

TUNE IN TO THE  
SOUND OF DEMOCRACY

## Justice Talking Radio Transcript

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*Attorney Lynne Stewart never thought she would find herself facing years in prison for what she considers just doing her job of zealously representing her client. But based upon wiretapped discussions with her client Sheik Omar Abdel Rahman, who was convicted of plotting a series of bombings at New York landmarks, the U.S. Justice Department successfully prosecuted Stewart for aiding and abetting terrorism. Is the government taking necessary measures to prevent criminal behavior or violating the Sixth Amendment right to counsel by challenging the ability of lawyers to talk confidentially with their clients?*

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**MARGOT ADLER:** From NPR, this is Justice Talking.

**JOHN ASHCROFT:** Today's indictment charges that Lynne Stewart and Mohammed Yousry repeatedly and willfully violated these orders in order to maintain Sheik Abdel Rahman's influence over the terrorist activities of the Islamic Group.

**UNIDENTIFIED FEMALE:** The Special Administrative Measures, or SAMs, have been used since the Clinton Administration to block terrorists and terror suspects in custody from communicating with their supporters on the outside.

**LYNNE STEWART:** And when I signed them, I had no intention of violets, or like getting married, and something comes up and you suddenly see that maybe the promises you made really are not appropriately kept.

**UNIDENTIFIED MALE:** What she was attempting to do was to send a message to his supporters in Egypt – a call to arms.

MARGOT ADLER: Attorney Lynne Stewart and former Federal Prosecutor Joe Aronica debate the limits of zealous representation in the post 9/11 era. Stay with us.

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MARGOT ADLER: This show was taped on June 7<sup>th</sup>, 2005.

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MARGOT ADLER: This is NPR's Justice Talking. I'm Margot Adler. [applause]

We're coming to you from the National Constitutional Center in Philadelphia. On our show today, one of our guests has a lot at stake. She's a lawyer and a jury has convicted her of aiding terrorism. At the age of 65, she faces up to 20 years behind bars. You'll meet Lynne Stewart and our other guest, former Federal Prosecutor Joseph Aronica in a moment.

First, here's a quick introduction to Lynne Stewart's case from independent producer Carole King, and a hint of the emotions that Stewart incites from both her critics and supporters.

CAROLE KING: It's a Friday night benefit at the Socialist Meeting House Freedom Hall on 128<sup>th</sup> Street in New York—Harlem tenant leader Nellie Bailey rallies support for Lynne Stewart.

NELLIE BAILEY: [interspersed with Carole King introduction above] I just wanted to say I'm so happy everyone is here... ..she's a fighter, a lawyer, a friend and a comrade—someone who we love dearly...

LYNNE STEWART: You know, I always say that you have to die usually to hear all these good things. [laughter and clapping] I'm reminded of Tom Sawyer sitting in a balcony in church in Hannibal, Missouri and crying to hear how wonderful he was.

CAROLE KING: Listening to 65-year-old Stewart, it's not hard to imagine the public school librarian she was here in Harlem in the 1970s. In another life, Stewart might be looking forward to retirement, but this September the teacher turned civil rights lawyer will instead be facing a judge, and a sentence of up to 20 years in prison. After three decades defending clients from the Black Panthers to mafia figures, Stewart is now traveling coast to coast and fundraising for herself so she can fight the first U.S. federal conviction of a defense attorney in a terrorism case – her own. It was in 2001, less than six weeks after the September 11<sup>th</sup> attacks when the government indicted Stewart. Former attorney general and Stewart's colleague, Ramsey Clark.

RAMSEY CLARK: I suddenly hear over the telephone that a person I have great respect for as a human being and as a lawyer has been charged in a terrorism case. I just thought the government's gone crazy.

CAROLE KING: Prosecutors accused Stewart of conspiring to defraud the government, and giving material support to terrorists. They said Stewart signed and then violated prison restrictions by relaying communications for her client, the blind Egyptian Sheik Omar Abdel Rahman. The Sheik had been convicted in 1995 for plotting to bomb Manhattan bridges and landmarks. He was also linked to a terrorist group that had kidnapped and murdered tourists in Egypt in the 1990s.

After his conviction, Stewart says, the Sheik was isolated, serving a life sentence in a U.S. prison. So Stewart and a translator, who was also convicted along with Stewart, became the eyes and ears of the now 66-year-old Sheik who speaks no English. Stewart openly passed a press release to Reuters saying that Sheik Rahman was withdrawing his support for a ceasefire between his followers and the Egyptian government.

STEVEN LUBET: Maybe that's being a publicist or a propaganda agent, but it's no part of legal representation.

CAROLE KING: Criminal defense lawyer, Steven Lubet, directs the Trial Advocacy and Professionals Program at Northwestern University Law School.

STEVEN LUBET: Everybody is entitled to a defense and that's true. But not everybody is entitled to a lawyer who is going to become a political assistant, and once those lines are blurred, it becomes more difficult for the legitimate lawyers to fulfill what is already an extremely difficult role.

CAROLE KING: Stewart admits having violated prison restrictions, she says, because she saw them as unconstitutional. The Special Administrative Measures or SAMs have been used since the Clinton Administration to block terrorists and terror suspects in custody from communicating with their supporters on the outside. No terrorist violence in Egypt followed the press release and the government barred Stewart from seeing the Sheik until she signed even more restrictive SAMs. Those who disagree with Stewart say instead of violating the SAMs, she should've challenged them in court. But Stewart says she was doing what all defense lawyers are required to do: operating as a zealous lawyer for her client. According to Ramsey Clark, using the Special Administrative Measures to criminally indict Stewart violated the Sheik's Sixth Amendment right to counsel.

RAMSEY CLARK: This not only greatly inhibits your access to such counsel, but in this case, it removed her counsel from that criminal prosecution. It's hard to think of a greater invasion of an attorney-client relationship than what happened here.

CAROLE KING: For the U.S. Department of Justice, the attorney-client relationship is a gray area. After all, the Sheik was already convicted and serving a life sentence, he wasn't a

defendant anymore, and, in any case, says Doug Letter, the terrorism litigation counsel for the Justice Department, Stewart was hardly behaving as a lawyer.

DOUG LETTER: If you look at the indictment you see that the charges against her were that she was making noise and pretending to have a discussion with Sheik Rahman. In fact, the indictment explains that at one point, either Sheik Rahman or the interpreter indicated to her that she was doing a wonderful job of acting.

CAROLE KING: Doug Letter, U.S. Department of Justice. Stewart's lawyers are in the process of submitting their final round of documents to the presiding judge. Sentencing is set for September. For Justice Talking, this is Carole King in New York.

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MARGOT ADLER: I'm Margot Adler. This is NPR's Justice Talking. Terrorism cases are tough. The government needs to keep some things about the war on terrorism secret, and it wants to prevent terrorists from communicating information to followers. But the right to counsel is a hallowed part of our Constitution, and many lawyers believe they have a moral duty to defend even the most unpopular of clients and keep their communications private. That dilemma was at the heart of a case in which the Justice Department convinced a jury that Lynne Stewart went well beyond her role as a lawyer.

In the next hour, we'll have a chance to hear her tell her story, and we'll hear a former federal prosecutor's opposing views. Lynne Stewart was once a public school teacher and a librarian in New York City. She then went to Rutgers Law School in New Jersey and began a 30-year career as one of New York's most activist lawyers. She became known as the woman who would take the cases nobody else would, including high profile civil rights cases and several cases involving the deaths of police officers. Our other guest, Joseph Aronica, is a partner with a law firm, Duane Morris. Before entering private practice, Aronica was an Assistant U.S. Attorney for the Eastern District of Virginia where he served as Chief of the Criminal Division. He was lead counsel in the "Illwind" fraud investigation. The investigation resulted in 65 convictions of major defense contractors and high level government and military officials.

He also prosecuted cases involving espionage and major weapons and technology export violations. Please join me in welcoming Joe Aronica and Lynne Stewart to Justice Talking. [applause]

I'd like to begin with a couple of questions for Lynne. Lynne, you've said it was crucial to keep the Sheik's story before the public so that he would not rot in jail alone and unknown. But by helping to keep his charismatic influence alive, didn't you help empower a group the United States government says is a violent terrorist organization?

LYNNE STEWART: Well, I think there are about three answers to that. First of all, they also said Nelson Mandela was part of a violent terrorist organization in the mid-80s, so we see there is a certain fashionableness to this designation of who is the current terrorist. The

other thing was that I knew, as indeed I am sure the government knew, that the IG – the so-called terrorist organization...

MARGOT ADLER: The Islamic Group...

LYNNE STEWART: Yes, in Egypt the IG is Gama Islamiya. There had been no actions, there had been no violence, since 1997. The Egyptian government had basically arrested the movement and who weren't in jail were actively participating in a ceasefire or peace initiative, as they called it. So all of this became part of a formed idea at the point that the press release was made. And let's remember, that was the entire offense – this press release. That served as the focus of the government case.

MARGOT ADLER: This was a press release in which the Sheik was saying that he was withdrawing his support for a ceasefire between the Islamic Group and the Egyptian government – correct?

LYNNE STEWART: Yes. The crucial word, I think, which is often forgotten by media, is his personal support. In other words, he was no longer an actor within this group. He was not part of their governing body or decision-making process. He was – and he's described himself as "buried in the middle of Minnesota, not knowing what was going on on the ground" – but from what he read or what was read to him, actually, in the newspapers, he knew that the Egyptian government had not mended its ways. It had recently executed three teenagers who they claimed were part of the IG. They had cracked down on student demonstrations at Al-Azhar University, actually killing a small child. So all of these things made him feel that this ceasefire was only working one way, and he basically asked the group to reconsider where they were at and whether or not other demands shouldn't be made.

MARGOT ADLER: Now I'm going to ask a lot more about this whole question of lawyers talking to the press when they're asked or told or sign agreements not to, but I first want to take you back to when this all happened in 2002. The attorney general at that time, John Ashcroft, announced your indictment. Let's hear him for a minute.

JOHN ASHCROFT: Today's indictment charges that Lynne Stewart and Mohammed Yousry repeatedly and willfully violated these orders in order to maintain Sheik Abdel Rahman's influence over the terrorist activities of the Islamic Group.

MARGOT ADLER: Now listening to John Ashcroft that day, did you feel like you were a pawn in the war against terrorism?

LYNNE STEWART: Well, when I stopped to consider it with a little bit of hindsight, not the day it happened, I think, because it was like getting hit with a truck—you're sort of in shock—I think that I thought at that point that they really had very little to show for the fact—government that is—for all this legislation. They had the Patriot Act, they had the Homeland Security, and yet there was only one person in jail, John Walker Lindh—and Moussaoui from Minnesota. So this was their showing, and here was this old case just

sitting around from the year 2000 and it must've looked good down in Washington, and so they decided to prosecute me.

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MARGOT ADLER: This is Justice Talking from NPR. I'm Margot Adler. For supporters of Lynne Stewart, her cases about the right of every defendant to be represented zealously in court, for some opponents like law professor Dan Richmond, her case is largely about keeping one's word.

DAN RICHMOND: Lynne Stewart made certain pledges when she signed these agreements, and not just technically violated them, but flagrantly violated them.

MARGOT ADLER: More on lawyers' responsibilities and clients' rights when Justice Talking continues.

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MARGOT ADLER: I'm Margot Adler. Welcome back to NPR's Justice Talking. Joe Aronica and Lynne Stewart are with me, and we're talking not only about Stewart's conviction on charges that she aided terrorism, but more broadly about how lawyers can do their jobs in the post-9/11 world.

Joe, the Constitution's Sixth Amendment, while talking about the right to counsel, doesn't say anything about the special nature of lawyer-client communication; but lawyer-client confidentiality is a venerable part of common law. What do you think are the limits of lawyer-client confidentiality?

JOSEPH ARONICA: Well, the attorney-client privilege, as you know, is not an absolute privilege. That is if you're speaking to your client, your duty is to represent your client in conduct that he or she has been indicted on or will be charged with – it's past conduct. If your client is telling you about information regarding future events, then that is not covered by attorney-client privilege, and you have an obligation under the Code of Ethics to bring that to the government's attention. And that is embodied in the Code of Ethics in virtually every state, and as well in the ABA—rules of professional responsibility.

MARGOT ADLER: What about post-9/11? Do you think things have changed and should change?

JOSEPH ARONICA: Well, I mean, there are things that have changed since 9/11. However, the basic principles have been there for some time. Communications to your attorney must be for seeking advice in either a pending case or one to be brought. It is not to serve as his or hers political mouthpiece – that's an entirely different thing. That's not covered by the attorney-client privilege, and I'm a little surprised to hear some of what I already heard, and that is that, Lynne, there was no case pending. He was convicted, his

convictions were affirmed, there was nothing pending for you to be doing on his behalf other than to keep his name in the media as well as to...

LYNNE STEWART: I must respectfully cut in at this point.

JOSEPH ARONICA: Let me finish.

MARGOT ADLER: Okay, let him finish and then you can certainly respond.

JOSEPH ARONICA: Because you well knew that the Islamic Jihad was responsible for the death and the murder of 58 tourists in Luxor, Egypt back '97 – all right? There was a ceasefire between the Islamic Jihad and the Egyptians that went on for some time. The message that the Sheik wanted you to convey was that he, as sort of the titular head of the group, or an influential individual, no longer supported that ceasefire; so it would be terrorist activity all over again. And that's the essence of what you did.

MARGOT ADLER: Okay, let Lynne respond to this.

LYNNE STEWART: Okay, let me just start at the end. Assuming you were right, then how do you explain that nothing happened afterwards? Absolutely nothing happened. The press release was made, it was not done covertly, it was done very overtly, and afterwards nothing happened. There had been no violence in Egypt since 1997 and there was none until very recently. It also is a different group altogether – I don't know whether that's confusing the issue—the Gama Islamiya, that's the Islamic Group, not Jihad—that's a separate group, but that's technical.

I really wanted to talk, though, about your statement about him not being entitled to attorney-client confidentiality – he had no pending case. I'm sure you know that a person incarcerated always has a pending case, in the sense that he has conditions that can be a problem and that need a lawyer's fine hand in. He may have a witness come forward that had not come forward before. He has personal things that must be dealt with on his behalf. I'm not talking about an all things to all men kind of relationship, but I'm talking about a person who has been placed by the United States government in a condition of almost total isolation. He has no communication except with his lawyers, and that is only once a week. His family, he gets a ten-minute call once a month.

JOSEPH ARONICA: Wait a second. You were not acting in that role. If you're talking about restrictions that he had in jail, there are procedures to follow to address those. What you did was merely to keep his name and get a message out to the Islamic Group in Egypt. That's what you did. Maybe what you were attempting to do was cloak yourself with representing him in order to try to rationalize what you were doing. But the bottom line is, if he had those issues, there are procedures to deal with those and it wasn't to issue a press release so that his name and his thought could be conveyed to his group in Egypt.

LYNNE STEWART: Just so we're very clear what the legal framework was here. First of all, we operated as a team – Ramsey Clark, myself and Abdeen Jabara. There were three

lawyers involved here, not just me alone. And unless you're willing to say that Ramsey Clark was also cloaking, the ex-attorney general of the United States, was cloaking his activities in order to make press releases because he has stated publicly from the witness stand that he made as many press releases as I did. But he was never called for them and he certainly was never indicted for them – but, then again, his father was the United States Supreme Court Justice. My father was a school teacher in Queens.

JOSEPH ARONICA: Well, I wouldn't even go there. That's an absurd rationalization. What you did...

MARGOT ADLER: Let me go on to... I want to get to this press release.

JOSEPH ARONICA: Let me make another point. The fact that nobody was killed or there wasn't anymore terrorist activity as a result of what you did is lucky for you because you might've been charged with murder.

MARGOT ADLER: Okay, let me go on to another question which relates to this whole question of the press release, because there are many questions that come out of this. One question is that lawyers are routinely often given gag rules and don't talk to the press. On the other hand, talking to the press is what lawyers try to do in most cases all the time. Ron Kuby is a defense lawyer who has also defended Sheik Rahman, and he told me in an interview that it wasn't as if Lynne Stewart ran out of the prison with a secret message to the Sheik and whipped out her cell phone...

RON KUBY: [makes cell phone beeping sounds] "Akmed Akmed, the Sheik says the drunken monkey sings at midnight; be ready in Sector R." That would be transmitting clandestine messages, plans of attack and the like. That's not what she did – she spoke to Reuters.

MARGOT ADLER: Now, Joe, you clearly don't agree with Ron Kuby, but except for the question of violating the SAMs and the larger question of why didn't you litigate them instead violate them – I mean, what was the crime here?

JOSEPH ARONICA: The crime was she violated the rules that she agreed to abide by. In addition, what she was attempting to do was to send a message to his supporters in Egypt, in essence, between the lines, to a call to arms. That's what that was all about—whether you do it clandestinely or you do it publicly – and that may be the best way for cover is to do it publicly.

LYNNE STEWART: This really is double talk if you're going to say that the best way to do something clandestinely is to do it openly. And, Joe, I know you've been a defense lawyer long enough now to know that we don't prosecute people for what might have happened.

MARGOT ADLER: Lynne, before we go back into the audience, I just have to ask you why you didn't litigate the SAMs as unconstitutional instead of violating them. The SAMs are the Special Administrative Measures that said that in fact there was not supposed to

be communication between the Sheik and the outside world, talking to the media and so forth.

LYNNE STEWART: You know, we always say "follow the dollar and you come to the end of the road". Well, there was no money for this. We all were acting pro bono in this case. We would've had to mount a litigation in Minnesota, hire or get someone to act as counsel in Minnesota. There just weren't the horses to do it.

MARGOT ADLER: So I have to ask you: when you violated the SAMs, was it a conscious act of civil disobedience? What was going on in your head?

LYNNE STEWART: In my head was the knowledge that we had all made press releases over the period of years that these SAMs had been in effect. I had never violated the SAMs in any way whatsoever. And when I signed them, I had no intention of violets, or like getting married, and something comes up and you suddenly see that maybe the promises you made really are not appropriately kept. However, the SAMs basically restricted us from doing things, and yet the government seemed to tolerate. In other words, allowed us what I called in testifying in court for over three weeks, a bubble. And in that bubble we were allowed to do the necessary legal work, even though strictly speaking it may have been in violation of the letter of the law. But since, as I said, we had had three year... Ramsey, I think, made ten press releases during that period - some in Egypt, some in Abu Dhabi, some in New York, and had never even gotten a letter from Pat Fitzgerald. So we assumed that there was a sort of a flex.

MARGOT ADLER: If you're just joining us, I'm Margot Adler and this is NPR's Justice Talking. Can lawyers affectively represent terrorism suspects when the government is the prosecutor and the gate keeper? Tell us your opinions at [justicetalking.org](http://justicetalking.org). There you can listen to programs you've missed, you can download them through Audible.com, you can sign up for our new Podcast service.

Let's go into our audience now here on Justice Talking for some comments and questions.

AUDIENCE MEMBER ALEX: My name is Alex. I'm from Philadelphia. My understanding of the attorney-client privilege was that the privilege belonged to the client, and that the client had the ability to wave their privilege – for example, by disclosing the communication to some third party, not his lawyer. Didn't Sheik Rahman intend to wave whatever privilege he had by making this communication, which he intended be publicized, which he intended to be made to all the world in a form of a press release— what has attorney-client privilege got to do with this case?

MARGOT ADLER: You want to start with that, Joe?

JOSEPH ARONICA: My view is it has nothing to do with it, and that was what the defense attempted to do – that she was acting as his attorney in doing this, and that she was cloaked as operating as a defense attorney to represent him, and those communications were part of the attorney-client privilege.

LYNNE STEWART: Joe, just to be clear, it should be known that the government didn't only listen to me and the Sheik – they did it secretly, of course; we had no idea we were being listened to. They first listened to an attorney-client meeting in the prison between Abdeen Jabara and the Sheik. And we're not talking about a single communication; we are talking about meetings that took place over two days each at least six to seven hours long, and that they listened to every single word that was said. They also listened to all the telephone conversations from the jail of the Sheik.

Of course, he was the subject of this and there was a warrant, but it was a warrant that had been granted by a court that I don't think has ever turned down a warrant—that is a court called the Foreign Intelligence Surveillance Act—the FISA court.

MARGOT ADLER: And you really didn't believe that you were being under surveillance? I mean, isn't that naïve?

LYNNE STEWART: In cases like this, which involves a very high politic, you assume you may be being listened to on some level; but you don't know whether it's the guards who are picking up a word here or there, or that the FBI might be listening to phone calls because they've gotten a hint that certain big events are happening and they'd like to know it. You don't assume that kind of wholesale invasion – that kind of hour by hour, minute by minute listening in to entire conversations.

I'm not talking about law, we're talking about that I violated the SAMs which were put upon me by my adversary in the case, dreamed up by my adversary. This was not something that was legislated; this was using those prison regulations within the conspiracy framework to bring an indictment. But the violation was not one of law, and I actually think the laws of ethics probably must supercede these prison regulations.

JOSEPH ARONICA: Well, I'm not sure I understand what you mean by the law of ethics supercede that. You agreed to abide by those SAMs when you went in there repeatedly to speak to the Sheik. You agreed to it.

LYNNE STEWART: And the penalty...

JOSEPH ARONICA: If you didn't want to do that and agree to it, you shouldn't have signed it. Or...

LYNNE STEWART: The penalty was the only way there were contracts of adhesion. In other words, if I didn't sign them, I couldn't see my client.

MARGOT ADLER: And what was the penalty?

LYNNE STEWART: And the penalty, as recited within the framework of the SAM was, if these rules should be violated, you may be cut off from seeing the client.

JOSEPH ARONICA: Well, I mean, one of the charges as well was that you provided material support to terrorists.

MARGOT ADLER: Material support was yourself, right?

LYNNE STEWART: No, the Sheik, it was, allegedly—or his words, actually.

JOSEPH ARONICA: Right, by disclosing what he wanted done in the press release.

LYNNE STEWART: His words.

JOSEPH ARONICA: So his words. But you knew as well that he was prohibited from saying and communicating with his followers in Egypt, yet you in place of him did what you knew he was prohibited from doing as well as what you were prohibited from doing.

MARGOT ADLER: Joe Aronica, former federal prosecutor. I'm going to go to another question right now.

AUDIENCE MEMBER BRIAN FORD: My name is Brian Ford and I'm from Willow Grove, Pennsylvania. I was just curious to hear where... or if you think that there is any kind of bright line rule about where an attorney loses the right or privilege, or however you want to say it, to communicate to the press on behalf of their client. Regardless of this particular case, is there any sort of general rule that can be applied?

MARGOT ADLER: Joe?

JOSEPH ARONICA: It depends on the case. In many cases, courts will enter gag orders; and you have an obligation to honor that order, and if you violate that order you're going to be found in contempt. There are other situations where there may not be an order out there, but I think you have to be circumspect in what do you say to the media on any case that's pending, and what effect that what you say in the media might have on your client's case. And you also need to be careful that in terrorist cases things that you're saying may encourage terrorist acts.

MARGOT ADLER: Joseph Aronica and Lynne Stewart. You're listening to NPR's Justice Talking. I'm Margot Adler.

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MARGOT ADLER: Harvard law professor Alan Dershowitz is no apologist for Lynne Stewart. In fact, he was quoted in one conservative magazine as calling her a disgrace to the legal profession. Still, he believes that she has a case for an appeal despite the political climate.

ALAN DERSHOWITZ: Where this case litigated prior to 9/11, I would've been willing to bet widows' and orphans' money, that there would've been a reversal by the Second Circuit,

but the world has changed since 9/11, and I hope that the Court of Appeals will have the courage of its convictions to look at this prosecution, not in the context of post-9/11, but in the context of an enduring Constitution.

MARGOT ADLER: Coming up, we're reconciling constitutional guarantees with the war on terrorism and the prospects for Lynne Stewart's appeal. Stay with us.

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MARGOT ADLER: This is NPR's Justice Talking. I'm Margot Adler. Lynne, before we go on, let's talk a bit about the appeal process in your case and your upcoming sentencing. Who has control of your life right now?

LYNNE STEWART: That's a good question. I certainly don't feel like I do, but I am free on bail. We have just filed a motion based on what we consider the lack of evidence to prove the case, and also some jury issues – questions about the jury and things that may or may not have happened in the jury room.

MARGOT ADLER: Let's go back into the audience now and take a question.

AUDIENCE MEMBER JOHN BIANCHI: John Bianchi, New Jersey. I apologize for not being factually aware of this case, but I've heard about Ramsey Clark and I guess other members of the defense team making public statements to the media. I'm wondering the sequence of events post conviction of the statements other than Lynne's for which she has been prosecuted and convicted – were they made. I'm getting a sense here, I'm questioning waiver here. The government having accepted behavior of public statements on behalf of the Sheik to the media, and have we selectively, post 9/11, picked on this case because of its high profile and the needs that it serves for the government?

MARGOT ADLER: Who would like to take that one on?

LYNNE STEWART: Well, just let me say that during the course of the trial, the government did name Ramsey Clark as an un-indicted co-conspirator, and Assistant United States Attorney Patrick Fitzgerald, who had been in charge of the case during the trial of the Sheik and thereafter, also stated publicly that it was considered whether or not some of Ramsey's earlier pronouncements were indictable, but it was decided they were benign; and by that he meant they were in keeping with the government policy and so therefore they wouldn't go after Ramsey Clark.

I did want to follow-up just a little bit about whether or not there really is a terrorist bright-line exception. It seems to me a client is a client. Many of our clients are less than palatable, and yet we do know the bright line of not crossing over and becoming part of what you described as the crime exception – in other words, becoming part of your client's own conspiracy; and we make those judgment calls. I think the question in my case is: Are we going to let the government make the judgment call for us? Are they going to be able to say to the independent defense bar – and I think this affects your

clients as well as mine and we certainly come from very different places in terms of clients – but whether the government in decree says this is where we say the line is, don't cross it.

MARGOT ADLER: I can understand giving every client a good defense. I can understand defending the oppressed; I can understand defending Black Panthers; I can understand defending a blind prisoner who is in solitary confinement. I don't understand what you and what the left were doing supporting militant Islamists, which seem to have, even if they're against U.S. policy as you are, which seem to have, in some sense, you know... seem to be everything that one does not want to support. And I want to understand how you ended up in that position.

LYNNE STEWART: Well, first of all, Margot, I think it's very important that we understand my politics are not me as a lawyer. I represent people. I do not bring my politics—I don't think the left supported the Sheik whatsoever. I don't think the left or what we consider the liberal left, shading to the left, supports fundamental Islamism. I certainly don't support it, but I think I represented my client just as when I represent a mob guy—I don't suddenly support “Murder Incorporated” in Bensonhurst, Brooklyn. I'm representing a client. I'm trying to do the best I can for the client.

MARGOT ADLER: Now I want to turn to Joe for a minute before we go back into the audience, and ask you about the question that's come up for many, many lawyers, which is this whole question of whether there is a chilling affect from this case. Some people have argued that this is going to make it much harder for suspects to get counsel, and it brings up the question: Why would anybody in this climate be willing to defend people accused of terrorism. Does this worry you?

JOSEPH ARONICA: This case is, in a way, an aberration. It is so far out of, in my view, the mainstream that this case should not have a chilling effect; because lawyers operate, and we have an obligation, to operate within the bounds of the law. We take an oath when we're admitted to practice to support and defend the Constitution of the United States. We have an obligation to zealously represent our clients no matter who they might be. But by doing that, we don't assume – and we're not supposed to assume – the mantle of their politics just like we shouldn't be mixing our politics in the defense of our clients. It is not our job to keep their name in play so that the militant groups can try to figure out: well, what does the Sheik want us to do now?

MARGOT ADLER: Now, Mimi Wesson, a professor at the Colorado School of Law, said she was worried about the chilling effect, but as the case went on, the Lynne Stewart case, she came to believe that Lynne Stewart had gone too far in advocating for her client. But she told NPR's Sheila Kast that the case post other dangers to the legal system.

MIMI WESSON: This is the question that really troubles lawyers the most, I think, Sheila. There is a fear that any dilution of the constitutional rights enjoyed by criminal defendants in cases where the government says that there are terroristic activities or a fear of terroristic communications being passed along, that any dilution in those cases is going

to have a sort of a blow-back effect, and may, in the end, dilute the protections that defendants in cases that have no such aspect at all, are involved in.

MARGOT ADLER: So, I'd like to ask both of you: Does the fight against terrorism pose a danger to diluting the rights of other criminal defendants that have nothing to do with terrorism? Lynne?

LYNNE STEWART: I, of course, unequivocally, believe it does. I think the minute you create a category and you say: we can do these kinds of cases—which we don't do in any others—you already are not acting in a constitutional manner towards those defendants. I think if we do this kind of thing, we become the enemy who we are trying to defeat because that is exactly what we are against. If we are going to criminalize people and give them a trial, then it has to be an all-American trial with all the guarantees, with everything that goes with it. Otherwise, they should be held as prisoners of war with all that that guarantees.

But this shadowland where we're going to say no, we can hold you without bringing any charges for as long as we want, or we can listen in unabashedly to all of your attorney-client privileges on the signature of the attorney general – I think that goes too far and it's very dangerous because it does create a category. We have seen in history, whenever a separate category was created, it came to be regretted. When the Japanese were interred, we found out that was the wrong thing to do. It was expedient, but it was the wrong thing.

JOSEPH ARONICA: But that's not what's happening today. Terrorist activity, people can understand what that is. It's similar to major drug dealers. There was the huge push back 20/30 years ago to criminal enterprise prosecutions, RICO prosecutions, in categorizing types of crimes and dealing with those crimes in a certain way. We're doing the same way with terrorism. You've got a class of crimes and activity that you need to deal with in a certain way and that's what the government's attempting to do. Now there may be certain aspects of what's going on like the detention of people for two and three years that is close to un-American.

MARGOT ADLER: Okay, let's, for a moment, forget about Lynne's case and go to where clearly this discussion is going and that is the cases of military commissions at Guantanamo and elsewhere. Can a military lawyer whose first allegiance is to his country and his career adequately defend an enemy combatant who's his enemy?

JOSEPH ARONICA: Well, it all depends on what kind of tribunal you're talking about. If you're talking about the tribunals that have been set up, it's a little unclear, frankly, what...

MARGOT ADLER: We don't know what's going on...

JOSEPH ARONICA: ... the rules are. If you're talking about military tribunals onto the UCMJ—

MARGOT ADLER: Universal Code of Military Justice.

JOSEPH ARONICA: —that's a whole different arena which is very similar to the federal system. There are protections, there are the federal rules of evidence, you know, and a lawyer in the military at the end of the day is no different than a lawyer in civilian life. He takes the same oath that you and I took to defend the Constitution of the United States and to represent your clients and zealously represent them. So I think they are capable of doing that, my only question is: what kind of tribunals there are, what are the rules going to be and how are they actually going to be run?

LYNNE STEWART: I think my main problem with the whole concept, obviously, is I think lawyers are asked: how can you defend these people, which is a question we can deal with. We are able to understand that we are part of a system – and I'm still talking in the "we", although I'm now convicted and no longer part of that system, but I still think this way – that we do accommodate. We are. We have a role to play here, and I think that they will. What I am concerned with is the encouraging of the government into that process, where the lawyers for the folks at Guantanamo have to sign on. First of all, they have to get through a security clearance, which would knock out a lot of lawyers I know – probably Clarence Darrow would never get through it. And they then have to sign on saying they won't disclose sometimes even to their own clients some of the things they're made privy to. This kind of government supervision of the function is what's troubling to me, and I think that most lawyers would say without the guarantee of attorney-client privilege, it's really virtually impossible to represent someone accused by the government.

MARGOT ADLER: Let's go back into the audience here on Justice Talking where we're talking about attorney-client confidentiality and a lot of other stuff and get another comment or question from our audience.

AUDIENCE MEMBER AMY HIRSCH: Amy Hirsch, Philadelphia. I'd like to return to the question of attorney-client confidentiality and wire tapping, or covert surveillance of conversations between attorneys or clients. Call me naïve—how often is this happening and under what authority? I mean, it seems to me to be really extraordinary to have that degree of intrusion by the government into an attorney-client conversation that is under long standing principles of law confidential.

MARGOT ADLER: Let's start with you, Lynne.

LYNNE STEWART: Well, I think lawyers, particularly after my arrest, became aware that they should be inquiring of the government, whether or not they are being listened in on. I know the case up in Boston of the shoe bomber. The judge there ordered the government to disclose whether or not they would be listening to the attorney-client privileged conversation. So we have now got this much remedy, but, of course, the government has refused on the law, and they did in our case as well, to reveal whether or not wiretapping was going on under the FISA – the Foreign Intelligence Act. So as a

result, we know that if they're Title 3, they have to reveal it. We know if it's done under SAMs that they have to now reveal it; but FISA, they don't have to reveal.

So we really have no idea how much of it is going on, and, of course, the new one where all the attorney general has to do is certify that this is a terrorist case and wiretap is placed – we have no idea where those are taking place. I would say most lawyers are acting as if the government is now listening.

MARGOT ADLER: I remember looking at the American Bar Association's model rules of professional conduct, and according to them, lawyers have to render candid advice to their clients not only about the law, but about economic, social, political factors relevant to a client's situation which goes well beyond what we might call legal matters. So should the government be in the business of deciding exactly how a lawyer can best aid her client?

JOSEPH ARONICA: Well, I don't think the government's doing that. I don't think the government decides how you can best defend your client. That's up to you as a lawyer. You have an obligation to defend your client as best and as zealously as you can within the bounds of the law. What you do, how you do it is your business and your client's business as long as you are not breaking the law. Nobody's telling you how to defend or not to defend your client.

LYNNE STEWART: And I don't believe I did break the law.

JOSEPH ARONICA: Well, you know, obviously...

LYNNE STEWART: That's what makes controversy obviously.

JOSEPH ARONICA: Obviously 12 men and women who deliberated for roughly 13 days believe you did, and that's where it is and you'll see what happens on the appeals.

MARGOT ADLER: We've taken our last question here on Justice Talking. Joe Aronica, thanks for coming to Philadelphia to talk about lawyers, secrecy and fairness in the post 9-11 era. Thank you very much.

JOSEPH ARONICA: Thank you for having me.

MARGOT ADLER: And Lynne Stewart, thank you for joining us on Justice Talking and thanks to the judge in your case for letting you travel here today.

LYNNE STEWART: Yes, and thank you. The government opposed, but didn't opposed vociferously enough to keep me from coming.

MARGOT ADLER: Lynne Stewart's case continues and so does this debate. You can join the discussion by going to our website [justicetalking.org](http://justicetalking.org).

Before we go, here's a quote from criminal defense attorney Paul O'Neil. "A criminal lawyer, like a trapeze performer, is seldom more than one slip from an awful fall."

I'm Margot Adler, thanks for listening to NPR's Justice Talking. [applause]

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MARGOT ADLER: This show was taped on June 7<sup>th</sup>, 2005. As of this broadcast, Lynne Stewart is scheduled to be sentenced on March 10<sup>th</sup>, 2006.

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