

Chill the lawyers

The Stewart case is meant to intimidate attorneys who defend controversial clients.

Petra Bartosiewicz

THIS WEEK, Lynne Stewart, a former attorney who in the tradition of activist lawyers spent her career defending cases of the indigent and politically controversial, will learn if she will be sentenced to die in prison.

The charges against Stewart are related to a long-ago client, the infamous "blind sheik," Omar Abdel Rahman, an Egyptian cleric who in 1995 was convicted of "seditious conspiracy" for encouraging his followers to commit terrorist acts in and around New York City.

Stewart's offense came in 2000, as the case was on appeal. She violated what were at the time a novel set of security requirements known as Special Administrative Measures, or SAMs. The measures included a communications ban on Rahman, which Stewart defied by issuing a news release to Reuters on the sheik's behalf that urged his supporters to reconsider their participation in a cease-fire with the Egyptian government.

As a result, Stewart was disbarred and sentenced to 28 months in prison. Citing the "deadly serious nature of her terrorist crimes," the Justice Department has sought a far higher penalty: 15 to 30 years.

In November, an appellate court upheld the verdict against Stewart, revoked her bond and ordered the original trial judge, U.S. District Judge John G. Koeltl, to reconsider his "breathtakingly low" sentence. Koeltl's revised sentence is expected at a hearing in federal court in New York on Thursday.

Ever since her indictment in

2002, Stewart's case has captured the attention of defense attorneys and the support of groups such as the National Assn. of Criminal Defense Lawyers, which filed amicus briefs on her behalf, and George Soros' Open Society Institute, which donated \$20,000 to her defense. Supporters believe the government's dogged pursuit of Stewart — whose legal odyssey has now spanned three presidents and five attorneys general — is meant to have a chilling effect. The Center for Constitutional Rights said the case represents "an attack on attorneys who defend controversial figures and an attempt to deprive these clients of the zealous representation that may be required."

But Stewart's plight has larger implications for us all: It is a bellwether of the increasingly stringent secrecy and security measures imposed in federal courts, particularly in terrorism trials — all part of the systemic erosion of due process that reformers expected would end with the election of Barack Obama, but which has been only further institutionalized. Stewart's case has come to symbolize the increasing difficulty attorneys face in advocating for politically unpopular clients — a necessary component of due process in an adversary legal system.

Critics say SAMs, which, along with a handful of other secrecy measures, have been commonly invoked since the Sept. 11 terrorist attacks, can cripple an effective defense and violate a defendant's right to confront the evidence against him. Defendants with no prior criminal record are in some cases kept in solitary confinement for years before reaching trial. In April, Syed Hashmi, a U.S.

citizen charged with aiding a terrorist (who later turned out to be a government informant) pleaded guilty on the eve of trial, in part, his attorney later told me, because of his nearly four years of pretrial solitary confinement.

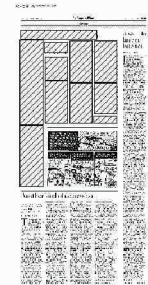
Meanwhile, attorneys are severely limited in the evidence they can share with outside investigators who are part of the trial team, or even with their own clients. The measures are largely invoked in the name of national security with minimal public scrutiny, and include a near-total ban on information that can be shared with the media, sometimes encompassing material already in the public sphere.

Nearly anything an attorney says can be put under a microscope. Stewart's case shows how intrusive the rules allow the government to be: Her indictment was based on two years of govern-

ment wiretaps of attorney/client conversations that usually would have been privileged.

Stewart, who grew close to Rahman during his trial and came to see him as a freedom fighter, has said she believed the communique she issued was part of a protected "bubble" within the SAMs. She defends her actions as an attempt to mitigate the near-total isolation of a client who had already been sentenced to life in prison, was cut off from the world by his blindness, and was limited to very occasional visits from his attorneys and a once-weekly 15-minute phone call with his wife.

That Stewart violated the SAMs is not now in question. It is her misfortune that her pre-Sept. 11 infraction is being judged and rejudged in a post-Sept. 11 context. Back in 2000, when she conveyed the sheik's communi-



tion, terrorism trials and the enhanced security measures that accompany them were still a new phenomenon in the federal courts. Janet Reno, the attorney general under whose watch Stewart's violation of the SAMs occurred, declined to prosecute.

Stewart's co-counsel in the Rahman case, former U.S. Atty. Gen. Ramsey Clark, stated in court filings in defense of Stewart that he repeatedly violated SAMs and the "U.S. has never complained." Among the infractions were reading newspapers with political content to the sheik and even, like Stewart, issuing a news release on Rahman's behalf. But Clark was never prosecuted, perhaps in part because the communique, which signaled the sheik's initial support for the cease-fire, was more palatable.

Even former Atty. Gen. John

Ashcroft — who first brought charges against Stewart, calling her a "terrorist lawyer" — has violated gag orders like those imposed under the SAMs. In one of the earliest post-Sept. 11 prosecutions (the case of the Detroit sleeper cell) Ashcroft violated a court-ordered communications ban in the case not once but twice by holding news conferences that relayed inflammatory details about the defendants. After nearly being cited for contempt of court, he got off with a reprimand from the judge.

By seeking what could be tantamount to a death sentence for Stewart, who is now a 70-year-old grandmother, it seems clear the Justice Department is intent on making an example of her. This is not just because she breached the rules but because she has remained largely unapologetic for

her transgressions.

Stewart, who over three decades represented members of the Weather Underground and the Black Panthers and who even said she'd represent Osama bin Laden if given the opportunity, spoke out immediately after her original sentence was handed down in 2006. Standing before the courthouse, she told the media that she could do the 2 1/2 years "standing on my head."

When she was finally ordered to prison in November to begin serving that sentence, she told Democracy Now, "I'd like to think I wouldn't do anything differently."

PETRA BARTOSIEWICZ is writing a book on terrorism trials in the United States, "The Best Terrorists We Could Find," to be published next year.