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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

02 CR 395 (JGK)

5 LYNNE STEWART,

6 Defendant.

7 -----x

8
9 July 15, 2010
2:35 p.m.

10 Before:

11 HON. JOHN G. KOELTL,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

BY: ANDREW DEMBER

18 MICHAEL MAIMIN

Assistant United States Attorneys

19 JILL R. SHELOW

SARAH KUNSTLER

20 REBECCA HEINEGG

Attorneys for Defendant

07festes

1 (In open court)

2 THE DEPUTY CLERK: United States of America versus
3 Lynne Stewart. Will all parties please state who they are for
4 the record.

5 MR. DEMBER: For the government, your Honor, Andrew
6 Dember, along with Assistant United States Attorney Michael
7 Maimin, as well as paralegal specialist Lillie Grant. Good
8 afternoon.

9 MR. MAIMIN: Good afternoon, your Honor.

10 MS. SHELOW: Good afternoon, your Honor. Jill
11 Shellow for defendant Lynne Stewart. With me is Sarah Kunstler
12 and Rebecca Heinegg. Ms. Heinegg was admitted to the bar of
13 this Court last week.

14 THE COURT: All right. I note that the defendant is
15 present.

16 I have received the presentence report prepared
17 August 22, 2005, as amended June 30, 2010, together with the
18 sentencing recommendation and the addendum dated June 30, 2010.
19 I have received the defendant's submissions dated June 11,
20 2010, June 28, 2010, July 9, 2010, July 12, 2010, July 13, 2010
21 and July 14, 2010. I've received the government's submissions
22 dated June 11, 2010, June 25, 2010, and July 14, 2010.

23 The parties should assure that their filings are in
24 the Court file so that they can be publicly available, unless
25 they're marked as filed under seal. However, in filing the

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1 documents, the parties should assure that they comply with
2 Federal Rule of Criminal Procedure 49.1 and redact any personal
3 identifying information, in particular the home addresses of
4 any persons.

5 I'll rely on the parties to make those filings. I
6 believe that many of them have already been made on ECF. And
7 I'll simply place my copies in the record under seal, along
8 with the presentence report, the recommendation and the
9 addendum.

10 Is that satisfactory with everyone?

11 MR. DEMBER: Yes, your Honor.

12 MS. SHELLOW: Yes, your Honor.

13 THE COURT: Okay. Before I call on counsel and the
14 defendant, let me deal with the defense objections to the
15 presentence report as set out in the defense letter dated
16 July 13, 2010.

17 One, on page two of the presentence report, the
18 defense requests that the Court provide a more complete
19 description of the defendant's remand and the Court will do
20 that. The Court will delete the sentence that begins, "on
21 November 19, 2009," and the Court will replace it with the
22 following language: "On November 17, 2009, the Court of
23 Appeals for the Second Circuit directed that the district court
24 order Ms. Stewart, who had been granted bail pending appeal, to
25 surrender forthwith to begin serving her term of incarceration.

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1 The district court thereafter ordered Ms. Stewart to surrender
2 to the marshal on November 19, 2010, and Ms. Stewart
3 surrendered. She remains in custody."

4 Two, the defense notes that there are several points
5 in the presentence report where the report is marked as
6 "stricken by the Court." There is no reason that the
7 presentence report should indicate that portions have been
8 ordered stricken by the Court. It's sufficient that the
9 language simply doesn't appear. Therefore, those references
10 should be deleted in paragraphs 20, 26, page 33, third
11 paragraph, also including the word "was" at page 33, fifth
12 paragraph.

13 Three, paragraph 75, the word ultimately should be
14 changed to initially.

15 Four, page 33, second paragraph, I will strike the
16 sentence that states "Stewart declined to discuss the incident
17 offense at the time of the presentence interview and we cannot
18 surmise her motivation for committing this offense." The
19 sentence is inconsistent with paragraph 41, and I accept the
20 representation that defense counsel offered the sentencing
21 memoranda to the probation department.

22 Number five, page 33, paragraph four, I'll replace
23 "age 65" with "age 70." I will strike the sentence that begins
24 "Stewart is now being treated," and replace it with
25 "Ms. Stewart completed radiation therapy for breast cancer and

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1 she continues to receive chemotherapy in the form of Arimidex,
2 a medication delivered orally."

3 Any objections or comments on these changes?

4 MR. DEMBER: Your Honor, we have no objection to the
5 changes. The only thing I would suggest, and it's really not
6 very important, your Honor, is on page 15, paragraph 75,
7 paragraph 75 really serves no purpose in the report itself.

8 THE COURT: Hold on one second.

9 MR. DEMBER: Sure.

10 THE COURT: I mean, this is not an objection or
11 comment on the changes I made?

12 MR. DEMBER: Your Honor, you did make a change in that
13 paragraph from the word -- removed the word ultimately and
14 substituted the word initially.

15 THE COURT: Yes.

16 MR. DEMBER: All I'm saying, your Honor, is apparently
17 there was a motion to dismiss that case originally, which was
18 granted. The case was reinstated after I believe, you know, an
19 appellate court ruled the original motion to be wrongly
20 decided, and then the defendant was -- pled guilty and the
21 disposition shows.

22 I see no purpose to it. I don't object to it being
23 there, but it really serves no purpose for the report itself.
24 And, frankly, we prefer that it be stricken because it serves
25 no purpose.

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1 THE COURT: Defense?

2 MS. SHELLLOW: Your Honor, we think it's there for
3 completeness. It's not particularly relevant, but on the other
4 hand, it would otherwise require a renumbering of the entire
5 document.

6 THE COURT: So you want it in with initially?

7 MS. SHELLLOW: Initially, please.

8 THE COURT: Okay. I'll leave it in.

9 Any other objections or comments?

10 MR. DEMBER: No, your Honor.

11 MS. SHELLLOW: No, your Honor.

12 THE COURT: Okay. I'll call on each of the lawyers
13 and the defendant for any other objections and any statements
14 they want to make in connection with sentence.

15 Ms. Shellow, have you reviewed the presentence report,
16 the recommendation and the addendum and discussed them with the
17 defendant?

18 MS. SHELLLOW: I have, your Honor.

19 THE COURT: Other than I've already noted, do you have
20 any objections?

21 MS. SHELLLOW: I do not to the PSR, your Honor.

22 THE COURT: I'll listen to you for anything you wish
23 to tell me in connection with sentence, any statement you'd
24 like to make on the defendant's behalf, anything at all that
25 you'd like to tell me.

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1 MS. SHELLOW: Your Honor, I note at the outset that
2 the government did not in its reply papers respond to our
3 sentencing memorandum. They maintain in their papers that
4 Ms. Stewart is a hub of communication between her client and
5 the IG.

6 I note that in the almost eight years from the time
7 that she was indicted until today there's been no continuing
8 allegation of any contact whatsoever. There's been no
9 suggestion from the government of any impropriety or any
10 improper words in relation to -- that is, communications with
11 any of the people who are described either in the indictment or
12 about whom evidence was presented at trial. Ms. Stewart
13 traveled freely during those years with the permission of the
14 Court, and there is absolutely no suggestion that she is a
15 threat -- or a terrorist threat in any way, shape or form in
16 her hub-like capacity. Former Attorney General Ramsey Clark
17 suggests that her conduct and his are indistinguishable in many
18 ways, perhaps in style and frequency during these years.

19 Lastly, I guess I would note, your Honor, that in
20 approaching the sufficient but not greater than necessary
21 standard, the materials that we provided to the Court about the
22 Guantanamo lawyers sets up book end opposite, which we have
23 Judge Walker's collected cases in footnote four.

24 The Guantanamo lawyers, who are doing phenomenal work,
25 have been accused by the government of significant conduct, but

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1 there is no punishment there. And somewhere in between lies
2 the right answer for what is sufficient but not greater than
3 necessary. The allegations are set forth in the Justice
4 Department's letters ranging from photographs of badges and
5 drawings of maps.

6 We're not suggesting that Ms. Stewart doesn't stand in
7 a different place here today. Rather, what we say is that in
8 looking at assessing the reasonableness and the sufficient but
9 not greater than necessary to arrive at a just sentence, that
10 this is another point of reference for the Court.

11 Thank you.

12 THE COURT: All right. Thank you, Ms. Shellow.

13 Ms. Stewart, have you reviewed the presentence report,
14 the recommendation and the addendum and discussed them with
15 your lawyer?

16 THE DEFENDANT: I have, your Honor.

17 THE COURT: Other than I've already noted, do you have
18 any objections?

19 THE DEFENDANT: None, your Honor.

20 THE COURT: I'll listen to you for anything that you
21 wish to tell me in connection with sentence, any statement
22 you'd like to make, anything at all that you'd like to tell me.

23 THE DEFENDANT: Thank you, Judge.

24 I never thought I would be confronting this moment
25 again. It was terribly difficult the first time around, almost

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1 four years ago, and the pain is overwhelming now. I don't want
2 to prolong the proceedings --

3 THE COURT: Take as long -- I have as much time. I
4 always tell defendants, take as much time as you want.

5 THE DEFENDANT: Thank you, sir.

6 -- with any unnecessary repetitions. I spoke the last
7 time, and you still have my letter. You also have all the
8 expressions of support from my family and friends.

9 I want to start with the issue that the circuit
10 directed your Honor to address, whether I committed perjury.
11 My lawyers have ably made the legal arguments. I want to
12 respond personally.

13 As your Honor recognized the last time we were here, I
14 have spent my legal career acting for the poor, the
15 disadvantaged, the unpopular and the people of my community. I
16 have tried a lot of jury cases. I respect the jury as an
17 institution, and I would never say to a jury anything that I do
18 not believe to be true; and that includes especially what I
19 said under oath to my jury.

20 I did not commit perjury. I did not attempt to
21 obstruct justice. I spoke only the truth as I knew it.

22 I also want to speak to you personally and directly on
23 two other subjects that were remarked upon by the Circuit Court
24 and included in the government's arguments. First, I, of
25 course, refer to standing on my head, my remarks upon leaving

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1 the courthouse on October 16, 2006, after the first sentencing.
2 Second, I refer to my answer to the question, would I do it
3 again?

4 First, I have learned that no one, and especially not
5 this 70-year-old woman in questionable health, can do 28 months
6 standing on her head, not in prison. I was wrong. Over the
7 last almost eight months prison has diminished me. Daily I
8 confront the prospect of death, death by a cancer that I fear
9 may reappear, death as a result of the length of the sentence
10 requested by the government. I endure medical procedures with
11 nothing to distract me from the unknowns to come.

12 I sense myself losing pieces of my personhood. My
13 sense of inquiry has been replaced by a sense of wariness. My
14 sense of compassion is subordinated to expediency. Once I
15 could think creatively and clearly. Now I see my thoughts are
16 becoming regimented to match the institutional regulation. I
17 feel my world, once filled with love and laughter, kindness and
18 work in the company of my husband, surrounded by my children
19 and grandchildren, slipping away, a widening rift. And there
20 is so little I can do about it.

21 I look around me at the other girls, ladies, the women
22 who live with me on my floor. They are so needy. I am not
23 talking about needy in the sense of needing legal advice. I am
24 meticulously careful not to slip into my past roles, talking
25 about their cases with them. I mean needy in the sense they

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1 need to learn how to learn.

2 From the time I was 22 years old and walked into my
3 first classroom, I've always believed that education is the
4 answer. I know how to teach. I know how to counsel. We all
5 need comfort for all our fears. We all need someone to lean
6 on, the soft shoulder, the sympathetic ear. But the reality is
7 that each of us is alone. I was eager to contribute to
8 institutional rigidity but foreclosed the possibility of
9 teaching either GED or -- I'm sorry -- or even basic literacy.

10 My fears now are about losing touch with those I love
11 and suffering some unknown medical complication, hospitalized
12 with no one to hold my hand. Each day my hope is that I will
13 make it to tomorrow.

14 When I stood outside this courthouse after you imposed
15 your original sentence, I was exhausted, mentally drained, but
16 overjoyed. The government wanted me then, as it does now, to
17 spend the rest of my life in prison. They asked for 30 years.
18 Today they ask for 15 to 30. Either way, it's a potential
19 death sentence.

20 You gave me back the promise of a future, a future I
21 could share with my family in the company of the world of my
22 friends and the world outside. Twenty-eight months set a
23 horizon. It was a journey I had to make and one I thought I
24 could complete. I could see where I was going, and I had an
25 event I could anticipate: Freedom. You gave me back the

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1 promise of my life. That's all I meant to say. Twenty-eight
2 months, I will live through this, not standing on my head.

3 THE COURT: I'm sorry. Twenty-eight months, I didn't
4 hear you.

5 THE DEFENDANT: I said 28 months, I will live through
6 this; not standing on my head. That, I know for sure. Just
7 surviving.

8 To understand the do it again response, I ask you
9 please to focus on the "it." To me the it has always been
10 about representing my clients with selfless, I hope,
11 compassion, putting their needs before my own. It was the
12 client as a human being, not his cause, that I represented. He
13 was old and blind. After years of diabetes he had lost his
14 sense of touch. He could no longer read Braille. The prison
15 regulations forbade him from communicating with anyone, even
16 his jailers. He did not participate in the communal rights of
17 his religion. His conditions of confinement and his
18 deteriorating health compelled me, not his politics.

19 Times have changed. And with hindsight, Ramsey Clark
20 is right when he said that we should have gone to court at the
21 first rumblings of government disapproval. Unreasonable
22 restrictions such as the SAMs needs to be challenged and
23 overturning improper regulations in the role of the Court under
24 the rule of law. I should have followed that course. That
25 should have been my instinct, but it wasn't.

07festes

1 Would I do it again? When the "it" means
2 compassionately represent my client, the answer is, I would.
3 When the it means abiding by unfair and arbitrator regulations
4 that seriously compromise my ability to represent my client, I
5 would do it differently. A license to practice law is a
6 license to use our best judgment on behalf of those who need
7 us. In this I did not succeed, and this I would do
8 differently.

9 The decision I made weighs heavily on me. As a
10 criminal lawyer for almost 30 years, I knew or thought I knew
11 that prison was an alienating experience. The reality is worse
12 than I could have imagined. You go through it drawing in work
13 from the edge, cut off from what sustains you, becoming less
14 and less.

15 My 15-year-old grandson is a fine boy; smart,
16 sensitive, love of the whole family, a true city boy, too,
17 savvy negotiating adolescence. He came to visit me once in
18 December when I was first in jail. And as we spoke, his eyes
19 filled with tears. Soon he was weeping openly in a room full
20 of visitors, strangers, some his own age. He couldn't stop and
21 he cried silently for the rest of the visit. After he was
22 home, he told his parents that he couldn't visit again. He
23 couldn't bear to see me in that place.

24 It's been seven months and I haven't seen him since.
25 He writes me short letters. I write to him and send him

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1 clippings I think he'll like from The Times. We speak
2 occasionally on the phone, superficially, only a few minutes a
3 month. But I see him moving away. If I am in prison for an
4 extended period of time, I will lose him altogether. And I may
5 never have a chance to bond with the nine younger cousins.
6 That is the isolating nature of the place.

7 I am revived during the one-hour visiting one time per
8 week of my husband, family and oldest friends. But when they
9 leave, I shrink again. It returns. As I said, with a 28-month
10 sentence, there is a horizon out there in the distance for me
11 and for them. I would be able to remember and celebrate the
12 lives and the passing of dear ones, relatives, friends,
13 comrades, and be able to say good-bye to them. I will still be
14 able to do good for my community and, Judge, my country.

15 I ask you today to reimpose the 28-month sentence. I
16 did not commit perjury. A 15-year sentence, the lowest of the
17 government recommendations, I repeat, is a potential death
18 sentence for me. Twenty-eight months was and is just,
19 reasonable and sufficient but not greater than necessary. It
20 embodies the true qualities of mercy and justice to all.

21 Thank you.

22 THE COURT: Thank you, Ms. Stewart.

23 Mr. Dember?

24 MR. DEMBER: Yes, your Honor.

25 THE COURT: Has the government reviewed the

07festes

1 presentence report, the recommendation and addendum?

2 MR. DEMBER: We have, your Honor.

3 THE COURT: Does the government have any objections?

4 MR. DEMBER: No, we do not.

5 THE COURT: I'll listen to you for anything the
6 government wishes to tell me in connection with sentence.

7 MR. DEMBER: Your Honor, may I speak from the podium?

8 THE COURT: Yes.

9 MR. DEMBER: I have much to say, your Honor, much to
10 say about this sentence. And I ask the Court to bear with me.

11 When a person commits serious crimes, crimes that
12 place the lives of innocent people in danger, a sentence that
13 includes a substantial period of incarceration is warranted.
14 Such is the case of Lynne Stewart. This was not some trivial
15 matter, some violation of some administrative rules by a lawyer
16 engaged in legitimate legal representation of a client, as
17 Ms. Stewart would have the Court believe.

18 Ms. Stewart gave aid to a proviolence faction of the
19 vicious terrorist organization and one of its leaders. The
20 Court has to consider obviously all the factors under 3553(a).
21 As we've said in our papers, it's the government's view the
22 most important, the most compelling factor, the one that should
23 outweigh all others, is the seriousness of this crime.

24 Ms. Stewart was convicted of conspiracy to defraud the
25 United States, lying to the government, conspiring to provide

07festes

1 material support and, most seriously, in fact, providing the
2 material support to a conspiracy to commit murder. She
3 committed these very serious crimes, your Honor, with the very
4 possibility that injury, that death could result. She did so
5 knowingly, intending that when she provided her client -- when
6 she provided her client to that murder -- conspiracy to murder,
7 which essentially was Taha and Sattar's attempt to end the
8 ceasefire in Egypt, unilaterally called by their terrorist
9 organization, Islamic Group, and renew terrorist activity.
10 That's what she knew. She was convicted of that.

11 And part of that conviction was the fact that she knew
12 there was a conspiracy to murder. And she knew, either she
13 knew or intended, that she was providing her client, an
14 influential leader of that terrorist group, to that conspiracy
15 because of his influence, because of what the others thought of
16 him, that they would hopefully in their eyes be able to
17 reinstitute terrorist activity against the Egyptian government.
18 She knew all of that.

19 What she did essentially was provide a terrorist
20 leader to a terrorist organization for the purpose of resuming
21 that organization's terrorist activity. In a nut shell, that's
22 what she did. And she did it not by dealing with low-level
23 members of the group, but dealing with and through its leaders.

24 Your Honor, I'm not going to spend a lot of time
25 talking about the evidence. In our initial submission for this

07festes

1 resentencing, we've provided the Court with the most detailed
2 account of the evidence that was presented in this case that
3 proved this defendant's guilt. But, you know, when she did
4 this, one of the most striking things to the government, your
5 Honor, is what she knew, what she knew and when she was
6 engaging in these crimes, what she knew about the Islamic
7 Group.

8 She knew it was a terrorist organization. She knew
9 about the Luxor massacre, where 58 foreign tourists were
10 murdered, as well as four guards. She knew about other
11 terrorist activity by this group. She knew the group focused
12 its attention on its attack on the Egyptian government by
13 killing foreign tourists. She knew all this. And yet she did
14 what she did.

15 Your Honor, as the evidence played out, obviously she
16 delivered terrorist messages to her client. She took the
17 messages from him and passed them on. She announced it to the
18 world. This was, in fact, remarkable conduct, remarkable in
19 light of what she knew about who she was dealing with. There
20 has been a suggestion in the defense papers, your Honor, by a
21 judge on the Second Circuit Court of Appeals, that, gee, if
22 September 11th had happened, taken place, before Ms. Stewart
23 had engaged in this conduct, maybe she would have had greater
24 insight. Maybe she would have restrained herself. Maybe she
25 would have been more sensitive to what she was doing.

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1 That's an argument your Honor can easily be disposed
2 of. She knew all about this group when she committed the
3 crimes. She knew about their violence. She knew about her
4 client. She knew about what he was convicted of. She knew
5 about his participation in the conspiracy of blowing up the
6 World Trade Center in 1993. She sat through his trial. She
7 sat through weeks of testimony directed specifically at that
8 bombing. She knew what they were capable of. She didn't need
9 September 11th as a wake-up call to realize, these people mean
10 business.

11 One of the most striking parts of this case, your
12 Honor, which perhaps didn't receive as much attention, didn't
13 receive much argument on, was the fatwah. Your Honor will
14 remember a fatwah. That was drafted by Mr. Sattar and Taha.
15 Ms. Stewart had nothing to do with the drafting of that fatwah.
16 In fact, her client had nothing to do with the drafting of the
17 fatwah. It was a fatwah which called for the murder of Jews
18 everywhere and anywhere they could be found. And Sattar and
19 Taha drafted it in Abdel Rahman's name and drafted it in his
20 style of writing so that others, once they issued it, would
21 believe it, in fact, had been issued by Abdel Rahman.

22 And this was done a few months after Ms. Stewart had
23 called Mr. Salaheddin, the Cairo-based Reuters reporter, and
24 announced to the world that Abdel Rahman was withdrawing his
25 support for the ceasefire. This was after the fire storm

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1 that that press release caused in the Middle East, and
2 particularly in Egypt, amongst members of the Islamic Group.
3 And this was after Ms. Stewart again, again in defiance of all
4 the rules and regulations she knew she had to obey, again
5 issued a reaffirmation of his withdrawal of support for the
6 ceasefire.

7 And so the world believed and knew that Abdel Rahman,
8 though under SAMs, could speak and could direct and communicate
9 with his jihaddist followers.

10 So when Taha and Sattar issued their fatwah, sent to
11 the Arab papers in the Middle East, and it gets published,
12 people believed it. And why do they believe it, that it comes
13 generally from Abdel Rahman? Because of what Ms. Stewart did,
14 by initially broadcasting his withdrawal of support. Now,
15 what's most interesting about that fatwah and as it pertains to
16 Ms. Stewart, it's not that it was issued because it was issued
17 without her knowledge. And she had nothing to do with it. But
18 once she found out about it, once she learned about it, and she
19 was told about it by Mr. Yousry, who himself didn't know
20 anything about it until one day during one of those prison
21 calls that he had with Abdel Rahman, is reading a newspaper
22 that Sattar told him to read to Abdel Rahman, and he reads an
23 article about the issuance of the fatwah by Abdel Rahman.

24 And Yousry tells Ms. Stewart about it. And he tells
25 Ms. Stewart that he has spoken to Ramsey Clark, and Ramsey

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1 Clark was very concerned about the fatwah; very concerned in
2 light of the withdrawal of support that had been published with
3 respect to this fatwah, they would be cut off.

4 And Ms. Stewart's reaction to all that is truly
5 telling about who she is and what she did in this case.
6 Essentially what she said was, essentially, I don't care what
7 Ramsey Clark has to say. I don't care what the government
8 restrictions are. I don't care about the SAMs. Abdel Rahman's
9 words are going to get out. They can't contain him.

10 And what she also did was say, if Abdel Rahman is for
11 that fatwah, so is she. So is she. A fatwah calling directly,
12 explicitly, for the murder of Jews everywhere. And it was
13 suggested, this is a bad idea, this is not good for Abdel
14 Rahman. Her reaction was, well, if he's for it, I'm for it,
15 too. And certainly if somebody had issued a statement in his
16 name in which he had called for Palestinians to stop throwing
17 stones at Israelis, well, that would be a travesty. That would
18 be a tragedy. But it's certainly fine and okay for him to be
19 issuing statements about murdering Jews everywhere.

20 One of the striking things about this case, your
21 Honor, is not just simply her conduct in providing material
22 support to a terrorist murder conspiracy; it's the fact that
23 she repeatedly, repeatedly lied to the government and deceived
24 the government. And obviously that's reflected in her
25 convictions on the 2001 charges.

07festes

1 Your Honor, I want to briefly talk about some of the
2 other factors involved. Obviously it's our position -- and
3 actually, the Second Circuit has indicated, has ruled
4 essentially in this case, Ms. Stewart has conceded, certainly
5 the terrorism enhancement applies. I'm not going to repeat our
6 arguments that are in our briefing, our submissions, your
7 Honor. It's the government's position clearly that the fact
8 that Ms. Stewart's conduct did not result in death or injury is
9 not a basis for variance when it comes to the terrorism
10 enhancement. We've made that argument. I'm not going to
11 repeat them here.

12 Let me talk a little bit about the perjury, your
13 Honor, that Ms. Stewart was talking about.

14 One thing, having been involved in this case from
15 certainly trial through today, your Honor, one thing it seems
16 to be almost a current theme with Ms. Stewart is that
17 Ms. Stewart and the truth seem to frequently travel in
18 different directions. It's not just a question, your Honor, of
19 her lying to the government in her affirmations repeatedly.
20 You know, there's a small little piece of evidence we included
21 introduced at trial; we reference it in our first submission
22 for this resentencing, your Honor. Your Honor may remember it.
23 It's a conversation Ms. Stewart had with Mr. Sattar at some
24 point after the withdrawal of support for the ceasefire. And
25 they're talking about Abdel Rahman and how he refuses to take

07festes

1 his medication and insulin in the prison.

2 And what Ms. Stewart is being told by Sattar is, well,
3 certainly he just refuses to do it, but that Abdel Rahman's
4 sons want to publish a claim or put out in the media that, in
5 fact, the United States authorities are denying him his
6 insulin, denying him his medication.

7 And if your Honor remembers that conversation -- and
8 it's in our briefing -- Sattar is saying to her, no, it's just
9 Abdel Rahman refusing to take his -- being difficult and
10 refusing to take his medication. But she essentially sanctions
11 that publication of the falsehood that, in fact, the American
12 authorities are denying him his medication. Certainly
13 something inflammatory and dangerous, if published in the
14 Middle East. But she's okay with that, despite the fact that
15 she knew full well it wasn't the truth.

16 You know, reading through all the defense submissions
17 that were provided to the Court and the government with respect
18 to this resentencing, one of the things that caught my eye,
19 your Honor, was an affidavit submitted on behalf of Ms. Stewart
20 from Elizabeth Fink. Again, your Honor, it was a fascinating
21 reading for this reason alone, your Honor: It was Ms. Fink's,
22 I guess on behalf of the defendant, trying to rewrite history
23 in this case. All of a sudden, despite what your Honor has sat
24 through, a nine-month trial, great deal of evidence, all of a
25 sudden, according to defense, now Mr. Yousry is one of the

07festes

1 masterminds behind all these crimes.

2 The evidence as the government saw it, and we believe
3 your Honor saw it at the sentencing of Mr. Yousry, is that he
4 was the least culpable of the three defendants; certainly had
5 committed serious crimes, was sentenced for those serious
6 crimes to hold accountable for those serious crimes. But the
7 arguments made on the defendant's behalf, essentially by the
8 defendant, was, uh-oh, no, I'm just sort of an innocent
9 bystander here, wasn't paying attention. It was Sattar and
10 Yousry who were the masterminds. Again, another example of
11 Ms. Stewart not quite being truthful.

12 And that takes us to her trial testimony, your Honor,
13 which, despite her claims that, in fact, she testified
14 truthfully, well, the evidence about that, about the fact that
15 she was untruthful, couldn't be more compelling and more
16 obvious.

17 What is clear from all of this, the perjury, the false
18 statement allegations, the claim about Mr. Yousry, the insulin
19 claim, is that Ms. Stewart says things regardless of their
20 truth when it suits her purpose. And that's what she did when
21 she testified at trial. You know, we've identified eight
22 different -- I'll call them acts of perjury for your Honor.
23 They're in our briefing. I won't go through each of them,
24 frankly.

25 One of the main ones was that essentially there was a

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1 bubble concept she created for the purpose of the trial, and
2 that, in fact, she and the other lawyers were permitted to
3 violate the SAMs with impunity, even though, you know, the only
4 people signing affirmations in this case were the attorneys.
5 But she was allowed to do that.

6 Now, we've cited all of the evidence in the case, your
7 Honor, that clearly proves that to be untrue, that not to be
8 her belief. And let me just highlight a few. She claims she
9 was allowed to violate the SAMs, issue statements to the press
10 with Abdel Rahman's statements, yet when she did it in June of
11 2000, when she issued his withdrawal of support for the
12 ceasefire, what does she tell the reporter who she issued it
13 to? Because of what she's doing by issuing this statement by
14 Abdel Rahman, the authorities will not let her, likely not let
15 her see him again.

16 Why did she say that? Because she knew, in fact, she
17 was not allowed to do it. And what did she say a few days
18 later to Lisa Sattar, when word of Abdel Rahman's withdrawal
19 was spreading like wild fire? She said, well, uh-oh, Pat
20 Fitzgerald, the Assistant US Attorney dealing with her and the
21 SAMs, is likely to find this out. I can't hide it from him.
22 And there will be consequences for Ms. Stewart. Well, gee
23 whiz, if she thought she was allowed to violate the SAMs with
24 impunity and issue Abdel Rahman's statements, why on earth
25 would she say that? Because, in fact, she knew she couldn't.

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1 And then, of course, the classic statement to
2 Mr. Yousry during a telephone conversation. After the
3 withdrawal of support was issued, after people in the Middle
4 East were criticizing the statement, her claiming it actually
5 came from Sattar, not from Abdel Rahman, Ms. Stewart told
6 Yousry, you know, in response to that, she was risking her
7 whole career by issuing this statement, and she didn't do it
8 lightly. Why? Because she knew full well she couldn't do it.
9 That's why she smuggled terrorist messages into the prison and
10 smuggled them out. That's why she did covering noises and
11 deception, so that the guards who were outside the conference
12 room where she met with Abdel Rahman wouldn't know when she
13 was, and Yousry were translating the Sattar and Taha letters
14 and statements and messages to him, the terrorist messages;
15 covering that up, but not covering up when they were talking
16 about innocuous topics, because she knew full well she
17 couldn't. I can go on and on and on, your Honor, discussing
18 the proof that clearly establishes that Ms. Stewart repeatedly
19 committed perjury in this case.

20 I will speak briefly about the enhancement involving
21 abuse of trust. We spoke at length about this the last time we
22 were at sentencing, your Honor. The government put a lot of
23 faith in Ms. Stewart, trusted her, as the government should be
24 able to trust any defense attorney, any lawyer they deal with.
25 She signed affirmations that she herself under oath said

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1 thought it was oaths, promises to abide by the SAMs. The
2 government took her at her word, believed, in fact, and trusted
3 her, believed her and trusted her that she would be abiding by
4 the SAMs.

5 In fact, when she went and visited Abdel Rahman back
6 in May of 2000, when she smuggled those terrorism messages to
7 him which led eventually to the press release, the announcement
8 to the world, she actually had signed, if your Honor remembers,
9 the affirmation, but not sent it to the US Attorney's office.
10 But that didn't prevent her from going and seeing him. And why
11 was that? Because of the trust, the assumption that if
12 Ms. Stewart makes a promise, that's a promise we can rely on,
13 we can trust.

14 The government was wrong. It was very wrong. You
15 know, the SAMs didn't require that when she showed up at
16 whatever prison Abdel Rahman was in, that she had to be
17 searched or that her briefcase or belongings had to be searched
18 to make sure she wasn't smuggling messages into him. That
19 never occurred. She was treated like any other visitor with
20 any other prisoner. Why? She was trusted. Trusted to be a
21 lawyer to do the lawyerly work, not what she was doing.

22 You know, there is a mention by Ms. Shellow about the
23 Guantanamo Bay lawyers. The last two days I've read what the
24 defense has provided about some supposed wrongdoing done by
25 some lawyers who are apparently representing detainees at

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1 Guantanamo Bay, lawyers from some well known law firms. And I
2 read those documents a few times, and apparently there's some
3 indications those lawyers engaged in some kind of wrongdoing.

4 I have yet to figure out from reading those documents,
5 your Honor, whether any of them have committed any crimes. It
6 doesn't appear to be that they've committed any crimes, and
7 certainly Ms. Stewart and her attorneys haven't indicated to at
8 least the government what crimes they think those lawyers
9 committed.

10 Well, frankly, it sounds like they may have violated a
11 protective order. They may have. They may have violated some
12 regulations. But what's crystal clear about those lawyers,
13 your Honor, is that they didn't provide material support to a
14 murder conspiracy. They didn't provide a coconspirator to a
15 conspiracy that they knew was to murder innocent people.
16 That's what Ms. Stewart did. So whatever these lawyers did in
17 relation to these Guantanamo Bay detainees has nothing to do
18 with this case. And to compare that conduct to Ms. Stewart's
19 is to trivialize what Ms. Stewart did in this case.

20 Now, there's been a suggestion at least by one judge
21 that perhaps the fact that Mr. Jabara and Mr. Clark were not
22 prosecuted is some -- a factor that the Court should consider
23 in determining the appropriate sentence for Ms. Stewart. We
24 have said this to the Court a number of times in relation to
25 various motions Ms. Stewart made in this case, but the fact of

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1 this matter is Mr. Jabara and Mr. Clark did not do what
2 Ms. Stewart did do. In fact, they refused to do what she did.
3 And that clearly distinguishes them from her, because unlike
4 her, they refused, they refused to provide Abdel Rahman to a
5 conspiracy to murder. They knew better.

6 And, in fact, as your Honor may remember, the
7 February 2000 visit and the evidence about that visit, where
8 Mr. Jabara is essentially telling Mr. Yousry he wasn't going to
9 let Abdel Rahman write a letter to the Islamic Group. He was
10 not going to announce anything publicly about Abdel Rahman's
11 view of the ceasefire and refused to do it. And Mr. Clark
12 didn't do it either.

13 Your Honor, among the factors your Honor has to
14 consider under 3553(a) is in determining an appropriate
15 sentence whether this serves as a deterrent, whether it
16 promotes respect for the law.

17 As we presented to the Court in our briefing in a DVD
18 that we provided to the Court with various public statements
19 made by Ms. Stewart, what comes out, and what is crystal clear,
20 is that she has no remorse for the crimes she committed. In
21 fact, she barely acknowledges them. She's demonstrated no
22 acceptance of responsibility. In fact, she's come out
23 literally the day before and the day she surrendered to start
24 her sentence in this case and unequivocally told an interviewer
25 on some apparently cable station and the media right before she

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1 surrendered that, you know, no regrets, you know. She would do
2 what she did again. That's disturbing, your Honor. She
3 clearly is not deterred by a sentence of 28 months. I don't
4 know what would deter Ms. Stewart, but certainly not the
5 original sentence in this case.

6 The Court has to and should, consider Ms. Stewart's
7 personal characteristics, her health, her age, certainly. And
8 we remind the Court that, you know, Ms. Stewart committed these
9 crimes, yes, it's now nine, ten years ago when she's committed
10 them. It's not four or five years ago. About five years ago
11 she committed perjury in trying to cover up those crimes. But
12 it's only recently, your Honor, where she announced to the
13 world that, you know, she has no regrets; knowing everything
14 she knows now, she would do what she did again at her current
15 age.

16 Your Honor, on the last occasion certainly, it's
17 argued by the defense, your Honor should consider her career.
18 And there is no dispute here, your Honor. Ms. Stewart has done
19 good as a lawyer, represented some unpopular people, poor
20 people. We recognize that. You know, we certainly know the
21 Court will and should take that into consideration. As a
22 lawyer, she's done much good. But, your Honor, Ms. Stewart in
23 the last several years as a lawyer, and even after not losing
24 her license, has done a tremendous disservice as a lawyer and
25 also to the legal profession.

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1 In the first instance, your Honor, her example and
2 what she did in this case as a lawyer, repeatedly lying to the
3 government, providing a terrorist leader to a conspiracy to
4 murder, committing perjury, if there was anyone who should
5 understand and appreciate an oath, it's Ms. Stewart, a person
6 who's tried many cases in this courthouse and this district and
7 in state court and other places.

8 Then she got on the witness stand, and as we argued,
9 your Honor, repeatedly committed perjury during her trial as a
10 lawyer. She abused her license to commit the crime she
11 committed. This is not a situation where we have a lawyer who
12 happened to commit a crime that has no relationship to being a
13 lawyer. In fact, she used it. She used her license to commit
14 these crimes. The loss of her license, your Honor, isn't a
15 mitigating factor. The fact that she used it to commit these
16 crimes is an aggravating factor.

17 The disservice she's also provided to the profession,
18 one only needs to look at some of the Second Circuit opinions.
19 Judge Walker makes a point, you know, perhaps because of
20 Ms. Stewart's conduct, these kinds of cases, terrorism cases,
21 your Honor, may not be brought in Article III courts. That's
22 Judge Walker's view.

23 Judge Jacobs has opined that maybe judges will stop
24 trusting lawyers, trusting lawyers with sensitive information,
25 confidential information, secret information in terrorism type

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1 cases or even in constitutional torts cases based on the kind
2 of conduct that Ms. Stewart engaged in. She's done a
3 disservice to the profession, your Honor.

4 But perhaps in our view one of the greatest
5 disservices she did, your Honor, was just before, literally
6 minutes before she surrendered to start her sentence in this
7 case, we provided your Honor with -- on that DVD sort of her
8 last press conference outside this very courtroom. And at one
9 point during that press conference, Ms. Stewart was asked,
10 essentially, what are the implications of your case,
11 Ms. Stewart? And here's what she said: I believe the larger
12 implication is that my case was always a warning shot to
13 lawyers. Don't do what Lynne did. Don't advocate for your
14 client in a stringent, in a strong way, or you will end up like
15 she did, disbarred and in jail. I think that this is a warning
16 to the lawyers who are now being looked at to handle the latest
17 cases of the men who were tortured and held offshore for year
18 after year after year.

19 Clearly she's referring, your Honor, I believe to the
20 September 11th defendants. And I ask the Court, we're talking,
21 of course, is that really what this case was all about? Your
22 Honor sat through a nine-month trial. During nine -- the
23 better part of nine days of that trial Ms. Stewart sat on the
24 witness stand under oath. At no point in time did she ever
25 explain to us, any of us, how smuggling terrorist messages into

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1 a jail is legitimate representation. At no point did she
2 explain to any of us how announcing from a terrorist leader his
3 withdrawal of support for a ceasefire, sanctioning the
4 resumption of terrorist violence in Egypt and, you know,
5 encouraging the Islamic Group, a terrorist group, to do such is
6 legitimate representation, how lying repeatedly to the
7 government in affirmations is legitimate representation; how
8 providing a terrorist leader to a conspiracy to murder is
9 legitimate representation.

10 She was not prosecuted for representing her client.
11 If Ms. Stewart wants to deny her guilt for all eternity, that's
12 her right. She's just frankly, your Honor, another criminal
13 who refuses to accept responsibility for the extraordinarily
14 serious conduct she engaged in.

15 Your Honor, what she said, the quote that I just
16 referred to, your Honor, is yet another untruth, another lie by
17 Ms. Stewart. If she wants to perpetuate that lie, that's her
18 business. But when she did that, your Honor, she does a
19 terrible disservice to the legal community, to the judicial
20 system. And what she did, your Honor, besides trying to or
21 perhaps thinking that the government is intimidating, what she
22 does, your Honor, is essentially pass this false lie, this
23 false message, this lie to the defense bar, people who don't
24 understand the nature of the evidence in this case, that, in
25 fact, that's why she was prosecuted, because she strongly

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1 advocated for her client.

2 Well, the conduct I just referred to, your Honor, that
3 she couldn't explain away as legitimate representation, was not
4 strong advocacy. It was plain and simply foreign, and she
5 refuses to accept the fact that she is just, when it comes to
6 this conduct, a criminal; not a lawyer, a criminal. She wants
7 to make herself out to be the victim, the victim of a
8 government that did nothing but essentially be victimized by
9 her.

10 I will come to a conclusion, your Honor. This is very
11 serious damage she engaged in, serious conduct, for a serious
12 substantial sentence. It's the government's belief a sentence
13 somewhere between 15 and 30 years would be sufficient and not
14 greater than necessary, and we urge your Honor to impose such a
15 sentence.

16 Thank you.

17 THE COURT: Thank you.

18 Ms. Shellow?

19 MS. SHELLOW: Your Honor, if I could have an
20 opportunity to respond to Mr. Dember.

21 THE COURT: Yes. I'll give him an opportunity to
22 respond to you also.

23 MS. SHELLOW: Your Honor, I'm not going to repeat
24 Mr. Tigar's summation, nor am I going to respond to
25 Mr. Dember's recitation of the evidence. We were all there.

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1 You've been through it, at least by my count, three times in
2 written pleadings. There was actually -- there was the
3 summation, there were the post-conviction motions, there was
4 the original sentencing memoranda and there are now the current
5 sentencing memoranda, four times. A couple of the new points,
6 however, I would like to respond to.

7 What Judge Calabresi said was that Ms. Stewart's
8 conduct took place shortly before the attacks of September 11,
9 an event that illustrates in particularly excruciating fashion
10 that results do matter to us. He says, however, and he knows,
11 it does not diminish the gravity of the crimes, to take
12 judicial notice of their timing and to recognize that our
13 attitudes about her conduct have inevitably been influenced by
14 the tragedy of that day. Not only have our or the judiciary's
15 attitudes about Ms. Stewart's conduct being changed by that
16 day, but Ms. Stewart's conduct can't be viewed in a different
17 context. Our worlds have changed, and she didn't have the
18 benefit of knowing what was going to happen in the future. Had
19 9/11 occurred, her conduct might well have been different. We
20 judge it with a post-9/11 view, but it hadn't happened yet.
21 And Judge Calabresi points out that perhaps she would have been
22 more sensitive, and that is a legitimate factor to take into
23 consideration in determining whether the sentence is sufficient
24 but not greater than necessary.

25 One minute, your Honor.

07festes

1 THE COURT: Sure.

2 MS. SHELLOW: Mr. Dember inquired about the list of
3 crimes that might have been committed by the lawyers identified
4 in the Guantanamo papers that we provided. That's not our
5 place. I am not going to list for the government the Title 18
6 offenses that might apply. It is sufficient to note that on
7 the stationery of the civil division of the United States
8 Department of Justice, serious charges are lodged against
9 lawyers that minimally violate a protective order and that may
10 well constitute other crimes.

11 That the government, on the one hand, can make those
12 allegations against those lawyers and not proceed criminally
13 and stand here and request 15 to 30 years for Ms. Stewart we
14 find to be offensive. It is, again, an indication of a
15 sentence that is sufficient but not greater than necessary at
16 28 months.

17 You know that those Guantanamo lawyers in connection
18 with their conduct, they talk about it at least in some of
19 those pleadings as being part of their representation of their
20 client, directly part of that representation. As a footnote,
21 Mr. Dember at length -- not so at length, relatively speaking,
22 I guess, says, but Ms. Stewart never justified what she did in
23 the context of representing her client. Quite the contrary.
24 The record does reflect that she did, in fact, testify about
25 how what she did related directly to her representation of her

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1 client. Perhaps the word bubble is -- it's unfortunate, but
2 it's there. Whether it's a form of estoppel, whether it's a
3 form of understanding, whether it's a form of the way that the
4 lawyers in the past had come to understand the government --
5 the way the government was reacting under these new SAMs,
6 whatever it is, it is as much a part of directly representing
7 Sheikh Omar Abdel Rahman as the conduct that the Guantanamo
8 lawyers claim is directly related to representing their
9 clients.

10 Mr. Dember makes fleeting reference to Ms. Fink's
11 affirmation in this case. The materials that we submitted in
12 our opening papers, including Ms. Fink's affirmation, are
13 submitted for the purpose of pointing out to the Court that
14 there are other ways to view the evidence. It's not that it
15 doesn't support the conviction, but that it is an explanation,
16 that, again, goes to sufficient but not greater than necessary.
17 A glass half full or a glass half empty is still a glass.
18 There are circumstances and constraints at trial that are not
19 present at sentencing. That's what Ms. Fink's affirmation is
20 about.

21 Ms. Stewart said, and the government provided on that
22 DVD, that her prosecution and her conviction were a warning
23 shot to other lawyers. And many lawyers have written to this
24 Court about the chilling effect of the indictment and trial and
25 conviction of Ms. Stewart. Twenty-eight months as a general

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1 deterrent sentence combined with the indictment, trial and the
2 sentencing should be well enough to convince any lawyer that
3 they have to be very careful. It is a chilling effect, your
4 Honor, to any one of us who stand up and represent criminal
5 defendants when one of our own, for whom we have phenomenal
6 respect, finds herself in this terribly unfortunate situation.
7 It is a chilling effect every time a lawyer believes, as
8 Ms. Stewart did, that she was acting in the best interests of
9 her client, finds herself so at odds with an understanding from
10 the government.

11 Ms. Stewart certainly never thought that this is where
12 she would end up; a sanction, perhaps, a bar complaint, being
13 prohibited from seeing him again. There were discussions with
14 the government. There was never a suggestion back in 2000 and
15 2001 that Ms. Stewart would find herself sitting at this table
16 today in these clothes. The young lawyers that she has
17 mentored over the years, her friends and her colleagues, are
18 certainly deterred by a 28-month sentence.

19 And Ms. Stewart's opportunity ever to do this again is
20 gone, as the Court acknowledged in its original sentence.

21 If I could have a moment, your Honor.

22 THE COURT: Sure.

23 (Pause)

24 MS. SHELLLOW: Just a minute, your Honor. A couple of
25 last words, your Honor.

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1 Everything that the government said about
2 Ms. Stewart's perjury, everything that Ms. Stewart said in her
3 denial is covered not only in our papers but in Mr. Tigar's
4 declaration. I'm not going to go through it paragraph by
5 paragraph. I am similarly not going to go through Ramsey
6 Clark's explanation in which he makes clear that his conduct
7 and her conduct are one and the same in representing their
8 client. He remained a client. He remained a client with
9 legitimate legal interests in the United States and a goal that
10 could be achieved through the process and the rule of law.

11 Lastly, the government attributes to Ms. Stewart the
12 statements in Ms. Fink's affirmation. Ms. Fink is making an
13 argument and Ms. Stewart is her client. There's a deferential
14 issue, your Honor.

15 Your Honor, thank you.

16 THE COURT: All right. Thank you, Ms. Shellow.

17 Mr. Dember?

18 MR. DEMBER: We have nothing further to add, your
19 Honor.

20 THE COURT: All right. This case is before the Court
21 for resentencing. The Court previously imposed a sentence
22 consisting principally of 28 months' imprisonment, but the
23 Court of Appeals remanded the case for resentencing. The Court
24 of Appeals explained, "We therefore remand this matter to the
25 district court for resentencing, in the course of which we

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1 direct the Court to determine the issue of perjury, and if it
2 finds such perjury, to resentence Stewart so as to reflect that
3 finding. The district court should also consider whether
4 Stewart's conduct as a lawyer triggers the special skill/abuse
5 of trust enhancement under the guidelines, see U.S.G. Section
6 3B1.3, and to reconsider the extent to which Stewart's status
7 as a lawyer affects the appropriate sentence. Finally, the
8 district court should further consider the overall question
9 whether the sentence to be given is appropriate in view of the
10 magnitude of the offense, which the Court itself has explicitly
11 recognized. Although we do not preclude the district court's
12 election to continue to impose a nonguideline sentence, we do
13 require that such a sentence selected after the reconsideration
14 we have directed begin with the terrorism enhancement and take
15 that enhancement into account. We have serious doubts that the
16 sentence was reasonable and think it appropriate to hear from
17 the district court further before deciding the issue." *United*
18 *States v. Stewart*, 590 F.3d 93, 151 (2d Cir. 2009). The Court
19 will, of course, consider each of the issues specified by the
20 Court of Appeals and engage in the resentencing of the
21 defendant as directed.

22 I adopt the findings of fact in the presentence
23 report, except as I've already indicated earlier in this
24 proceeding, and except as noted below.

25 The first step in any sentencing proceeding is to

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1 calculate the advisory guideline sentencing range. There is no
2 dispute that the November 1, 2000, edition of the guidelines
3 manual should be used, and the presentence report uses that
4 manual.

5 The presentence report divided the offenses of
6 conviction into two groups: Group 1, conspiracy to defraud the
7 United States on false statements, consists of Counts One, Six
8 and Seven. Group 2, conspiracy to provide and conceal material
9 support to a terrorist act, consists of Counts Four and Five.
10 The presentence report applied the terrorism enhancement to
11 each of the groups, and in the original sentencing the Court
12 found that it was appropriate to apply the terrorism
13 enhancement to each of the groups. See sentencing transcript
14 at 27 to 28 and 106.

15 In its current sentencing memorandum the government
16 only seeks to apply the terrorism enhancement to Group 2, the
17 conspiracy to provide and conceal material support to a
18 terrorist act, which consists of Counts Four and Five. See
19 government, June 11, 2010, memo at 135 to 36. However, the
20 probation department has applied the enhancement to both
21 groups, and the Court did so at the first sentencing. And
22 there has, in fact, been no objection from the defense as to
23 this aspect of the presentence report. Applying the terrorism
24 enhancement to both groups, however, does not change the
25 guideline sentencing range because the guideline range for

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1 Group 2 alone would provide a guideline sentencing range of 360
2 months, the statutory maximum. No higher sentence is possible
3 for the offenses for which the defendant was convicted.

4 The terrorism enhancement, Section 3A1.4, applies if
5 the offense is a felony that involved or was intended to
6 promote a federal crime of terrorism as defined in 18, U.S.C.,
7 Section 2332b(g). Pursuant to that section, a federal crime of
8 terrorism means an offense that is calculated to influence or
9 affect the conduct of government by intimidation or coercion,
10 or to retaliate against government conduct and is a violation
11 of certain specified statutes. The enhancement applies to
12 Group 2 because the offense of which the defendant was
13 convicted in Count Five, providing and concealing material
14 support to terrorist activity in violation of 18, U.S.C.,
15 Section 2339A involved a specifically enumerated crime of
16 terrorism, namely Section 2339A. And the crime of which she
17 was convicted in Count Four, a conspiracy to violate
18 Section 2339A, was intended to promote a federal crime of
19 terrorism, namely, Section 2339A and Section 956, both of which
20 are specifically enumerated crimes in Section 2332b(g) (5). The
21 enhancement applies to Group 1, Counts One, Six and Seven,
22 because those offenses were intended to promote the federal
23 crimes of terrorism, namely, the violations of Sections 956 and
24 2339A charged in Counts Two and Five.

25 At the original sentencing the Court found and

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1 reaffirms that the defendant's actions were calculated to
2 affect the conduct of the Egyptian government through
3 intimidation and coercion. Indeed, the jury found that the
4 defendant possessed the specific intent to provide Abdel Rahman
5 as a coconspirator in a conspiracy to kill. The Court of
6 Appeals has summarized some of the evidence supporting that
7 conclusion. This Court also summarized some of that evidence
8 in the decision denying the defendant's motion for a judgment
9 of acquittal, and it is unnecessary to repeat all of it here.
10 The evidence at trial supports the conclusion that the
11 defendant violated the Special Administrative Measures, SAMs,
12 smuggled terrorism messages to and from Sheikh Abdel Rahman and
13 twice issued publicly his withdrawal of support for a ceasefire
14 which had otherwise called a halt to violence by the Islamic
15 Group against the Egyptian government in order, at the very
16 least, to have Sheikh Abdel Rahman transferred to Egypt or
17 released. See sentencing transcript at 108. The defendant's
18 conduct satisfies the requirements for the terrorism
19 enhancement for both groups of offenses.

20 Indeed, the defendant concedes that "This Court
21 applied the terrorism enhancement at Ms. Stewart's last
22 sentence and correctly calculated the applicable guideline
23 range. Thus the appropriateness of the terrorism enhancement
24 is not at issue." Stewart reply memo at 23.

25 Hence, there is no dispute that the terrorism

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1 enhancement applies. This Court found it to be so initially.
2 The defendant agrees. And the Court of Appeals has directed
3 that the Court begin with the terrorism enhancement and take
4 that enhancement into account, and the Court will do so.

5 Therefore, using the November 2000 guidelines as
6 explained in the presentence report, the total offense level is
7 41, the criminal history category is VI and the guideline
8 sentencing range is 360 months, the statutory maximum. It is
9 useful to understand that this is the guideline calculation in
10 the presentence report. The guideline sentencing range is
11 capped at 360 months because that is the maximum sentence that
12 can be imposed in this case. And it can only be imposed by
13 taking the maximum sentence for each of the offenses of
14 conviction and running the sentences consecutively, namely, the
15 ten-year maximum for the violation of Section 2339A and the
16 five-year maximum for the remaining four counts of conviction.

17 The government seeks two additional enhancements under
18 the guidelines. First, the government urges that the defendant
19 committed perjury at trial and that the defendant should
20 receive a two-level enhancement under Section 3C1.1 of the
21 guidelines for obstruction of justice.

22 The government also urges that the defendant abused
23 her position of trust and should receive a two-level
24 enhancement under Section 3B1.3.

25 The Court of Appeals directed that the Court consider

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1 these enhancements, and the Court will, of course, do so. It
2 should be noted that these enhancements cannot increase the
3 guideline sentencing range, which is already capped at 360
4 months, the maximum sentence that can be imposed for all counts
5 added together and run consecutively. However, the Court
6 appreciates that the enhancements can be used for the internal
7 calculation of the offense level and can also affect the
8 consideration of the sentencing factors under 18, U.S.C.,
9 Section 3553(a).

10 The government seeks a two-level enhancement for
11 obstruction of justice under Section 3C1.1 of the guidelines
12 based on the defendant's alleged perjury at trial. Perjury
13 occurs when a witness "gives false testimony concerning a
14 material matter with the willful intent to provide false
15 testimony rather than as a result of confusion, mistake or
16 false memory." *United States v. Dunnegan*, 507 U.S. 87, 94
17 (1993); *United States v. Case*, 180 F.3d 464, 467 (2d Cir.
18 1999). "An obstruction enhancement based on perjury must be
19 supported by a finding that the defendant's statements
20 unambiguously demonstrate an attempt to obstruct. The district
21 court must determine by clear and convincing evidence that the
22 defendant provided false testimony concerning a material matter
23 with the willful intent to provide false testimony." *United*
24 *States v. Savoca*, 596 F.3d 154, 159 (2d Cir. 2010), citations
25 omitted. A court can take into account a jury's determination

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1 when a defendant testifies "to an essential element of the
2 offense, such as the defendant's state of mind or the
3 defendant's participation in the acts charged in the
4 indictment, the judgment of conviction necessarily constitutes
5 a finding that the contested testimony was false." *United*
6 *States v. Duque*, 123 Fed. Appx. 447 (2d Cir. February 18, 2005,
7 quoting *United States v. Bonds*, 933 F.2d 152, 155 (2d Cir.
8 1991). See also *Savoca*, 596 F.3d at 159.

9 The defendant made a series of statements at trial
10 that were clearly false concerning a material matter that were
11 made with the willful intent to provide false testimony. Any
12 of these statements would justify the enhancement, but the
13 defendant actually made a number of such statements. These
14 statements involved her assertion that she believed that she
15 was complying with the SAMs because the attorneys operated in a
16 "bubble" and that, consequently, she did not violate the SAMs
17 or sign the false affirmation. More particularly, she
18 testified falsely, one, that it was understood by the United
19 States Attorney's Office and Abdel Rahman's attorneys that the
20 SAMs contained a "bubble" which permitted Abdel Rahman's
21 attorneys to issue press releases containing Abdel Rahman's
22 statements as part of their representation of him. Transcript
23 7717, 7832, 8080 to 81; two, that she kept her "promise to
24 abide by the plain language of the SAMs" and that she did not
25 believe that she violated "the SAMs or the language of the

07festes

1 SAMs." Transcript 7717, 7838, 7845, 8675 to 76; three, that
2 she did not believe that she violated any "command" or
3 restriction of the United States of America. Transcript 7846;
4 and, four, and that she never signed a false affirmation.
5 Transcript 7693. The government also points to an additional
6 statement that appears at pages 7828 to 29 of the transcript
7 which is too ambiguous to support a finding that the defendant
8 made a willfully false statement of fact.

9 With the exception noted, the remainder of these
10 statements were contradicted by the plain language of the SAMs,
11 which made it clear that Sheikh Abdel Rahman was prohibited
12 from communicating with the media, including through his
13 attorneys, Government Exhibit 6 and 7. In her affirmation
14 Ms. Stewart promised that she would abide by the SAMs and would
15 not use her meetings to pass messages between third parties,
16 including the media and Sheikh Abdel Rahman. During her
17 testimony the defendant conceded that the language of the SAMs
18 and the affirmations was clear and unambiguous. Transcript
19 8065 to 67.

20 The defendants's actions at the time evidenced the
21 fact that she knew she was violating the SAMs. And she
22 participated in smuggling the messages in and out of the prison
23 and made covering noises while the messages were read or
24 responses by Sheikh Rahman were dictated. In the course of the
25 May 2000 prison visit she and Mr. Yousry acknowledged that if

07festes

1 the guards found out that Mr. Yousry was reading Taha's message
2 to Sheikh Rahman, they would be "in trouble." Government
3 Exhibit 1707X at 29. Moreover, on the second day of the
4 May 2000 visit, when Sheikh Abdel Rahman asked to hear the
5 letter from Mr. Sattar again with the message from Taha,
6 Mr. Yousry explained to Sheikh Abdel Rahman that defendant
7 Stewart had told him to leave the message in the car because of
8 an apparent concern "if they find it with us today after we go
9 out." Government Exhibit 1711X at 31 to 32.

10 Defendant Stewart acknowledged at the time when she
11 spoke to the Reuters reporter that the United States
12 authorities may bar her from visiting Sheikh Rahman because of
13 the statement she was issuing. Transcript 5574. She also told
14 Lisa Sattar that she would probably not be able to hide the
15 press release from Assistant US Attorney Fitzgerald, and that
16 something would probably happen to her but she would live with
17 the repercussions. Government Exhibit 1115X at 2 to 3. She
18 told Mr. Yousry shortly after issuing the press release that
19 she was "risking her whole career" by disseminating Sheikh
20 Abdel Rahman's statement and that she had not done it lightly.
21 Defendant's Exhibit LS701T at 5 to 6. All of this
22 contemporaneous evidence demonstrates that defendant Stewart,
23 in fact, knew that she was submitting false affirmations to the
24 government and was knowingly violating the SAMs by what she
25 did.

07festes

1 Moreover, there is no evidence that Ms. Stewart
2 asserted at the time that she operated in a bubble such that
3 the SAMs did not apply to her. Indeed, Assistant US Attorney
4 Fitzgerald wrote to Ms. Stewart after she had publicly
5 disclosed Sheikh Rahman's withdrawal from the ceasefire and
6 advised her that release of the statement as recorded in the
7 press was in violation of the SAMs imposed on Sheikh Rahman.
8 Government Exhibit 9. Nevertheless, after a further revision
9 of the SAMs she proceeded to sign a new affirmation to abide by
10 the SAMs and then proceeded to violate them again during the
11 July 2001 visit.

12 The defendant attempts to rely on the actions of
13 Messrs. Clark and Jabara to explain why she did not believe
14 what she was doing was a violation of the SAMs and why she
15 believed she operated within a bubble. But that argument is
16 unavailing. The language of the SAMs was clear. The
17 defendant's false affirmations were clear. She acted in a
18 surreptitious way and acknowledged at the time the seriousness
19 of her actions and the risk that she took and chose to do that
20 anyway. Further, the defendant's actions went further than
21 those of either Messrs. Clark or Jabara by publicizing
22 withdrawal from the ceasefire.

23 Similarly, the jury's finding that the defendant was
24 guilty of conspiracy to defraud the government and submitting
25 two false affirmations to the government supports the finding

07festes

1 that the defendant willfully testified falsely at the trial
2 when she testified as indicated above. The jury's finding of
3 guilt is inconsistent with the defendant's testimony that she
4 operated in a bubble, that she did not submit false
5 affirmations and that she did not violate the SAMs and did not
6 submit false affirmations.

7 Similarly, the defendant's testimony that she did not
8 believe that she "conspired with anyone to defraud the United
9 States of America, the Department of Justice and the Bureau of
10 Prisons out of its right to have the SAMs applied and
11 enforced," transcript 7688, and that she did not "believe that
12 there was a conspiracy that involved Mr. Sattar or this fellow
13 Taha and others to kill or kidnap people in a foreign country"
14 and did not make "Abdel Rahman available to any conspiracy to
15 kill or kidnap people," transcript 7968, were necessarily
16 inconsistent with the jury's finding of guilt and were false
17 testimony concerning material matters that cannot be ascribed
18 to mistake, inadvertence or faulty memory.

19 The jury's findings were supported by more than clear
20 and convincing evidence. It is also clear that the purpose of
21 the testimony was to mislead the jury on material matters.

22 The government urges that several statements by the
23 defendant about Taha in her trial testimony were knowingly
24 false. She testified that in the period 1996 through 2000 she
25 did not know the name Taha, although she had seen it in an

07festes

1 article in connection with her representation of Nasser Ahmed,
2 but the article was just placed in a file and forgotten about.
3 Transcript 7650. She also testified that at the time of the
4 May 2000 prison visit she did not know who Abu Yasir was,
5 transcript 7738, and that on May 20, 2008, "Abu Yasir" did not
6 mean anything to her. Transcript 7791. It is undisputed that
7 Abu Yasir is another name for Taha. Prior to the May 2000
8 visit the defendant had an article translated for her that made
9 clear that Taha was known as Abu Yasir and indicated his role
10 in the Islamic Group. The defendant acknowledged having read
11 the article. Government Exhibit 2671, transcript 8132 to 35.
12 She also encountered the name on other memorable occasions.
13 The defendant smuggled or assisted in smuggling messages to
14 Sheikh Rahman during the May 2000 visit and his responses.
15 Government Exhibit 1706X at 48 to 49, 53, Government
16 Exhibit 1707X at 34 to 36. The defendant acknowledged that for
17 each prison visit, Mr. Yousry translated for her all
18 correspondence and documents that Mr. Sattar supplied to them
19 for the visit, transcript 7916 to 17, 8593 to 94, and that
20 after each visit Mr. Yousry translated for her all
21 correspondence that Sheikh Abdel Rahman dictated to him during
22 the visit. Transcript 7776 to 77, 8300. Mr. Yousry agreed.
23 Transcript 9083 to 84, 9827 to 31.

24 During the May visit there was an explicit militant
25 statement attributed to Taha by name in response to events at

07festes

1 Al-Azhar University which identified him as one of the Islamic
2 Group leadership. Government Exhibit 1706X at 48 to 49 and 53.
3 The statement attributed to Abu Yasir during the May 2000 visit
4 also identified him as a person having "massive weight" and "if
5 the regime worries about anyone, it is Abu Yasir." Government
6 Exhibit 1707X at 34 to 36.

7 Moreover, in the furor over the release of Sheikh
8 Abdel Rahman's first withdrawal from the ceasefire, newspaper
9 articles marked approved by the defendant to be read to Sheikh
10 Rahman contained militant statements by Taha and made clear who
11 he was. And one article explicitly indicated that he was known
12 as Abu Yasir. Government Exhibit 2312-45BT, Government
13 Exhibit 2312-49T, Government Exhibit 2312-45AT. Moreover, in
14 September 2000 defendant saw a news article about a militant
15 videotape made by Osama bin Laden, Ayman al-Zawahiri and Taha
16 calling for the release of Sheikh Abdel Rahman. Transcript
17 8538, Government Exhibit 2656. The article was memorable, and
18 the defendant acknowledged having read the part about Taha.
19 And the exhibit indicates that it was sent by the defendant to
20 Messrs. Sattar and Yousry. Transcript 8538, Government
21 Exhibit 2656.

22 While the defendant relies on the fact that she was a
23 busy lawyer, the references to Taha were numerous enough and
24 significant enough that her testimony that she had not heard of
25 Taha until the trial, except for the 1998 article that she

07festes

1 forgot, was knowingly false about a material matter and
2 intended to mislead the jury on a material matter. Similarly,
3 her testimony that she did not know who Abu Yasir was at the
4 time of the May 2000 prison visit and that the name had no
5 meaning for her was belied by the substance of the message
6 attributed to Abu Yasir and by the prior article that had been
7 translated for her. Hence, there were instances of trial
8 perjury that justify the imposition of the two-level
9 enhancement for obstruction of justice under Section 3C1.1 of
10 the sentencing guidelines.

11 The government now seeks a two-level enhancement under
12 Section 3B1.3 of the guidelines. That enhancement applies "if
13 the defendant abused a position of public or private trust in a
14 manner that significantly facilitated the commission or
15 concealment of the offense." The government does not rely on
16 another portion of the enhancement that applies when the
17 defendant used a special skill. It is plain that the defendant
18 did abuse a position of both public and private trust. The
19 application notes explain that "public or private trust refers
20 to a position of public or private trust characterized by
21 professional or managerial discretion, i.e. substantial
22 discretionary judgment that is ordinarily given considerable
23 deference. Persons holding such positions ordinarily are
24 subject to significantly less supervision than employees whose
25 responsibilities are primarily nondiscretionary in nature."

07festes

1 Access to Sheikh Rahman was limited and attorneys were
2 given access for legal purposes. The defendant swore that she
3 would abide by the SAMs and not use her access to pass messages
4 between Sheikh Rahman and the media, but she failed to keep her
5 word. The administration of the SAMs depended on trust placed
6 in attorneys to keep their word. The defendant was able to
7 participate in smuggling messages into and out of the prison
8 because of the trust placed in her as the attorney for Sheikh
9 Rahman. Even after she had violated the SAMs, she was
10 permitted to visit Sheikh Rahman again because she signed a new
11 affirmation. But, again, she did not abide by that
12 affirmation.

13 The findings of the Court made at the original
14 sentencing continue to be true and support the enhancement. As
15 the Court explained, among other things, "Ms. Stewart abused
16 her position as a lawyer to gain access to Sheikh Omar Abdel
17 Rahman while he was in prison and used that access to smuggle
18 messages to and from Sheikh Abdel Rahman while he was in prison
19 and to make potential and lethal public statements on his
20 behalf in violation of the SAMs." Sentencing transcript at
21 118.

22 The defendant argues that the Court should not apply
23 the enhancement because it was not raised at the initial
24 sentencing, and that that is now the law of the case and, in
25 any event, it does not affect the sentencing guideline range.

07festes

1 It is true that the government did not ask in its initial
2 sentencing submission for this enhancement, and the government
3 does not contend otherwise. It is also true that while the
4 government spoke about the issue of abuse of trust at
5 sentencing, that was not a request for a new enhancement. And
6 the Court would only have considered a request for such an
7 enhancement with sufficient notice to the defendant and an
8 opportunity to respond.

9 However, it is plain that the Court of Appeals
10 directed the Court to consider this enhancement and that the
11 government now seeks it. It is also clear that the spirit of
12 the mandate requires de novo resentencing, and specifically a
13 consideration of this enhancement. See *United States v. Rigas*,
14 583 F.3d 108, 119, (2d Cir. 2009). It is also true, as noted
15 above, that the enhancement does affect the offense level
16 calculation, even if it does not affect the ultimate sentencing
17 guideline sentencing range, which is capped at 360 months.

18 Finally, the defendant argues that the enhancement
19 should not be applied because she did not engage in her conduct
20 for personal gain. However, the enhancement contains no
21 requirement of personal gain, and for the reasons explained
22 above, the defendant meets the criteria for this enhancement.
23 Therefore, the Court will add a two-level enhancement under
24 Section 3B1.3.

25 That brings me to the calculation of the guideline

07festes

1 sentencing range. Two additional levels are added for the
2 enhancement for abuse of a position of trust under
3 Section 3B1.3, and two additional levels are added for the
4 obstruction enhancement under Section 3C1.1. These four levels
5 are added to both Group 1 and Group 2. Therefore, the adjusted
6 offense level for Group 1 is 36 and the adjusted offense level
7 for Group 2 is 44. Under Section 3D1.4, one additional level
8 is added to the group with the highest offense level, which is
9 Group 2. Therefore, the total offense level is 45, the
10 criminal history category is VI, as a result of the terrorism
11 enhancement. The guideline sentencing range remains 360
12 months, because that is the statutory maximum when the
13 statutory maximums for each of the counts of conviction are
14 added together and if the sentences on all of the counts were
15 to be served consecutively. See section 5G1.1A.

16 As directed by the Court of Appeals, the Court will
17 begin with a guideline range that is enhanced by the terrorism
18 enhancement. The Court notes that without the terrorism
19 enhancement, the offense level would be 32, because Group 2
20 would have an offense level of 28. And with the two
21 enhancements for obstruction and abuse of trust, the offense
22 level would be 32. Group 1 would drop out of the calculation
23 because it is more than nine levels less serious than Group 2.
24 See section 3D1.4. The criminal history category would be I,
25 therefore, without the terrorism enhancement. And without any

07festes

1 downward variance, the guideline sentencing range would be 121
2 to 151 months.

3 As the Court indicated, the Court will begin with the
4 guideline sentencing range of 360 months, which is the
5 sentencing range enhanced by the terrorism enhancement. The
6 calculation of the guideline sentencing range is, of course,
7 only the first step in the sentencing process. "The guidelines
8 provide the starting point and the initial benchmark for
9 sentencing, and district courts must remain cognizant of them
10 throughout the sentencing process. It is now, however,
11 emphatically clear that the guidelines are guidelines; that is,
12 they are truly advisory. A district court may not presume that
13 a guidelines sentence is reasonable. It must instead conduct
14 its own independent review of the sentencing factors aided by
15 the arguments of the prosecution and the defense." *United*
16 *States v. Cavera*, 550 F.3d 180, 189 (2d Cir. 2008) (en banc)
17 (internal quotation marks and citations omitted). Congress has
18 set forth the sentencing factors in 18, U.S.C.,
19 Section 3553(a). Congress has required that "The Court shall
20 impose a sentence that is sufficient but no greater than
21 necessary to comply with the purposes set forth in paragraph
22 two." Paragraph two provides these factors: "A, to reflect
23 the seriousness of the offense, to promote respect for the law
24 and to provide just punishment for the offense; B, to afford
25 adequate deterrence to criminal conduct; C, to protect the

07festes

1 public from further crimes of the defendant; and D, to provide
2 the defendant with needed educational or vocational training,
3 medical care or other correctional treatment in the most
4 effective manner."

5 Put another way, Congress has mandated that a
6 sentencing court must impose a sentence that is sufficient but
7 no greater than necessary to comply with the purposes of
8 Section 3553(a)(2). This section recognizes the importance of
9 a defendant's liberty because it is a violation of the statute
10 to impose a sentence that is greater than necessary to comply
11 with the purposes of Section 3553(a)(2). It also recognizes
12 the importance of public safety by requiring that the sentence
13 be sufficient to accomplish the purposes of punishment,
14 deterrence and protection of the public.

15 For present purposes Congress has also required that
16 the Court consider, one, the nature and circumstances of the
17 offense; two, the kinds of sentences available; three, the
18 sentencing guidelines and the pertinent policy statements of
19 the sentencing commission; and four, the need to avoid
20 unwarranted sentencing disparities among defendants with
21 similar records who have been found guilty of similar conduct.

22 The Court, after considering these factors, initially
23 determined that a sentence of 28 months satisfied these
24 statutory criteria. Before turning to these factors again, it
25 is useful to place the positions of the parties at the prior

07festes

1 sentencing and the parties' current positions in perspective.

2 At the prior sentencing the government took the
3 position that the guideline sentence of 360 months -- that is,
4 30 years -- was the appropriate sentence. This was and is the
5 statutory maximum for all of the counts of conviction with the
6 sentences on each of the counts added together and served
7 consecutively. That sentence was, the Court thought then and
8 continues to think, unreasonable. It gave no credit whatsoever
9 to the personal history and characteristics of the defendant,
10 including her age, health and prior service to the community,
11 as well as certain other unusual characteristics of this case.

12 In any event, the government, to its great credit, no
13 longer takes that position. In view of mitigating factors in
14 this case, the government now states that a sentence of between
15 15 and 30 years' imprisonment would satisfy the statutory
16 criteria for a reasonable sentence.

17 It is, however, useful to reflect for a moment on that
18 position. The Court's obligation is to impose a sentence that
19 is sufficient but no greater than necessary to satisfy the
20 statutory criteria in Section 3553(a)(2). The Court must
21 follow the law. If it imposed a sentence that was greater than
22 necessary to satisfy the statutory criteria, it would be,
23 plainly, not following the law. The government now submits
24 that a sentence of 15 years would be a reasonable sentence and
25 satisfy the statutory criteria. Put another way, the

07festes

1 government concedes that a sentence of half the guideline
2 sentencing range would be sufficient in this case. That
3 suggests that a sentence of 30 years would surely be greater
4 than necessary to satisfy the statutory criteria and be in
5 violation of the law.

6 The Court has an obligation in every case to assure
7 that the sentence is no greater than necessary to satisfy the
8 statutory criteria in Section 3553(a)(2). To the extent the
9 sentence is greater than necessary, it not only unnecessarily
10 deprives the defendant of liberty, but it is in violation of
11 law. But as I said, the government's recommendation, which
12 includes a sentence of 15 years, half its original
13 recommendation at the first sentence, is taken with great
14 seriousness, and the fact that the government includes that
15 recommendation is to the government's great credit.

16 The defendant, on the other hand, took the position at
17 the initial sentencing that any sentence of imprisonment would
18 be too much. Indeed, at sentencing defense counsel took the
19 position that given the defendant's health situation, any
20 sentence of imprisonment "likely will be a death sentence
21 because of the failure to give her the proper treatment."
22 Sentencing transcript 88.

23 The Court was plainly concerned and continues to be
24 concerned about the effect of any sentence of imprisonment on
25 the defendant's health. The defendant had been diagnosed with

07festes

1 breast cancer after the trial and was treated for that horrible
2 and unpredictable disease in the period after the trial and
3 before the sentencing, and had a statistically increased chance
4 of a recurrence of the disease. The defendant had other
5 medical conditions, and the Court believed then, as it does
6 now, that the defendant was in poor health.

7 Moreover, the Court had reviewed more than 400 letters
8 by a wide cross-section of people that were submitted in favor
9 of the defendant; letters from family, former clients, lawyers
10 and other members of the community, all of which urged
11 mitigation, and many of which urged that no imprisonment at all
12 be imposed.

13 It is very difficult to summarize such a record. The
14 Court read all of the letters. The letters were a powerful
15 testament to the defendant's previous contributions to the
16 community. The Court considered the nature and circumstances
17 of the offense and the necessary factors under Section
18 3553(a)(2) and determined that a sentence of imprisonment was
19 required but that a very substantial deviation from the
20 guideline range was appropriate. The Court did not view the
21 sentence of imprisonment of 28 months for a recent breast
22 cancer survivor in poor health, particularly in view of the
23 defendant's entire history, to be a trivial sentence.

24 The defendant now urges that nothing has changed and
25 that the Court should simply reimpose the original sentence for

07festes

1 all of the reasons that the Court originally gave. The
2 defendant now says that the Court's original sentence was a
3 fair and reasonable sentence and that the Court should simply
4 reimpose it. This is a change from the defendant's original
5 position of no imprisonment at all, and it is understandably
6 influenced by the defendant's experience of imprisonment.

7 In any event, it is plain that the original sentence
8 cannot simply be reimposed. First, the comments that the
9 defendant made immediately after the sentence indicated that
10 the defendant did indeed view the sentence as a trivial
11 sentence. These comments are noted in the Court of Appeals
12 opinion and produced again by the government in connection with
13 the present sentence. The defendant characterizes the comments
14 as, "intemperate at best," and suggests that they are taken out
15 of context. Defendant's reply memo at 25. The Court has
16 listened to the entire video of the comments, and they reflect
17 the defendant's comments about the sentence. A trivial
18 sentence would not be sufficient to reflect the seriousness of
19 the offense, promote respect for the law and provide just
20 punishment for the offense as required by law.

21 Similarly, after the sentence and statement submitted
22 by the government, the defendant has said that she made a
23 considered decision based on the needs of her client and would
24 do it again. The defendant has also said that she would like
25 to think she would not do anything differently. These

07festes

1 statements indicate a lack of remorse for conduct that was both
2 illegal and potentially lethal. These statements indicate that
3 the original sentence was not sufficient to accomplish the
4 purposes of Section 3553(a)(2), including to reflect the
5 seriousness of the offense and to provide adequate deterrence.

6 The defendant has suggested that it would be a
7 violation of her First Amendment rights to consider her
8 statements to the press. The argument has no merit. The
9 defendant has every right to make any statements she wishes,
10 and the Court granted the defendant's request to travel and
11 speak while awaiting the outcome of her appeal.

12 At the same time, the Court can take into account, for
13 purposes of sentencing, the truth of the defendant's comments
14 about the sentence and the degree of her remorse in the way
15 that courts allow defendants to speak at sentencing and
16 consider those statements. See *United States v. Kane*, 452 F.3d
17 140, 142 to 43, (2d Cir. 2006). Court can consider the
18 defendant's writings, to the extent relevant, at sentencing;
19 *United States v. Martinucci*, 561 F.3d, 533, 535, (2d Cir. 2009)
20 (per curiam).

21 Moreover, the Court must resentence the defendant in
22 accordance with the Court of Appeals decision. That decision
23 requires the Court, among other things, to sentence the
24 defendant in light of the perjury enhancement, the abuse of a
25 position of trust and the terrorism enhancement.

07festes

1 That brings the Court to the application of the
2 Section 3553(a) factors in this case.

3 The Court begins with the guideline sentencing range
4 in this case, which is the statutory maximum of 360 months.
5 The guideline sentencing range is driven by the terrorism
6 enhancement which the Court has applied. As the Court has
7 explained above, the Court appreciates the seriousness of the
8 defendant's conduct that triggers the terrorism enhancement.
9 The Court also appreciates the seriousness of the offenses for
10 which the defendant has been convicted. As the Court explained
11 at the prior sentence, "There is an irreducible core of
12 extraordinarily severe criminal conduct. Ms. Stewart abused
13 her position as a lawyer to gain access to Sheikh Omar Abdel
14 Rahman while he was in prison and used that access to smuggle
15 messages to and from Sheikh Abdel Rahman while he was in prison
16 and to make potentially lethal public statements on his behalf
17 in violation of the SAMs. She lied to the government when she
18 made her affirmation under the SAMs to get access to Sheikh
19 Rahman while in prison, and after being warned of the possible
20 consequences of her actions, she made another false affirmation
21 to gain access yet again, and she violated the affirmation yet
22 again. She understood the potential seriousness of her conduct
23 at the time and acknowledged that she was putting her whole
24 career at risk." Sentencing transcript at 118.

25 I indicated earlier that I would not summarize all of

07festes

1 the evidence. It is summarized in the opinion of the Court of
2 Appeals and this Court's prior opinion denying the motion for a
3 judgment of acquittal. As the Court has explained, the
4 terrorism enhancement was warranted, as were the enhancements
5 for obstruction and abuse of trust.

6 All of this evidence goes to explain the reasons for a
7 substantial sentence to be sufficient to comply with the first
8 three factors of Section 3553(a)(2). There are two mitigating
9 factors that should be considered in connection with the
10 terrorism enhancement itself.

11 First, the criminal history category VI overstates the
12 defendant's criminal history. The criminal history category is
13 designed to reflect the serious in the of the defendant's past
14 criminal conduct and the likelihood the defendant will commit
15 further crimes. See Section 4A1.3. The Court of Appeals has
16 recognized that category VI for the terrorism enhancement is
17 rational "because even terrorists with no prior criminal
18 behavior are unique among criminals in the likelihood of
19 recidivism, the difficulty of rehabilitation and the need for
20 incapacitation." *United States v. Meskini*, 319 F.3d 88, 92,
21 (2d Cir. 2003). At the same time, the Court added "a judge
22 determining that the terrorism enhancement overrepresents the
23 seriousness of the defendant's past conduct or the likelihood
24 that the defendant will commit other crimes always has the
25 discretion under Section 4A1.3 to depart downward in

07festes

1 sentencing."

2 In this case, unlike in *Meskini*, the defendant has no
3 prior criminal history. Moreover, the defendant is unlikely to
4 resume the activities that produced the current conviction
5 after she is released from imprisonment. This is not the case
6 of a member of a terrorist organization who would return to the
7 group when released from prison or would find some other means
8 to support such an organization when provided the opportunity
9 to do so. The defendant was involved in each of the crimes of
10 conviction through a profoundly wrongful effort to use her
11 status as a lawyer for Sheikh Omar Abdel Rahman to further his
12 cause. The defendant has now been disbarred and will no longer
13 have access to Sheikh Rahman.

14 As the defense points out, the crimes of conviction
15 occurred more than nine years ago. And there is absolutely no
16 evidence that the defendant has done anything further in those
17 nine years that could be considered furthering terrorism.

18 The government argues that the defendant does not have
19 to be a lawyer to engage in fraud against the government.
20 However, there is no basis in the record to conclude that the
21 defendant would have any realistic opportunity to defraud the
22 government, and the government does not suggest how the
23 defendant would be in such a position to defraud the
24 government. Plainly, the government will not place any trust
25 in Ms. Stewart, and she can never use her position as a lawyer

07festes

1 to exploit any access to Sheikh Abdel Rahman. Therefore, some
2 mitigation of the criminal history category is warranted.

3 In this connection, it should be noted that the Court
4 of Appeals affirmed some mitigation in the criminal history
5 category produced by the terrorism enhancement in the case of
6 codefendant Sattar. See Stewart, 590 F.3d at 144. There is no
7 reasonable basis to find that Ms. Stewart is a greater threat
8 of recidivism than Mr. Sattar or that she warrants a greater
9 criminal history than Mr. Sattar. Indeed, given Mr. Sattar's
10 far greater crime and far more extensive involvement with the
11 members of the Islamic Group, Ms. Stewart should be afforded
12 considerably greater mitigation of the criminal history
13 category to reflect her lower risk of recidivism.

14 In the prior sentencing the Court also noted that some
15 mitigation was warranted because of the lack of evidence of
16 harm to a victim. The Court is well aware that harm to a
17 victim is not required for the terrorism enhancement to apply,
18 and indeed, as the government points out, it is important for
19 the government to prevent terrorist acts before they occur.
20 And the fact that the acts are prevented does not lessen the
21 gravity of the contemplated harm. Indeed, in some cases it is
22 perfectly apparent that the intended harm is horrific and
23 warrants the severest punishment, even if the harm is
24 prevented. See, for example, *United States v. Abu Ali*,
25 528 F.3d 210 (4th Cir. 2008), conspiracy to bomb American

07festes

1 military bases and assassinate the president of the United
2 States.

3 In this case the jury found that there was a
4 conspiracy to kill that existed, and the evidence was that Atia
5 would have committed a fatal act, if not thwarted. Moreover,
6 Ms. Stewart participated in providing Sheikh Rahman as a
7 coconspirator to the conspiracy to kill. She facilitated
8 smuggling out of prison Sheikh Rahman's support for Taha, and
9 she provided the public dissemination of withdrawal from the
10 ceasefire.

11 The Court in no sense minimizes the gravity of these
12 acts. However, as the Court of Appeals noted, the terrorism
13 enhancement covers a wide variety of culpable conduct. And
14 this Court relied in part on the absence of specific harm as a
15 factor to be noted in determining Sattar's sentence with which
16 the Court of Appeals did not find fault. See Stewart, 590 F.3d
17 at 143 to 44.

18 The Court also takes seriously the instruction from
19 the Court of Appeals that "a district court should be cautious
20 in determining the significance of the fact that no harm may
21 have occurred where a defendant intended such harm." Id. at
22 140, note 43. Accordingly, the Court does not attach much
23 weight to this mitigating factor, and it does not cancel the
24 terrorism enhancement.

25 There are additional mitigating factors which the

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1 Court considers to warrant a substantial downward variance from
2 the guideline sentencing range. First, the defendant is now 70
3 years of age. Increasing age decreases the likelihood of
4 recidivism. Indeed, in *Cavera* the defendant was described as
5 70 years old in the opinion of a district court and the Court
6 of Appeals. The Court of Appeals noted "in view of *Cavera's*
7 advanced age, the district court chose to reduce the sentence
8 it would otherwise have imposed on its perception that *Cavera*
9 was less likely than the average offender to reoffend."
10 *Cavera*, 550 F.3d at 197. The Court of Appeals deferred to that
11 determination by the district court. So, too, here, a lower
12 sentence than one which would otherwise be called for is
13 warranted by the defendant's age, which reduces the likelihood
14 of recidivism.

15 Second, the defendant has significant health problems
16 which are detailed in the medical reports and which the Court
17 will not detail here. The defendant is a breast cancer
18 survivor with a statistically significant chance of recurrence.
19 She underwent surgery and radiation therapy and continues to
20 take medication to prevent recurrence. She suffers other
21 significant medical conditions which are in the record, and
22 indeed, the defendant would have had additional surgery, had
23 she not been incarcerated.

24 The defendant's medical conditions can be treated in
25 prison and, indeed, the defense has supported the quality of

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1 the medical care that the defendant has received at the MCC and
2 the outpatient care that she has received from other
3 institutions under the supervision of the medical staff at the
4 MCC. Nevertheless, those medical conditions will make
5 imprisonment more difficult for the defendant than the average
6 prisoner and are entitled to some weight in assessing the
7 personal characteristics of the defendant under Section 3553(a)
8 and the severity of the sentence necessary for punishment under
9 Section 3553(a)(2)(A) and deterrence under Section
10 3553(a)(2)(B).

11 Third, the Court turns to the defendant's personal
12 history, a plainly relevant consideration under Section
13 3553(a), which directs the Court to consider the "history and
14 characteristics of the defendant." The defendant was a teacher
15 in inner city public schools before becoming a lawyer. For
16 over 30 years she practiced law concentrating on criminal law.
17 In the course of that practice, while she became well known and
18 celebrated as a lawyer, she did not use the practice of law to
19 earn personal wealth. As the Court explained at the initial
20 sentencing, she represented the poor, the disadvantaged and the
21 unpopular, often as a court-appointed lawyer.

22 This was an extraordinary record that was reflected in
23 the fact that defense counsel submitted over 400 letters in
24 support of the defendant, many of which repeatedly stressed
25 these themes. Defense counsel represented that they could have

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1 submitted over 800 letters to the same effect. This volume of
2 support has been unprecedented, at least for this Court, and
3 has been a testament to the defendant's work. In connection
4 with the resentencing, the defendant has submitted more than 70
5 letters, although these letters cannot be read in isolation
6 from all of the original letters.

7 There are several specific aspects of this record that
8 bear highlighting. By providing representation to those who
9 need representation, the defendant has provided a public
10 service. Our system of justice depends on lawyers who will
11 represent those who cannot afford representation, and our
12 system depends on lawyers who are prepared to represent
13 unpopular clients. One of the tragedies of this case is that
14 the defendant was appointed by the Court to represent Sheikh
15 Omar Abdel Rahman, a deeply unpopular client, and she did so
16 through appeal. There has been no contention that she violated
17 the law throughout that representation through appeal, but as a
18 result of that representation, she subsequently became involved
19 in the offenses of conviction.

20 It is significant that the defendant built her career
21 over three decades without a view toward personal profit and
22 certainly without a view to establishing mitigating factors for
23 the purpose of sentencing. This is not a case where a
24 defendant has turned to charity in response to an indictment.
25 Under the policy statements in the 2002 guidelines, which are

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1 only advisory, civic charitable public service, employment
2 related contributions and similar prior good works are not
3 ordinarily relevant in determining whether a sentence should be
4 outside the guideline range, but the policy statements indicate
5 that they may be considered in exceptional cases. See
6 Introductory Commentary and Section 5H1.11.

7 This is an exceptional case. The length, quantity and
8 quality of the defendant's service is exceptional, as reflected
9 in the letter submitted to the Court. The government, to its
10 credit, recognizes that the mitigating factors in this case may
11 warrant a downward variance of 50 percent from the guideline
12 sentencing range. And the Court of Appeals noted in reviewing
13 the sentence "like the district court, we are impressed by the
14 factors that figured in Stewart's modest sentence, particularly
15 her admirable history of providing at no little cost to herself
16 proficient legal services in difficult cases to those who could
17 not afford them." Stewart, 590 F.3d at 93.

18 There is an additional aspect of this personal history
19 that was touched on above but bears directly on the
20 Section 3553(a) two factors. The defendant has been disbarred
21 and will plainly have no opportunity to interact with Sheikh
22 Abdel Rahman again, nor will she be able to use her license to
23 practice law to commit the offenses of conviction. Each of the
24 offenses of conviction depended on her role as a lawyer for
25 Sheikh Abdel Rahman. Because the defendant will not have the

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1 same opportunity to commit the offenses, the need for a longer
2 term of imprisonment is less necessary for purposes of
3 deterrence. Indeed, the Court of Appeals affirmed the
4 consideration of a similar factor for defendant Yousry. "The
5 Court found that Yousry will not be in a position to commit the
6 offenses of conviction again because it is unlikely he will
7 ever be able to serve as an interpreter in an official
8 capacity. We defer to this finding, too. It is not error for
9 a district court to evaluate, based on the defendant's
10 individual circumstances, the extent of punishment necessary to
11 deter him from engaging in future criminal conduct or to
12 protect the public from his future criminal acts." Stewart,
13 590 F.3d at 141.

14 The government argues, as indicated above, that the
15 defendant does not have to be a lawyer to defraud the
16 government. But while that is true, there is nothing in the
17 record to indicate that the government could reasonably be
18 deceived by the defendant in the future, and there is nothing
19 in the record that the government has pointed to to indicate
20 what the occasions might be for the recurrence of the crimes of
21 conviction. And the defendant has pointed to the fact that the
22 offenses of conviction occurred more than nine years ago and
23 there is no evidence of any recurrence.

24 The Court has carefully considered the guideline
25 sentencing range of 360 months, which is the maximum sentence

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1 that can be imposed on the defendant and is obtained only by
2 adding the maximum sentence on each of the counts and making
3 them run consecutively.

4 The Court must consider all of the relevant
5 Section 3553(a) factors and impose a sentence that is
6 sufficient but no greater than necessary to comply with the
7 purposes of Section 3553(a)(2). The Court has carefully
8 considered the guideline sentencing range and the specific
9 enhancements directed by the Court of Appeals. The Court is
10 aware of the severity of the offenses and the importance of
11 including the terrorism enhancement in the sentence. The Court
12 believes that a substantial downward variance is warranted for
13 the reasons explained above, but the mitigating factors do not
14 cancel out the severity of the offense.

15 On balance, the Court concludes that a sentence of 120
16 months' imprisonment is sufficient but no greater than
17 necessary to comply with the purposes of Section 3553(a)(2).

18 The sentence also does not result in unwarranted
19 sentencing disparities. The Court has carefully considered
20 under Section 3553(a)(2) the need to avoid unwarranted
21 sentencing disparities among defendants with similar records
22 who have been found guilty of similar conduct. The Court,
23 consistent with the concerns of the Court of Appeals, has
24 compared the proposed sentence to that of the other defendants
25 in this case. The sentence does not result in unwarranted

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1 sentencing disparities. The sentence is substantially longer
2 than that for defendant Yousry -- 100 months longer than the
3 20-month sentence for Yousry -- but the guideline sentencing
4 range for Mr. Yousry was much lower because it did not include
5 the terrorism enhancement and did not include the enhancement
6 for obstruction of justice. Defendant Yousry's guideline
7 sentencing range was 78 to 97 months, substantially lower than
8 the 360-month guideline sentencing range for defendant Stewart.

9 Defendant Stewart actually argues now that Mr. Yousry
10 was very knowledgable about what was really going on because of
11 his knowledge of Arabic and his study of the Islamic Group and
12 Sheikh Abdel Rahman. However, Mr. Yousry remained in a
13 subservient position to the lawyers, and his sentence was, in
14 fact, reasonable, given the nature of his participation in the
15 crimes and the applicable guideline range that applied to
16 Mr. Yousry. Defendant Stewart's substantially longer sentence
17 than that of Mr. Yousry is reasonable, given all of the
18 enhancements that apply in her case.

19 The sentence is also reasonable compared to defendant
20 Sattar's. Mr. Sattar was sentenced to 288 months'
21 imprisonment, and his guideline sentencing range was life
22 imprisonment. Mr. Sattar was plainly the most knowledgable and
23 most culpable of all of the defendants. He was the only
24 defendant charged and convicted of the offense of conspiracy to
25 murder for which the potential penalty was life imprisonment.

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1 Therefore, a substantially lower sentence for defendant Stewart
2 than that for defendant Sattar is warranted.

3 Finally, the variance from the guideline range is
4 based on a consideration of the particular factors in
5 Ms. Stewart's case, as discussed above, and does not result in
6 unwarranted sentencing disparities. The government has
7 cataloged a wide variety of cases dealing with material support
8 for terrorist acts or organizations. See government August 25,
9 2006, sentencing memo at 64 to 82. Many of these cases
10 resulted in substantial sentences, but many resulted in
11 sentencing of ten years or less.

12 The defendant also points to seven specific cases
13 where defendants were accused of violating 18, U.S.C.,
14 Section 2339B, which prohibits material assistance to a
15 designated foreign terrorist organization, and where the
16 defendants received sentences of less than eight years'
17 imprisonment. See defendant's sentencing memo of June 11,
18 2010, at 19 to 20. Most of these cases were decided after
19 *Booker* was decided, when the guidelines were no longer
20 mandatory. However, comparison to individual cases is
21 difficult. Many of the cases cited by the government were
22 decided before the Supreme Court's decision in *Booker*, when the
23 sentencing guidelines were mandatory. Many of the cases that
24 involved lower sentences were decided after guilty pleas or
25 involved cooperation with the government.

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1 Comparisons of other cases to this case are also
2 difficult because some of the cases that included higher
3 sentences involved crimes that carried far more serious
4 penalties than the crimes with which defendant Stewart was
5 charged. The most serious crime with which Ms. Stewart was
6 charged was a violation of 18, U.S.C., Section 2339A, providing
7 material support to terrorist activity. That offense carried a
8 maximum penalty of ten years' imprisonment and no mandatory
9 minimum at the time that the offense was committed.

10 After the events of September 11, 2001, the penalty
11 for a violation of 18, U.S.C., Section 2339A and for a
12 violation of 18, U.S.C., Section 2339B were increased by
13 50 percent, from 10 years to 15 years. But the parties agree
14 that the maximum penalty for the violation of 18, U.S.C.,
15 Section 2339A that applies to the offense when Ms. Stewart
16 violated the statute is ten years. Put another way, at the
17 time the offense was committed, Congress determined that the
18 maximum penalty could be ten years for that offense. All of
19 the other counts of conviction for Ms. Stewart carried
20 sentences of five years with no mandatory minimum. As
21 indicated above, the only way that the guideline range could be
22 achieved in this case is by sentencing the defendant to the
23 maximum term on each of the counts and then running them all
24 consecutively.

25 Therefore, some of the other cases listed by the

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1 government as allegedly comparable are plainly not comparable.
2 For example, in *United States v. Abu Ali*, 529 F.3d 210, (4th
3 Cir. 2008), cited by the government as one of the most
4 comparable cases, the defendant was convicted of nine separate
5 counts arising from his affiliation with an Al-Qaeda terrorist
6 cell in Saudi Arabia and its plans to carry out terrorist acts
7 in the United States, including a plot to assassinate the
8 president. The conviction involved a mandatory minimum term of
9 20 years' imprisonment and a maximum term of life imprisonment.
10 The nature of the acts, the mandatory minimum, the greater
11 number of the counts of conviction and the maximum sentence
12 distinguished that case from Ms. Stewart's.

13 Indeed, the Court of Appeals in that case reversed the
14 district court sentence of 360 months as insufficient,
15 primarily because the district court made an incorrect
16 comparison of the acts of the defendant in that case to the
17 crimes of John Walker Lindh, Timothy McVeigh and Terry Nichols.
18 See *Abu Ali*, 528 F.3d at 262 to 64. That case illustrates the
19 danger of attempting to determine a sentence based on the
20 comparison to other specific cases when sentencing must be
21 based on a careful analysis of all of the Section 3553(a)
22 factors as applied to the facts of the case at issue.

23 The government also compares this case to *United*
24 *States v. Khan*, 309 F.Supp. 2d 789 (E.D.Va. 2004), but in that
25 case two defendants received mandatory minimum sentences on

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1 weapons offenses of life and 55 years, and therefore the
2 severity of the sentence was required, in any event, and the
3 third defendant was sentenced to 52 months on the material
4 support conviction concurrent with terms of 52 months on other
5 counts. See government reply memorandum June 25, 2010 at 35.

6 Moreover, a comparison to the sentences in other cases
7 involving recent violations of 18, U.S.C., Section 2339A or
8 Section 2339B may be misleading because the sentences may well
9 have been affected by the 50 percent increase in the penalty
10 for those statutes which occurred after the events of
11 September 2001 and which does not apply to the conduct in
12 Ms. Stewart's case which occurred before the penalty was
13 increased.

14 In this case the Court has considered the range of
15 cases provided by the parties. There is nothing about those
16 cases that indicates that the proposed sentence in this case
17 would result in unwarranted sentencing disparities. It is
18 reasonable compared to the sentences for the codefendants in
19 this case, and the variance from the guideline sentencing range
20 is based on a consideration of all the relevant Section 3553(a)
21 factors. The sentence is sufficient but no greater than
22 necessary to comply with the purposes of Section 3553(a)(2).
23 It carefully takes into account the actual offenses of which
24 the defendant was convicted and the sentences that Congress
25 provided at the time those offenses were committed.

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1 The Court began with the guideline sentencing range
2 which was enhanced with the terrorism enhancement. The Court
3 then determined that a downward variance was justified to
4 arrive at the sentence that the Court determined was sufficient
5 but no greater than necessary to comply with the purposes of
6 Section 3553(a)(2). The Court notes that the sentence is
7 substantially higher than it would have been without the
8 terrorism enhancement because the Court would have applied the
9 considerations discussed above to vary downwardly from the
10 sentencing range that was otherwise provided by the guidelines
11 without the terrorism enhancement. The sentence has also been
12 enhanced by the two specific factors noted by the Court of
13 Appeals, namely obstruction and abuse of trust. The Court has
14 considered all of the arguments of the parties and the
15 extensive submissions to the Court. To the extent not
16 specifically addressed, they do not change the Court's decision
17 with respect to sentencing.

18 Therefore, the Court intends to impose a sentence of
19 120 months' imprisonment to be imposed as follows: 120 months
20 on Count Five and 60 months on Counts One, Four, Six and Seven,
21 all to run concurrently. The Court intends to impose
22 supervised release of two years to follow an imprisonment on
23 Counts One, Four, Five, Six and Seven, to run concurrently with
24 the standard conditions of supervised release in this district
25 and those recommended by the probation department. I will not

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1 impose drug testing because the defendant is a low risk of
2 substance abuse.

3 I will not impose a fine because the defendant lacks
4 the ability to pay a fine. I will not impose an order of
5 restitution because there are no victims under 18, U.S.C.,
6 Section 3663. I will impose a \$500 special assessment.

7 I will recommend that the defendant be incarcerated at
8 FCI Danbury so that she can be close to her family. I will
9 recommend, in accordance with the defendant's request, that she
10 be designated care level two by the Bureau of Prisons and, to
11 the extent possible, that her care continue to be monitored by
12 Dr. Glover.

13 I will recommend to the Bureau of Prisons that the
14 defendant continue to be held at MCC for 60 days to allow her
15 to participate in the preparation of any appeals, and that she
16 continue to be held there during the briefing of any appeal, if
17 any appeal is taken.

18 Before I actually impose the sentence, I'll recognize
19 each of the lawyers and the defendant for anything that they
20 wish to tell me in connection with the sentence.

21 Ms. Shellow?

22 MS. SHELLOW: Your Honor, Ms. Stewart has asked for a
23 moment for a personal break. If we could take it now. I know
24 that it's an awkward time to do it.

25 THE COURT: Oh, no, absolutely. Of course. Of

07festes

1 course. Can the marshals accommodate this?

2 We'll take ten minutes.

3 (Recess)

4 THE COURT: Ms. Shellow.

5 MS. SHELLOW: Your Honor, I have two points I'd like
6 to make. One, I'd like the Court to reconsider or to clarify
7 that what it is doing is it is imposing the statutory maximum
8 of 2339A, essentially treating everything else as a lesser
9 included in a statute where there's no mandatory minimum with a
10 defendant who presents the personal history and characteristics
11 and the balance of the record that the Court reviewed?

12 THE COURT: No. That is not a fair way of describing
13 what I've said.

14 The defendant was convicted of five separate crimes.
15 The defendant's sentence reflects the fact that the defendant
16 was convicted of five separate crimes, each of which is
17 serious. You have to understand the difference between the
18 sentences of -- the offenses for which the defendant was
19 convicted and the maximum sentences on those counts and the
20 calculation of the guideline sentencing range, which I've gone
21 through, and the individual calculations within the guideline
22 sentencing range.

23 I stressed that the maximum sentence that the
24 defendant was liable to was 360 months. And I did that several
25 times in order to understand the guideline calculation -- so

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1 that people would understand the guideline calculations and why
2 the guideline calculations would arrive at a sentence that was
3 unreasonable in this case. I described at some length the fact
4 that the maximum sentence on the 2339A count was 10 years so
5 that people would understand that some of the comparisons to
6 some of the other cases used, for example, by the government,
7 were not quite accurate because the maximum sentence on 2339A
8 has been increased after the offense of conviction from 10
9 years to 15 years.

10 It would be wrong to think of the sentence as saying,
11 okay, I'll sentence the defendant to the maximum on 2339A as
12 though it were a mandatory minimum. It is not. I fully
13 understand, it's not a mandatory minimum. No question. When a
14 sentence is imposed, the Court determines what is the sentence
15 that the Court determines is the reasonable sentence in this
16 case. The Court then, in terms of describing how that sentence
17 is to be imposed under the guidelines, takes the sentence and
18 looks at the counts of conviction. To the extent that there is
19 a count that will include the total sentence, as there is in
20 this case, it imposes that sentence on that count and any other
21 counts that include that sentence and then takes the other
22 counts and makes them concurrent. That's why the sentence that
23 is imposed uses -- I arrive at the sentence of what is the
24 appropriate and reasonable sentence in this case, and then I
25 look at the counts of conviction and direct how that sentence

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1 will be included in the judgment of conviction.

2 Because the sentence is 120 months and there is a
3 count for 120 months, I describe it then as imposed on that
4 count and the other counts all run -- which maximum of 60
5 months, all run concurrently. So the total sentence is 120
6 months. I've tried to go through in detail both my analysis of
7 the guideline sentencing range, how I've arrived at the
8 sentence and also tried to point out how some other cases are
9 not fairly comparable to this case.

10 Have I answered your question?

11 MS. SHELLLOW: Yes. Thank you. The second point,
12 and -- unrelated --

13 THE COURT: Okay.

14 MS. SHELLLOW: -- to the first point.

15 When you imposed the first sentence, in the
16 transcript, my recollection is that you acknowledged not as
17 sentencing enhancements in the guidelines calculation but in
18 your overall analysis of the offense conduct the abuse of her
19 position as a lawyer. And you also, I believe, characterized
20 her testimony as having made false statements; that is, you
21 identified it but said that you weren't going to consider it
22 because at that point you already maxed out the sentencing
23 guidelines calculation, and the circuit has now directed you to
24 consider it in that context.

25 But essentially nothing has changed from then until

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1 now, save the two statements, the standing on your head and the
2 I would do it again; that is to say, you did take them into
3 account, would be our position, in arriving at the 28 months.
4 You didn't do it in the context of the guidelines calculation,
5 but you did in the context of evaluating the offense conduct.

6 THE COURT: It would be wrong to attempt to isolate
7 individual factors in terms of the ultimate conclusion as to
8 what the fair and reasonable sentence was. I was directed by
9 the Court of Appeals to conduct a resentencing. I was directed
10 to consider in particular certain factors and to conduct a
11 resentencing. And I have done that, in light of all of the
12 direction given by the Court of Appeals and all of the
13 submissions by the parties, in light of what was before me
14 initially and in light of what is before me now. And that's
15 why I say, it's wrong for whatever purpose to simply single out
16 an individual factor. I have tried at length to explain in as
17 much detail as possible for a resentencing the factors that go
18 into the resentencing.

19 MS. SHELLOW: Thank you, your Honor.

20 THE COURT: All right. Before I actually impose the
21 sentence, Ms. Stewart, I'll recognize you for anything you wish
22 to tell me. Anything you'd like to say, anything at all you
23 would like to say.

24 THE DEFENDANT: I'm somewhat stunned, Judge, and I --
25 at the swift change in my outlook, and I am -- I also -- well,

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1 we will continue to struggle on. We will, of course, take all
2 available options to do what we need to do to change this, and
3 hopefully -- I just feel that I've let an awful lot of my good
4 people down, and I have nothing else to say.

5 THE COURT: Thank you. Okay.

6 All right. Mr. Dember?

7 MR. DEMBER: We have nothing further to add, your
8 Honor.

9 THE COURT: Okay. Pursuant to the Sentencing Reform
10 Act of 1984, it is the judgment of this Court that the
11 defendant, Lynne Stewart, is hereby committed to the custody of
12 the Bureau of Prisons to be imprisoned for a term of 120
13 months, to be imposed as follows: 120 months on Count Five and
14 60 months on Counts One, Four, Six and Seven, all to run
15 concurrently.

16 I recommend incarceration at FCI Danbury. I recommend
17 that the defendant be designated care level two and that, to
18 the extent possible, her care continue to be supervised by
19 Dr. Glover. I recommend that the defendant continue to be held
20 at the MCC for 60 days to allow her to participate in the
21 preparation of any appeals, and that she continue to be held
22 there during the briefing of any appeals, if any appeal is
23 taken.

24 Upon release from imprisonment, the defendant shall be
25 placed on supervised release for a term of two years on Counts

07festes

1 One, Four, Five, Six and Seven, all to run concurrently.
2 Within 72 hours of release from the custody of the Bureau of
3 Prisons, the defendant shall report in person to the probation
4 office in the district to which the defendant is released.

5 While on supervised release, the defendant shall
6 comply with the standard conditions of supervised release in
7 this district. The defendant shall not commit another federal,
8 state or local crime. The defendant shall not possess a
9 firearm or destructive device, as defined in 18, U.S.C.,
10 Section 921. The defendant shall refrain from any unlawful use
11 or possession of a controlled substance. The defendant shall
12 cooperate in the collection of DNA, as directed by the
13 probation officer.

14 It is further ordered that the defendant shall pay to
15 the United States a special assessment of \$500, which shall be
16 due immediately.

17 I've already explained the reasons for the sentence.
18 Does either counsel know of any legal reason why this sentence
19 should not be imposed as I've so stated it?

20 MR. DEMBER: No, your Honor.

21 MS. SHELLLOW: No, your Honor.

22 THE COURT: All right. I'll order the sentence to be
23 imposed as I've so stated it.

24 Ms. Stewart, you have the right to appeal the
25 sentence. The notice of appeal must be filed within ten days

07festes

1 after the entry of the judgment of conviction. The judgment is
2 entered promptly after the Court announces the sentence, so you
3 should discuss this issue promptly with your lawyer. If you
4 cannot pay the cost of appeal, you have the right to apply for
5 leave to appeal inform a pauperis. If you request, the clerk
6 will prepare and file a notice of appeal on your behalf
7 immediately.

8 I note that the Court of Appeals has indicated that
9 jurisdiction may be restored to the Court of Appeals by a
10 letter from any party. Do you understand?

11 THE DEFENDANT: Yes.

12 THE COURT: Yes?

13 THE DEFENDANT: Yes, I understand, Judge.

14 THE COURT: Thank you.

15 Finally, I intend to issue an order indicating that no
16 resentencing of defendants Yousry or Sattar is required, and no
17 party has requested such resentencing. Therefore, the original
18 judgments are reaffirmed. I'll issue an order to the parties
19 to just let me know if there's anything further that I should
20 do in that connection.

21 All right. Anything further?

22 MS. SHELLLOW: Your Honor, I would ask that at the
23 conclusion of these proceedings, if Ms. Stewart could have a
24 moment after the courtroom is cleared with her family.

25 THE COURT: Absolutely.

07festes

1 MS. SHELLOW: Thank you.

2 THE COURT: Absolutely. Yes. Marshals should allow
3 the defendant to have some time with her family. Thank you.

4 Anything else?

5 MR. DEMBER: Your Honor, I believe the defendant has a
6 right to file the notice of appeal in 14 days now, as opposed
7 to 7, I believe? That's what I'm being advised.

8 THE COURT: You're probably right.

9 MR. DEMBER: I think it's 14 actual days, as opposed
10 to 10 days, excluding the weekends.

11 THE COURT: Thank you. Right. Always good to be
12 safe. The government says it's 14 days to file the notice of
13 appeal, which I suspect is right after the time computations
14 have changed. But certainly check.

15 MS. SHELLOW: We will, your Honor.

16 THE COURT: Okay. Anything else?

17 MR. DEMBER: No, your Honor.

18 THE COURT: Good afternoon, all.

19 (Adjourned)

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