

Approved:

STEVEN R. PEIKIN/DAVID C. ESSEKS
Assistant United States Attorney

Before: HONORABLE JAMES C. FRANCIS, IV
United States Magistrate Judge
Southern District of New York

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		:	<u>SEALED COMPLAINT</u>
UNITED STATES OF AMERICA		:	Violation of
- v. -		:	18 U.S.C. § 1623
LARRY F. STEWART,		:	COUNTY OF OFFENSE:
		:	NEW YORK
	Defendant.	:	
- - - - -	- - - - -	x	

SOUTHERN DISTRICT OF NEW YORK, ss.:

JOHN JORDAN, being duly sworn, deposes and says that he is a Special Agent with the United States Secret Service and charges as follows:

COUNT ONE

(Perjury)

1. On or about February 19, 2004, in the Southern District of New York, LARRY F. STEWART, the defendant, under oath in a proceeding before a court of the United States, unlawfully, willfully and knowingly did make a false material declaration, to wit, in the criminal trial of United States v. Martha Stewart and Peter Bacanovic, 03 Cr. 717 (MGC), STEWART gave the following testimony, the underlined portions of which he believed to be materially false:

Specification One

(Page 3281, Line 21 - Page 3282, Line 3)

- Q. Just so I understand, I think you had testified before that she had done the analysis, but you were involved with taking these photographs back in July or August of 2002?
- A. To be specific about it, she wrote the report in July of 2002 or August 2002. However, her and I worked the

case together, and that's standard procedure in my laboratory, to have a supervisor work with you, and I was the supervisor. So I worked with her on creating these documents.

Specification Two

(Page 3285, Lines 2 - 9)

- Q. Mr. Stewart, this Government Exhibit 479, which is a picture of the two spots you just described, when was this done?
- A. This original plate was done in July of 2002 with [Employee-1] and myself.
- Q. And when you did that were you involved in the actual creation of the plate?
- A. Yes, sir.

Specification Three

(Page 3292, Line 3 - Page 3293, Line 6)

- MR. BURCK: Mr. Bove, could you put up Government Exhibit 479, please.
- Q. Tell us a little more about chromatography. What exactly does it consist of?
- A. Well, it can happen in a number of different ways, but I'll specifically talk about how it was used in this case. Chromatography is a piece of plastic or glass that has silica gel on top of it. Now, silica gel is a powdered material, and the silica sticks to the plastic or the glass. What I have to do in the laboratory is I have to take the ink that's dry on the document and I have to make it liquid again, and I do that by putting solvent or chemicals on the ink that makes it extract from its dry phase into a liquid phase; it turns it liquid again. I then take that and I place it on this silica gel that is on this plate, it is either plastic or glass plate.
And if you look at the picture up there in Government Exhibit 479, on the left-hand side at the bottom, that little blue circle, that's where I first placed an ink. That is where I actually put it on to that plate.
- Q. What ink was that?
- A. That was the ink that was the "AVEA" ink that was on the Government Exhibit 81.

MR. BURCK: Mr. Bove, could you put 81 up next to 479?

A. It is in the upper left quadrant.
So I took a small amount of that AVEA ink and I turned it liquid again and I put it on this plate. I then did the same thing for the @60 ink. And that's the blue dot that is on the right side of the plate.

Specification Four

(Page 3322, Line 12 - Page 3323, Line 11)

Q. Mr. Stewart, you testified that you performed the tests with [Employee-1] that were done in July and August of 2002; do you remember that testimony before?

A. Yes.

Q. And is it your testimony that you observed, or is it your testimony that you actually conducted the hole punching and spotting of the chromatographic plate that occurred in connection with these tests? What is your testimony?

A. Observed, participated and reviewed.

Q. And so it's your testimony that you and [Employee-1], both, you, with all of the experience that you have talked about, as well as [Employee-1] -- who was not a new person, right? She had been there for years, right, doing ink analysis in your lab?

A. She has been there approximately 15 years.

Q. Right. So the two of you together examined --

MR. STRASSBERG: Can we put up Exhibit 81A, please?

Q. The two of you together examined this one-page document, is that right?

A. Yes.

Q. And you did it -- you examined it to determine the answers to those two questions that we were previously talking about, right?

A. That's correct.

Specification Five

(Page 3324, Lines 13 - 18)

- Q. And so you, the head of the lab, personally participated in doing what are, fair to say, regular standard tests that ink experts do about trying to determine the answers to those two questions, with a 15-year veteran from your lab; that's your testimony, right?
- A. That's correct, I do that quite often.

Specification Six

(Page 3277, Line 20 - Page 3279, Line 3)

- Q. Did there come a time that you performed a separate analysis on Government Exhibit 81A?
- A. Yes. I performed an analysis in January of 2004.
- Q. Can you explain what analysis you performed, in general terms?
- A: I examined the entire document to -- for purposes of determining whether the entry that's about halfway down on the left-hand side -- it says @60 with a line underneath it -- to determine if that entry and the entry at the beginning of the line, that same line, were consistent with the remaining entries on the document. In other words, is it the same ink as what was found on the rest of the document.
- Q. What was the analysis that [Employee-1] performed?
- MR. STRASSBERG: Objection, your Honor.
- THE COURT: You performed the same analysis?
- A: I repeated the same examination, yes, ma'am.
- THE COURT: Why don't we find out what you did.
- Q. Mr. Stewart, what kind of tests did you perform on this document?
- A. I performed a test to determine whether the @60 entry with the line underneath it and the remaining entries on the document were the same ink.
- Q. What were the types of analyses that were used to determine that?
- A. I did a technique called chromatography, and chromatography is a technique that got its start around 1903 by a gentleman named Tswett. And that gentleman determined that you could separate out chlorophyl from plants and make it so that you could see the composition of the chlorophyl from the plants, and we

use a similar approach to look at ink. We basically break down the ink into its composition and look at its recipe. We look at what makes that ink unique, and we use a technique called chromatography as the primary approach to do that.

Specification Seven

(Page 3358, Line 17 - Page 3359, Line 13)

- Q. And now that your recollection is refreshed, am I right that it was January 13 of 2004 when you did the first test that involved ink from the dash?
- A. That's correct.
- Q. Now, I assume you've seen the results of the tests that you did for both of these tests, the one on the 13th and the one on the 15th, right?
- A. Yes.
- Q. And am I right that you actually conducted these tests, you personally, as opposed to [Employee-1] or someone else in your lab?
- A. [Employee-1] and I worked on it the together, same time.
- Q. Is this another instance where you worked side by side to do the test?
- A. Yes, sir.
- Q. Do you remember who placed the ink on the plate or put the plate in the solution, or anything like that?
- A. No. We did it side by side at the same time, so, no, I don't know.
- Q. You don't remember whether she did it or you did it, but you did it together?
- A. Yes.

(Title 18, United States Code, Section 1623.)

COUNT TWO

(Perjury)

2. On or about February 25, 2004, in the Southern District of New York, LARRY F. STEWART, the defendant, under oath in a proceeding before a court of the United States, unlawfully, willfully and knowingly did make a false material declaration, to wit, in the criminal trial of United States v. Martha Stewart and Peter Bacanovic, 03 Cr. 717 (MGC), STEWART gave the following testimony, the underlined portions of which he believed to be materially false:

Specification One

(Page 4197, Line 3 - Page 4199, Line 8)

- Q. Mr. Stewart, are you familiar with a person named [Employee-2]?
- A. Yes, I am.
- Q. In fact, is that the [Employee-2] that works at the Secret Service?
- A. Yes, he's our chief research scientist.
- Q. Are you familiar with [Employee-3]?
- A. Yes, [Employee-3] works for me.
- Q. He is another individual involved with ink analysis at the Secret Service?
- A. Yes, sir.
- Q. Are you familiar that they have submitted a proposal for a book that would talk about one of the chapters we talked about -

THE COURT: Well, before you tell what it says, why don't you show it to the witness.

MR. STRASSBERG: Sure. I will, your Honor. I was just going to ask him if he was aware. He may be aware.

THE COURT: Except that that becomes -- that is, if he is not aware of it, you have already testified about it.

MR. STRASSBERG: I don't have this marked, your Honor. I am happy to mark it for identification. I don't intend to introduce it.

THE COURT: You may show it to the witness and see if he is familiar with it.

(Pause)

BY MR. STRASSBERG:

- Q. I am going to direct your attention to the fourth page of this document, and the heading "C." Feel free to look at the front, if you would like, Mr. Stewart, and then let me re-ask my question, which is simply: Are you aware that [Employee-2] and [Employee-3] have submitted a book proposal --

THE COURT: Wait. Let the witness look at it first.

MR. STRASSBERG: Sure.

THE COURT: Because you can't testify.

A. Yes, I am familiar with this.

Q. So --

MR. STRASSBERG: Your Honor, may I ask the question?

THE COURT: What is the question?

BY MR. STRASSBERG:

- Q: The question is: Are you aware, Mr. Stewart, that [Employee-2] and [Employee-3] have submitted a book proposal that includes as a chapter a heading of "Instrumental methods for determining analytical features that do not tend to change with age" -- this is a book proposal about ink analysis, and that

includes underneath it, in this chapter about things that don't affect aging -

MR. BURCK: Objection, your Honor. Your Honor -

MR. STRASSBERG: -- TLC densitometry.

THE COURT: That is just another way of putting that into evidence, please.

Have you seen the proposal for the chapter?

THE WITNESS: Yes, I have.

(Title 18, United States Code, Section 1623.)

The bases for my knowledge and for the foregoing charges are, in part, as follows:

Introduction

3. I have been employed as a Special Agent with the United States Secret Service (the "Secret Service") for approximately twenty years. I am currently assigned to the Secret Service's Inspection Division, and my responsibilities include investigating official misconduct by Secret Service employees.

4. The information contained in this affidavit is based, in part, upon personal knowledge arising from my participation in this investigation, and, in part, upon information and belief. The sources of my information and belief include the following: information provided to me, directly and indirectly, by other law enforcement agents who have participated in this investigation; information provided to and statements made to other law enforcement agents and me by various Secret Service employees; and my review of various documents, records, and reports. Where the statements of others or the contents of documents are related herein, they are related in substance and in part, and not verbatim. All references to dates, times, and amounts are intended to be approximate. Because this affidavit is submitted for the limited purpose of establishing probable cause, I have not set forth each and every fact that I know concerning this investigation.

The Charges Against Martha Stewart and Peter Bacanovic

5. Based on my conversations with representatives of the United States Attorney's Office for the Southern District of New York and my review of various court records, I am aware of the following:

a. On June 4, 2003, a Grand Jury in the Southern District of New York filed Indictment 03 Cr. 717 (MGC), which charged Martha Stewart and Peter Bacanovic with various offenses arising from their participation in a scheme to obstruct

regulatory and criminal investigations into trading by Martha Stewart and others in ImClone Systems, Inc. ("ImClone") common stock, in advance of an adverse news announcement by ImClone;

b. The Indictment alleged that, as part of the criminal scheme, Peter Bacanovic had altered a worksheet (the "Worksheet") that listed various securities positions held by Martha Stewart and contained various handwritten notations. Specifically, the Indictment alleged that, using ink that was scientifically distinguishable from ink used elsewhere on the worksheet, Peter Bacanovic had added the handwritten notation "@60" next to the entry for ImClone, purportedly to corroborate his and Martha Stewart's claim that they had a pre-existing agreement to sell Martha Stewart's ImClone stock if the market price of ImClone fell to \$60 per share. The Indictment alleged Peter Bacanovic's alteration of the worksheet (i) as an overt act in the conspiracy charged against both Martha Stewart and Peter Bacanovic, (ii) as the basis for a false documents charge against Peter Bacanovic, and (iii) in connection with one perjury specification against Peter Bacanovic;

c. Superseding Indictment, S1 03 Cr. 717 (MGC), which contained allegations almost identical to those in the original Indictment, was filed on January 4, 2004.

The Martha Stewart/Peter Bacanovic Trial

6. Based on my review of relevant portions of the transcript of the trial of Martha Stewart and Peter Bacanovic, my conversations with representatives of the United States Attorney's Office for the Southern District of New York, and my conversations with other Secret Service agents who have interviewed LARRY F. STEWART, I am aware of the following:

a. Trial of Martha Stewart and Peter Bacanovic began on January 20, 2004;

b. On February 19, 2004, the Government called LARRY F. STEWART, an employee of the Secret Service's Forensic Services Division ("FSD") and the Secret Service Laboratory Director, to testify about various analyses of ink on the Worksheet that had been conducted by the Secret Service. In the course of his testimony, STEWART offered his expert opinion that the ink used to make the "@60" notation on the Worksheet was different from the ink used to make other handwritten markings on the Worksheet.

c. Among other things, LARRY F. STEWART testified about the nature and extent of his personal participation in the ink analyses at issue, including the testimony excerpted in paragraph 1, above.

d. On February 25, 2004, following testimony by a defense expert witness, LARRY F. STEWART was recalled by the Government in its rebuttal case. Among other things, LARRY F. STEWART testified about the efficacy of a scientific technique known as "densitometry," including the testimony excerpted in paragraph 2, above.

e. On March 5, 2004, the jury returned verdicts convicting both Martha Stewart and Peter Bacanovic of various charges. Peter Bacanovic was acquitted of the false documents charge relating to the "@60" notation on the Worksheet, and the jury found not proven all of the false statements and perjury specifications relating to the purported \$60 agreement -- including the perjury specification relating specifically to the "@60" notation.

The Falsity Of Larry F. Stewart's Trial Testimony

7. For the reasons set forth below, I believe there is probable cause to find that LARRY F. STEWART's testimony concerning his participation in the ink analyses of the Worksheet was perjurious.

8. In or about mid-May 2004, the Inspection Division of the Secret Service was notified by other Secret Service employees of allegations that LARRY F. STEWART may have testified falsely at the trial of United States v. Martha Stewart and Peter Bacanovic. The Inspection Division immediately commenced an investigation into this matter.

9. I, along with other Secret Service Agents, interviewed an employee ("Employee-1") of the Secret Service's FSD. Employee-1 stated, in substance and in part, the following:

a. Employee-1 is assigned to FSD's Questioned Document Branch and is responsible for conducting scientific analyses of documents, including ink analyses;

b. On or about July 25, 2002, Employee-1 received a request from the FBI Laboratory Division to conduct analyses of ink contained on the Worksheet. Employee-1 conducted the analysis of the Worksheet on or about August 1, 2002 and August 2, 2002. Employee-1 prepared a report of the analysis dated August 5, 2002. Employee-1 submitted the report to another FSD employee ("Employee-2") for review. Employee-2 reviewed and signed the report on or about August 5, 2002;

c. Employee-1's analysis concluded that the ink used to make the "@60" notation on the Worksheet was different from the ink used to make other handwritten markings on the Worksheet;

d. LARRY F. STEWART did not participate at all in the August 2002 analysis of the Worksheet. Indeed, Employee-1 did not alert LARRY F. STEWART to the fact that the FBI had requested the Secret Service to analyze the Worksheet until after Employee-1 completed the August 5, 2002 report and after Employee-2 had reviewed and approved it;

e. Employee-1 did not test ink from a particular handwritten dash on the Worksheet because Employee-1 viewed it as an extraneous mark and because there was an insufficient amount of ink to leave ink for the defense to test. Employee-1 did not discuss the decision whether to test the dash with LARRY F. STEWART at any time in 2002; and

f. In January 2004, FSD was requested to undertake additional analysis of the Worksheet, including (i) to analyze ink used to make a handwritten dash that had not been analyzed in 2002, and (ii) to attempt to identify the source of inks contained on the Worksheet. During the multi-day period in which Employee-1 conducted the laboratory work, Employee-1 consulted with LARRY F. STEWART two or three times. Employee-1 did not work side-by-side with LARRY F. STEWART on this laboratory work.

10. I, along with other Secret Service agents, interviewed Employee-2. Employee-2 stated, in substance and in part, the following:

a. Employee-2 is assigned to FSD's Questioned Document Branch and is responsible for conducting scientific analyses of documents, including ink analyses;

b. In August 2002, Employee-1 gave a report of Employee-1's analysis of the Worksheet to Employee-2 for review. Employee-2 believed that the analysis of the Worksheet had been conducted by Employee-1 alone. The report and related notes submitted by Employee-1 contained no reference to any participation by LARRY F. STEWART in the analysis;

c. In or about January 2004, LARRY F. STEWART spoke to Employee-2 concerning the analysis of the Worksheet that had been conducted in 2002, including the fact that a particular handwritten dash on the Worksheet had not been tested. LARRY F. STEWART stated that not only had Employee-1 failed to test ink from the dash, but that Employee-2 had failed to spot the issue in reviewing Employee-1's work; and

d. Employee-2 and another FSD employee ("Employee-3") together prepared a proposal for a forensic science textbook that was to include a proposed chapter on densitometry. Employee-2 did not discuss that book proposal with LARRY F. STEWART prior to the completion of STEWART's testimony

at the trial of United States v. Martha Stewart and Peter Bacanovic.

11. I, along with other Secret Service agents, interviewed Employee-3. Employee-3 stated, in substance and in part, the following:

a. In or about August 2002, Employee-3 was working in the Secret Service's laboratory at the same time as Employee-1. Employee-1 told Employee-3 that Employee-1 was working on an ink analysis relating to the Martha Stewart matter, showed Employee-3 the Worksheet, and the two discussed various issues relating to the analysis. Employee-3 did not see LARRY F. STEWART in the laboratory while Employee-1 was working on the analysis of the Worksheet;

b. In or about January 2004, LARRY F. STEWART called a meeting of approximately eight FSD employees, not including Employee-1. During the meeting, LARRY F. STEWART stated that he had been requested to testify concerning the ink analysis of the Worksheet. LARRY F. STEWART stated that he disagreed with some of the phrasing contained in Employee-1's report; and

c. Employee-3 and Employee-2 together prepared a proposal for a forensic science textbook that was to include a proposed chapter on densitometry. Employee-3 did not discuss that book proposal with LARRY F. STEWART prior to the completion of STEWART's testimony in United States v. Martha Stewart and Peter Bacanovic.

12. I, along with other Secret Service agents, interviewed an employee of Secret Service's FSD ("Employee-4"). Employee-4 stated, in substance and in part, the following:

a. Employee-4 attended the January 2004 meeting at which LARRY F. STEWART discussed his expected trial testimony. During the meeting, LARRY F. STEWART discussed Employee-1's failure to analyze ink used to make a particular handwritten dash on the Worksheet; and

b. Employee-4 observed the trial testimony given by LARRY F. STEWART on February 25, 2004. Following the completion of the testimony, LARRY F. STEWART stated that he had been unaware that Employee-2 and Employee-3 had proposed to write a textbook that included a chapter on densitometry.

13. I have spoken to other Secret Service agents who interviewed an employee of Secret Service's FSD ("Employee-5"). According to those other agents, Employee-5 stated, in substance and in part, that in or about mid-January 2004, LARRY F. STEWART stated to Employee-5 that Employee-1 had "fucked up" the analysis of the Worksheet.

14. I have spoken to another Secret Service agent who has reviewed the FSD laboratory file relating to the analysis of the Worksheet. That agent informs me that the file includes copies of the reports, laboratory notes, and various photographs made concerning the Worksheet, and that the file reflects that analysis of the Worksheet was conducted on August 1, 2002 and August 2, 2002. No records in the file reflect LARRY F. STEWART's participation in FSD's analysis of the Worksheet during August 2002.

15. I have also reviewed usage logs relating to a piece of laboratory equipment routinely used in conducting ink analyses. The logs reflect that on August 1, 2002, Employee-1 used the equipment in connection with the analysis of the Worksheet, and that Employee-3 used the equipment in connection with another matter.

16. I have reviewed a report by an agent of the Federal Bureau of Investigation, who was a member of the trial team in United States v. Martha Stewart and Peter Bacanovic, regarding a conversation that that agent had with LARRY F. STEWART on or about May 15, 2004. In the report, that agent stated, in substance and in part, the following:

a. The agent met LARRY F. STEWART by chance in an airport in California on or about May 15, 2004;

b. STEWART stated that he had been informed by his supervisor of an allegation that he committed perjury in the trial of United States v. Martha Stewart and Peter Bacanovic, and ordered to return to Washington;

c. STEWART stated that he had been trying to think of the basis for the perjury allegation, and then commented, in substance, that if this is related to that dash, I was covering for Employee-1.

17. I have spoken to other Secret Service agents who interviewed LARRY F. STEWART on May 19 and 20, 2004. According to those other agents, LARRY F. STEWART stated, in substance and in part, the following:

a. With respect to the tests conducted in 2002 in connection with the investigation of Peter Bacanovic and Martha Stewart (the "2002 Tests"):

i. The 2002 Tests were conducted by Employee-1. STEWART estimated that the work performed by Employee-1 on the 2002 Tests would have taken approximately 20 hours.

ii. STEWART did not conduct any actual tests.

iii. STEWART did not get involved in the making of plates.

iv. STEWART's only involvement was looking at final test results.

v. STEWART was present in the laboratory to review Employee-1's work only three times for durations of approximately five minutes each time. STEWART later stated that he went to the laboratory seven or eight times for very short durations in order to check on Employee-1's progress.

b. STEWART was not aware of the book proposal submitted by Employee-2 and Employee-3 before it was shown to him on the witness stand on February 25, 2004.

WHEREFORE, deponent prays that a warrant issue for the arrest of LARRY F. STEWART, and that, upon arrest, he be imprisoned or bailed as the case may be.

JOHN JORDAN
Special Agent
United States Secret Service

Sworn to before me this
____ day of May, 2004

UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF NEW YORK

Due to the ongoing nature of this investigation, we request that this Complaint and any arrest warrant issued thereon be filed under seal.

Assistant United States Attorney