

## Addendum

After the editors of the *Journal* finalized the article, a jury convicted Martha Stewart on four counts, all involving obstruction of justice.<sup>172</sup> Before the jury retired, the judge had thrown out the prosecutors' novel charge of financial fraud on her own company's shareholders based on her public claims of innocence. The charges thus turned at that moment into a paradigm sideshow prosecution. She was not convicted of insider trading or any other form of financial fraud. Rather, she was convicted of lying about her actions to federal officials. Whether the actions that she lied about were illegal was not determined and not in issue. The tangential nature of the convictions was not lost on many observers. In a letter to the editor of the *New York Times*, Skip Perry of Atlanta wrote: "I'm no legal expert, but that means she was found guilty of covering up crimes that the government couldn't prove she committed. This is justice?"<sup>173</sup>

The irony of the conviction is that Ms. Stewart engaged in the conduct for which she was primarily convicted, lying to SEC officials, while she had the country's highest paid attorneys—partners at Wachtell, Lipton, Rosen & Krantz, whose average partnership draw per year per partner is close to \$3 million—at her elbow.

A day before going to press, the judge declared a mistrial in the prosecution of two former Tyco International executives, Chief Executive L. Dennis Kozlowski and Chief Financial Officer Mark Swartz. The two were charged with taking over \$600 million in cash from firm coffers, all without authorization of the Tyco Board. The trial lasted close to seven months. There were forty-seven witnesses, many of them testifying on complex accounting and financial matters. One juror said it was "like watching paint dry." A well-publicized jury deadlock was dissolving just as the judge declared a mistrial; one 79-year-old juror, the apparent holdout, had received a threatening letter after her name was published in the national press. Prosecutors vow to try the case again.

Also of interest is the prosecution of four former executives of Qwest Communications in Denver. In the closing arguments, their attorneys claimed that the men were being sacrificed to protect the higher-ups.

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<sup>172</sup> See Kara Scannell & Matthew Rose, *In Stewart Case, Reluctant Jurors Found Guilt After 'Foolish Mistake'*, WALL ST. J., Mar. 8, 2004, at A1. Specifically, she was convicted of two counts of making false statements to government investigators, one count of conspiracy to obstruct justice, and one count of obstructing justice. The jury "felt that she was a smart lady who made a dumb mistake." *Id.* at A6.

<sup>173</sup> Letter to the Editor from Skip Perry, N.Y. TIMES, Mar. 9, 2004, at A26.