



A Longer Sentence for Post-Conviction Comments to the Press?

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Lynne Stewart, an attorney who was convicted in 2005 of providing material support to a terrorist group by passing messages to and from her imprisoned client, Sheik Omar Abdel Rahman, to his followers, was re-sentenced last month by U.S. District Judge John Koeltl in the Southern District of New York to 10 years in prison, far more than observers expected.

But most surprising was the fact that Koeltl based the longer sentence in part on Stewart's post-sentencing comments in 2006, particularly a comment on TV that she would "not do anything differently" and a statement to the press that she could do a 28-month prison term, the original sentence, "standing on my head." The judge said this showed a lack of remorse.

The U.S. Court of Appeals for the 2nd Circuit had told Koeltl to try again and to give Stewart a longer sentence than the 28 months he originally specified. The court said sentencing enhancements for terrorism, perjury, and Stewart's abuse of her position of trust as a lawyer should be applied

Still, there doesn't appear to be any legal basis for using post-sentencing comments by the defendant, however unrepentant, to tack on more prison time. The facts in Stewart's case are not attractive – she was convicted of assisting terrorism by smuggling information, under the cloak of her legal advice, from her client to violent followers in Egypt – but that is no reason for judges to use inappropriate bases for adding to a sentence.



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If Stewart's attorneys try to challenge the sentence in another appeal, however, it's very likely that they would gain nothing. Even if the 2nd Circuit found that Koeltl used an inappropriate basis for enhancing the sentence, it remains within the Sentencing Guidelines, and on remand he would simply impose the same 10-year sentence and give different, legally acceptable reasons.

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