



For Immediate Release

January 31, 2007

**COURT URGED TO AFFIRM REBUKE OF
PROSECUTORS FOR "PARALLEL PROSECUTION"
(*United States v. Stringer*)**

The Washington Legal Foundation (WLF) filed a brief this week in the U.S. Court of Appeals for the Ninth Circuit urging it to uphold the dismissal of criminal charges against three officers of a company for securities law violations. The district court had dismissed the charges because the U.S. Attorney's Office used attorneys from the Securities and Exchange Commission (SEC) in a civil investigation as a secret "stalking horse" to develop criminal charges against the company officials. Accordingly, the businessmen's Due Process and Fifth Amendment rights were violated.

The outcome of this appeal will have far-reaching effects on every employee who works for a company that is subject to regulation by any federal agency, such as the SEC, the Environmental Protection Agency (EPA), or the Food & Drug Administration (FDA). At issue is the abuse of "parallel prosecutions" whereby suspected violations of a regulation are investigated by the agency, and at the same time, prosecutors are building a criminal case against the same targets. While *bona fide* parallel prosecutions are generally lawful, Chief Judge Ancer Haggerty of Oregon ruled in *Stringer* that the civil investigation by the SEC was essentially being run by criminal prosecutors to lull company employees into foregoing their constitutional rights to remain silent in order to build a criminal case; therefore, the court held, there was only one criminal investigation.

The judge further held that dismissal was nevertheless warranted because of the dissembling, deceit and trickery used by the SEC attorneys and prosecutors to gain an advantage in their criminal case. For example, even though *Stringer* was a criminal "target," the SEC attorneys did not acknowledge that fact even when asked directly by *Stringer*'s attorneys during the civil investigation. The SEC dissembling even carried over into court when the SEC attorneys told the judge there was an agency policy against revealing to witnesses whether they are the subjects of an ongoing criminal investigation. Evidence was later produced showing that, in fact, there was no such SEC policy.

WLF's brief was drafted with the *pro bono* assistance of Robert P. Varian, Gabriel Z. Reynoso, Russell D. Duncan, and Meredith Moss of the Washington, D.C. and San Francisco offices of Orrick, Herrington & Sutcliffe, LLP.

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