for himself.

by Mollie Hemingway

Following countdown clocks on cable outlets and dramatic claims in the media about what devastating testimony to expect, James Comey sat down before the Senate Intelligence Committee last week. The hearing ended up being a [bit of a let-down](#) for critics of President Trump who hoped to get him impeached (or removed via the 25th amendment!) as soon as possible. Comey admitted that Donald Trump had told the truth when he wrote that the former FBI director had thrice told him he was not under investigation in the Russia meddling probe. Comey admitted that Trump had twice encouraged him to get to the bottom of the Russian meddling issue.

But the media chose to run with a dramatically different narrative. That narrative was if James Comey had not proven obstruction, he came pretty darn close.

“Is Trump Guilty Of Obstruction Of Justice? Comey Laid Out The Case,” was the [big takeaway](#) from NPR’s Domenico Montanaro.

“Comey Bluntly Raises Possibility of Trump Obstruction and Condemns His ‘Lies,’” [exulted](#) the *New York Times*, describing his testimony as “a blunt, plain-spoken assessment” by a man who was “humble, folksy and matter-of-fact.”

The *New Yorker* was even more breathless. “Comey’s Revenge: Measuring Obstruction,” [wrote](#) Evan Osnos. “[T]his was not a political partisan tossing off a criticism of a rival; this was a career prosecutor, who served Republican and Democratic Presidents, presenting a time line of specific statements from the President that he described as either untrue or potentially criminal.”

MSNBC agreed. And I watched an hour of CNN the night of the hearing with the sober legal analysis of Jeffrey Toobin, who declared repeatedly that he’d never seen such obstruction of justice in the history of the world. I’m only slightly exaggerating.

Most liberal, mainstream media have flipped and flopped on their view of James Comey, in direct relationship to whether his actions hurt Hillary Clinton or Donald Trump. They’re currently huge fans, needless to say.

Comey is a man of rectitude, they’re currently saying. A boy scout who is very honest, and good at laying out obstruction of justice cases.

It’s worth looking at a few of these cases, and whether they say anything about his current judgment.

One of the few media outlets that has consistently expressed skepticism about Comey is the *Wall Street Journal*. When he was nominated by President Barack Obama to be FBI director in 2013, they presciently wrote a piece headlined, “The Political Mr. Comey: [Obama’s FBI nominee has a record of prosecutorial excess and bad judgment](#).” The article described even then Comey’s “media admirers” and a “media fan base” that refused to ask him tough questions. But the *Journal* had concerns:

Any potential FBI director deserves scrutiny, since the position has so much power and is susceptible to ruinous misjudgments and abuse. That goes double with Mr. Comey, a nominee who seems to think the job of the federal bureaucracy is to oversee elected officials, not the other way around, and who had his own hand in some of the worst prosecutorial excesses of the last decade.

Frank Quattrone

Let’s begin with the case of one Frank Quattrone, a banker who Comey pursued relentlessly on banking related charges without fruition. But while he couldn’t find any wrong-doing on criminal conduct, he went after him for supposed “obstruction of justice” because of a single ambiguous email. Sound familiar?

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very moment he was found guilty in the second trial, he realized there must be innocent people in prisons who lacked the financial resources to fight for justice. He also started the [Quattrone Center for the Fair Administration of Justice](#) at the University of Pennsylvania Law School.

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Steven Hatfill

The FBI absolutely bungled its investigation into the Anthrax attacker who struck after the 9/11 terrorist attacks. Carl Cannon [goes through this story well](#), and it's worth reading for how it involves both Comey and his dear "[friend](#)" and current special counsel Robert Mueller. The FBI tried — in the media — its case against Hatfill. Their actual case ended up being thrown out by the courts:

Comey and Mueller badly bungled the biggest case they ever handled. They botched the investigation of the 2001 anthrax letter attacks that took five lives and infected 17 other people, shut down the U.S. Capitol and Washington's mail system, solidified the Bush administration's antipathy for Iraq, and eventually, when the facts finally came out, made the FBI look feckless, incompetent, and easily manipulated by outside political pressure.

More from Cannon, recounting how messed up the attempt to convict Steven Hatfill for a crime he didn't commit was:

In truth, Hatfill was an implausible suspect from the outset. He was a virologist who never handled anthrax, which is a bacterium. (Ivins, by contrast, shared ownership of anthrax patents, was diagnosed as having paranoid personality disorder, and had a habit of stalking and threatening people with anonymous letters — including the woman who provided the long-

ignored tip to the FBI). So what evidence did the FBI have against Hatfill? There was none, so the agency did a Hail Mary, importing two bloodhounds from California whose handlers claimed could sniff the scent of the killer on the anthrax-tainted letters. These dogs were shown to Hatfill, who promptly petted them. When the dogs responded favorably, their handlers told the FBI that they'd "alerted" on Hatfill and that he must be the killer.

When Bush administration officials were worried about the quality of the case Mueller and Comey had, the two men assured them. "[Comey was 'absolutely certain' that it was Hatfill,](#)" Deputy Defense Secretary Paul Wolfowitz said.

"Such certitude seems to be Comey's default position in his professional life," Cannon wrote. He shouldn't have been certain in this case. After the six years the FBI spent destroying his life, they settled a \$4.6 million lawsuit he filed and officially exonerated him.

Scooter Libby, Judith Miller

After pressuring John Ashcroft to recuse himself from the responsibility on the grounds of potential conflicts of interest, Comey gave Patrick Fitzgerald, his close personal friend and godfather to one of his children, the role of special counsel into the investigation of the leak of Valerie Plame's identity as a CIA employee. Some conflicts of interest are more important to Comey than others, apparently.

Fitzgerald immediately discovered that Deputy Secretary of State Richard Armitage was the leaker. Of course, the FBI and Department of Justice had [known that all along](#), so Comey's push for a special counsel is ... intriguing.

Not only did they not shut down the investigation that never needed to begin, Comey expanded its mandate within weeks. The three-year investigation was a cloud over the Bush administration and resulted in nothing but the jailing of a journalist for not giving up a source, and a dubious prosecution of Scooter Libby for, wait for it, obstruction of justice. Comey was unconcerned about the jailing of journalists and never threatened to resign over this infringement on First Amendment freedoms.

Hillary Clinton

Comey treated Hillary Clinton poorly by convicting her in the court of public opinion without giving her the chance to defend herself in a free and fair trial. But it's interesting to note why Comey didn't pursue charges against Clinton. He claimed — despite this not being a legal standard of relevance, that he didn't think Clinton had intent. And while Clinton and her team engaged in massive evidence destruction shortly after subpoenas were issued, Comey — who was near-delirious in his pursuit of others on obstruction charges — didn't seem to think anyone would be interested in prosecuting here.

Clinton had classified info on a private server, was extremely careless in handling that information, and had caused the destruction of evidence. The notion that "no reasonable prosecutor" would even try to charge her with the misdemeanors or felonies in question is beyond belief.

But there's so much more to that case, such as upon learning that two Clinton staff members had classified information, the FBI didn't subpoena those computers but gave the employees immunity in return for giving them up. The FBI severely limited their own searches for data on the computers and then destroyed them. A technician who destroyed evidence lied to FBI

investigators even after he received immunity, and Comey did nothing. And after the FBI discovered that President Obama had communicated with Clinton on the non-secure server, Obama said he didn't think Clinton should be charged with a crime because she hadn't intended to harm national security. As former Attorney General [Michael Mukasey noted](#), "As indefensible as his legal reasoning may have been, his practical reasoning is apparent: If Mrs. Clinton was at criminal risk for communicating on her nonsecure system, so was he."

Did Comey pursue the case under the relevant laws or follow Obama's wish that charges not be filed? In this case, he chose the latter. As a Wall Street Journal editorialist wrote last July, "Mr. Comey wasn't ready to go it alone and impose accountability on Mrs. Clinton. That would have been tough. That would have been brave. He instead listed her transgressions in detail and left it to the public to pass judgment at the ballot box in November. That isn't how the system is supposed to work. But Mr. Comey is no John Adams."

Donald Trump

As the Journal noted in 2013, the media are enamored with Comey. Such blinders make it difficult to see problems with his own testimony. He claimed that his motivation to leak was to achieve the appointing of a special prosecutor. His very close friend — and associate in the bungled Hatfill prosecution — Robert Mueller was, in fact, named as a result of his leak. The immediate cause of the leak was, he said, Donald Trump telling him not to leak. Yet the day before that tweet, the *New York Times* ran a story headlined, "[In a private dinner, Trump demanded loyalty. Comey demurred.](#)" The information, as with the story about the memos Comey leaked, was sourced to associates of Comey. You don't have to be a brain surgeon to figure out who was pushing this information.

More bizarre was his claim regarding the notes he kept before leaking. He said, inexplicably, that he never kept notes on his meetings with George Bush ([he did](#)) or Barack Obama but kept notes on Trump simply because he believed he was a liar. He said he viewed these notes as personal property, despite the fact that they were government work product, produced on classified computers in a government vehicle following a meeting with the President of the United States. We don't know why the FBI is unable to deliver these memos to the investigative committees, or whether the FBI even has copies of them. But we do know that his claim to have not kept notes about his meeting with President Bush was false.

As John Hinderaker [details](#), Barton Gellman wrote a book against Dick Cheney that used extensive notes from a meeting between Comey and President Bush. And the information contained therein reads very much similar to the Trump memos, down to the gratuitous grandfather clocks that are mentioned and 15 lines of dialogue in which Comey appears to be, however implausibly, the only virtuous man in Washington.

Comey's case would require his friend Robert Mueller to agree that the president's actions weren't bad enough to make Comey do literally anything other than chat with subordinates about it and save notes in case of vengeance, but then somehow bad enough to be obstruction of justice. Mueller has fans within the D.C. establishment, but I'm not sure that's a case he'd be willing to take on, no matter how many recipients of Comey leaks cheer him on.

There are many [other examples](#) of Comey's poor judgment when it comes to obstruction of justice cases. But the idea that Comey should be trusted to lay out an impartial case for obstruction is going to be hard to swallow.





