

Lynne Stewart: Heroic Human Rights Lawyer Jailed

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On November 20, New York Times writer Colin Moynihan broke the news headlining:

“Radical Lawyer Convicted of Aiding Terrorist Is Jailed,” then saying:

“Defiant to the end as she embraced supporters outside the federal courthouse in Lower Manhattan, Lynne F. Stewart, the radical lawyer known for defending unpopular clients, surrendered on Thursday to begin serving her 28-month sentence for assisting terrorism.”

Fact check:

Stewart did what all attorneys should, but few, in fact, do – observe the American Bar Association’s Model Rules saying all lawyers are obligated to:

“devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.”

Also to practice law ethically, morally and responsibly to assure everyone is afforded due process and judicial fairness in American courts. Sadly and disturbingly, Stewart was denied what she did for others heroically, unselfishly, and proudly. More on that below.

Stewart (prison number 53504-054) is now jailed at:

MCC-NY
150 Park Row
New York, NY 10007

Betrayed by American Justice

For 30 years, Stewart worked heroically to defend America’s poor, underprivileged, and unwanted, never afforded due process and judicial fairness without an advocate like her. Where others wouldn’t go, she defended controversial figures like David Gilbert of the Weather Underground, Richard Williams of the United Freedom Front, Sekou Odinga and Nasser Ahmed of the Black Liberation Army, and many more like them. She knew the risk, but did it fearlessly and courageously until bogusly indicted on April 9, 2002 for:

- “conspiring to defraud the United States;
- conspiring to provide and conceal material support to terrorist activity;
- providing and concealing material support to terrorist activity; and

— two counts of making false statements.”

She was also accused of violating US Bureau of Prisons Special Administrative Measures (SAMs) that included a gag order on her client, Sheik Abdel Rahman. When imposed, they prohibit discussion on topics the Justice Department (DOJ) rules outside of “legal representation,” so lawyers can’t discuss them with clients, thus inhibiting their defense.

At former US Attorney General Ramzy Clark’s request, she joined him as part of Rahman’s court-appointed defense team. In his 1995 show trial, he was convicted and is now serving a life sentence for seditious conspiracy, solicitation of murder, solicitation of an attack on American military installations, conspiracy to murder, and conspiracy to bomb in connection with the 1993 World Trade Center attack despite evidence proving his innocence on all charges.

The DOJ’s case wasn’t about alleged crimes. It reflected his affiliations and anti-western views. Rahman was connected to the Egyptian-based Al-Gamaa al-Islamiyya – a 1997 US State Department-designated “foreign terrorist organization.” In the 1980s, however, he helped the CIA recruit Mujahadeen fighters against the Soviets in Afghanistan. For his work, he got a US visa, green card, and State Department-CIA protection as long as he was valued. When no longer, he was targeted along with Stewart.

Her case was precedent-setting, chilling, and according to the Center of Constitutional Rights Michael Ratner:

sent “a message to lawyers who represent alleged terrorists that it’s dangerous to do so.”

Her attorney, Michael Tigar, called it:

“an attack on a gallant, charismatic and effective fighter for justice (with) at least three fundamental faults:

— (it) attack(ed) the First Amendment right of free speech, free press and petition;

— the right to effective assistance of counsel (by) chill(ing) the defense; (and)

— the ‘evidence’ in this case was gathered by wholesale invasion of private conversations, private-attorney-client meetings, faxes, letters and e-mails; I have never seen such an abuse of government power.”

Her 2004 – 2005 show trial was a mockery of justice with echoes of the worst McCarthy-like tactics. Inflammatory terrorist images were displayed in court to prejudice the jury, and prosecutors vilified Stewart as a traitor with “radical” political views. In addition, days before the verdict, the militant pro-Israeli Jewish Defense Organization put up flyers near the courthouse displaying her address. It threatened to “drive her out of her home and out of the state,” and said she “needs to be put out of business legally and effectively.”

It was part of the orchestrated scheme inside and outside the courtroom to heighten fear, convict Stewart, and intimidate other lawyers to expect the same treatment if they dare represent unpopular clients effectively.

On February 10, 2005 (after a seven month trial and 13 days of deliberation) she was

convicted on all five counts. Under New York state law, she was automatically disbarred, and the state Supreme Court's Appellate Division denied her petition to resign voluntarily. On October 17, 2006, she was sentenced to 28 months imprisonment, but remained free on bond pending appeal before the US Court of Appeals for the Second Circuit.

Stewart Ordered to Prison

The Justice for Lynne Stewart web site (lynnestewart.org) announced the news. On November 17, the Appeals Court revoked her bond, upheld the verdict, ordered her surrender forthwith, but stayed it until November 19 at 5PM to let her attorney file a motion for reconsideration. It was denied, so she must report to federal marshals as directed. A November 19 conversation with Lynne and her husband Ralph confirmed it.

The situation remains fluid, dire, and complicated by Stewart's battle with breast cancer. She has surgery scheduled for December 7, unlikely now, but if done in prison or where authorities direct, it won't be the quality she deserves.

In its ruling, the three judge panel (John Walker, Guido Calabrese and Robert Sack) was firm, hostile and belligerent in upholding the lower court's conviction. Judge Sack accused Stewart of lying and called for a longer sentence. "We think that whether (she) lied under oath at her trial is directly relevant to whether her sentence was appropriate," he wrote, and directed District Court Judge John Koeltl to re-sentence her "so as to reflect that finding." Judge Walker was even harsher, calling the original sentence "breathtakingly low." Judge Calabrese said: "I am at a loss for any rationale upon this record that could reasonably justify a sentence of 28 months' imprisonment for this defendant."

They all said Stewart was "convicted principally with respect to (her violating) measures by which (she) had agreed to abide," namely SAMs. They rejected her "argument that, as a lawyer, she was not bound by (them), and her belated argument collaterally attacking their constitutionality." They also:

"affirm(ed her conviction) of providing and concealing material support to the conspiracy to murder persons in a foreign country (and) of conspiring to provide and conceal such support....We conclude that the charges were valid (and) the evidence was sufficient to sustain the convictions. We also reject Stewart's claims that her purported attempt to serve as a 'zealous advocate' for her client provides her with immunity from the convictions...."

"Finally, we affirm Stewart's convictions for knowingly and willfully making false statements....when she affirmed that she intended to, and would, abide by the SAMs. In light of her repeated and flagrant violation of (them), a reasonable factfinder could conclude that (her) representations that she intended to and would abide by the SAMs were knowingly false when made. We reject the remaining challenges to the convictions. (We) affirm the district court's rejection of Stewart's claim that she was selectively prosecuted on account of her gender or political beliefs....We therefore affirm the convictions in their entirety."

They redirected her case to District Court Judge Koeltl for re-sentencing. The DOJ wants 30 years. Koeltl originally imposed 28 months, let Stewart remain free on bond pending appeal, implied his decision might be overturned because of a gross miscarriage of justice, effectively rebuked the Bush administration at the time, and handed it a major defeat. Her fate is now in his hands, but justice has already been denied at a time we're all as vulnerable as she if we dare resist state policies, unchanged under an administration no

different from its predecessor.

In a November 17 news conference, Stewart said:

"I'm too old to cry, but it hurts too much not to." In criticizing the Court's decision, she said its timing "on the eve of the arrival of the tortured men from offshore prison in Guantanamo" suggests that lawyers appointed to represent them may face the same fate as she. "If you're going to lawyer for these people, you'd better toe very close to the line that the government has set out (because they'll) be watching you every inch of the way, (so those who don't) will end up like Lynne Stewart. This is a case that is bigger than just me personally (but she added that she'll) go on fighting."

So will her lawyer, Joshua Dratel, who said he'll pursue it "as far and as long as we can," including a possible Supreme Court review. The Obama US attorney's office was silent, effectively affirming a gross injustice at a time the due process and judicial fairness thresholds are so low that all Americans risk the same fate as Lynne.

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