

US indicts Sheik Rahman's lawyer, escalating government attack on democratic rights

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At 10am Tuesday morning, United States government agents arrested prominent New York criminal defense attorney Lynne F. Stewart, who represents Sheik Omar Abdel Rahman, the blind Muslim cleric from Egypt presently serving a life sentence in the US for conspiracy to commit terrorist acts. The case is believed to be the first in which a defense attorney in a terrorism case has faced terrorism-related charges.

The arrest was followed by a search of Stewart's home as well as the law office she shares with other lawyers, where federal agents examined and seized documents protected by the attorney-client privilege.

While Stewart was being processed into the federal criminal justice system, Attorney General John Ashcroft held a news conference in downtown Manhattan announcing the indictment of Stewart along with three other people for supporting the "Islamic Group," an alleged terrorist organization headed by Abdel Rahman. The other defendants are Mohammed Yousry, the interpreter Stewart used to discuss legal matters in prison with Abdel Rahman, Ahmed Abdel Sattar of New York, a well known supporter of Abdel Rahman, and Yassir Al-Sirri, the former head of the London-based Islamic Observation Center, who is presently under arrest in Great Britain on charges of conspiring to assassinate Ahmed Shah Massoud, the late commander of the Northern Alliance in Afghanistan.

Stewart was charged separately with making false statements and conspiring to defraud the government. Sattar and Al-Sirri were charged with inciting violence, based on a document issued in October 2000 under Abdel Rahman's name, entitled, "Fatwah mandating the bloodshed of Israelis everywhere."

Stewart faces a maximum of 40 years in prison if convicted on all counts with the sentences served consecutively; the other defendants face between 35 and 55 years.

Strangely, Abdel Rahman himself, the alleged font of all this alleged criminal activity, is not being charged with a crime.

Stewart, 62, is well known for her effective representation of clients facing highly publicized and serious criminal charges. Besides Sheik Abdel Rahman, she has represented political radicals involved in shoot-outs with the police and prominent organized crime figures. Earlier this year, she announced that she would represent Abdel Rahman's son Ahmed, who was captured in Afghanistan in November and accused of being a liaison between the Islamic Group and Al Qaeda. She is also well known for sharing her own radical views. She once told a reporter, "When the revolution comes to this country, it'll be as American as apple pie and baseball."

Stewart represented Abdel Rahman during the 1995 trial in which he was convicted of plotting to blow up various New York landmarks.

She, along with former United States Attorney General Ramsey Clark, have been representing him in appeals and other proceedings while he is incarcerated in the federal penitentiary system.

According to the indictment announced Tuesday, in 1997 the government imposed "special administrative measures" on Abdel Rahman, restricting his ability to communicate with people outside prison. Stewart acknowledged the restrictions, which prohibit her passing on certain messages to outsiders. The centerpiece of the indictment is the allegation that during a May 2000 meeting in the Federal Medical Center, located in Rochester, Minnesota, Stewart violated those measures by talking in English to mask a conversation in Arabic between Abdel Rahman and the translator Yousry about whether the Islamic Group should continue its "cease fire" with the Egyptian government. Following the meeting, Stewart is alleged to have announced to the news media that Rahman had withdrawn his support for the cease-fire.

Ashcroft stated at his Tuesday press conference that the government built its case by secretly monitoring communications among Stewart, the sheik and their interpreter, Mohammed Yousry, since December 1998.

There are several significant questions that arise from these charges. First, are the charges based on the illegal monitoring of confidential attorney-client communications?

There was no provision then or now which allows such strictly confidential communications to be recorded without telling the participants that their conversations are being monitored. The executive order issued by Ashcroft after September 11 to permit government monitoring of certain attorney-client discussions mandates that the subjects be informed that their conversations are being recorded.

Second, if the government has believed since May 2000 that Abdel Rahman was directing acts of international terrorism through his attorney, why was this activity allowed to continue for almost two years, including the six months since the September 11 attacks?

Third, if Stewart was trying to hide the discussion regarding the cease-fire from the guards, why did she announce Abdel Rahman's position to the media right after her May 2000 prison visit? If that act violated the special administrative measures, why was no action taken against her then?

The second allegation against Stewart is even more specious than the first. The government alleges that she conspired to make a public statement that Abdel Rahman was being denied medical treatment for his diabetes, when she supposedly knew that he was refusing insulin. Even if true, this allegation describes conduct protected by the First Amendment's guarantee of freedom of speech, which prohibits the

government from penalizing its critics. The government's charge smacks of the anti-sedition laws discredited over two hundred years ago.

The charge against Stewart for providing material support to a "terrorist organization" is the same charge stated in eight counts of the indictment against John Walker Lindh, the young American from the San Francisco Bay area captured with a Taliban fighting unit during the Afghanistan war. Just as the prosecution of Lindh is meant to intimidate dissidents, the prosecution of Stewart is intended to serve as a shot across the bow for Lindh's counsel and other lawyers who are prepared to stand up to the Bush administration's assault on democratic rights.

The concocted criminal case against Stewart is not just an attempt to bully and intimidate lawyers willing to defend people accused of terrorism. More profoundly, this case is part of the government's accelerating drive to dismantle democratic rights.

In announcing the indictment, Ashcroft said: "Sheik Rahman is determined to exploit the rights guaranteed him under the United States' system of justice to pursue the destruction of that very system. The United States cannot, and will not, stand by and allow this to happen."

Here Ashcroft is using hyperbole to camouflage his own destruction of the justice system. Setting a precedent for hauling the lawyer of a controversial client into court to face nebulous charges carrying long prison terms seriously undermines the independence of criminal defense attorneys. It therefore violates the right of those charged with crimes to effective assistance of counsel, a right guaranteed by the Sixth Amendment to the United States Constitution.

The implications of Ashcroft's actions have generated a sharp reaction in the legal community. As word of Stewart's arrest spread Tuesday, dozens of lawyers made their way to Stewart's arraignment at the federal courthouse at Foley Square, where they heard Stewart reply to United States District Judge John G. Koeltl's request for a plea by stating "Emphatically not guilty." Gasps were heard as bail was set at \$500,000, but Stewart posted a personal bond immediately and secured her own release.

Meeting with the media outside the courthouse, Stewart denounced the bringing of charges against her. "I do think this will become, hopefully, a touchstone case, as many of my cases have, something that points out the limits the government can go to in prosecuting people they don't like," she said.

"They've arrested the lawyer and the interpreter," Stewart continued. "How much further? Are you going to arrest the lady who cleans the sheik's cell?" Stewart's lawyer, Susan Tipograph, added, "The charges are troubling because everything she is charged with has to do with attorney-client privilege."

The initial news reports of the indictment are replete with statements from lawyers praising Stewart and condemning Ashcroft. "Lynne is a zealous advocate and a proud defender of the oppressed all over the world," New York attorney Ronald L. Kuby told Associated Press. "She was always there at any time of night when the police or the FBI were kicking in someone's door, and as a distinguished member of the New York bar, those of us who know her find these allegations to be unbelievable and politically motivated."

"I'm sure this is an attempt by the government, thinking that if it can attack the best of us, the rest of us will go along with the program," Kuby warned.

"She's a person who is extraordinarily skillful with extraordinary courage and principle," said Frederick H. Cohen to the *New York*

Times. Cohen represented a defendant in a recent trial stemming from the bombings of American embassies in East Africa in 1998. "I think it would be unlikely she would do such a thing," he added.

Gerald Lefcourt, past president of the National Association of Criminal Defense Lawyers and a prominent New York criminal defense attorney, told the *Washington Post* he believed the government's action "is a powerful message to attorneys with people who are incarcerated."

He continued: "As a defense lawyer now, you basically cannot talk to your clients in prison. If you have a securities fraud case . . . then you're probably safe. If you're in the Southern District of New York and there are people under indictment for these kinds of cases, then you're probably being watched. It bodes terribly ill for our defense system."

Bill Goodman, legal director for the Center for Constitutional Rights, a New York-based human rights organization, said "People are shocked more than outraged; outrage will come later. This is a long, slow progressive buildup of the assault on the Bill of Rights. This is an attack on the bar."

The indictment itself seems in places to have been drafted more for the media and the public than for any legal reason. For example, it contains a detailed description of the 1997 massacre of 58 tourists at an archaeological site in Luxor, Egypt, allegedly carried out by the Islamic Group. According to the indictment, the killers left leaflets calling for Abdel Rahman's release from US prison. One of the leaflets was stuffed into the slit torso of a victim, the indictment says.

There is no allegation that Stewart, or for that matter Abdel Rahman, had any role in that atrocity.

Asked why the indictment mentions the Luxor massacre, Ashcroft offered that it would remind people that Abdel Rahman's "leadership is substantial in the community of terrorists" and that any "signaling from him would be important."

Ashcroft claimed that information passed through Stewart's visits with Abdel Rahman was responsible for his executive order permitting government agents to monitor attorney-client conferences, and that he was now making Abdel Rahman the first person designated pursuant to that order. Accordingly, from this date forward, Abdel Rahman's conversations with attorneys like Ramsey Clark will be monitored by government agents.

Supporting Ashcroft was the *Wall Street Journal*, which called the indictment "remarkable," and claimed that the role of lawyers and translators was to allow mafia dons and terrorists to direct operations from within their prison cells. Reflecting the escalating suggestions of violence in the right-wing media, the *New York Post* said that Stewart is "lucky she lives where she does." The newspaper continued: "Behavior of the sort she specializes in would have gotten her a bullet behind the ear—or worse—where people like Sheik Rahman run things."

The indictment of Lynne Stewart demonstrates that the United States government is adopting more and more openly the methods of a police state and dispensing with the trappings of a constitutional democracy.



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