

Truth as a Two-Way Street...

By Gordon D. Henderson

Much of the public discussion during the Watergate period (or, perhaps I should say, the earlier phase of the Watergate period) seemed to reflect an assumption by most Americans that the telling of a deliberate falsehood by a Government official would not be a crime unless the lie had been told under oath, or it were part of a cover-up of another crime. In short, the telling of a deliberate lie in a press release or a news conference, while reprehensible, would not be actionable.

The American public probably also assumes that the telling of a lie by a private citizen to the Government is similarly not grounds for criminal action unless it is told under oath or on a tax return or the like.

On this point, however, the public would be mistaken. Title 18, Section 1001 of the United States Code makes it a serious offense for anyone to lie to the Government.

If it is a serious crime for a private citizen to lie to a Government official, why shouldn't it be equally criminal for a Government official to lie to the people?

Indeed, it can be argued that the latter is a more serious offense than the former, since a Government official owes a special duty to the people whom he is supposed to serve, and since a democracy cannot function very well when the people are misled by their officials.

Deliberate lying by Government officials is of no small practical concern. For a decade now, the American people have not been able to believe much that they are told by the Federal Government.

Now, alas, only a few weeks after the Nixon resignation, the issue of Government misrepresentation has reappeared.

For we are told that one of the reasons President Ford's first press secretary, Jerald terHorst, resigned was that he had been misled by one or more other high Administration officials; the other reason was his disagreement with the pardoning of Richard Nixon.

He had been told a cover story rather than the truth about the impending pardon. Mr. terHorst, who had hoped to give the White House press office a new reputation for integrity, resigned, but those who apparently misled him are still in office.

It is a pattern that should concern us all, and the more sensational issues

raised by President Ford's pardoning of Mr. Nixon should not cause us to lose sight of it.

The Government has legions of employees ready to pounce on private citizens who lie to the Government, or who lie in connection with various commercial transactions, such as the sale of stock. Is there any reason why it shouldn't apply the same standards to Federal officials who lie to the public?

Section 1001 of Title 18 has, interestingly enough, been used in a few instances against Government officials rather than private citizens. There is, for example, the case of *United States v. Myers* decided by a California District Court in 1955.

The language used by the court seems almost poignant in the light of recent events. Here the wife of a deputy property disposal officer at a United States arsenal had purchased an automobile from the United States Government. Many years later, when she wanted to sell it, she could not find her evidence of title.

To accommodate her, her husband completed a United States Government form that falsely represented that the automobile was then owned by the Government and was being sold by the Government, not by his wife, to the purchaser. The form was used by the purchaser to register the car in California. It was not submitted to the Federal Government for any purpose.

The husband was prosecuted and convicted under Section 1001. The husband had argued in his defense that this section applied only to false statements made to the Federal Government and that he had not misled the Government.

To this argument the court replied that the section "goes beyond the deceiving of the Government, its officers, or its agents, and applies to reports and documents issued under governmental authority."

"It is in effect designed to insure to the whole world, governmental employees and the general public alike, that any record, document, instrument or statement made by a governmental employee, great or small, in his official capacity in the course of his official duties can be relied upon by all."

The section has not, unfortunately, lived up to the promise the court found in it, and has not very often been used to prosecute Government officials "great or small," perhaps because its applicability to Government

officials who mislead the public is not as clear as this court believed, or because the Government has lacked the will to apply to itself the standards it demands from the people.

In any event, what is needed now is a public review of the standards of integrity that should apply in the Government, and in this connection consideration should be given to applying to all Government officials the same standards of law that they apply to the public.

Washington's long-term love affair with cover stories suggests that there will be some who will argue that the Government must be free to lie.

Perhaps valid arguments exist. But I am skeptical. It seems likely that most if not all cover stories have as their primary purpose management of the news for the selfish advantage of the Government officials involved, or preventing the public from knowing about an activity the officials fear the public might condemn.

Public debate on this point should be most instructive for us all.

Gordon D. Henderson is a New York lawyer.