
A National Lawyers Guild Publication

THE CASE OF LYNNE STEWART

A Justice Department Attack
on the Bill of Rights



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Introduction

Attorney Lynne Stewart, age 65, faces 30 years in prison as the result of the Bush Administration's use of the war on terrorism to curtail rights and criminalize advocacy, actions that threaten the very basis of our legal system. Her case is alarming, not just because of what it means for her future and her family, or even the criminal defense bar, but because it is part of a profoundly dangerous attempt to circumvent the Bill of Rights and rewrite the Constitution by practice and administrative fiat. Other pieces of this effort include the scandalous practices of Abu Ghraib and Guantanamo, establishing precedent for holding people (including juveniles) in custody indefinitely without lawyers, charges or trials; declaring the ban against torture, and treatment of prisoners of war, as defined in international law since 1949 obsolete and affirmatively embracing methods it condemns; rendering people to "friendly" governments condemned for practicing torture in order to use its fruits in US courts; creating administrative shortcuts to avoid the privacy protections provided by judicial warrants or subpoenas; obtaining library and internet records through the Patriot Act; jailing and deporting immigrants by the thousands; and reshaping the federal judiciary in an attempt to make permanent these and other features of the administration's agenda.

The authors of these policies, using the pretext of the war on terrorism, are determined to permanently alter the nature of legal defense in our criminal justice system. Central to this effort is invading the confidentiality between attorney and client as well as the right of the attorney to act for and speak for his/her client. This is why the case of Lynne Stewart cries out for our urgent attention and support.

On the same day that President Bush signed the Patriot Act into law, Attorney General John Ashcroft announced an amendment to the Bureau of Prisons regulations, to take effect five days later without public comment, which authorized the government to conduct electronic surveillance on attorney-client conversations of persons in custody. Two years earlier, using a special warrant from a secret "Foreign Intelligence" (FISA) court located within the Department of Justice in

Washington, Lynne Stewart, an attorney appointed by a federal court to represent Egyptian Sheik Omar Abdel Rahman, became the first attorney subjected to surveillance of privileged prison interviews. Her case is not an aberration. This rule now applies to all counsel in all so-called national security cases.

This new power was super-imposed on regulations which already gave the Bureau of Prisons authority to impose Special Administrative Measures (SAMs) that require attorneys in such cases to limit their advocacy, and their own First Amendment rights, to those actions approved by the Justice Department, or risk prosecution.

When Lynne released for public dissemination to the media a statement from her client — an act that the Justice Department was fully aware of and about which it took no action for years — it was assumed her actions fell within current norms of protected legal advocacy. Following a change in administrations as well as the stigma of 9/11, Attorney General John Ashcroft convened an unseemly press conference and appeared later that day on the David Letterman Show to announce the bootstrapping of that minor violation of regulations into a full blown terrorism charge against her.

Lynne Stewart, known in New York for defending poor and politically controversial clients for decades, was made part of a seven-count indictment, accusing her of conspiracy with two others, her translator and a legal assistant. The evidence presented at trial included the secret recordings of her meetings with her client. One of the most serious charges resulted from conversations carried out in Arabic — a language she does not understand — between her client and a translator. The evidence showed, at most, that in her effort to counterbalance the devastating efforts of her client's lengthy isolation, she had released the press statement years earlier as part of the defense campaign to keep him in the public eye. This effort, joined in by co-counsel Ramsey Clark and Abdeen Jabara was to set the stage for the ultimate return of her blind and sickly client to Egypt. For that, she faces 30 years in jail.

Her trial and conviction were a travesty. Her appeal is just under way and may not be decided for another year. She will, in the meantime, be sentenced on September 23, 2005.

She needs your help now.

This case brings us all to a cross-roads. Either we protest her conviction

and demand respect for the Sixth Amendment and the rights of clients and attorneys to execute defense strategy without governmental interference and the constant threat of prosecution, or we consent to a radical rewriting of the right to counsel, thereby endorsing the administration's view of a new America ruled by administrative fiat, unhindered by Constitutional restraint.

Her conviction is not just the personal tragedy of one woman and her family. It is part of a concerted attack on the principle of the rule of law, and presents a very real threat to the rights of not just lawyers and clients, but every citizen. Let the Department of Justice, the judiciary, the media and the people know that we cannot tolerate these and other kindred losses of rights and yet remain free.

Case Summary

Lynne Stewart was convicted of three counts specifically related to her violations of a promise to abide by the SAMs imposed on her client, Sheikh Omar Abdel Rahman. She was also found guilty of one count of a conspiracy to provide or to conceal material support to a terrorist conspiracy – that is, the conspiracy of her codefendant Ahmed Sattar and others to kill persons in a foreign country – and of one count of actually providing or concealing that material support. Mohammad Yousry, the interpreter, and Ahmed Sattar, were also convicted of all counts brought against each of them.

The focus of the government case against Stewart was a June 2000 press statement in which she publicly announced to Reuters News Service that her client Sheikh Rahman withdrew his personal support for the ceasefire in Egypt.

At least 75% of the evidence at trial was not offered against Stewart or Yousry, but against Sattar. The government had wiretapped Sattar's telephone and fax machine and obtained more than 85,000 conversations over a seven-year period. Unbeknownst to Stewart or Yousry, Sattar was in contact with militant members of the Islamic Group in Afghanistan, London, Iran and around the world and had issued a false fatwa in the name of Sheikh Rahman to kill all Jews. The Court denied repeated severance motions both before and during the trial.

Among others, one of Stewart's defenses was that she had a good faith belief that notwithstanding the language of the SAMs she was permitted by ethical rules to release a press statement on behalf of her client. That statement was not a direct call to resume armed violence but rather to criticize the lack of progress of a peace initiative. As to the terrorism charges (Count 2), Stewart had no knowledge of her codefendant Sattar's communications with anyone other than the Sheikh's family and his Egyptian lawyers and supporters there. Moreover, there was no proof that she had such knowledge.

Critical to the case was the knowledge and intent of all three defendants. Consequently, the court allowed the government to present to the jury

inflammatory evidence such as a two videotapes of Osama Bin Laden, not "offered for the truth," but for Sattar's "knowledge, intent and state of mind." Repeatedly, the government gave the jury vitriolic statements by her client, Sheikh Rahman, regarding the burning and destruction of American buildings, planes and corporations. This, and newspaper articles found in her files, was offered against Stewart solely for "her knowledge, intent and state of mind."

Lynne Stewart's politics as a "revolutionary" who personally and publicly believed in directed violence as a final political resort was core to the government's cross examination and its theory of the case.

Despite the media hype, Lynne Stewart was convicted based upon that public release of one statement in June 2000 that her client, Sheikh Omar Abdel Rahman, withdrew his personal support for the ceasefire (the peace initiative) in Egypt. She did not "smuggle messages." Rather, she openly made a statement to the media. She did not believe that this statement would lead to violence. It did not. Nothing happened. Lynne Stewart never believed that she was committing any crime. The worst that she thought might happen was, as recited in the SAMs, that the Southern District of New York terrorism prosecutors would bar her from visiting with her client. If not for the events of September 11, 2001 and John Ashcroft, Lynne Stewart would never have been made a target.

This case is centered squarely on a questionable (even to the government) violation of a prison rule bootstrapped into terrorism felonies. If the government believed that Lynne Stewart "crossed the line" between zealous advocacy and criminal behavior, it could have:

- suspended her from visiting her client
- brought disciplinary charges against her

Instead, she became a convenient target of the administration's so-called war on terror.

Background Facts

Lynne Stewart, asked by former Attorney General Ramsey Clark to be Sheikh Omar Abdel Rahman's lead trial lawyer, represented the Sheikh in court for 10 months in his 1995 trial where he was convicted of seditious conspiracy to wage a war of urban terror against the US including the bombing of various New York City landmarks and bridges.

Lynne Stewart, along with Ramsey Clark and Abdeen Jabara, continued to represent Sheikh Rahman on direct appeal through the 2nd Circuit and the Supreme Court's ultimate denial of certiorari. Their representation also encompassed litigating his isolated prison conditions, the denial of adequate medical care and the right to practice his religion including the repressive SAMs imposed upon him.

By 2000 the team was committed to securing the Sheikh's transfer to a prison in Egypt where they believed he would be held in more familiar surroundings. Sheikh Rahman, blind and diabetic, was (and remains) held in total isolation without anyone to speak to him in his language or who observe or understand his religion. The lawyers considered these conditions of confinement abominable. Ramsey Clark traveled back and forth to Egypt with the view that it might be possible to arrange the Sheikh's transfer to Egypt, much like repatriations that had been arranged for Cold War and IRA prisoners in the past. To accomplish such a long-term goal, it was important to keep the Sheikh in the public eye.

In 1997 SAMs had been imposed on Sheikh Omar Abdel Rahman. The specific provisions of the SAMs changed over the course of the years, but the government's announced goal was to prohibit him from communicating with parties other than his lawyers and specific family members for the purpose of preventing future acts of terrorism. The lawyers had to sign affirmations that they would abide by the SAMs in order to continue to visit and communicate with their client. They did so.

The lawyers had limited access to Sheikh Omar Abdel Rahman. The visits to the prison were infrequent. They took turns communicating with him in weekly telephone calls. They kept him abreast of events in Egypt and around the world, reading him newspaper articles (from the English-and-Arabic-language papers), and communicating information to and from third parties in the U.S. and Egypt. Many religious followers sought his advice on a wide range of matters from the personal to the treatment of prisoners to the political situation in Egypt.

The lawyers believed that they were permitted to have such third party communications because the SAMs permitted lawyers to engage in "legal matters." Ramsey Clark, called as a witness by Mohammed Yousry, testified that it was important to read him these letters to help him keep his sanity and that this is the way the lawyers operated since the imposition of the SAMs.

In 1997, Clark made a press statement announcing Sheikh Omar Abdel Rahman's support for a ceasefire between the Islamic Group and the Egyptian government. (Former Assistant United States Attorney Pat Fitzgerald, the first witness in this prosecution, testified this was a violation of the SAMs. In an attempt to distinguish Lynne Stewart's actions from Clark's, the government, in summation, said Pat Fitzgerald was "mistaken" that Clark had violated the SAMs). Michael Tigar commented in rejoinder that if the government was confused about the interpretation of the SAMs, how about the lawyer?

The Prison Visit in May 2000 and July 2001

Lynne Stewart and Mohammed Yousry made five prison visits to Sheikh Omar Abdel Rahman after he was transferred out of the Metropolitan Correction Center (MCC) in New York City. Two visits formed the basis for charges in the indictment; the May 2000 visit was the crux of the government's case.

The Lynne Stewart/Mohammed Yousry protocol was the same for each visit. Because there was little time to meet with him, Stewart and Yousry discussed, in advance, matters that would be raised so that they would not have to waste time with word-for-word repeat interpreting. Stewart spoke no Arabic and her client did not speak English.

A day or so before each visit, Stewart approved or disapproved items

that Yousry would read to the Sheikh. Yousry kept a careful notebook documenting his work. Both the May 2000 and the July 2001 prison visits were videotaped pursuant to a Foreign Intelligence Security Act (FISA) warrant and shown to the jury. During each visit, Yousry did most of the talking while Stewart worked on other things. Occasionally she pretended to be involved in the discussions (while once stating that she could win an "Academy Award") to re-assure the guards, and clanked the water pitcher while stating that she was just making "covering noises." The rationale was first, that if the guards watched and thought Yousry was separately communicating, Stewart and Yousry could be asked to leave the prison and second, that if listening, they were intruding on protected privileged conversation.

During the May visit, Yousry read a letter asking Sheikh Rahman for his views on the three-year old ceasefire in Egypt. (The government called it a "ceasefire;" the defendants and Islamic Group literature refer to it as a "peace initiative"). The Sheikh dictated a letter to Yousry. In the letter, he said that he withdrew his personal support for the ceasefire, that there should be group (Islamic Group) discussion and that they should resume media criticism of the Mubarak regime. After several weeks of considering whether to issue to the press Sheikh Rahman's statement, Lynne Stewart decided to do so. She believed it was part of her role as a zealous advocate and did not believe it was a call for violence. She knew it was important to keep her client in the public eye to accomplish the ultimate goal of his transfer to Egypt. She knew that Ramsey Clark and Abdeen Jabara had made prior statements to the press about the Sheikh's conditions and his political beliefs. Stewart said that she believed that there was a bubble within the SAMs in which she could operate as a lawyer to represent her client.

In June 2000, Stewart called a Reuters reporter in Cairo and read a statement that said Sheikh Rahman was withdrawing his support for the ceasefire. Ahmed Sattar knew the reporter, set up the call, and gave Lynne Stewart an English translation of the Sheikh's statement for her to read to the reporter. In Egypt, the news traveled rapidly and was prominent in the Arab press. Several days later, after a call in which Sheikh Rahman said clarification was necessary, Stewart issued a clarification that stated that the Sheikh withdrew his *personal* support for the peace initiative but that the matter was up to the Islamic Group in Egypt. Further discussion occurred. No violence ensued.

In early August 2000, Pat Fitzgerald called Stewart and told her that she would be cut off from her client and would have to renegotiate the

conditions under which her visits could resume. He followed three weeks later with a letter to her. She told him her lawyer, Stanley Cohen, would call. Cohen spent the next nine months renegotiating the terms of the new SAMs. Lynne Stewart had no communication with Sheikh Omar Abdel Rahman from June 2000 until July 2001.

This 2000 press release was the focus of the government's case against Lynne Stewart. The rest of the evidence was a few of her comments and statements to Ahmed Abdel Sattar, Mohammed Yousry or her client that the government claimed demonstrated her intent. She offered contrary evidence. The charges based on the July 2001 prison visit were all predicated on innocuous third party letters to the Sheikh and his dictated responses.

In October 2000, while Stewart was barred from communicating with the Sheikh, Sattar and Rafa'i Taha drafted and issued a fatwa in the Sheikh's name to "fight the Jews and kill them wherever they are." Stewart learned about this when it was reported in the media. Subsequently her client told the lawyers not to deny it, even though he had not issued it. Sattar's involvement in the issuance of the fatwa and subsequent conversations that he had with Rafa'i Taha regarding a fugitive Islamic Group member in Egypt were unknown to Lynne Stewart until the evidence was produced in this prosecution. There was no evidence that Lynne Stewart or Mohammed Yousry knew about Ahmed Abdel Sattar's activities. All defendants testified. Stewart and Yousry said they did not know about Rafa'i Taha or others with whom Sattar communicated. Sattar confirmed this.

The jury deliberated for three weeks before returning the verdict. Three of them were openly weeping as it was read.

Glossary

Lynne Stewart *Radical human rights attorney Lynne Stewart has been falsely accused of helping terrorists. Now convicted, she faces 30 years in prison.*

Mohammed Yousry *Interpreter, York College Professor at York College and candidate for PhD at New York University, doctoral dissertation subject Sheikh Omar Abdel Rahman. Not a follower of Islam.*

Ahmed Abdel Sattar *Postal worker, former paralegal and communicator between Sheikh's family and political supporters and the legal team in the US.*

Sheikh Omar Abdel Rahman *Unindicted coconspirator in this case and Lynne Stewart's client.*

Ramsey Clark *Unindicted coconspirator in this case and Lynne Stewart's cocounsel representing Sheikh Omar Abdel Rahman.*

Abdeen Jabara *Unindicted coconspirator in this case and Lynne Stewart's cocounsel representing Sheikh Omar Abdel Rahman.*

Islamic Group (Gamma Islamiya) *Egyptian Islamic fundamentalist group. Responsible for numerous armed actions directed against Mubarak government including attacks on tourists. Announced a peace initiative, 1997. No subsequent violence.*

Rafa'i Rafa'i Taha *A leader of a militant wing of Islamic Group (Islamic Group), in Afghanistan (recently reported to be rendered to Egyptian custody); telephone link with Ahmed Abdel Sattar, unindicted coconspirator in this case.*

Osama Bin Laden *Had nothing to do with this case but tenuously linked by the government through appearances with Rafa'i Taha. Government used image repeatedly to jury.*

Pat Fitzgerald *Former Assistant United States Attorney who tried the 1993 case and obtained a conviction against Sheikh Omar Abdel Rahman. He instituted the Special Administrative Measures (SAMs) and enforced them; now US Attorney in Chicago appointed by Bush.*

SAMS – (Special Administrative Measures) *Restrictive rules governing selected prisoners in federal jails. They are promulgated in each case by the US Justice Department and the Bureau of Prisons.*

Charges and Maximum Sentences

Lynne Stewart's conviction arose out of a seven-count superseding indictment returned on November 19, 2003. (Initial terrorism counts were dismissed because the judge found them unconstitutionally vague and overbroad).

The superseding indictment read like a government tract detailing worldwide Islamic terrorism from the early 1990s until the present. It included Sheikh Omar Abdel Rahman as an unindicted coconspirator, and contained unique and convoluted terrorism charges. (See below for Count 4).

Count 1 Conspiring to Defraud the US (all defendants) (5 years) by violating an oath to abide by the SAMs part of the Bureau of Prison regulations.

Count 2 Conspiracy to Kill and Kidnap Persons in a Foreign Country (against Ahmed Abdel Sattar only) (life) for agreeing to provide communications between Sheikh Omar Abdel Rahman and Islamic followers in Egypt and elsewhere plotting attacks outside the United States – presumably in Egypt – although the country was never specified. The government argued it was not necessary to prove the country or the potential victims.

Count 3 Solicitation of Crimes of Violence (against Ahmed Abdel Sattar only) (20 years) for issuing false fatwa with Rafa'i Taha in Sheikh Omar Abdel Rahman's name that called on Muslims to kill Jews everywhere.

Count 4 Conspiracy to Provide Material Support or to Conceal Material Support to Terrorist Activity against Lynne Stewart and Mohammed Yousry) (5 years) for agreeing to use prison meetings to convey messages from Sheikh Omar Abdel Rahman to Islamic Group followers for the purpose of carrying out the Count 2 conspiracy. If this seems confusing, it is. Basically, this novel charge is a conspiracy to provide or conceal the material support to a conspiracy to kill and kidnap.

Count 5 Providing and Concealing Material Support to Terrorist Activity (against Lynne Stewart and Mohammed Yousry) (10 years) the substantive (actual act) part of Count 4.

Count 6 False Statements (against Lynne Stewart only) (5 years) for falsely promising in May 2000 to uphold the prison rules by abiding by the SAMs.

Count 7 False Statements (against Lynne Stewart only) (5 years) for falsely promising in May 2001 to uphold the prison rules by abiding by the SAMs.

Lynne Stewart faces a maximum total prison time of 30 years.

Timeline

1993

Sheikh Omar Abdel Rahman arrested.

1995

Sheikh Omar Abdel Rahman convicted of seditious conspiracy to wage a war of urban terror against the US including the bombing of New York City bridges and tunnels, the United Nations and other landmarks, including the World Trade Center.

1996

Sheikh Omar Abdel Rahman sentenced to life imprisonment.

April 1997

First set of Special Administrative Measures imposed on Sheikh Omar Abdel Rahman.

July 1997

Ramsey Clark announces that Sheikh Omar Abdel Rahman supports a peace initiative between the Islamic Group and the Egyptian government.

May, October and November 1997

Ramsey Clark releases statements to press that Sheik's condition is deteriorating.

November 1997

Luxor, Egypt massacre.

February 1998

Osama Bin Laden holds a press conference and issues a statement – which Rafa'i Taha allegedly supported “to kill Americans and plunder their wealth wherever and whenever they find it.”

1999

Sheikh Omar Abdel Rahman's conviction upheld by Supreme Court.

March 2000

Abu Sayyaf terrorist group kidnaps 29 hostages in the Philippines demanding, among other things, the release of Sheikh Omar Abdel Rahman.

February 2000

Abdeen Jabara and Mohammed Yousry visit to Sheikh Omar Abdel Rahman in Rochester, Minnesota.

May 2000

Lynne Stewart and Mohammed Yousry visit to Sheikh Omar Abdel Rahman in Rochester, Minnesota.

Mohammed Yousry reads a request from Rafa'i Taha conveyed through Sattar for Sheikh Omar Abdel Rahman's comments regarding the current status of the Islamic Group ceasefire.

Sheikh Omar Abdel Rahman dictates statement to Mohammed Yousry.

Sheikh Omar Abdel Rahman's statement is given to Ahmed Abdel Sattar.

June 2000

Lynne Stewart and Ahmed Abdel Sattar call Reuters and dictate Sheikh Omar Abdel Rahman's statement that he withdraws his support for the peace initiative; two days later she clarifies the statement by stating that he withdraws his *personal* support for the peace initiative and asking for resumption of criticism of Mubarak in the media and finally, to discuss these issues among themselves, for decision.

August 2000

Pat Fitzgerald calls Lynne Stewart and says she has violated the SAMs and that she cannot visit her client unless they renegotiate the SAMs. Lynne Stewart tells Fitzgerald her lawyer will call him.

September 2000

Osama Bin Laden tape aired with background of Sheikh's son calling for violence to release Sheikh Omar Abdel Rahman.

After Al Aksa mosque visit by Sharon sparking violence in Middle East, particularly against Palestinians.

October 2000

Ahmed Abdel Sattar and Rafa'i Taha issues fatwa in the name of Sheikh Omar Abdel Rahman to kill Jews.

USS Cole bombed in Yemen.

May 2001

Lynne Stewart signs new affirmations for the SAMs.

July 2001

Lynne Stewart and Mohammed Yousry visit Sheikh Omar Abdel Rahman in prison: Lynne Stewart has not seen her client from May 2000 until July 2001.

September 10, 2001

Legal meeting to strategize an exchange of Sheikh Omar Abdel Rahman for U.S. prisoners in Afghanistan.

September 11, 2001

Attack on World Trade Center.

April 2002

Lynne Stewart arrested.

June 2004

Trial commences.

February 10, 2005

Guilty verdict.

Frequently Asked Questions (FAQs)

WHAT ARE THE “SAMs” ?

Special Administrative Measures are prison regulations first imposed on Sheikh Omar Abdel Rahman by the Department of Justice in the person of Pat Fitzgerald in April 1997. The SAMs were changed to be more specific over the course of the next five years. All the Sheikh's lawyers “violated the SAMs” by allowing him to have communications with others through letters. Both Ramsey Clark and Abdeen Jabara also made press statements. Lawyers cannot violate SAMs because they are imposed on the prisoner. Lawyers sign an affirmation that they will abide by the SAMs.

WHAT WAS THE DEFENSE?

Whether or not she was correct, Lynne Stewart had a good faith belief that her duty as a lawyer required her to keep her client in the public eye and that releasing the statement, believing that no violence would ensue, was within her ethical obligation. One of the lawyer's goals was to secure Sheikh Omar Abdel Rahman's transfer to a prison in Egypt. That would not happen unless he remained a public figure. Lynne Stewart believed that the affirmation she signed to abide by the SAMs gave her and the other lawyers room (a “bubble”) to do their jobs. She was not criminally liable because she operated with the good faith belief that she could do so. Reasonable lawyers may disagree as to whether they would have done what she did. As long as she had her good faith belief in her actions, there is no criminal liability.

As to Ahmed Abdel Sattar's activities, she had no knowledge of any of them. There was no evidence that she did.

WHY DIDN'T LYNNE INITIALLY CHALLENGE THE SAMs IN COURT?

She did not challenge the SAMs in court because there was no money to fund an effort, no reasonably available venue (her client was in Rochester, Minnesota), and she thought she would wait until conditions were more favorable. She planned to challenge the SAMs as part of a lawsuit challenging prison conditions, and she was preparing to file the administrative forms to begin the process, when the events of September 11 occurred.

WHAT FACTORS LED TO THE CONVICTION?

- **No severance.** The overwhelming amount and most damaging evidence was against Ahmed Abdel Sattar. The government had more than 85,000 intercepts on Ahmed Abdel Sattar's telephone over a seven-year period. Months were spent playing tapes of Ahmed Abdel Sattar's conversations with Islamic Group militants. They were highly prejudicial, and unrelated to Lynne Stewart. They espoused violence and anti-semitism.
- **Evidence gathered by invasion of attorney-client privilege through a FISA tap** (two prison visits and several legal prison calls between Sheikh Omar Abdel Rahman and his attorneys).
- **Admission of highly prejudicial evidence** with “limiting instructions” that the evidence was either:
 - Not offered for the truth
 - Not offered against Lynne Stewart
 - Offered as “background”
- **Most prejudicial (and least relevant) evidence:**
 - **September 2000 videotape of Osama Bin Laden**, Zawahiri and Rafa'i Taha (with Sheikh Omar Abdel Rahman's son speaking off camera) under a banner “Convention to Support Honorable Omar Abdel Rahman.” Sheikh Omar Abdel Rahman's son says, “avenge your Shiekh” and “go to the spilling of blood” (limiting instruction that it is not “offered for the truth,” not offered against Lynne Stewart, only offered for “intent, knowledge and state of mind.”)
 - Moving testimony of a German citizen who was present at the **1997 massacre of tourists in Luxor, Egypt** (pre-dated the indictment and was offered only as “background” to the conspiracy and not against any of the defendants). One Islamic Group Faction claimed credit for the attack renounced this massacre in a Ramsey Clark 1997 press release.
 - **Piles of newspaper articles** about politics in Egypt, the Islamic Group, the Sheikh, violence in other countries (all of which were “not offered for the truth” but only as to “knowledge, intent and state of mind.”) Some of these were seized during a search of Lynne Stewart office and files.

- Having a jury try to **judge actions from a May 2000 perspective** rather than the post 9/11 perspective. Who knew much about Bin Laden in 2000?
- **Lynne's radical politics** (belief in directed violence, a people's revolution). Lynne Stewart made many public statements from 1993 onward regarding her personal "revolutionary" beliefs. These were the subject of cross examination designed to demonstrate that she was a supporter of violence with the suggestion, despite her denial, that she supported Islamic fundamentalism
- An **anonymous jury** that was brought to and from the court in two government vans. A provocative incident with one of the van drivers during deliberations may have had an impact on the jury. See article on page 37.

SELECTED NEWS ARTICLES

February 17, 2005

New York Times

OP-ED CONTRIBUTOR

No Defense

By ANDREW P. NAPOLITANO

The conviction of Lynne F. Stewart for providing material aid to terrorism and for lying to the government is another perverse victory in the Justice Department's assault on the Constitution.

Ms. Stewart, the lawyer who was convicted last week of five felonies, will be disbarred and faces up to 30 years in jail. She represented Sheik Omar Abdel Rahman, not exactly a sympathetic character. He is the leader of the Islamic Group, a terrorist organization that plotted the assassination of President Hosni Mubarak of Egypt and masterminded the 1993 bombing of the World Trade Center.

He was sentenced in 1996 to life in prison. When Ms. Stewart sought to visit her client in jail, prison officials required her to sign an affirmation that she would abide by special rules requiring that she communicate with the sheikh only about legal matters. The rules also forbade her from passing messages to third parties, like the news media. Yet the jury found that Ms. Stewart frequently made gibberish comments in English to distract prison officials who were trying to record the conversation between the sheikh and his interpreter, and that she "smuggled" messages from her jailed client to his followers.

But if the federal government had followed the law, Ms. Stewart would never have been required to agree to these rules to begin with. Just after 9/11, Attorney General John Ashcroft gave himself the power to bypass the lawyer-client privilege, which every court in the United States has upheld, and eavesdrop on conversations between prisoners and their lawyers if he had reason to believe they were being used to "further facilitate acts of violence or terrorism." The regulation became effective immediately.

In the good old days, only Congress could write federal criminal laws. After 9/11, however, the attorney general was allowed to do so. Where in the Constitution does it allow that?

Mr. Ashcroft's rules, with their criminal penalties, violate the Sixth

Amendment, which grants all persons the right to consult with a lawyer in confidence. Ms. Stewart can't effectively represent her clients—no lawyer can—if the government listens to and records privileged conversations between lawyers and their clients. The threat of a government prosecution would loom over their meetings.

These rules also violate the First Amendment's right to free speech. Especially in a controversial case, a defense lawyer is right to advocate for her client in the press, just as the government uses the press to put forward its case. Unless there is a court order that bars both sides from speaking to reporters, it should be up to the lawyer to decide whether to help her client through the news media.

Ms. Stewart's constitutional right to speak to the news media about a matter of public interest is absolute and should prevent the government from prosecuting her. And since when does announcing someone else's opinion about a cease-fire—as Ms. Stewart did, saying the sheik no longer supported one that had been observed in Egypt—amount to advocating an act of terrorism?

In truth, the federal government prosecuted Lynne Stewart because it wants to intimidate defense lawyers into either refusing to represent accused terrorists or into providing less than zealous representation. After she was convicted, Ms. Stewart said, "You can't lock up the lawyers, you can't tell the lawyers how to do their jobs."

No doubt the outcome of this case will have a chilling effect on lawyers who might represent unpopular clients. Since 9/11 the federal government's message has been clear: if you defend someone we say is a terrorist, we may declare you to be one of them, and you will lose everything.

The Stewart conviction is a travesty. She faces up to 30 years in prison for speaking gibberish to her client and the truth to the press. It is devastating for lawyers and for any American who may ever need a lawyer. Shouldn't the Justice Department be defending our constitutional freedoms rather than assaulting them?

Andrew P. Napolitano, a former judge of the Superior Court of New Jersey, is an analyst for Fox News and the author of "Constitutional Chaos: What Happens When the Government Breaks Its Own Laws."

The Lynne Stewart Guilty Verdict: Stretching the Definition of "Terrorism" to Its Limits

by Elaine Cassel

Findlaw.com

February 14, 2005

On February 10, after thirteen days of deliberations, a federal jury in New York City returned a guilty verdict in the case of 65-year-old attorney Lynne Stewart. The jury found Stewart guilty on five counts of defrauding the government, conspiracy, and providing support for terrorism.

Stewart will be sentenced on July 15. She may serve up to thirty years in prison. Appeals are expected to consume years. In the meantime, Stewart will lose her right to practice law and face hard prison time.

The eavesdropping on attorney-client communications that led to this prosecution would have been unimaginable before September 11. I will argue that this eavesdropping has a serious cost in inhibiting defense attorneys' ability to zealously represent their clients. This cost is of a constitutional dimension: The Sixth Amendment's right to counsel cannot be served while the government is a third party present at attorney-client meetings.

Another problematic aspect of the Stewart prosecution is how far the definition of support for terrorism was stretched. Stewart never provided any financial support, weaponry — or any other concrete aid — for any act of terrorism. No act of terrorism is alleged to have resulted from her actions.

Stewart's supposed support for terrorism instead consisted of aiding her client in 2000 by giving a press release to Reuters News Service in Cairo, Egypt, and of being present when her co-defendants allegedly aided her client in writing a series of letters.

(SAMs). Pursuant to regulations enacted in 1996, these restrictions can be placed on a federal prisoner's communications or contacts with the outside world — including visitors, and the media — when the government believes "that there is a substantial risk that a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons."

The SAMs prohibited Stewart from having any contact with her client that the Department of Justice deemed to be outside the scope of "legal representation" and prohibited Rahman from having contact with anyone outside prison walls except his wife. The SAMs specifically restricted his access to the media.

Stewart agreed to the SAMs — having little choice, as it was the only way she could visit her client.

What Stewart did not know was that after she signed the SAMs, the government began surveillance of her visits, first under the 1994 Foreign Intelligence Surveillance Act warrant targeting her client, and then under specific regulations that allowed them to target her.

The Eavesdropping Regulation: How the Government Made Its Case

On October 31, 2001, Attorney General John Ashcroft secretly amended the SAMs regulations — without notice to the public. As amended, the regulations allow the Bureau of Prisons to conduct videotape and audiotape surveillance with respect to attorneys' communications with people in federal custody.

There is no exception for attorney-client privileged communications; indeed, the regulations contemplate that these sacrosanct conversations will be the very ones surveilled. Moreover, the regulations apply not only to convicted persons, but also to defendants awaiting trial — and even detainees against whom no charges are even pending. Finally, the surveillance can be broad: It can done "to the extent determined to be reasonably necessary for the purpose of deterring future acts of violence or terrorism."

No warrant is necessary for the surveillance to occur. Nor is specific notice to the attorney or the client that they will be monitored; according to the regulations. Rather, routine notice that their communications "may" be monitored is enough.

The government eavesdropped on Stewart's communications with Rahman — and these communications, along with her subsequent communications with the media, are the sole basis for her conviction.

The government alleges that Stewart never intended to abide by the SAMs, and that — as, it says, it discovered by eavesdropping — she violated them in several ways.

Along with Mohammed Yousry, an interpreter, and Ahmed Abdel Sattar, who sometimes acted in the role of a law clerk, the government alleges, Stewart tried to thwart the government's surveillance. At trial, the government introduced surveillance tapes intending to demonstrate that Stewart served as a willing conduit for the Sheik, using her position as a lawyer as a smokescreen for illegal communications and conspiracies by people whose agenda she shared.

In particular, the government charges, Stewart violated the prohibition on outside contacts in two ways. First, it alleged in 2000, she released to Reuters News Service a statement from the Sheik to his followers saying that he was "withdrawing his support for a ceasefire that currently exists," with respect to violence that his followers in Egypt were engaged in (the ceasefire was declared after 58 tourists were slain in Luxor, Egypt, in a bid to win the Sheik's release). The government charged that the press release was a veiled message for the Sheik's followers to engage in violence. Reuters ran a story about the statement in Arab newspapers.

Second, the government says Stewart was present when Yousry and Sattar allegedly helped the Sheik compose letters that served as communications to his followers. (Notably, though, while Yousry and Sattar speak Arabic, it is undisputed that Stewart neither speaks nor understands Arabic.)

In closing arguments, Prosecutor Andrew Dember argued that Stewart and the co-defendants effectuated a virtual "jail-break," in which Rahman did not actually get sprung from prison, but did get his messages of violence out to the world.

Yet no actual act of violence, terroristic or otherwise, has ever been linked to either the letters to the Sheik's followers, or the statement by the Sheik given to Reuters.

Yousry was convicted on the same charges as Stewart; Sattar was convicted of conspiracy to murder civilians.

The Constitutional Issues the Eavesdropping Regulations Raise

Stewart herself was represented by famed civil rights and criminal defense attorney Michael Tigar. Tigar argued, on her behalf, that the surveillance regulation was unconstitutional—and thus that evidence

procured as a result of surveillance should not be admissible at Stewart's trial. Although Tigar and Stewart lost their motion, their argument was a strong one.

The Sixth Amendment guarantees a criminal defendant's right to counsel. The Ashcroft eavesdropping regulations are unprecedented in the way they interpose the government between a client and his or her attorney—and thus violate this right. How can a defendant be expected to speak openly and candidly with counsel, and contribute to his own defense, when the government is listening on every conversation, recording every gesture, following every move?

The trial judge in the case, John G. Koeltl, should have suppressed the eavesdropping evidence, but instead, he ruled against Stewart. He did, however, rule for her on another constitutional claim.

Judge Koeltl's Rulings on the Terrorism Claims

Remember, Stewart was convicted of defrauding the government, conspiracy, and providing support for terrorism.

The "defrauding the government" charge was weak: It was based on the government's allegation that Stewart never intended to abide by the SAMs, as she had agreed to do. But it seems likely that Stewart's intention, instead, was to abide by the SAMs in order to continue to represent her client.

Moreover, the original terrorism charge against Stewart was unconstitutional, as Judge Koeltl held. Initially, *Stewart was charged under a federal statute* that prohibited providing "material support" for terrorism—regardless of one's intent in doing so.

The government said Stewart violated the statute by making Rahman's message available to the press. (Where was the "material" support? The government said it came in the form of "personnel"—meaning, Stewart herself.)

Judge Koeltl wisely reasoned that to prosecute Stewart under this theory was unconstitutional. She lacked sufficient notice that the statute would be applied this way—to prohibit a news release, rather than, say, the provision of weaponry. He ruled that the statute applied to the facts of Stewart's case was too vague to satisfy Due Process requirements.

So the government, as it explained in a *press release*, then indicted Stewart for the same acts again, under *another federal statute*—one that,

unlike the first statute, requires intent.

Passed in 1994, after the 1993 bombing of the World Trade Center, the statute prohibits defines a violation as giving material support to anyone while intending or knowing that the support will be used in connection with any one of a list of violent crimes.

What violent crime did the government cite? It claimed Sattar was alleged to have been conspiring to commit terrorism abroad, urging Rahman's followers to kill Jews. But again, no such crimes have ever been linked to the Reuters news release.

This time, Judge Koeltl found the statute, as applied, to be constitutional. But in doing so, he interpreted the intent standard to require very specific proof: proof that Stewart knew she was providing resources to carry out a *specific* violent crime.

The Stewart Conviction is a Warning to Defense Attorneys

Stewart's defense team had doubts that the prosecution could carry this strong burden of proof. Though the facts were basically not in dispute, Tigar argued that Stewart was acting as a zealous advocate.

The American Bar Association's Code of Professional Conduct *demand*s zealousness of lawyers. It also mandates that lawyers make their services available to unpopular causes. Stewart was fulfilling both duties by agreeing to serve as court-appointed attorney for Rahman, the defense argued.

Stewart admitted she violated the SAMs, but she was duty-bound to do so, she said. What self-respecting defense attorney, she contended, would let a government restriction stand in the way of the confidential attorney-client relationship?

Through helping with the news release, Tigar maintained, Stewart, as his lawyer, was trying to keep her client's case before the public and the government, and ultimately hoping to gain his release to Egypt.

The government countered, and the jury agreed, that when she so spoke, and aided her co-defendants in speaking, she was no longer acting as a lawyer. She was aiding and abetting terrorism.

Prior to September 11, 2001, many attorneys might have sided with Stewart. They would certainly have seen a blatant Sixth Amendment violation in both the SAMs and the eavesdropping regulations—and

possibly seen First Amendment violations when it came to the SAMs. And they might also have agreed that to honor the right to counsel, an attorney ought to try to resurrect the traditional attorney-client relationship despite these unconstitutional constraints.

Now, however, the First and Sixth Amendments have been gutted—at least in terms of the attorney-client relationship. Indeed, as I argued in the first article I wrote about Stewart, the government seems to be conducting an all-out assault on the right to counsel.

Defense attorneys who represent alleged terrorists — or even detainees who are merely suspected of some connection to terrorism — now know that the government may listen in on their attorney-client communications. They also know that this eavesdropping may give rise to evidence that may be used in their *own* prosecution for terrorism if they cross the imaginary line drawn by the government.

How can these attorneys be zealous advocates with this government-inspired fear overshadowing their every word?

If the attorneys are prosecuted, they can expect, at trial, to be conflated with their clients — just as Stewart was. The prosecution showed an old tape of Osama bin Laden promising revenge if Rahman were not released. In a courtroom only a short distance from Ground Zero, the tape must have meant a great deal. But it related to Rahman, not Stewart. Though Rahman may be a Bin Laden confederate, that does not mean his attorney is.

The larger issue here is not whether Stewart “stepped over the line” from lawyer to criminal co-conspirator, as the jury verdict implies. Nor is it whether terrorism fears caused the jury to reach an irrational verdict — as may well be the case. The larger issue is that those who face terrorism-related charges will now be entitled to a government-crippled defense.

The Ashcroft Justice Department showed disdain for attorneys — save its own. Unfortunately, the Gonzales Justice Department likely will be even worse on this score. Referring to the Stewart verdict, Gonzales was quick to warn that he would “pursue both those who carry out acts of terrorism *and those who assist them with their murderous goals.*” (Emphasis added.)

This is pure hyperbole — treating Stewart's willingness to assist her client in putting out a press release as the moral equivalent of financing

or arming terrorists. It furthers the lie that a terrorist's lawyer, by zealously representing her client, at the same time aids and abets terrorism.

Hundreds of prisoners alleged to be terrorist combatants sit in cages and cells in Guantanamo Bay, Cuba. Every one, according to the Supreme Court, has the right to challenge his detention in federal court, through the ancient writ of habeas corpus.

What attorneys will risk their licenses — and life in prison — in order to protect their rights?

NATIONAL CONFERENCE OF BLACK LAWYERS (NCBL) STATEMENT REGARDING THE CONVICTION OF LYNNE STEWART

Those of us who know Lynne Stewart as a lawyer of great integrity and as a zealous advocate for all of her clients, even those whose cases are considered unpopular, are saddened and outraged by the conviction returned against her on February 10, 2005. Convicted on all counts including violating the SAMs provision, a subsection of the Patriot Act, Ms. Stewart now faces decades in prison. This conviction, secured by government prosecutors who were permitted to raise the specter of Osama Bin Laden repeatedly during the trial and thereby inflame the jury, will have a chilling effect on lawyers who contemplate zealous and competent representation of clients charged with crimes of "alleged" terrorism or any other "unpopular" crime during this climate of "terrorism" hysteria.

As Lynne Stewart stated in her own words, "You can't lock up the lawyers." NCBL understands and supports the proposition that everyone deserves and needs competent, zealous representation, and an attorney's representation of his/her client should not be held hostage to the prospect that the attorney may later be prosecuted and convicted, in violation of the 5th, 6th and 14th Amendments to the United States Constitution. Government eavesdropping on attorney/client conversations must cease immediately — as that practice can now (following the conviction of Lynne Stewart) be seen for what it truly is, a way to gain evidence against lawyers for prosecution. Otherwise, lawyers — under fear of prosecution — will simply not be willing to engage in full and complete discussions with their clients, a situation that will surely hinder the lawyer's quality of representation.

The National Conference of Black Lawyers does not support open defiance to just and fair laws, but it firmly and uncompromisingly opposes the legal lynching of lawyers in highly politicized trials, no matter how that process may be otherwise "packaged."

The Federal Court of Appeals for the Second Circuit should take an objective look at this case against Lynne Stewart and reverse in its entirety this conviction.

Targeting Lynne Stewart

by Mumia Abu Jamal

The conviction of civil rights attorney Lynne Stewart and her co-defendants translator Mohamed Yousry and paralegal Ahmed Sattar is a triumph of fear over reason. The three legal workers were charged and convicted of aiding and abetting terrorism in connection with their representation of the Blind Egyptian Sheik Omar Abdel-Rahman. When the former attorney general Ashcroft announced the arrest of Stewart he did so on the late night David Letterman talk show. Certainly an unprecedented venue for such an announcement. And as it began on TV so it was often prosecuted with a fearsome visage of Osama Bin Laden beamed to jurors via video tape threatening to attack America on the Sheik's behalf.

Even though the judge dutifully instructed the jury that Osama Bin Laden had nothing to do with the case. How do you wash something like that from the mind after it has been admitted into evidence? Lynne's husband activist Ralph Poynter put the hammer to the nail when he said of the trial "this prosecution doesn't have a damn thing to do with terrorism. It has to do with politics and putting Lynne Stewart away." Stewart was really targeted because she ignored unconstitutional rules put in place by the government.

In an interview with Stewart she spoke about what the case was really about. "The justice department decided that things that I did as a lawyer are now to be outlawed, are now to be made into crimes, in order to deter other lawyers from vigorously defending people. What I basically did was, I issued a press release on behalf of my client. They said that this press release was materially aiding a terrorist organization, thus making it impossible for any first amendment right to be protected. And to me that is the real essence of this work, is that we be permitted to defend people such as yourself in these cases as political people, not just as defendant 10872."

Recently black political prisoner Albert Woodfox of the Angola Three talked about the importance of lawyers in destroying isolation. "I think that this was a pretty strong shot across the bow as they say, you know if you dare put forth an honest attempt to uphold the standards of law in this country we will get you. You know we will destroy you, cause in most cases they are the only voice to the outside world." And now the state has prevailed, sending shock waves through the

defense bar that already shies away from the kind of cases that has been Stewart's staple for a generation. She has taken on cases involving members of the Black Panther Party, the Attica Brothers, Puerto Rican Independence fighters and since at least 1995 the blind Sheik. In order to put into operation the draconian special measures of the government the state needs to seed fear into those who are sworn to protect and provide a full and vigorous defense — lawyers. But the battle isn't over. Perhaps what has happened has awakened many people in this country who would have preferred to slumber? Lynne Stewart, paralegal Ahmed Sattar and professional translator Mohamed Yousry plan to stage a vigorous appeal of this outrageous verdict. They will need your support, now more than ever, it will take work of many to undo John Ashcroft's revenge. From Death Row this is Mumia Abu-Jamal. © Mumia Abu-Jamal 2005

The Lynne Stewart Trial

by David Cole

From *The Nation*

On February 10, a jury in New York City convicted longtime activist attorney Lynne Stewart and two others on all counts in one of the Bush Administration's most heralded terrorism trials since 9/11. Stewart, a 65-year-old who has never committed a violent act, now faces twenty to thirty years in prison. Do you feel safer?

Perhaps more than any other, this case illustrates how out of hand things have gotten in the "war on terrorism." To inflate its successes in ferreting out terrorism, the Justice Department turned an administrative infraction into a terrorism conviction that, unless reversed, will likely send Stewart to prison for the rest of her life. To make sure the charges would stick, the prosecution tried the case in the most inflammatory and prejudicial way possible, introducing as "background" reams of evidence of terrorism that had nothing to do with Stewart's actions.

The case against Stewart was fairly straightforward. She represented Sheik Omar Abdel Rahman, now serving multiple life sentences for conspiring to blow up several Manhattan bridges and tunnels. Rahman is barred from any contact with the outside world beyond his immediate family and attorneys. As his lawyer, Stewart signed an agreement not to transmit messages from him to unauthorized people. In June 2000 she violated that agreement. After meeting with the sheik, Stewart called Reuters to say that he had withdrawn his personal support for a cease-fire then in place in Egypt. Two days later she issued a clarification explaining that the sheik "did not cancel the cease-fire," but "left the matter to my brothers to examine it and study it because they are the ones who live there and they know the circumstances better than I."

Stewart should not have issued the release. Doing so violated the administrative agreement. But it is not a crime to violate such an agreement. In an ordinary case, the lawyer might receive a warning. In an unusual case, the lawyer might be barred from continuing to visit her client (as indeed Stewart was at the time, until she agreed to a new set of conditions). In an extraordinary case, the lawyer might be brought up on disciplinary charges before the bar.

But after September 11, the Justice Department was not content with any of those measures; it charged Stewart with terrorism. Since violating

the agreement was not itself a crime, the indictment charged her with fraudulently entering into the agreement in the first place. And it alleged that by passing on the sheik's message, she'd offered "material support" in aid of terrorist activity.

Both charges were a stretch. Showing that Stewart violated the agreement would be easy, but proving that she intended to violate it when she initially signed it was much more challenging. And the terrorism charge would require showing that Stewart's statement to the press was intended to support a particular terrorist act, when in fact the release did not call for or prompt any such act.

So how did the prosecution meet its burden? With classic McCarthy-era tactics: fearmongering and guilt by association. First, it tried Stewart together with Ahmed Sattar, an Egyptian-born US citizen against whom it had thousands of hours of wiretaps of communications with a terrorist group. Among other things, Sattar had issued a fake fatwa urging followers to "kill [Jews] wherever they are." By trying Stewart and Sattar together, the government could taint Stewart with Sattar's sins, even though, as was the case with the fatwa, she had nothing to do with them and no knowledge of them. In his closing, the prosecutor repeated Sattar's "kill the Jews" fatwa more than seventy times.

Second, the prosecution sought to inflame the jury by introducing evidence that had nothing to do with Stewart's actions. Shortly before the anniversary of 9/11, it played a tape of Osama bin Laden expressing support for the sheik. It introduced evidence of Al Qaeda's bombing of the USS Cole, even though there was no claim that Stewart or her co-defendants had anything to do with Al Qaeda, and of a massacre in Egypt in which fifty-eight tourists were killed, even though the massacre long pre-dated the actions of Stewart and her co-defendants. The prosecution offered this evidence as "background," not proof of Stewart's culpability, but it is hard to believe that such a distinction could be maintained by a jury sitting less than a mile from Ground Zero.

Let me be clear: I think Stewart crossed the line from zealous advocacy to wrongful conduct. But she is no terrorist. At most she deserves a disciplinary proceeding before the bar. Sending her to prison will provide another statistic in the Justice Department's desperate effort to show results in the "war on terrorism," but it will not make us any safer. One of the defining evils of terrorism is that it uses human beings' lives to send a political message. Has the Justice Department done any differently here?

Case Against Attorney Was a Stretch

Regarding the Feb. 18 editorial "Over the Line:" There is a difference between "crossing the line of propriety," as the editorial characterized me as saying about Lynne Stewart, the activist lawyer recently convicted on terrorism charges, and crossing the line of criminality. The later warrants prison; the former doesn't. The editorial seems to have confused the two.

Ms. Stewart was convicted for having issued a press release in 2000 announcing that her client, Sheik Omar Abdel Rahman, had withdrawn his support from a cease-fire in Egypt but also noting that any decision about the cease-fire was up to the people in Egypt. The statement did not call for violence, much less terrorism, and it did not prompt any violence.

Yet Ms. Stewart was convicted of having provided support to terrorist activity, without having called for or incited any terrorist activity.

How was this accomplished? By trying her in the most inflammatory way, putting her on trial with a man who explicitly has called for terrorism, and introducing extraneous and prejudicial evidence, including statements by Osama Bin Laden and evidence of the bombing of the USS Cole, even though there was no claim that Ms. Stewart or anyone else on trial had any connection to al Qaeda.

That the government would go to such lengths to get a "terrorism conviction" against a 65 year-old woman who has never committed violence is what is so chilling to defense lawyers.

- David Cole

Excerpt from U.S. v. Reid

In U.S. v. Reid (Mass. 2002), Judge William Young in striking down the SAMs-like restrictions imposed upon the lawyers in that case, remarked:

Nor is this all. The Court takes judicial notice, pursuant to Federal Rule of Evidence 201, that the government has indicted attorney Lynne Stewart, Esq., inter alia, for violating 28 U.S.C. § 1001, in that having signed the required affirmation, she violated the SAMs applicable to one Sheikh Abdel Rahman, and therefore knowingly made a false statement. See Indictment ¶ 30, United States v. Sattar, Criminal Action No. 02-395 (S.D.N.Y. Apr. 8, 2002). Evidently, the government theorizes that the affirmation was knowingly false when made.[fn8] Whatever the merits of this indictment, its chilling effect on those courageous attorneys who represent society's most despised outcasts cannot be gainsaid. It is worth remembering that John Adams represented the British soldiers who allegedly committed the Boston Massacre. David McCullough, John Adams 66 (2001) (noting that, upon learning that no one else would represent the soldiers, John Adams took the case, saying "no man in a free country should be denied the right to counsel and a fair trial"); Hiller B. Zobel, The Boston Massacre 220 (1970).

fn8 While the indictment is unclear on this point, if the government complains only that she violated her affirmation and that this violation transgresses 28 U.S.C. § 1001, serious constitutional issues might arise in that the Attorney General would himself be criminalizing a variety of conduct by imposing the SAMs and then seeking indictments for their violation. It is constitutional bedrock that only the Congress can enact federal criminal statutes. See, e.g., United States v. Oakland Cannabis Buyers' Cooperative, 532 U.S. 483, 490, 121 S.Ct. 1711, 149 L.Ed.2d 722 (2001).

LETTERS FOR LYNNE STEWART
DETAILS: WE ARE TRYING TO AMASS THOUSANDS OF
LETTERS TO SHOW MASSIVE COMMUNITY SUPPORT IN
FAVOR OF LENIENCY

- MARGIN: Please leave at least a one-inch left-hand margin to allow us to bind the letter into the appendix to the sentencing memorandum that is being filed on Lynne's behalf. Typewritten, letters if possible, are preferred
- INSIDE ADDRESS: Honorable John G. Koeltl
United States District Judge
Southern District of New York
United States Courthouse
500 Pearl Street
New York, New York 10007
- GREETING: Honorable Sir or Dear Judge Koeltl:
- BODY: Briefly say who you are and your relationship to Lynne, if any.
- Briefly discuss yourself—your position in work and in society.

State that you are aware that Lynne is to be sentenced following a jury verdict of guilty, on serious charges. Tell the Judge why you believe she should be treated with compassion (i.e. age and lifetime of service to the community). If possible, you should tell of an incident where she helped you out or what you may know of her commendable community service. Do not try to argue that she is not guilty or was unfairly convicted. Focus on the unfairness of the government's actions in bringing the charges; the way in which the government portrayed her, etc. You are asking the Judge to view her with mercy.

WHEN LETTER IS COMPLETED:

Please mail the final product by July 15 to the following address:

Jill R. Shellow-Lavine, Esq.
2537 Post Road
Southport, CT 06890

Do NOT send your letters to the judge. We ask that you forward your letter to me so that the lawyers can present it to Judge Koeltl with the other letters being written for this purpose. This is the manner in which letters will have the greatest impact. If they are sent directly to the Judge's chambers, they may not be accounted for and could cause the judge a substantial inconvenience (and annoyance).

Thank you for your cooperation. If you know others who will also write favorable letters, please give them this or refer them to the Lynne Stewart website. If you have any questions, please do not hesitate to contact the defense committee by email: info@lynnestewart.org or find the link at the website: www.lynnestewart.org or telephone (212) 625-9696.

Sincerely,

Jill R. Shellow-Lavine
Attorney for Lynne Stewart



Photo by Clark Kissinger

Lynne Stewart, 2004