

## Lynne Stewart's Long Struggle for Justice

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On April 9, 2002, Attorney General John Ashcroft made a symbolic visit to “Ground Zero.” While in New York, he held a well-publicized press conference at the US Attorney’s Office and used the occasion for an indictment. Four individuals were named on charges of conspiracy and materially aiding a terrorist organization. One of them was long-time civil rights lawyer Lynne Stewart. On the same day, FBI agents arrested her at her home and illegally seized documents there and from her office that are protected by attorney-client privilege.

In July 2003, Federal District Court Judge John Koeltl (a 1994 Clinton appointee) dismissed the original charges for being “unconstitutionally void for vagueness” and because they “revealed a lack of prosecutorial standards.” Nonetheless, Stewart was symbolically reindicted on November 22, 2003 (the 40th year anniversary of John F. Kennedy’s assassination) on five counts of aiding and abetting a terrorist organization under the 1996 Antiterrorism Act. Specific charges included:

- “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.”

Stewart was also accused of violating US Bureau of Prisons-imposed Special Administrative Measures (SAMS) that included a gag order on her client, Sheik Abdel Rahman. These measures are imposed on some prisoners to forbid discussion (even with an attorney) of topics DOJ claims are outside the scope of their “legal representation.” It’s all very vague, does more to harass and obstruct justice than protect state secrets, yet Stewart was forced to accept them to gain access to her client.

In her case, police state-type attorney-client monitored conversations provided the basis for her indictment. However, engaging in this practice stretches the limit of the law, gives DOJ sole authority to decide how far and for what purpose, and in this instance egregiously overstepped it by charging defense counsel with aiding and abetting terrorism for representing her client as required.

At former US Attorney General Ramsey Clark’s request, Stewart agreed to join him as a member of Rahman’s court-appointed defense team. He was convicted in his 1995 show trial and is now serving a life sentence for “seditious conspiracy” in connection with the 1993 World Trade Center Center bombing despite evidence proving his innocence.

However, in what's now common practice, the government's case related more to his affiliations and anti-western views than specific evidence presented. Rahman was connected to the Egyptian-based Al-Gamaa al-Islamiyya (Islamic Group) – a 1997 State Department-designated “Foreign Terrorist Organization (FTO). Ironically in the 1980s, he was handled much differently as a “valuable (CIA) asset” for his influential role in recruiting Mujahadeen fighters against the Soviets in Afghanistan. It was no accident that he got a US visa, green card and State Department-CIA protection for as long as he was valued. When he wasn't, he became a target along with Lynne Stewart who represented him at trial.

Stewart's charges were trumped up, outrageous, and likely first time ever instance of a defense attorney in a terrorism case facing terrorism-related counts – for doing her job as the law requires and that renders attorney-client confidentiality sacrosanct under our criminal justice system. No matter, if convicted, she faced a possible 30 year sentence.

In America's “war on terrorism,” her precedent-setting case is chilling, and president of the Center for Constitutional Rights, Michael Ratner, explained it: Its “purpose....was to send a message to lawyers who represent alleged terrorists that it's dangerous to do so.” It's also an effort to exploit the current atmosphere, incite fear and suspicions, stifle dissent, and make it just as risky for anyone with openly critical views of government policies. In Police State America, we're all Lynne Stewarts.

At the time of her indictment, her attorney, Michael Tigar, explained what was at stake:

“This case (still ongoing) is an attack on a gallant, charismatic and effective fighter for justice (and has) at least three fundamental faults: (it) attack(s) the First Amendment right of free speech, free press and petition; (it) attack(s)....the right to effective assistance of counsel ....chills 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.” In America's “war on terrorism,” many other defense attorneys can cite similar instances of lawlessness and injustice today.

However, in targeting Stewart, DOJ may have gotten more than it bargained for. Whatever the outcome, her case shamed the government, gave her worldwide recognition, made her a powerful symbolic figure, and elevated her to iconic stature. For her honor, devotion to principles, and lifetime of service to society's most abused, she deserves it and more.

Throughout her 30 year career, she never shunned controversy or her choice of or duty to clients. She represented the poor, the underprivileged and society's underdogs and unwanted who never get due process unless they're lucky enough to have an advocate like her. She knew the risks and understood the state uses every underhanded trick possible to convict these type defendants and overwhelm, outspend and/or discredit their counsel doing it.

Nonetheless, she did what the American Bar Association's Model Rules state all lawyers are obligated to do: “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.”

Defending Sheik Rahman was especially risky, and Stewart knew it. His case was so high-profile, it made her a target, and she remains one today. It was the beginning of her long

struggle (six years and running) that included a battle against breast cancer that's now in remission.

Her trial played out in the same Foley Square courtroom where Julius and Ethel Rosenberg were unjustly framed, convicted and sentenced to death in April 1951 on charges of conspiracy to violate the Espionage Act. It was an earlier time of hysteria when "communism" was the "threat," national security again the issue, and, in Stewart's case, she's the victim.

Her trial was a travesty and gross miscarriage of justice with echoes of the worst type McCarthyist tactics. Inflammatory terrorist images were displayed in court to prejudice the jurors, and prosecutors vilified Stewart as a traitor with "radical" political views. In fact, she always embraced the rule of law with equity and justice for everyone under it. Nonetheless, prosecutors falsely accused her of saying violence may be justified to overthrow oppressive governments and claimed she advocated regime change in Egypt under its president, ruling despot, and close US ally Hosni Mubarak.

In addition, just days before the verdict, the extremist pro-Israel Jewish Defense Organization put up flyers near the courthouse displaying Stewart's home address, 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." Prosecutors ignored it. It was all part of a government-orchestrated scheme inside and outside the courtroom to heighten fear, convict Stewart, and tell other defense attorneys to expect the same treatment if they represent "unpopular" clients.

It worked on the jury, and on February 10, 2005 (after a seven month trial and 13 days of deliberation) Stewart was convicted on all five counts. Key now would be sentencing for a decisive DOJ victory. If gotten it would seriously weaken First Amendment free expression rights and Fourth Amendment protections against unreasonable searches and seizures. It would also destroy fundamental ones under Section 1 of the Fourteenth Amendment that guarantees all US citizens won't be deprived of their right of "life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In addition, it would challenge the landmark 1963 Supreme Court *Gideon v. Wainwright* decision that affirmed defendants' Sixth Amendment rights "in all criminal prosecutions (to) the right to a speedy and public trial, by an impartial jury....to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

October 17, 2006 was Stewart's sentencing date. Prosecutors asked for 30 years and hoped getting it would set a precedent. Instead, the same Judge Koeltl, who dismissed Stewart's first indictment, again defied DOJ. He sentenced Stewart to 28 months, let her remain free on bail pending appeal, implied it might be overturned as a gross miscarriage of justice, effectively rebuked the government, and handed them a major defeat.

The trial ended with Stewart proud and vindicated. Next came her chance for a full exoneration before the US Court of Appeals for the Second Circuit three judge panel. Defense attorney Joshua Dratel represented her on January 29, 2008 in a packed courtroom of mostly Stewart supporters with many others denied admittance for lack of space.

Dratel's job was to convince the court that Stewart had First Amendment protected speech

rights to release her client's statement to his followers and other interested parties. He also cited Judge Koeltl's unconstitutional use of US Code Title 18, Part I, Chapter 113B, 2339 (a) relating to "harboring or concealing terrorists" because he "failed to abide by his promise to impose a specific intent requirement" when he charged the jury.

In addition, Dratel argued that evidence against Stewart amounted to no more than three meetings with her client over a two year period. He further said that she was charged for "isolated and sporadic conduct" in an alleged plot where no "violent acts were planned or occurred," and, in fact, there was no plot.

In response to one judge's question about her allegedly saying Rahman withdrew his support for a cease fire, Dratel stated the "cease fire was not abrogated. It remained in effect." He insisted that Rahman merely said it was time to "reevaluate" the cease fire because of the Egyptian government's oppression and recalcitrance. Dratel stressed that with no intent to "incite imminent unlawful conduct or violence," the First Amendment protected Stewart's statements.

So does the Supreme Court's unanimous 1969 *Brandenburg v. Ohio* decision that overturned Ohio's Criminal Syndicalism statute. The Court ruled that government cannot constitutionally punish abstract advocacy of force or law violation and only can do so in instances of directly inciting "imminent lawless actions." Dratel referenced the "Brandenburg standard" that's the law of the land and under which Stewart was within her rights.

Assistant US attorney in the Southern District Anthony Barkow, who was part of the prosecutorial team, argued for the government before a potentially sympathetic court. It's at a time two-thirds of all federal judges are from or affiliated with the extremist Federalist Society. It advocates rolling back civil liberties; ending New Deal social policies; opposing reproductive choice, government regulations, labor rights and environment protections; and subverting justice in defense of privilege.

This is what Stewart is up against as she awaits the decision that can go either way in an age of police state justice. Under New York state law, she was automatically disbarred, and the state Supreme Court's Appellate Division denied her petition to resign voluntarily. Adding insult to her unjust conviction, it ruled that "federal convictions provide a proper predicate for automatic disbarment."

It was the fourth injustice against a woman who spent a lifetime advocating for society's most disadvantaged. It followed two falsified indictments, a kangaroo court proceeding, and an unjustifiable conviction on all counts. Combined they represent an outrageous miscarriage of justice.

An appeals verdict is due any time, and legions of Stewart supporters hope justice delayed won't be denied to her. She deserves full exoneration, readmittance to the state bar, and to be able again to represent society's most unwanted who need her advocacy and remain hopeful. So does everyone who respects the law at a time it's being desecrated.

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