Greetings for the New Year!

The Lynne Stewart Defense Committee wishes to thank all of you for your steadfast support of Lynne Stewart. In April it will be five years since Lynne’s arrest. Although we were all relieved at the 28-month sentence that Lynne received - it is still over two years in prison and for a 67 year old woman, who has suffered breast cancer and other health issues, a considerable length of time in prison (at last exam Lynne was cancer free and remains on medication to prevent a reoccurrence). Lynne went to court on the day of sentencing fully expecting to go to prison for the rest of her life. On the eve of her sentencing over 750 people attended a rally at Riverside Church of New York. On the day of sentencing a spirited rally took place outside the courthouse. People walked with Lynne to court but most were unable to get in to the courtroom. You can imagine Lynne’s emotions when she exited the courthouse after several hours to find many people still waiting for her with flowers and cheers. An exhausted but overjoyed Lynne spoke to the People thanking the Judge and especially all the people who have stood by her. (A transcript of Judge Koeltl’s sentencing remarks is available at lynnstewart.org).

The Government is appealing Lynne’s sentence. The Defense is appealing Lynne’s conviction. The struggle continues. While reviewing our work of the past five years the Lynne Stewart Defense Committee feels very proud of the organizing we have done both in terms of fighting for Lynne Stewart and developing the broad support for Lynne Stewart and the issues her arrest raised. Fighting the Bush administration’s attack on the Constitution and the Bill of Rights. We intend to continue to do both - as we all know our rights are far from secured by a newly elected democratic congress. America seemed to wake up during the last election and the tide of opinion has turned against the war in Iraq but we breathe no sigh of relief from this election, only hope that the People will remain awake. We also don’t believe that the People’s vote was just against the war, we believe the American people are also affronted by the loss of many rights which many of us still remember fighting to secure and a deep concern for the environment. We are united in securing a world our grandchildren can flourish in body and soul.

The continued disintegration of the attorney client privilege and the conditions of prisoners, the shameful treatment of detainees, the length of prison sentences meted out in this country, the Prison Industrial Complex, the challenge to and loss of the right to Habeus Corpus all cry out for our continued vigilance and unity.

In recent hearings in Congress on the Military Commissions Act and whether the law can be used to justify the indefinite detention of an American citizen and bar federal courts from issuing writs of habeas corpus and hence prevent the detainee from having a legal process to challenge the government’s authority to imprison them on account of their INNOCENCE, Alberto Gonzalez said the following:
“The Constitution doesn’t say [that] every individual in the United States or every citizen is hereby granted or assured the right to habeas corpus, it doesn’t say that...it simply says [that] the right of habeas corpus shall not, shall not be suspended.”

This newsletter will address some of these issues in a column by Lynne Stewart and Heidi Boghosian, Executive Director of the National Lawyers Guild. Lynne’s appellate attorney, Joshua Dratel will explain the current legal status of her appeal and what it means that the government is appealing her sentence. We will include photographs from events surrounding Lynne’s sentencing and excerpt some of the letters that were submitted to the judge at sentencing and which proved to be an invaluable contribution to Judge Koeltl’s decision on sentencing. In closing we hope that you will continue to work in solidarity with the Lynne Stewart Defense Committee, help us to continue our work and continue the unity in the progressive community that we have built over these last five years.

We hope that you will continue to support us. We have been able to continue our work over these last 5 years mainly from individual donations. We enclose an envelope seeking donations. These funds will be used to support a part time staff person, to send Lynne Stewart around the country to speak about her case and continuing to struggle for justice, to support the work of Lynne’s appeal, to continue the Newsletter and to hold events to build unity and knowledge as we fight back. Checks should be made payable to: Lynne Stewart Organization or if you prefer a tax deductible contribution to the National Lawyers Guild Foundation with “Lynne Stewart Organization” on the memo line. Mail all to the same address: 350 Broadway, Suite 700, New York, NY 10013.

Pat Levasseur, The Lynne Stewart Defense Committee

Legal Update

by Josh Dratel

Lynne Stewart’s case is now before the United States Court of Appeals for the Second Circuit, the federal court that hears appeals from federal cases heard in New York. Lynne has filed a Notice of Appeal, and her brief is due in mid-March. The other two defendants, Ahmed Sattar and Mohammad Yousry, have also appealed. Mohammed has added David Cole, a respected professor from Georgetown University Law Center, who has written and spoken widely on constitutional issues, particularly those affecting lawyers and those involving the “material support” statute under which Lynne and her co-defendants were charged. After the briefs are filed, all three appeals will be heard at one time by a three-judge panel. No date has yet been set.

In addition, the government has appealed the sentence imposed on Lynne. The government will present its arguments in support of more jail time in its brief opposing Lynne’s brief, and then Lynne will respond. In all likelihood, all of the issues raised on appeal by all defendants and the government will be heard together.

Lynne’s appeal has several facets. The validity of the charges themselves, the application of the statutes that were used, the constitutionality of tactics pre trial, as well as the conduct of and various rulings made at trial, will all be challenged. Lynne and her attorneys are hopeful that the issues raised in her appeal will result in a reversal of her conviction. Also, of course, Lynne will vigorously oppose the government’s objections to her sentence. In that regard, a Supreme Court decision, Cunningham v. California, ___ U.S. ___, 2007 WL 135687 (January 22, 2007), rendered only this past Monday supports the district judge’s exercise of discretion in imposing the sentence. In Cunningham, the Court struck down California’s tiered sentencing system in which judicial findings of fact resulted in higher sentences. The Court’s reasoning, applied to federal sentencing, establishes with even greater force that the Sentencing Guidelines are only advisory, and cannot be treated as a benchmark or starting point for sentencing any more than any of the other statutorily enumerated factors a court is bound to consider in determining the appropriate sentence. In Lynne’s case, the only argument the government presented for the more severe sentence was the Guidelines calculation. Other cases to watch with regard to sentencing and the Supreme Court are Claiborne v. United States (No. 06-5618), which presents the issue whether a sentence below the guidelines is reasonable and whether a sentence that substantially varies from the guidelines must be justified by extraordinary circumstances, and Rita v. United States (Nos. 06-5618 & 06-5754), involving a sentence that was within the guidelines, and presenting the question whether a Guidelines sentence is presumptively reasonable, and whether a court must still examine factors that would justify a lesser sentence.
When a jury found Lynne Stewart guilty in 2005 of the charge of conspiracy for issuing a press release from client Sheikh Omar Abdel Rahman, legal experts responded to the verdict with varying commentary. Michael Ratner, president of the Center for Constitutional Rights, said the government had prosecuted Stewart for political reasons, primarily to send a cautionary message to attorneys representing alleged terrorists. In contrast, noted ethics expert Steven Lubet expressed skepticism of Stewart’s claim that she was simply doing her job as a lawyer.

Professor Lubet teaches law at Northwestern University, where he is also the director of the school’s program on Advocacy and Professionalism. In addition to over 50 books and articles on legal ethics and litigation, Lubet has published widely in the areas of international criminal law and dispute resolution.

In a stinging critique of Lynne Stewart in The American Lawyer (“Nothing ‘Chilling’ Here, Folks: Why Lynne Stewart Doesn’t Deserve Our Sympathy This Time,” Jan. 1, 2007) Professor Lubet presents an uncharacteristically narrow analysis of the Stewart case. He might have been more charitable had he actually been in the courtroom and seen Stewart’s humanity bared to all. His assessment might have changed had he read some of the thousand-plus letters from former clients and colleagues on Stewart’s behalf.

Labeling Stewart an “envoy” of her client, Lubet said she used her access to facilitate communication between the Sheik and the Islamic Group, carried illegal messages, and lied about it. In fact, Stewart carried only one message and issued only one press release. She did this in 2000, two years before John Ashcroft indicted her. The release was the Sheik’s opinion against the ceasefire—Stewart merely exercised her constitutional right to speak to the press about a matter of public interest.

Lubet failed to mention that Stewart was guilty only of violating a Special Administrative Measure, which is not a crime. It occurred while Janet Reno was Attorney General. Reno knew about it, and dealt with it appropriately by telling Stewart not to do it again, or she would not be able to visit Rahman. The initial Ashcroft indictment, announced on the David Letterman show, was such an unconstitutional applica-

tion of the federal statute that Judge Koeltl dismissed it, only to have the government indict Stewart again under a different statute.

Lubet calls Stewart arrogant for expressing concern to the judge that unpopular clients may be receiving inadequate representation because their lawyers are intimidated by the government. “Arrogant” seems a poorly chosen word, given that response to Stewart’s indictment resulted in an outpouring of concern from criminal defense attorneys, a former conservative judge, and others who know too well the realities of the courtroom. Among the many distinguished attorneys representing Stewart at her sentencing was the president of the NYS Association of Criminal Defense Lawyers, an association that understood the effect her case would have on defense attorneys. Perhaps one must have actual experience in representing clients held in disdain by the authorities to know the stigma that attaches in so doing.

And perhaps unsurprisingly, Lubet found Stewart’s post-sentencing comments the “opposite of contrite,” when she said the government had been “overreaching,” (something the court agreed with when it dismissed the initial indictment). He also found her “arrogance breathtaking” when she responded with an expression used frequently by inmates (not surprising for a lawyer who worked closely with them for over three decades): “I could do the time standing on my head.” Ms. Stewart’s many supporters, over 1,000 of whom wrote letters on her behalf to Judge Koeltl, know that a sentence of 30 years was a death sentence for Stewart, against which a two year sentence pales in comparison. Her comments were not made in mockery, but in utter relief.

Lubet could have focused his disdain more constructively on a government that allows the eavesdropping on communications between attorneys and clients in violation of the oldest attorney-client privilege. He might just agree that such regulations have a chilling effect on the zealous representation of clients.

On Steven Lubet’s Indictment of Lynne Stewart

by Heidi Boghosian

A photo of Heidi Boghosian by Efren Sanchez
Government apologists, critical of the opposition we have mounted declare that the Lynne Stewart case is “one of a kind”, and has had no chill effect. They even have gone so far as to say that my remarks are an attack on the defense bar, those who continue to represent the most despised. Nothing could be further from the truth.

Initially, my case is unique in the over-reaching techniques (invasion of the attorney client privilege, searching of my law office, computers, date and message books, use of evidence that was incendiary and not relevant at trial etc.) employed by the Government to gather “evidence” and convict. Also, the use of an executive department prison regulation (SAM) directed at my client, to glue together a criminal indictment by using overly broad conspiracy and terrorist theories was indeed unique, but may not remain so.

In the months since my sentencing, there has been an increase in the Government regulation of lawyers–in particular those who are representing so called terror suspects at Guantanamo and elsewhere. The playing field for adversary proceedings has shrunk from the size of a basketball court to a ping pong table and even then it is (at least in Guantanamo cases) only possible for lawyers to play doubles. Their partner? A Government lawyer of course, who is privy to most if not all defense strategy and also the interpersonal relationship of lawyer and client. It is an unwarranted intrusion and I believe, could not be accomplished were the Guantanamo lawyers, who labor in this Gulag, not painfully aware of “what they did to Lynne Stewart.” Lawyers, under oath, without any regulation, must act ethically. Why impose these heavy handed rules that do not permit the lawyer to do the work effectively by establishing trust and then exploring all possibilities with the client, alone? The answer is simple. The government to perpetuate their own self righteousness of “saving” the world for democracy and relying on the fear of the “other” is exercising what they proclaim is a world wide commission by locking up their designated “bad guys” and throwing away the key. They will brook no interference from pesky lawyers.

Proof of this is found in recent events as they have been revealed to us. First, the Government assertion that Guantanamo detainees should not be allowed to talk to their lawyers about the torture inflicted upon them because the techniques are classified. They even went so far as to suggest that there should be no lawyers for 14 of the detainees. (Washington Post, New York Times, November 4, 2006) If indeed the muscle of repression is always flexing to limit challenges, this is another mark of our descent into state control. What could be more relevant to a defending lawyer than how the prosecution obtained inculpatory information? Indeed a murderer, accused of crime, is not only protected from use of torture (coerced confessions) but must be warned by officials of his/her right to remain silent. Here the government asks the Courts to “protect” its methods and to do so by burying, without voice, those who would dare complain!! This is not a proposed shrinkage of the right to counsel but a disappearing of it.

We also have seen the rant of a high ranking defense department official, Cully Stimson, Deputy Asst. Secretary of Defense for detainee affairs (Charles “Cully” Stimson has since resigned his Defense Department post as deputy assistant secretary for detainee affairs.). He invokes the fear of the loss of the almighty dollar when he calls upon CEO’s to check out the big law firms who are providing pro bono representation to Guantanamo prisoners. In that narrow shadowy world that is the Bush administration, Stimson assumed that Corporate America was in their pocket (and it may well be!!) and could be “enlisted” to “control” if not eliminate those annoying lawyers!! While Mr. Stimson has now apologized, the horse has still been stolen. The New York Times (1/13/2007) commented on its editorial page that even for the Bush administration’s notions of justice, this was a new low and called for Stimson’s firing. It seemed to me that it is the logical conclusion of everything since the enactment of the Patriot Act. And even after an apology, wasn’t this the rallying cry? And hasn’t it thus been ever in US history??

Back from the Brink

by Lynne Stewart
We have been able to continue our work over these last five years mainly from individual donations. We enclose an envelope seeking donations. These funds will be used to support a part time staff person, to send Lynne Stewart around the country to speak about her case, to support the work of her appeal, to continue the Newsletter and to hold events to build unity and knowledge as we fight back.

Defending the Right to Defend and be Defended!

Checks should be made payable to: Lynne Stewart Organization

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Mail all checks to the same address: 350 Broadway, Suite 700, New York, NY 10013

The latest escalation of the domestic war on the defense lawyers is revealed in the book form “Guide”, authored by the Pentagon (the adversary/prosecution) for the conduct of the “trials” now scheduled for eight detainees who ostensibly have ties to Al Qaeda. (Washington Post, 1/18/07) Replete with gross violations of due process (hearsay evidence, tortured confessions, and more), this guide is the script for performance of show-trials and the defense lawyer better learn the proper lines and stage directions. What punishment for deviating? Just look at what happened to Lynne Stewart.

This is never to say that the brave and thankless work performed by the lawyers for the despised is anything less than the best it can possibly be under the circumstances. Many of those who represent the detainees at Guantanamo are those who are in the forefront politically in denouncing the restrictions placed upon them. And the highest praise is due to the lawyers in the Public Defender’s Office for the federal district court in Miami and New York lawyer Andrew Patel for their no-holds barred defense of Jose Padilla based in part on the isolation, mental and physical torture he sustained and still suffers from. The work goes on because defense lawyers are a dedicated group. Yet, I don’t believe that any one of these would not agree that their role has been diminished and that there is a certain fear level implicit in each decision they make.

The playing field for adversary proceedings has shrunk from the size of a basketball court to a ping pong table and even then it is only possible for lawyers to play doubles.

Finally, in a recent story from the heartbreaking Battle of New Orleans, longtime National Lawyers Guild lawyer and professor at Loyola Law School, Bill Quigley has been threatened by his adversary, if he doesn’t stop speaking out. The issue involves the razing of low income public housing while tens of thousands of poor, mostly Black New Orleans refugees are kept far from home. The New Orleans Housing Authority has written to Bill that if he doesn’t remove statements from a web site and stop speaking publicly, they will report him to the Disciplinary Committee. In the finest tradition, he has said that the matter is of the greatest public interest, locally, nationally and internationally and that he will not be gagged by those interests seem to want to enwhiten, what was and can be again a great Black city.

All of these recent events involving the “lawyers” underscore the importance of the ongoing struggle in my case. The sentencing gave the Government pause, but it is only a victory on appeal that can strengthen the inviable role of defenders against predatory government.
June 1, 2006
Re: Sentencing of Lynne Stewart

Dear Judge Koetl:

I write this letter because I fear that bad judgments – by Lynne Stewart and by the government – have led to a conviction and possible sentence out of all proportion to the conduct proved in the case against Lynne Stewart. In addition, this case has generated an apprehension in the defense bar that undermines our reliance on zealous advocacy to maintain the credibility of our justice system. The Court has the opportunity to bring the case, and the message it sends, back into balance. I write to urge you to use your well-known independence when you exercise your own judgment in sentencing Lynne Stewart.

While I have worked almost entirely within the federal criminal justice system, my career has spanned many roles...I am, on the one hand, one of the high level Justice officials who reviewed and supported the indictment of Sheikh Omar Abel Rahman on sedition charges in 1994; but, on the other, I know that the existence of lawyers such as Lynne Stewart was one of the reasons why I was comfortable with that charge. I knew in our system, he would get a zealous defense. Lynne Stewart, her passion, her heart and soul, has been the embodiment of what makes our system work...

With the wake-up call of horrendous terrorist attacks on our nation, the world changed, the rules changed, the DOJ changed. Tolerance for certain “in-you-face” defense tactics evaporated and further, transformed into intolerance driven by law enforcement’s deep sense of responsibility and need to demonstrate its ability to meet the terrorist challenge.

The tragedy here, I believe, is that Lynne Stewart...didn’t have the judgment to see this change and to exercise a new measure of care. Instead, she still saw herself operating within a protective “bubble,” lulled by a history of government benign neglect...

Does this make her conduct criminal? For what it is worth, my sense is that given the circumstances, the Conspiracy to Defraud the U.S. was a fair charge...But, I believe the “terrorism” counts were unwarranted overkill...the decision to try the case against Ms. Stewart as a terrorism case, coupled with the decision to repeatedly refer to this evidence is yet another sad consequence of our changed world.

You should know that after the convictions and before writing this letter, I hit the web and reviewed the superseding Indictment, transcripts of some of the pretrial hearings, and waded through all of the transcripts of Ms. Stewart’s testimony, and some other defense witnesses. Finally, I read all of the summations in the case.

I know this limited review does not qualify me as an expert, but for what it is worth, I believe the evidence against Ms. Stewart appears to be sufficient to support each count of conviction; but that doesn’t mean the terrorism charges were correctly brought. Indeed what it says to me is that the statute is capable of being stretched far beyond the conduct it was designed to reach. In our criminal justice system only prosecutors have the power to assure that overreaching statutes are not abused. We must rely on the prosecutor’s office – empowered with vast discretion and, hopefully, imbued with good judgment – to serve as the main bulwark against unfair charges. The court has no power in charging decisions.

The court does possess the singular power, as I noted above, to exercise its judgment to do justice in this case at sentencing. I urge you to craft a sentence to fit the person, understanding that the collateral loss of her ticket to practice law, alone, is a terrible punishment for Lynne Stewart whose entire life, heart and soul and mind is inextricably connected to her important role as an advocate for the poor, the unpopular, and yes, the despised.

Respectfully submitted,

Jo Ann Harris

Respectfully submitted,
More Letters...

Dear Judge Koetl,

My name is Ernesto Stewart and I am the grandson of Lynne Stewart. I am in the 9th grade at Bard High School, a public school here in New York. I live with my parents in Brooklyn. I am writing to ask you to show mercy and not send my grandmother to prison.

My Grandmother or “Wita” as we know her has meant a lot to me in my life. She is known as “Wita” as a short form for the Spanish “Abuelita” which my mother Marta Stewart initiated. She has exposed me to a little bit of every thing: the New York countryside, theater, baseball games, and most importantly literature. When we go up to the country, every night she would make a point to read us stories. These stories ranged from children stories to young adult novels but whatever she read carried meaning.

Never would she try to drive us, her grand children in the wrong direction, but always would give us character and moral structure. Now growing into my mid-teens she has been a guide to keep me centered while still pursuing my passion for sports. Often she would come to see our school baseball games, making friends with the team and conversing with the coaches and umpires. It always means a lot to me to see my grandmother cheering for me and my teams.

I am not sure what will happen to us if she is not around. Life will go on but it will not be as good. Our family gets together a lot and without her we probably won’t. I feel ever more sad to think of her in jail. She is too old and too good for that. I hope you will let her come home to her family when this is all over.

Sincerely,

Ernesto Stewart

Dear Judge Koetl,

My name is James Della Bella and I am a client of Lynne Stewart. I feel very strongly that I should write in support of Lynne, not only because she has saved my life both literally and emotionally, but as a family survivor of September 11th, I feel it is my duty and right to speak on behalf of leniency. Your Honor, I have led a very troubled life since I was a very young child...I have traveled a volatile path, one I am still fighting today. In fact, Lynne was defending me while on trial herself. She was always optimistic and encouraging of me to continue moving forward as my path of rehabilitation has been one of the “three steps forward, two steps back” variation...

Her presence was especially vital after I lost my mother in the World Trade Center attacks...Even though Lynne’s offices are in Manhattan, she called me that day, knowing that my mother worked on the 102nd floor of Tower Two. Her first statements to me that day were of love and concern and assurances that she would never have supported the attack, despite her having defended the Sheik...She cried with me as I told her my mother was among the missing and presumed to be dead.

Lynne has been a lawyer, a healthy parental figure, a therapist, a cheerleader and overall life coach...She has always encouraged me to respect and follow the Constitution, emphasizing that I should work from within the system to affect change as that was what our forefathers provided for us to be able to do. Your honor, Lynne believes in the law. It was not just a career but her life...

It is a travesty that she is going to jail. Our legal system needs more lawyers like Lynne. I know her conviction cannot be undone but I beg the court to show leniency.

Your Honor, thank you in advance for taking the time to read this plea. I trust you will show this matter its due consideration.

Sincerely,

James Della Bella
Michael Ratner / Lynne Stewart / Jeff Mackler / Pam Africa
Tour Schedule
(For more details on all events, call 415-255-1085)

Friday, February 23
10:45am Oakland Press Conference; 12:45pm, Boalt Law School; 3:00
KPFA radio; 5:30 San Francisco Reception; 7:30 SF Mass Rally at Women’s Building, 3542 18th Street.

Saturday, February 24
10am Prison Radio Reception; 2pm Marin Rally, College of Marin, Student Services Center; 5:30 Berkeley Reception, Middle East Children’s Alliance, 901 Parker at 7th, Berkeley; 7:30 Berkeley Mass Rally, King Middle School, 1781 Rose

Sunday February 25
1:00pm Palo Alto Reception, Fireside Room; 2:00 Mass Rally at Unitarian Universalist Church, 505 E. Charleston Rd., Palo Alto - peaceandjustice.org

Monday, February 26
10:30am Gray Panther Reception, 12:30 University of San Francisco Law School, Fulton at Stanyon, Kendrick Hall; 5:30 Reception and 7:00 Rally

Tuesday, February 27
12:15pm New College of Law, San Francisco

Wednesday, February 28
12:00pm UC Davis School of Law, Moot Courtroom; 5:30 Sacramento Reception, 403 21st Street, Sacramento

Check website for details on Portland, Oregon and Seattle, Washington events!

Lynne Stewart
Organization 2007

Produced by Pat Levesaur

Designed by Ian Head
(haberdudas@hotmail.com)

Thanks to Rose Maldonado and Larry Otway for the photos. Cover design uses a photo by Larry Otway.

Right: Ralph and Lynne after sentencing. Photo: Rose Maldonado