

Lawyers' Rights Watch Canada

NGO in Special Consultative Status with the Economic and Social Council of the United Nations
Promoting human rights by protecting those who defend them

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27 May 2013

Mr. Charles E. Samuels, Jr., Director
Federal Bureau of Prisons
320 First Street, NW
Washington, DC 20534
United States of America
Fax: (202) 514-6620; Email: info@bop.gov

Re: Ms. Lynne Stewart: Release on compassionate grounds pursuant to 18 USC §3582 (c)(1)(A)(i)

Dear Sir,

I am writing on behalf of Lawyers Rights Watch Canada (LRWC), a committee of Canadian lawyers who promote human rights and the rule of law internationally. LRWC also provides support to lawyers and other human rights defenders in danger because of their advocacy.

LRWC requests that you make urgent application under United States (US) legislation 18 USC §3582 (c) (1) (A) (i) for the release from prison of Ms Lynne F. Stewart, age 73, on compassionate grounds because of her terminal condition with stage four cancer and her service to the community. Ms. Stewart is serving a ten-year sentence in the US related to charges relating to her efforts as a lawyer defending Egyptian cleric Sheikh Omar Abdel-Rahman on charges of seditious conspiracy for which he is now serving a life sentence. Ms. Stewart has a terminal disease which in all the circumstances is an extraordinary and compelling reason to warrant a reduction of her sentence. Ms. Stewart poses no threat to the safety of the community. There is a viable release plan. In this request, we join with a number of other international human rights organizations, including the International Commission of Jurists, Front Line Defenders and Human Rights First and others including Archbishop Desmond Tutu former United States (US) Attorney General, Ramsey Clark.

Ms. Stewart enjoys an exemplary international reputation for her life-time of service to the poor and disempowered. It was at the personal request of Mr. Ramsey Clark, former Attorney General in the Johnson administration, that Lynne Stewart agreed in 1995 to represent Egyptian cleric Sheikh Omar Abdel-Rahman after government lawyers were removed from the case for reasons of conflict of interest. In 2000, Ms. Stewart was visiting her client in prison and agreed to provide the media with information on his behalf. This was in violation of Special Administrative Measures (SAMs) imposed on her client. She submitted at the time that she had acted within her right to freedom of expression, that her actions were part of her zealous advocacy of her client's rights and not an adoption of her client's goals (with which she has stated she has always disagreed), and that the SAMs were an illegitimate intrusion on the lawyer-client relationship. Former Attorney General Ramsey Clark publically stated on 14 May 2013 that the SAMs "are a unique restriction on effective representation of counsel. They prohibit counsel from doing things that counsel are accustomed to doing in defense of their clients." The Attorney General of the time, Janet Reno, serving in the Clinton administration, chose not to prosecute her; instead, authorities asked Ms. Stewart to sign onto the agreement again to comply with the SAMs. However, in

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2003, Attorney General John Ashcroft, serving the George W. Bush administration, reviewed the matter and decided to prosecute her. In 2003, she was recognized by Front Line Defenders who invited her to participate in the Second Dublin Platform for human rights defenders at risk. On that occasion, Front Line Defenders states it “had an opportunity to witness her strong commitment to human rights and devotion to justice.”

In 2005, Ms. Stewart was convicted and sentenced to 28 months in prison. However, in 2010, on appeal, her sentence was dramatically increased to a sentence of 10 years imprisonment. Ms. Stewart has acknowledged before the court that while her motivation for her actions was that of a zealous advocate, she never shared her client’s goals and that she regretted her actions as having been careless, overemotional and politically naïve. Ms. Stewart has never used or advocated violence. Ms. Stewart poses absolutely no threat to the community.

At the time of her sentencing in 2010, Ms. Stewart had been scheduled within a week for surgery in New York. Because of the order for imprisonment, she instead had to wait eighteen months for that surgery. Stewart’s breast cancer returned after she was imprisoned, and, in the meantime, the cancer metastasized to other parts of her body. Her condition is now considered to be terminal. Ms. Stewart is currently receiving medical treatment at the Federal Medical Center prison in Carswell, Texas. She is subject to shackling in leg-irons, belly chains and handcuffs while being transferred for treatment to a medical center in Fort Worth, Texas and is shackled to the bed while receiving treatment. It is also reported that she experiences lengthy delays in receiving results of treatments and that it can take weeks to see a provider of medical services.

We bring to your attention United Nations *Standard Minimum Rules for the Treatment of Prisoners* (approved by the Economic and Social Council in 1957 and again in 1977), which entitles prisoners to prompt and effective medical attention and treatment. Article 22 (2) states: “Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals...” Article 33 states:

Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, *chains or irons shall not be used as restraints*. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority. (emphasis added)

Article 34 provides that “The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.”

The *International Covenant on Civil and Political Rights* ratified by the United States in specifies in article 7 that “No one shall be subjected to torture or to *cruel, inhuman or degrading treatment or punishment*” (emphasis added). Article 10 (1) stipulates that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Such treatment of Ms. Stewart constitutes improper treatment of a prisoner who poses no danger to herself or others and poses no security risk. There has been no suggestion whatsoever that Ms. Stewart, a 73-year-old, seriously ill cancer patient, presents any risk of escape or any risk to herself or to those transporting or treating her. Such unnecessary use of restraining force during the process of medical treatment of a seriously ill, elderly and frail person is degrading, humiliating and medically unsound.

Shackling in such circumstances is disproportionate and degrading and constitutes unnecessary discomfort and indignity in violation of international standards.

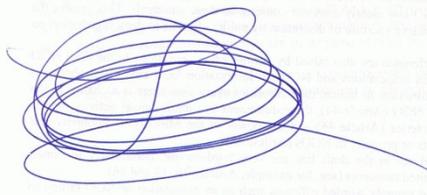
We draw your attention to a ruling of the European Court of Human Rights interpreting the *European Convention on Human Rights*, Article 3, which forbids “inhuman or degrading treatment or punishment.” The Court held in *Mouisel v. France* that France “having regard to the applicant's health, to the fact that he was being taken to hospital, to the discomfort of undergoing a chemotherapy session and to his physical weakness, the Court considers that the use of handcuffs was disproportionate to the needs of security.”

We emphasise that the warden at Carswell Federal Medical Center recommended on 26 April 2013 that Ms. Stewart be immediately released on compassionate grounds. We also understand that Federal probation officers have reviewed a release plan for Ms. Stewart to live and be cared for in Brooklyn while receiving medical treatment at the Sloan Kettering Cancer Center in New York. Thus, there is a viable plan for her release.

Lynne Stewart has now served a third of her 10-year sentence. Compelling and extraordinary circumstances warranting her immediate release are present. These circumstances include: her terminal condition, the urgent need to optimize the quality of recommended and necessary medical treatments, the failure within the prison system to ensure acceptable and timely and humane delivery of medical treatment, Ms Stewart’s history of service to the community as an attorney, and the absence of any public purpose in her continued detention.

LRWC urges you to take all necessary actions to ensure the immediate release of Lynne Stewart on compassionate grounds warranted by extraordinary and compelling reasons. Thank you.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Gail Davidson", is written over a light blue grid background.

Gail Davidson
Executive Director
Lawyers’ Rights Watch Canada