

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, :

-against- : **NOTICE OF MOTION**

LYNNE STEWART, :

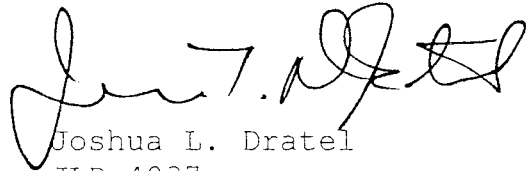
Defendant. : **S1 02 Cr. 395 (JGK)**
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PLEASE TAKE NOTICE that upon the annexed affirmation of **ELIZABETH M. FINK**, the accompanying Sentencing Memorandum, the Exhibits submitted therewith, and all prior proceedings heretofore had herein, the undersigned will move this Court on September 25, 2006 at 10 in the forenoon or as soon thereafter as counsel may be heard for the following relief:

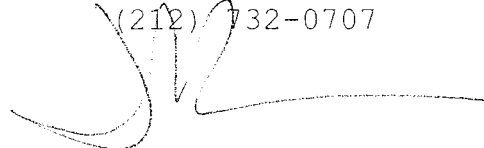
- 1) a non-custodial sentence for Ms. Stewart;
- 2) an Order granting Ms. Stewart's counsel access to those portions of the Pre-Sentence Reports prepared for Ms. Stewart co-defendants, Ahmed Sattar and Mohamed Youssry, that analyze their role in the offense(s), calculate their advisory Guidelines calculations, and set forth their sentencing recommendations; and
- 3) such other and further relief as may be just and proper.

Dated: July 5, 2006
New York, New York

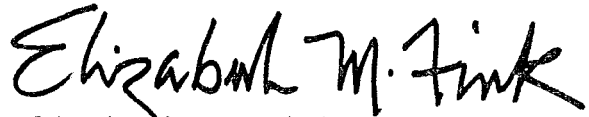
Yours, etc.,



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TO: CLERK OF THE COURT

UNITED STATES ATTORNEY
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA, :
 :
 -against- : **AFFIRMATION IN**
 : **SUPPORT**
 LYNNE STEWART, :
 :
 Defendant. : S1 02 Cr. 395 (JGK)
-----X

STATE OF NEW YORK)
 :
 COUNTY OF KINGS)

Ss.:

ELIZABETH M. FINK, an attorney duly admitted to practice before this Court, under pain and penalty of perjury, affirms as follows:

1. I am one of the attorneys for Lynne Stewart, the defendant herein, having been appointed by this Court pursuant to the Criminal Justice Act in October 2005. I make this affirmation in support of her motion requesting that this Court, after considering the guidelines and the factors enumerated in 18 U.S. C. §3553(a), impose a non-custodial sentence.

2. Certainly, in light of the Supreme Court decisions in Blakeley, Booker, and Fan Fan, a guideline analysis would be inappropriate in this case. This is a case, as articulated in the Guidelines themselves, that falls totally outside the "heartland" of criminal cases. A "nature and circumstances of

the offense" analysis as prescribed by the Guideline makes this obvious. See section C(1) in Ms. Stewart's Sentencing Memorandum filed with this Motion.

3. Thus, Ms. Stewart's motion for a non-custodial sentence serves the sentencing goals and the various factors enumerated in 18 U.S. C. §3553(a), and, in particular in this affirmation, with specific reference to the nature and circumstances of the offense and the history and character of the defendant.

NATURE AND CIRCUMSTANCES OF THE OFFENSE

A. Introduction

4. Ms. Stewart and I are colleagues of long-standing.¹ We met in 1985-1986, when along with William Kunstler and other counsel, we tried a case before Judge Glasser in the Eastern District.

5. Ms. Stewart and I are members of a small cadre of political criminal lawyers, mostly women, whose professional work has been shaped by decades of government hostility toward our clients and by our own experiences of harassment by various government employees because of the identity of our clients. Our clients, often because of their political beliefs alone,

¹ As this Court might imagine, my history with and knowledge of Ms. Stewart makes this case particularly difficult and draining.

have been the victims of extraordinarily harsh treatment by members of the Justice Department and other law enforcement employees. For many of our clients, such treatment continued throughout the long years of their incarceration and that is precisely why these attorney-client relationships cannot end with conviction and sentence. We accept the responsibility of seeing them through the long and dreadful years that await them while incarcerated to try and protect them from conditions of confinement that destroy their humanity and their physical selves. The letter submitted by Joanne Harris to this Court, Exhibit 8, contains an apt depiction of one aspect of our representation mind-set--our vision of the government.

6. Ms. Stewart was among the very few lawyers who are willing to represent people, like Sheikh Rahman, towards whom the government has a particular deep-seated animus. That animus is frequently demonstrated by their treatment. Because such a prisoner is powerless, their harsh treatment compels our continued protection. They have no power; the government is immensely powerful. To provide emotional support, the barest requirements of humanity, with the hope they need to survive is what Ms. Stewart felt compelled to do. Few attorneys are willing to make the prison visits to provide the attention,

human contact, hope and concern that might allow their clients to survive. Few accept hundreds and hundreds of collect calls years after any trial and appeal. Ms. Stewart did all this and kept in touch with her clients for years after their cases were over. She responded to them when they needed her to deal with prison issues and it troubled her greatly when clients she cared about were physically and mentally deteriorating. She understood that they had no one else to deal with the government but her, and, unlike most other lawyers, she was driven by a responsibility to do what she could to help them.² This was especially true for those, most of whom she sat next to for months during long trials, who were motivated by principle rather than monetary gain.

B. Sheikh Rahman

7. In October 1994, when Ramsey Clark first contacted her about representing the Sheikh, Ms. Stewart had a general criminal law practice. Having spent the previous decades representing political defendants, Ms. Stewart had no pending matters for clients who acted out of conviction. After much soul-searching about whether she should represent a religious

² When Ms. Stewart graduated from eighth grade in 1953, her father wrote in her autograph book: "Do more than you are supposed to. Help others as much as you can."

fundamentalist--given her anathema to fundamentalism, she consented to go to MCC and meet the Sheikh. She established a rapport with him because she perceived him to be a brilliant, charismatic, out-going, emotionally generous person--someone who spent decades acting as a spiritual advisor to a large community. During this visit, she observed that the Sheikh was a person of substance, and became convinced he was being prosecuted for his ideas and words rather than actions. She agreed to become his trial counsel.³ Attached as Exhibit 42 is a letter from Abdeen Jabara that, *inter alia*, describes the relationship that developed between the Sheikh and Ms. Stewart.

One other reflection about Dr. Abdel Rahman is an extraordinary one--his relationship to a woman lawyer. Much has been made of the fact in popular western culture that women are subordinate to men in Muslim culture and not fit for professional life. The fact that Lynne was a woman, a professional and a non-Muslim never interfered with Sheikh Abdel Rahman's respect for and consideration of her. This was not, in my estimation, just a chance development but what I thought was Dr Abdel Rahman's growing appreciation of the fact that Lynne was genuinely concerned about his welfare and his physical well-being and his legal situation. It was abundantly clear that Dr Abdel Rahman was very dependent on Lynne. As a non-English speaking, blind, diabetic, incarcerated

³ Despite the Sheik's conviction, Ms. Stewart, as the Sheik's trial counsel, believes to this day that there was insufficient evidence to support his guilt and that he was wrongfully convicted. See Exhibit WXR, the Wall Street Journal article admitted at trial as LS-406.

religious figure with no relatives close at hand and only one 15 minute phone call with family in Egypt a month, Lynne was his significant connection with humanity and no doubt important to his emotional survival.

C. The Trial

8. The trial began in early 1995 and ended in September. A few months into the evidence, Ms. Stewart experienced a deep personal crisis. A rift developed between Ms. Stewart and her life partner, Ralph Poynter. After thirty years of commitment, they were no longer together. Ms Stewart's devastation was obvious to all who knew her. The Sheikh's response was to be enormously solicitous and supportive. Since lawyer and client were together for many hours every day in court and for many hours during the week in the jail preparing for court, the Sheikh became a supportive friend to Ms. Stewart during a very difficult time. The result was Ms. Stewart's commitment to do everything she possibly could to improve the conditions of the Sheikh's life. Attached as Exhibit 6 is a letter from Roger Stavis, her co-counsel on the Rahman seditious conspiracy trial. Mr. Stavis describes Ms. Stewart's participation in the case and her relationship with her client.

It was during the trial that I noticed a very unique quality about Lynne: her ability to see the humanity in even the most "inhuman" of clients. Lynne can empathize

with a client even though the rest of the world may find that client, or the crimes for which he stands accused, to be utterly repulsive. Where others saw Sheik Omar Abdel Rahman as a terrorist; Lynne saw him only as a warm and generous old man afflicted by blindness and diabetes. She couldn't bear the thought of him dying in prison. I recall that immediately following the verdict, as the attorneys gathered in our "make shift" office at the Courthouse, Lynne had tears streaming down her cheeks as she told me: "I failed him."

D. Post-Trial Representation

9. As this Court is aware, the Sheikh has been blind since early childhood, speaks only Arabic, has serious heart problems, and is a diabetic. At the time of his trial, he was still able to read Braille, had the constant attention of at least three paralegals, several interpreters, three lawyers and a circle of supporters. He had continual access to a telephone and constant visits.

10. Immediately following the jury verdict, the Sheikh was transferred out of New York City and incarcerated at the Bureau of Prisons Federal Medical Center in Springfield, Missouri. A supportive community no longer surrounded him and it was the beginning of his isolation. The conditions there were atrocious and the Sheikh's mental and medical condition deteriorated,

causing his lawyers much concern.⁴ In 1997, the government began the SAMs. The Sheikh's telephone access was limited to his lawyers and immediate family in Egypt. Another immense deprivation occurred about this time when the Sheikh's diabetes destroyed the tactile sensation in his fingers leaving him unable to read Braille. Unable to read, to communicate with anyone in Arabic, the only language he knew, without a radio, his isolation was total. Such isolation and sensory deprivation began to affect his mind and the Sheikh became obsessed with sensory hallucinations.

11. This situation was profoundly upsetting to Ms. Stewart and she struggled to find a way to support the Sheikh and improve his existence. The only chance he had to escape life-long incarceration and isolation in America was to remain a political force, a presence in Egypt so that his supporters could work towards arranging a transfer to the Middle East.⁵ As I

⁴ After a lawsuit was brought by his attorneys in Missouri, the BOP agreed to transfer the Sheikh to their medical facility run by the Mayo Clinic in Rochester, Minnesota. He was transferred there in 1998.

⁵ At various points during this prosecution, the government emphasized their position that this reason—to get him back to Egypt—was specious and disingenuous because the Treaty governing the transfer of prisoners—the Strasbourg Convention—had not been signed by the Egyptian government. For eleven years, until its success, I, as the attorney for Silvia Baraldini, orchestrated a campaign to repatriate Ms. Baraldini, an Italian national who was convicted in the federal Brinks robbery trial and sentenced to 43 years in prison, to Italy.

see it, Ms. Stewart, losing her objectivity and her understanding of the governmental restraints placed upon her, did everything in her power to keep him in the public eye and keep him alive. She perceived that he was to die isolated and alone in prison. Motivated by her emotional attachment to him and her distress that the government could be so cavalier with his life, and considering the possibility of being personally cut off from her client, she agreed to call the Egyptian press on two occasions in June, 2000. Her focus was to provide her client with hope that might be life-sustaining.

12. Ms. Stewart has no commitment to Islam, let alone Islamic fundamentalism. The way she has conducted her life speaks to that. She has little interest in or understanding of the politics of Egypt. Ms. Stewart only learned at her trial who the cast of characters around the Sheikh really were. She received no financial gain by agreeing to the Sheikh's demands. Her actions were taken in an effort to save his sanity. Without realizing it, Ms. Stewart sacrificed her entire life's work in the misguided belief that her actions were necessary to preserve

The first years of the campaign were spent getting the Italian government to sign on to the treaty. Once that was accomplished, the next years were spent convincing the American government to transfer her. The main point of the campaign all those years was to keep her in the public eye while keeping in touch with the Italian Justice Department. Ms. Stewart was well acquainted with my success for Ms.

the Sheikh's life and sanity. And this is a tragedy--not only for Ms. Stewart, her friends and family but for all her past, present and future clients.

HISTORY AND CHARACTERISTICS OF THE DEFENDANT

A. Introduction

13. For whatever reason, Ms. Stewart's testimony at trial failed to develop fully Ms. Stewart's character, as elucidated herein, and her professional history. It also failed to present the personal motives for her conduct as demonstrated herein and by reference to her years of compassionate service to her clients and the legal profession. There were 459 pages of her direct testimony--only 27 pages of which concerned her personal history.

14. There was no evidence presented to the jury that described the compassionate way Ms. Stewart practiced law; nor was there substantial testimony relevant to her state of mind on the charge against her of material aid to terrorism count. Filed with this Notice of Motion are hundreds of letters from people who have been touched and influenced by Ms. Stewart---her family, life-long friends, neighbors, clients, and colleagues in the legal profession. These letters are selected from more than

Baraldini and the nature of the campaign.

800 letters received by Ms. Stewart's attorneys since the jury verdict.⁶ These letters attest to an extraordinary person--- someone who has changed for the better thousands of lives of ordinary people who have had the good fortune to cross Ms. Stewart's path. These letters, from clients, friends, neighbors, lawyers all attest to her extraordinary humanity, dedication, honesty and commitment to the legal profession. As this Court will see, these letters serve as a testament to an attorney fulfilling the foundation of our profession---providing a criminal defendant with the effective assistance of counsel. More importantly, these letters are evidence of a person who has devoted her life to taking care of others. As Peter Kircheimer, the supervising attorney of the Federal Defender's office for the Eastern District, stated in his letter attached as Exhibit 50, Ms. Stewart served as an example of the highest standards of our profession.

I write to you in mitigation of sentence for Lynne Stewart. I am the supervising attorney of the Federal Defender for the Eastern District of New York. I have worked as a Federal Defender in the EDNY since 1985. I sit on the EDNY committee that oversees the district CJA panel. Over the years I have come to know Ms. Stewart as a colleague

⁶ We have provided this Court with a representative selection of the more than 800 letters we have received so as not to burden the Court. If the Court would like to view the entire corpus of letters, we will provide them upon request.

working in the District. Lynne is extraordinary in her panel representation. She appears to love all of her clients. She is completely and totally committed to each of these people once they become her client.

In this regard Lynne stands out among those who regularly appear on criminal cases in the EDNY. Many of our clients are not the nicest people. All are, by definition, at least charged with criminal behavior. Many have actually committed reprehensible acts. Lynne ignores this. She is drawn to her clients as humans in trouble who need help. And she cannot but do what she can for them. Her decency; her affection and her kind treatment of these people in trouble is a model. Whenever I see Lynne in court with a client I walk back to the office trying to remind myself to be a little nicer to my clients.

Lynne's extraordinary feeling for her clients has nothing to do with who they are or with what they are charged. When Samuel Gravano was re-arrested Lynne was on duty. I remember hearing that Lynne tried hard to avoid the assignment; She was told she had no choice. After a few weeks it became apparent that she treated Gravano like any of her other clients. Regardless of who he was, to her he was another person in trouble. During our conversation about the case she made it clear that despite her initial misgivings she was strong an advocate for Sammy the Bull as anyone.

I cannot emphasize enough how she stands out compared to most assigned counsel. Most lawyers do not treat their clients all that well. It was refreshing to watch Lynne with hers. It was a reminder to us all to try to do better.

Lynne has spent a career trying to help poor people in trouble. She stands out for the vigor with which she dedicated herself to the work. She is exemplary in her extraordinary decency and compassion.

B. Early Life

15. Ms. Stewart's parents were both schoolteachers in the New York City system. She was essentially an only child as her brother and sister were born at about the time she left home to go to college. Her parents were liberals who went to church every Sunday and taught equality and social justice in the home. However, at an early age, Ms. Stewart was struck by the fact that her parents did not always practice what they preached. Even though her father had a close African-American friend at work, that person was never invited to the house. When Ms. Stewart was a teenager, her parents moved to Suffolk County. Ms. Stewart overheard her mother talking to the real estate agent, and refusing to sell the house to a non-white family. When Ms. Stewart questioned her mother, the reply was that she did not want to harm the neighbors. The hypocrisy of this position stays with Ms. Stewart to this day.

16. Throughout her teenage years, Ms. Stewart was attracted to the law and told that it was a man's profession. In high school, she won an award for the best essay on the

Constitution. Beginning in 1955, Ms. Stewart spent five summers at Cravath, Swaine & Moore. Starting as the person who put the carbon paper in between the sheets for the secretaries, Ms. Stewart soon began to work in the law library, eventually becoming the first woman employed at Cravath in that capacity.

C. Education

17. In 1957, Ms. Stewart entered Hope College in Holland, Michigan on a full scholarship sponsored by a member of her church. Hope was an extremely strict Christian college with fundamentalist views. From the beginning, Ms. Stewart was a rebel although she excelled academically. Even then, her integrity and intelligence moved others. Paul H. Wackerbarth, a retired Foreign Service Officer, in a letter attached with Exhibit H of Volume II of the Exhibits, credits Ms. Stewart with sparking his interest in the Foreign Service.

I have known Lynne Stewart for more than 45 years; she was my late sister's college roommate at Hope College in Holland, Michigan. One of my first concrete stirrings of interest in the Foreign Service emerged from a conversation with Lynne while she was visiting our family home in Hackensack, New Jersey in the late-1950's.

I have always known Lynne to be a person of integrity and high ideals. I believe when she recites our Pledge of Allegiance's last phrase, ". . .with liberty and justice for all !" she says it with as much fervor and

meaning as any citizen. I was not surprised to learn that she sought to give her love of our country substance by devoting her professional life as an attorney to the vigorous defense of persons who might otherwise find it difficult to obtain competent legal counsel. For many, a career in law is seen as highly remunerative profession. I believe Lynne's motivation was a sincere desire to achieve a just society in our country.

18. In her junior year, Ms. Stewart seized upon an opportunity to spend a semester for political science honors students in Washington at American University. By the end of the semester she was engaged to Robert Stewart and never returned to Hope, eventually getting a degree from Wagner College on Staten Island.

19. In 1961, Ms. Stewart, pregnant with her first child, moved to Philadelphia so that her husband could attend Temple University Medical School. On the day she went into labor, Ms. Stewart's husband had a psychiatric breakdown and had to be hospitalized. He never returned to medical school and they returned to New York, where their families supported them.

D. Becoming a School Librarian and Meeting Mr. Poynter

20. In 1962, Ms. Stewart became the breadwinner for the family as a school librarian in Harlem. For the first time, Ms. Stewart was confronted with institutionalized racism and was

appalled by it. Within months, she met Ralph Poynter and became part of the movement for racial and social justice within the Board of Education.

21. Mr. Poynter, originally from a small town in western Pennsylvania, had moved to New York in 1962 to attend the Juilliard School of Music. He was the youngest son in a family of six and the first one to attend college. His father was a steel worker and organizer for the union. Mr. Poynter, who had a full music scholarship, graduated from Dusquesne University in 1956. He was the first African-American to play in the Pittsburgh Symphony. While in Pennsylvania, he continued his studies at Carnegie-Mellon and the University of Pittsburgh while teaching music in the public schools.

22. Mr. Poynter came to New York with the intention of continuing as he had before---teaching in the public schools and studying at Julliard. That plan was wrecked by the chaos and racism in the New York City public schools and the burning need to do something about it. Mr. Poynter first attempted to effectuate change by being active in the union. When that failed, he became part of the movement for community control of the schools. Ms. Stewart, horrified by the conditions in the schools and wanting to do something about it, found an instant

ally and mentor in Mr. Poynter. They became a team, intent on improving the kids' lives, and over time, they became a team in everything, and with a few hard times, have remain so for over 40 years.

23. As this Court might remember, these were the years of great dissension within the City school system. Ms. Stewart and Mr. Poynter were in the middle of that struggle, fighting for community control and against racism. Eventually, they and others founded Concerned Parents Community Organization (COPACO) and the Teacher's Freedom Party. In the middle of this struggle, Mr. Poynter, having been arrested several times in protests, went to jail. This experience, and the powerlessness she felt being unable to help him, drove Ms. Stewart towards law school. A friend of Ms. Stewart's, Brian Ardizone, who knew her during her days as an educator and later became her client gave the following description of Ms. Stewart then and now.

I am incredulous at the prospect of writing a letter on behalf of Lynne Stewart, my friend and attorney for over thirty-five years. I have known Lynne since she was a dedicated school teacher on the lower east side, long before she was a member of the bar or had even gone to law school at Rutgers, let alone defended me through two hung juries and a final acquittal. Lynne's courage and work ethic have made her my hero. I always looked to her for advice and

support. I never thought I would need to defend her.

When I first met Lynne, she was not yet a lawyer but a schoolteacher-advocate. Lynne taught and defended those neglected mostly black and Hispanic children, nominally called students but who were actually denied a real, worthwhile education, often graduating high school as functional illiterates. She fought those irresponsible, uncaring, often racist "educators" whose callous disregard of the educational welfare of the children under their charge was all too obvious and unacceptable to Lynne.

Lynne decided to go to law school not as a means to more material success, but in order to provide a more effective, credible vehicle for defending those who had no voice or were otherwise disenfranchised. The politics were critical. When once chided by a materially successful doctor-landowner friend of mine (obviously impressed with Lynne's technical legal competence) about not pursuing a more monetarily rewarding career in corporate law, Lynne unhesitatingly responded: "but this is for freedom, and that's the ultimate reward?"

E. Law School

22. By 1971, Ms. Stewart's group had been defeated in the struggle for community control---a setback that affected her so deeply that the trauma remains with her to this day.⁷ Law schools had begun to open their doors to women--especially Rutgers and therefore Ms. Stewart's long-held dream could become a reality.

Mr. Pointer and Ms. Stewart had leased a building on West and Charles Street where Mr. Pointer opened up a motorcycle repair shop. Pregnant with her last child, Ms. Stewart commuted from her home on the Lower East Side to Newark for law school.

23. After her second year in law school, Ms. Stewart began to work for Stanley Siegel and Herman Graber, both of whom were criminal lawyers. Mr. Siegel was primarily a trial lawyer and Mr. Graber worked off and on for the State---first as a prosecutor investigating the 1971 Attica prison incident and then as counsel to the New York State Board of Parole. Ms. Stewart did all the legal writing for the office, including briefs and motion practice. Michael Stokamer, a former ADA in New York County, described sharing an office with Ms. Stewart during her years with Siegel and Graber.

I first met Lynne Stewart in 1973 or 1974, when I left the New York County District Attorney's office to enter the private practice of law. Lynne was employed by the law firm where I rented my first office. I believe that she was still a law student at that time, and was hired to assist with legal research, writing and all of the other duties that are typically performed by junior law clerks and students. After she graduated and was admitted to the Bar, she was hired as an associate. Lynne and I worked in the same suite for several years.

⁷ That trauma surfaced when, after many days on the stand and battered from it, Ms. Stewart gave her statement about the Board of Education under cross-examination.

On occasion we were co-counsel in criminal cases, representing separate defendants who were indicted in the same case. I always found Lynne to be extremely intelligent, energetic, and hardworking. She was always prepared and dedicated to giving her clients the very best defense possible. She was also courteous, cordial and cooperative with co-counsel, prosecutors, judges and court personnel. I admired her tenaciousness then, and I still do. She never lost her zeal, as many lawyers do.

F. The Beginning Years as a Peoples' Lawyer

24. After a few years with Siegel and Graber, Ms. Stewart decided to go out on her own. Working in the office above the motorcycle repair shop, Ms. Stewart practiced whatever kind of law people hired her to do, primarily matrimonial and criminal. By this time, she had lived on the Lower East Side for over a decade and was representing mostly for free all the kids in trouble from her neighborhood, and sadly, many of her former students. Attached as Exhibit E to Volume II of the Exhibits are letters from various clients from Ms. Stewart's neighborhood, all of who attest to the care and concern she showed them throughout the years, mostly without payment. Sean Gilmore in his letter attached within Exhibit E of Volume II of the Exhibits described Ms. Stewart's effect on her community.

I am writing this letter on behalf of Lynne Stewart. My name is Sean D. Gilmore and have been friends of the Stewart family for over

20 years. I grew up on the same streets that she raised her own family on. That was the lower east side. Lynne Stewart was an important role model in our neighborhood. Growing up I watched her help so many people in our neighborhood with legal problems, and a lot of them she did for free or very little money at all.

I can speak first hand on this matter. I was one of those kids who got into trouble with the law due to my drug addiction and Lynne Stewart was the first one to come to my aide. She represented me in court and got me a lesser sentence and did this for free. This is the kind of person that Lynne Stewart is. She is always there for people. And I can write about so many other people she helped out in her lifetime. And no matter where I was in jail, Lynne Stewart would send me and countless others a Christmas card every year.

25. At the same time, she was representing victims of domestic violence, also pro bono and making a modest living from small assignments and tiny fees. At all times during her practice and in her life, Ms. Stewart gave of herself, both advocating for her clients and emotionally supporting them when they were in need. In her letter attached as Exhibit 57, Diane Outeiral gives credit to Ms. Stewart for turning her life round.

I am writing this letter because I am compelled to tell you how profoundly influenced by Ms. Lynne Stewart my life has been. When Ms. Stewart decided to take my case, I was being charged with two felonies for direct sales and two misdemeanors for possession of a controlled substance. I did

not have money, I was on welfare and Lynne let me pay her on Lay-away, a little at a time. Two separate people I knew from two different circles of friends recommended an attorney I should call, Ms. Lynne Stewart. They were sure she would help me and since I was looking at possibly 10- 15 years in jail, I called. My main dilemma was that I was a substance abuser and was not being offered a program, only jail time. Although I had been using drugs since I was a child, this was my first arrest. I was lost in despair and desperate for help and the District Attorney took no real interest in seeing me enter a treatment program. I did not fit the typical profile of an addict I was a college graduate and did not look or act like an addict with a problem. Lynne persuaded Justice Friedman to allow me the opportunity to enter a substance abuse program, Aurora Concept, Inc. I entered on February 27, 1996, and have never touched drugs since. I am approaching 10 years clean and sober and have not had any trouble with the legal system since I was sentenced on March 2 1996.

26. Eileen Regan, a retired NYC police officer, described in her letter attached within Exhibit E of Volume II of the Exhibits, the effect that Ms. Stewart had on her life beginning 15 years ago.

As a retired NYC Police Officer, a conservative Republican, and a former client of Lynne Stewart, I would like to tell you about the wonderful woman I came to know.

I was in the throes of a horrific divorce and being criminally charged with unlawful eviction by an abusive husband who had pulled a gun on me. Lynne Stewart agreed to

defend me pro bono against this charge and her office was successful in having my husband withdraw the charge with prejudice. His agenda was to destroy me emotionally, physically and financially. With Lynne's help he did not succeed.

I remember how relieved I was when Lynne walked into that courtroom and hugged me some fifteen years ago. I remember how I knew justice would be served because Lynne was there to fight for me against trumped up charges. I needed her that day and she did her job. I don't know where I would be today if it were not for Lynne Stewart; I was at the end of my rope until she helped me.

Lynne Stewart practically saved my life that day in New York City some fifteen years ago. The hug I received from this short, chubby woman with a big smile could not mean as much to me if I had received it from my own mother. I will never forget that hug until the day I die because it told me that despite the multiple lawsuits I was facing in Kings and New York counties, the divorce, the criminal -charges, the -harassment, -the false witnesses, and the trump up charges that there was just one person who was going to fight for me and for the truth. And that person was, and is, Lynne Stewart.

27. Carmyn Levasseur in her letter attached as Exhibit 58 describes the effect that Ms. Stewart has had on her life. Ms. Levasseur was the child of the co-defendant of one of Ms. Stewart's political clients. When Ms. Levasseur was a child, Ms. Stewart brought her and her sisters in to visit their parents in prison. When Ms. Levasseur needed help after

completing a substance abuse program, Ms. Stewart took her into her home, providing her with the structure and love she needed to turn her life around.

My name is Carmyn Levasseur and Lynne has supported me in many ways throughout the years. As children, Lynne spent time with my sisters and me. My parents were in jail and Lynne drove us to see them. She also made sure we were treated well, and supported us emotionally after the visit. Her focus was always to make my sisters and me feel loved and cared for, in an extremely hard time for us.

As the years progressed Lynne always made herself available for me if I needed her. In 1998 I entered Aurora Concept, a drug rehabilitation center. I successfully completed treatment in 2000 and had limited options in terms of housing. Lynne graciously opened her doors to me. She treated me like her own daughter, even insisting I call her when I was coming home late. Once again Lynne was giving me the structure and support I needed in a very hard time. Living at Lynne's house, I was able to start Queens College and complete one year of out patient treatment. I have since graduated Queens College, and am starting my second year of graduate school at New York University. I am seven years clean and sober. I am so grateful that Lynne was there for me as a child and supportive in my adult years. I owe much of my success to Lynne.

28. In the early 1980s, Ms. Stewart, now with an expertise in criminal law, was looking for more challenging cases in line with her political vision. She began representing a defendant

arrested for protesting the South African soccer team. This was the first in a long series of cases where her client was motivated by beliefs rather than addiction and/or monetary gain. Along with these political cases, Ms. Stewart maintained a regular criminal practice and was a member of the CJA panel for Eastern District as well as the 18 B panel in State court. At the time of her arrest, Ms. Stewart had approximately 70 pending cases.

G. The Matriarch of a Close Extended Family

29. The letters submitted to this Court attest to the fact that Ms. Stewart is everyone's Mother. She is also the matriarch of a large, incredibly close family who are supported and cherished by her. Mr. Poynter and Ms. Stewart are the center of a diverse family, spread nationwide. Many members of the family wrote letters to this Court describing the importance of Ms. Stewart in the family structure and what she means to the family. These letters include letters from her grandchildren, her siblings, and Mr. Poynter's children whom she raised as her own.

30. Ms. Stewart's oldest daughter, Brenna, is a lawyer and educator who has served as a law assistant and an administrative judge. Brenna has one daughter, Milana, who is a basketball

star in college in Florida. Just a few weeks ago, Mr. Poynter went to Florida to see his grand-daughter play an important game. In a letter submitted to this Court as Exhibit 12, Brenna Stewart describes her mother as follows:

Her life, all of it has mirrored a true American patriot, struggling and fighting for fairness and equality whenever necessary, especially for those causes not yet popular or socially acceptable. My mother has fought for "Liberty and Justice for all" at her own expense, for as long as I can remember. She became an attorney, **not** like the majority of attorneys, to make a six-figure income, but to help people who needed help most. I cannot recount how many of my friends and neighbors she has helped. It is hardest to be a hero in your own home and Lynne, my mother, is a hero at home.

31. Geoffrey Stewart, the middle child, is a criminal lawyer who practiced with his mother and has taken over her practice. He is married and has two teen age sons. His letter is submitted as Exhibit 2. Reflecting on his professional relationship with his mother, he says:

I have been fortunate to spend most of my professional life at my mother's side as I chose to follow in her footsteps in the practice of law, and specifically criminal defense. The same selfless, dedicated person established a small law practice on her own in the world of the male dominated criminal defense bar. Our client base has been equally strong and dedicated to us because our clients always receive more than just a spokesperson; we would educate our

clients and advocate for them; we would let them, fully informed, make the crucial decisions about what course their representation would take.

The selfless Lynne Stewart, as an attorney, always found it impossible to turn anyone away who needed help. She would do so even when economically it made no sense. Sometimes she took on matters that had little viability under current legal norms, but in all matters she was guided by a sense of fairness and the desire to keep alive the hope and spirit of struggle inside the client.

Reflecting on his relationship with his mother and the family dynamics, Geoffrey says:

As a family, my selfless mother is literally the glue which keeps a wide flung array of grandchildren, step-siblings and great aunts and uncles together. She loves to scout out activities in the wonderful New York which she loves to her core. Her efforts are always driven by her knowledge of what the person loves and then proposing an outing with that person. She recently took my son Arthur, a NBA fanatic, to meet an NBA player who had happened to write and publish a book of poetry. Unbeknownst to him, while Arthur was awed by the player's status (and height) he was being dipped in my mother's love of poetry. She is the driving force behind family gatherings in which the true American Dream unfolds, a multiracial, multiethnic, multireligious celebration which is her family and her legacy. Our extended family may very well dissolve without her presence, because she is the one who always makes the effort in this accelerated overscheduled world of work and family.

32. Ms. Stewart's youngest child, Zenobia Brown, is a family practice physician in Florida with three young children. She describes in her letter attached as Exhibit 13 the amazing influence Ms. Stewart had on her and others.

My mother raised me to believe that helping your fellow man and making the world a better place was a necessary part of existing on this planet. She raised me to believe that no matter how successful I became, unless my "success" included lifting up those around me, my success would be meaningless.

I am an Ivy League educated Family Practice physician. I have dedicated my career to serving the medically needy of our country. My conviction is that everyone has not only the right to medical care, but they have the right to the highest level of medical care with the best-trained physicians, which is what I became. I am on the front lines working with some of the most impoverished people of this nation. As you can imagine, the financial gains are few; but as in so many things, my mother was right. By helping the most needy, I have the reward of knowing that I will leave the world a better place for the thousands of patients for whom I care.

My story is not unique. My mother Lynne has inspired and continues to inspire so many people to be BETTER. Better mothers, fathers, sisters, doctors, and lawyers. In short, to be better human beings. Humans who care for one another without regard for race, sex, creed, or religion. We can't all be like my mother, but our attempts make the world a better place.

H. Ms. Stewart and Mr. Poynter Upstate

33. In the mid-1980's, Mr. Poynter bought an old farmhouse and some land in Franklin County, way up in the Adirondacks by the St. Lawrence River and the family would go up there as much as possible. Once again, Ms. Stewart became a part of the community, offering a helping hand to everyone. One of her neighbors, Harold Scudder, in his letter attached within Exhibit H, described her acts of kindness and generosity in the community and to him personally.

I am writing in reference for Lynne Stewart. I have known Mrs. Stewart and her husband for the better part of twenty years. I have seen her and her husband's acts of kindness to the working poor in the county of Franklin in Northern New York. I have seen them buy groceries, purchase heating oil for furnaces for people who couldn't afford it. I have seen her (Lynne) do pro bono work for people, myself included. She defended me in an accident that occurred in the State of Maine.

34. Ms. Stewart's work on Mr. Scudder's case is described in a letter sent to this Court and attached within Exhibit C of Volume II of the Exhibits from Jonathan Beal, the Maine attorney.

I know Ms. Stewart from our collaboration on a case of an upstate New York truck driver, injured while delivering in Maine. He was first permanently and totally disabled through the negligence of a corporation,

then further injured by the negligence of his own attorney.

Ms. Stewart was the trucker's neighbor, and when she learned how he had been ignored and misled by his attorney, she vigorously [and at no gain for herself] interceded for him: gathering evidence, traveling to Maine for a bar discipline hearing, and creating such a record that not only was the attorney disciplined, but he voluntarily withdrew from the practice of law.

Meanwhile, she asked me to assist the truck driver in pursuing his legal remedies, and I was able to vindicate his rights. Working with Ms. Stewart, I was impressed by her straightforward commitment to helping the helpless, and her lack of focus on the financial bottom line. She seemed to me to be one of those lawyers who lived her beliefs, and who give our profession a good name.

I. Ms. Stewart's Subpoena and Contempt Prosecution

35. In 1989, Ms Stewart was representing a defendant charged in a multi-defendant narcotics conspiracy in New York Supreme Court. She was subpoenaed to the Grand Jury by the Special Narcotics prosecutor, ostensibly to answer questions regarding fee arrangements with her client. After moving to quash the subpoena and losing on the trial level and in the Appellate Division, First Department, (*Matter of Grand Jury Subpoena of Stewart*, 144 Misc. 2d 1012(1989); 156 A.D. 2d 294 (First Dept. 1989)), the matter was stayed by the higher court

in order not to "chill" her ongoing representation of Dominick Maldonado.⁸

36. During the ensuing time period, a pre-trial hearing was ordered. At this point, Ms. Stewart learned about matters that had taken place without her knowledge, between the judge and the prosecutor, which she felt created a profound conflict of interest. Accordingly, she moved to be relieved and the request was granted. Sometime thereafter another subpoena was issued and in 1991, Ms. Stewart appeared before the Grand Jury and declined to answer, asserting 6th Amendment grounds as well as the constitutional provisions found in the New York State Constitution. After her refusal, she was immediately indicted for Criminal Contempt (a Class E Felony). She was never charged with civil contempt and no attempt was made to compel her testimony.

37. In 1993, Justice Richard Andrias, then sitting in Supreme Court New York County, dismissed the indictment in the interest of justice, making the following findings:

What it [the Court] does find, however, in reviewing her "history, character and condition" is a dedication to the rule of law and of working to advance that

⁸ From the time of the service of the subpoena until the final plea by Ms. Stewart, the Special Prosecutor averred that Ms. Stewart was not a target of their criminal investigation.

fundamental principle. Can anyone say that Ms. Stewart has conducted herself in other than a decent, principled and trustworthy manner?

There is nothing in the extensive papers before this Court to reflect anything but an advocate totally dedicated to the rule of law and to advancing the principle of justice for all. ...No one has ever suggested that Ms. Stewart has been disrespectful of or to a law enforcement official, adversary or judge or justice of this or any Court. In many respects, Ms. Stewart is an advocate's advocate who sought to litigate the previously discussed high and significant principles that clash in the context of this case. People v. Stewart, 601 N.Y.S. 2D 983 (Sup. Ct., 1993)

Unfortunately her ordeal did not end there. The prosecution filed an appeal 364 days later.

38. The matter was argued in the Appellate Division First Department in May of 1995, in the middle of the Rahman trial. In 1998, the indictment was re-instated after the appellate court ruled against her with a scathing dissent from Presiding Justice Murphy. People v. Stewart, 230 A.D. 2d 116 (1st Dept 1997).

After all the litigation over the validity of the subpoenas issued to Ms. Stewart and co-counsel, it remains unclear whether the State through the Grand Jury may constitutionally demand answers from counsel respecting matters as to which their clients have been indicted and for which they await trial. It is therefore at best doubtful

whether the contempt power, utilized as it is here to force a response in such situations by harsh penalization of the failure to respond, serves an end that the law would ultimately countenance.

... Ms. Stewart's opportunity to test the constitutionality of the subpoena was seriously subverted by the prosecution's conduct and it is largely because of that conduct that, even at this late date, after years of litigation, the law in the subject area remains so very treacherously unsettled....

The more appropriate concern, however - indeed, the concern compelled by anything less than a completely ostrich-like appreciation of this record - would appear to be not that the People will be denied their day in court but that Ms. Stewart has been denied hers, and that, as a result, an injustice, already great, may, if the felony contempt prosecution is permitted to continue, be compounded for ends whose legality and social utility are, at best, highly questionable.

39. In 1998, Ms. Stewart's indictment was reinstated by the Appellate Division, First Department with a scathing dissent by Presiding Justice Murphy (People v. Stewart, 230 A.D. 2d 116 (1st Dept. 1997)) and the matter was remanded for trial. At that point, the District Attorney proposed a plea agreement that resulted in no penalty, which resolved the case. During the pendency of the appeal, however, Mr. Maldonado was convicted, sentenced to 87½ years to life in prison, and committed suicide

in Attica on November 17, 1995. Ms. Stewart, still suffering the defeat of her case for Sheik Rahman in October, saw this as another failure. She has never been able to free herself from a sense of ultimate responsibility for this tragic death.

40. At the time of her visit to the Sheikh in 2000, Ms. Stewart was engaged in a month long A-1 felony trial in New York County Supreme Court that had begun on May 11, 2000. Therefore her mind was primarily focused on the current trial. Her visit to Minnesota was made for one purpose---to bring some humanity and a ray of hope to a client, held under horrendous circumstances, for whom she cared deeply.

**AS DESCRIBED IN OUR SENTENCING MEMORANDUM, THE FACTORS
ENUMERATED IN 18 U.S.C. § 3553(a) (2) SUPPORT A NON-
CUSTODIAL SENTENCE FOR MS. STEWART**

41. As described in the letters to this Court, Ms. Stewart's entire life has been dedicated to helping people through the practice of law. Her interest in the law began as a teenager, was whetted by her years at Cravath, Swaine & Moore and fueled by law school.⁹ Once she began working for Siegel and Graber, she fell in love with the practice of law. For almost thirty years, she maintained a large practice, ministering to

⁹ Ms. Stewart was the mother of two young children and pregnant with her third child when she entered Rutgers Law School. She lived alone with the children as their sole caretaker and completed law school in four years.

her client's needs, both in and out of the courtroom. The loss of her license to practice law is a terrible punishment for Ms. Stewart.

A. Medical Care

42. One factor enumerated by the statute is the need to provide the defendant with needed medical care in the most effective manner. Here, given my experience of 32 years in prison law, it is beyond argument that the necessary medical care that Ms. Stewart needs to combat her cancer will not be given to her by the Bureau of Prisons. For eleven years, I fought with the Bureau of Prisons to obtain medical care for Silvia Baraldini who had surgery and radiation for a virulent form of uterine cancer. Even with constant telephone calls and letters, Ms. Baraldini's follow-up tests were invariably months, sometimes years late. Many times it was only the intervention of the highest levels of the Italian government that resulted in proper medical care for Ms. Baraldini. Not only is Ms. Stewart suffering from cancer, she is diabetic, suffers from hypertension, and has sleep apnea. Any prison sentence could be a potential death sentence for Ms. Stewart.

B. Horrible Prison Conditions

43. In addition to the inadequate medical care provided by

the BOP, given the rabid nature of the Pre-Sentence Report (PSR) coupled with the fact that Ms. Stewart has been convicted of a terrorism offense, her treatment by the BOP will be untoward and severe.¹⁰ She will be classified a high security prisoner and held under the most stringent conditions. Ms. Baraldini, who was convicted in the Federal Brinks robbery trial and labeled a terrorist, was shackled and chained during all examinations, and was shackled and chained to her bed during radiation treatments. If this Court imposes a prison sentence, Ms. Stewart could find herself in solitary confinement as a high security prisoner, subject to SAMs, shackled and chained during all movement and under constant monitoring.

C. Adequate Deterrence

44. Moreover, any prison sentence herein would not "...afford adequate deterrence to criminal conduct." Here, Ms. Stewart was convicted because she violated an administrative rule for which there was no precedent to guide her conduct and after the government's benign acceptance of her co-counsel's

¹⁰ As Joanne Harris stated: "In this connection, I urge you to examine the reality of a prison sentence of any length. Because Ms. Stewart has been convicted of terrorism, she may be treated as a terrorist by the BOP. If the defense bar is concerned now with the chilling effect of this case, I can't imagine the reaction if the government imposes SAMs, meant to isolate terrorists on Ms. Stewart."

numerous statements to the press without any repercussions. In the days before September 11, 2001, at most Ms. Stewart would have suffered would have been an administrative sanction forbidding her from seeing the client. As stated by Joanne Harris in her letter: "If anything back in those days if Lynne Stewart had violated some administrative BOP rule--the most she could have thought she was risking was an administrative sanction." Exhibit 8.

45. At most---and I have never heard of this and have known many instances of attorneys bringing in material that was forbidden by the authorities to their clients---she would be subjected to a disciplinary proceeding. Instead, she was indicted and convicted of an extreme charge, given a Category 6 criminal history category, and a recommendation by Probation of an enhanced maximum sentence pursuant to the guidelines.¹¹

46. The enormity of Ms. Stewart's case has sent a wave of fear through the Bar that has already interfered with zealous advocacy--the hallmark of a free system. What this means to the

¹¹ The PSR makes no mention of the fact that the guidelines are now advisory and does not refer to 18 U.S.C. §3553 or any of the factors that govern sentence. It is clear that the only reason that Probation did not recommend 360 months to life is that the maximum sentence permissible under the statutes was 360 months. We intend to file a separate letter detailing our objections to the PSR.

young attorney who has the responsibility of representing someone who is subject to the SAMs cannot be judged. Ms. Stewart's public trial on the most serious charges, her conviction and disbarment is deterrence enough. A prison sentence would send a message to the Bar that even an inadvertent violation of an administrative rule could lead to extreme consequences. Attorneys who are in constant fear of the consequences of their representation cannot and will not provide their clients with the effective assistance of counsel.

47. I have been a member of this Bar since the 1970s. When I first appeared before the federal court, zealous advocacy was respected by the government and deference to our need to represent our clients was given by the prison system. Neither of these statements is true today. In my opinion, today, the government, and by this I include all prosecutors, the Bureau of Prisons and various elements within U.S. Probation, view zealous advocacy as a personal affront to the power of the government and an anti-American act. Prosecutors have told me that while they admire attorneys who fight, most of their colleagues become incensed when they are confronted with anything less than total acquiescence to the way they think the case is supposed to proceed. In 1998, I represented a defendant whose speedy trial

dismissal motion was granted with prejudice by the late Judge Schwartz. The prosecutor on that case refuses to speak to me because I advocated successfully for my client. The awesome power of the prosecutor in the criminal justice system is uniformly exercised in an arbitrary, brutal and unjust manner, as witnessed by the draconian sentences mandated by the charges instituted and the guidelines.

48. Joanne Harris, a former SDNY prosecutor and Deputy Attorney General in charge of the Criminal Division, has made the following observation concerning the charges brought against Ms. Stewart.

But I believe the "terrorism" counts were unwarranted overkill. The decision to charge the terrorism counts and to try this case against Lynne Stewart by repeatedly relying on horrifying words and deed of the likes of Osama bin Laden with only tenuous links to the case, and virtually none to Lynne Stewart, is unworthy of the SDNY office.

49. Over the last twenty years, the Bureau of Prisons has escalated its campaign against lawyers until at present they have effectively made it almost impossible to provide a criminal defendant with the effective assistance of counsel. This Court's position (as Supervising Judge of the CJA panel in this district) has provided this Court with countless complaints from

CJA lawyers about their treatment at the hands of the BOP. As this Court knows, women lawyers are regularly harassed with arcane clothing regulations and abuse at the front door. Petty rules and regulations interfere with the ability to bring materials in which are necessary to consult with the client. Attorneys are made to wait for hours because only about 12 prisoners can meet with their lawyer at any one time at MCC.¹²

50. In my experience, there are elements within U.S. Probation who see their role as an "arm" of the prosecutor. Ms. Stewart's Pre-Sentence Report, including the criminal history category, guidelines calculation, and recommendation could have been written by the U.S. Attorney's Office or the Department of Justice. The assessment of Ms. Stewart as a career criminal without even a mention that this might over-state her criminal history illustrates the extreme animus against Ms. Stewart evidenced by this Report. The recommendation that Ms. Stewart spend the rest of her life in jail, serving the maximum sentence permissible under the guidelines and the statutes, is draconian, inhumane, and ludicrous. Here, Ms. Stewart made a grave error.

¹² I remember when the visiting room at MCC accommodated many legal visits at one time. Then attorneys visited and consulted with their clients; now they don't.

As I see it, motivated by blinding concern for her client,¹³ Ms. Stewart violated prison rules and, among other things, issued a press release in violation of the SAMs. Nothing happened. The recommendation of a 30-year sentence for 66-year-old women with cancer and a lifetime of service to the community is not reasonable. It is not justice. It is tyranny.

51. The most chilling and horrendous aspect of Ms. Stewart's PSR is the stated justification for the 30 year sentence. "We hope that this sentence of 30 years will not only punish Stewart for her actions, but serve as a deterrent for other lawyers who believe that they are above the rules and regulations of penal institutions or otherwise try to skirt the laws of this country." PSR, p. 28. Only a skewed view of the lawyers who practice criminal law in this Court would motivate such a recommendation. None of us need Lynne Stewart to serve

¹³ "It seems clear that, although Ms. Stewart defied an agreement with the government she did it for motives related to assistance to her client. It was a serious mistake and a crime, but it seems understandable that at the time the acts were done, they seemed less grave than they seem in retrospect. A crime done primarily for good motives and not recognizing its gravity is of course still a crime, but for purposes of sentencing, such factors would seem to make a great deal of difference to the court."

30 years in prison so that we will operate in a professional manner, perform our constitutional duties, and provide our clients with the effective assistance of counsel. We do that every day, under difficult and depressing circumstances, and for very little money. We provide our clients with zealous advocacy because we believe in our system of justice. Yet we are treated as pariahs and enemies by most segments of the government. The deterrence they want to accomplish here is to frighten lawyers into submission and destroy zealous advocacy. A prison sentence for Lynne Stewart will deter attorneys from doing their job. Her conviction, disbarment and whatever non-custodial sentence we hope this Court will give serves as adequate deterrence for the Bar. To put Lynne Stewart in prison in order to teach criminal lawyers how to "behave" is outrageous.

52. There is no question that Lynne Stewart made a serious mistake, and by doing so, ruined her life. She was devoted to the practice of law: that life is over. She is a senior citizen, in poor health, suffering from cancer, with a lifetime of service to her credit. As this Court can see, for decades, Ms. Stewart lead an exemplary life, a life based on community service. She changed the lives of thousands and as a lawyer,

Letter of Professor Paul Chevigny attached

she was the finest representative of our profession. Using her skills and compassion, she restored faith in America and its justice system to thousands of people. She was a symbol of the best of the system. Working tirelessly, for little or no money, she brought light and hope to thousands and was an example to everyone who knew and knows her. Justice and mercy require that this Court examine all of the factors that apply to Ms. Stewart: her decades of selfless dedication to her profession and to her clients, friends and neighbors, her precarious medical situation, the lack of any gain to her by her actions, her misguided but compassionate motivations, the lack of harm caused by her actions, and the effect on present and future member of the criminal Bar of a draconian sentence. I pray that your examination will compel you to find that justice and reason mandate a non-custodial sentence.

as Exhibit 40.

WHEREFORE it is respectfully requested that this Court
impose a non-custodial sentence herein and grant such other and
further relief as may be just and proper.

Dated: June 30, 2006
Brooklyn, New York


ELIZABETH M. FINK