

Liar, Liar, Pants on Fire

IT'S ALL FUN AND GAMES UNTIL YOU LIE UNDER OATH

by David Lefkowitz

Jeffrey Archer is a famous novelist. Martha Stewart publishes a magazine and sells a certain lifestyle. Barry Bonds has hit more home runs in the major leagues than any other baseball player in history. Mark Furman is the cop that testified against O.J. Simpson. Lil' Kim is a rapper. What do all of these people have in common? They have been prosecuted for perjury.

People lie all the time. When they do it, they are usually convinced that no one will catch them, that the lie is so small that no one will care, or that even if caught, there will be no consequences. Some lies are harmless. "Honey, does this dress make me look fat?" does not always demand an honest answer. The Santa who entertained my kids a few weeks ago claimed he was the "real Santa," when asked, point blank, by my five-year-old son. These little white lies hurt no one, and you aren't going to jail if you tell your child that the tooth fairy really did take his tooth.

There are lies in court proceedings which are serious and lead to prosecutions for perjury. There are prosecutions of famous people and prosecutions of people we have never heard of. Regrettably, people frequently lie in court. It's a problem

for the justice system, because the search for truth shouldn't be a competition between parties who are hiding the truth. But, that problem is a topic for another column. For this column, the hubris of the courthouse liar is the topic.

I can't recall when I read *Kane and Abel*, but I enjoyed it, and I had no idea that the critics hated it. It turns out that the critics dislike most of Jeffrey Archer's books. But, luckily for him, the most important critics, the readers (and purchasers) of his books, absolutely love them. He has written more than 150 novels and has sold more than 250 million books. With that success has come vast wealth, several homes,

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a few terms serving in the British Parliament, and alas, a 4-year prison term (of which he served two) for perjury.

In 1986, Jeffrey Archer was a candidate for political office, when the British publication, *News of the World*, published a story alleging that Archer had paid a prostitute 2,000 British pounds to go abroad. A rival newspaper, the *Daily Star*, claimed, in an article, that the payment stemmed from Archer's previous relationship with the prostitute in question.

No politician wants to be accused of paying a prostitute for sex,

and certainly no politician wants to be accused of paying the prostitute to leave the country. But only the foolish politician sues a newspaper for publishing a true story, no matter how damaging the allegations. However, Jeffrey Archer not only sued the *Daily Star* for libel, but he won. In the 1987 trial, he testified that he was simply being philanthropic by assisting a down-on-her-luck prostitute with some travel expenses. The story seemed odd but nonetheless, Archer won the case and won an award of 500,000 British pounds. The methods he used to win the case ultimately came back to haunt him.

Not only did Jeffrey Archer win the libel trial, but he emerged relatively unscathed

politically. However, when he received the nod to be the Conservative candidate in the 2000 London mayoral election, *News of the World* published a story saying that Archer had perjured himself in the 1987 trial. Former friends who had supported Archer's version of events at the earlier trial changed their stories.

At the trial of the perjury prosecution, the court heard titillating testimony from past secretaries about Jeffrey Archer's many affairs. Particularly damning, was testimony which proved that he had asked employees to make false

entries in substitute diaries that he subsequently submitted to the trial court in 1987. These diary entries had given him alibis for the night he was accused of having slept with the prostitute. He swore in court that the fake diaries were the originals.

At the libel trial, Jeffrey Archer's wife, Mary, had presented strong testimony that her relationship with her husband was strong and true. However, in the subsequent perjury trial, the secretaries also revealed that a young assistant named Andrina Colquhoun was actually Jeffrey Archer's live-in mistress at the same time that Mary Archer was giving critical testimony in the trial that she and her husband had a full and faithful marriage. At the end of the perjury trial, Archer was found guilty and spent two full years in an English jail.

The issue isn't regarding why people lie under oath. The issue is about why some liars virtually dare prosecutors to bring charges. Had Archer not sued for libel, and had he not presented false testimony in that trial, he never would have gone to jail. Roger Clemens is another example of virtually inviting prosecutors to bring perjury charges. Clemens was a pitcher in the major leagues for 23 years. His career had a normal trajectory, at first. He pitched for the Boston Red Sox from 1984-1996, at which point the Red Sox decided not to resign him. His results were not as good as they once were, and the experts felt that his skills were declining. Miraculously (to the extent that steroids are a miracle), Clem-

ens underwent a renaissance and had some of his very best seasons while he was over 40-years-old.

Jose Canseco wrote a book in which he claimed that Roger Clemens had expert knowledge about steroids and suggested that Clemens probably used steroids, based on his performance after leaving the Red Sox. Later, in December 2007, the "Mitchell Report" was released. Formally named *Report to the Commissioner of Baseball of an Independent Investigation into the Illegal Use of Steroids and Other Performance Enhancing Substances by Players in Major League Baseball*, the Mitchell Report mentioned Roger Clemens 82 times. Of course, Clemens then filed a libel suit against the primary witness against him. (Hello!! Have you never heard of Jeffrey Archer? Don't you know that suing your accuser for libel is foolish when the allegations are true?)

On February 13, 2008, Clemens appeared before a Congressional committee, along with Brian McNamee (his primary accuser), and swore under oath that he did not take steroids and that he had not discussed steroids with McNamee. It was not the testimony that was so striking, rather, it was the fact that Clemens had not been subpoenaed to testify before Congress, and it was widely understood that it was Clemens himself who had insisted on testifying at the hearing because he thought it would help him protect his legacy.

The bipartisan House committee in front of which Clemens appeared, citing seven apparent inconsistencies in Clemens' tes-

timony, recommended that the United States Justice Department investigate whether he lied under oath about using performance-enhancing drugs. The FBI investigated, and Clemens was indicted. His trial for perjury began last July, but a mistrial was declared. The next trial is scheduled to begin in April, 2012. No matter the result, Roger Clemens now knows that lying under oath, particularly when you volunteer to testify, is an invitation for prosecution.



David Lefkowitz is the founder of the Lefkowitz Firm, LLC, which has offices in Atlanta and Athens. The Lefkowitz Firm, LLC, represents individuals and corporations in their claims for legal malpractice (legal negligence) and similar claims such as breach of fiduciary duty, trustee misconduct and executor misconduct. The firm also represents attorneys with regard to law firm management issues, including conflicts and bar discipline matters. Mr. Lefkowitz frequently is an invited speaker at continuing legal education seminars on the topics of legal malpractice, ethics and professionalism. For more information, visit the firm's website at: www.LefkowitzFirm.com.