

From the Lynne Stewart Defense Committee:

Judge Koeltl's September 15, 2003 opinions contain elements that are favorable and unfavorable for the Stewart defense.

On our motion for additional information for our hearing on whether there was a settlement agreement, the judge overruled our document request. However, he rejected the government's narrow definition of the issues, which will require the government to provide additional information.

The judge accepted our position on his power to rule while the government's appeal is pending in the Second Circuit.

The most significant rulings were in the area of Foreign Intelligence Act (FISA) surveillance. Here, there were disappointments but few surprises. There were wiretaps on the telephones, fax machines and computers of Ahmed Abdel Sattar (Mohammed Yousry briefly after 9/11) during most of the seven year period before the April 2003 indictment. Mr. Yousry and Mr. Sattar were "targets" of those taps, as was Sheik Abdel Rahman. Lynne Stewart was not a target of those taps, and Judge Koeltl makes that clear.

Because Lynne was not a target, the government did not have to show the judge who issued the warrant any evidence that she might be engaged in wrongdoing. So nothing in the opinion or the records points the finger of suspicion at her. She was overheard, and her communications intercepted, because she dealt with the "targets." Obviously, she dealt with her client, Sheik Abdel Rahman, and Messrs. Yousry and Sattar were involved in different ways and at different times in assisting Sheik Abdel Rahman.

We argued that a lawyer should have a special right of privacy when communicating with the client, beyond the client's right to confidential communication. We believe that this right is necessary to prevent a chilling effect on lawyers who represent controversial clients. The judge did not completely accept this argument. In his discussion of it, the judge overlooked several important facts, and we are seriously evaluating whether to file a motion to reconsider based on those omissions. Also, the judge said that Sheik Abdel Rahman's present attorney Ramsey Clark had not aggressively argued that the Sheik's communications with his lawyers should be confidential. Again, we think the Court misconstrued Mr. Clark's views and this would be part of a possible motion to reconsider.

However, the judge's ultimate conclusion does recognize the confidentiality of an attorney's work product. The judge established special procedures to protect Lynne's attorney work product, and we expect to use those procedures.

The judge did accept the Ashcroft view of FISA, and he even cited the Patriot Act to uphold the basic legality of the wiretaps. This is the most disappointing part of the judge's opinion. He agreed with government secrecy, and with the idea that a FISA wiretap could be used even when a criminal investigation is also possible. That is, a secret FISA warrant can be obtained based on a claimed "intelligence" objective and then used for a criminal case without the safeguards one would have if the government used the "ordinary" wiretap procedures. Again, however, we think the judge misconstrued some issues as to Lynne's situation and we may move to reconsider.

It is also important to note that we are in the midst of a big dispute about the admissibility of electronic surveillance evidence, and rulings on those issues can have a great influence on what actually happens if there is a trial.

The most important point, however, is that Lynne Stewart is not guilty of anything. The evidence in this case will show that she was a principled, courageous and diligent advocate for her client.