

**April 1, 2005**

COURT DENIES PLO/PA SOVEREIGN IMMUNITY FROM SUIT

(Ungar v. Palestine Liberation Organization)

The U.S. Court of Appeals for the First Circuit in Boston yesterday required the Palestine Liberation Organization (PLO) and the Palestinian Authority (PA) to be answerable in court to claims that they are complicit in the deaths of Americans killed by Middle East terrorists. Because the PLO and PA refused to raise a merits-based defense in the trial court but instead chose to rely solely on their alleged sovereign immunity, that court entered a \$116 million default judgment against them in 2004. Yesterday's decision upholds that massive judgment.

The decision was a victory for the Washington Legal Foundation (WLF), which filed a brief in the case, *Ungar v. Palestine Liberation Organization*, in support of the plaintiffs. The appeals court agreed with WLF that because there is not now a sovereign state of Palestine, neither the PLO nor the PA should be granted sovereign immunity from suit in U.S. courts, a privilege normally granted by the U.S. to other nations.

"American foreign policy should be made by the Executive Branch, not by the courts," said WLF Chief Counsel Richard Samp after reviewing the court's decision. "Because the United States government has not recognized an independent Palestine and has pledged not to do so until after there is a final Middle East peace settlement, the court would have been out of line if it had second-guessed government policy by declaring that the PLO and PA should be granted immunity from suit as the representatives of a sovereign state," Samp said.

The case arose in the aftermath of the death of Yaron Ungar (an American citizen) and his wife Efrat on June 9, 1996. They were traveling by car following a wedding in Israel when gunmen affiliated with the terrorist group Hamas opened fire on the car. Both Yaron and Efrat were killed in the attack; their infant son Yishai was in the car but was unhurt. Several members of Hamas were eventually convicted of charges related to the murders. In March 2000, the Ungars' estates and their two children filed suit in federal court in Rhode Island under the Anti-Terrorism Act of 1991 (ATA), which permits Americans to sue for injuries or death caused by international terrorism. Included among the defendants were the PLO and the PA; the Ungars claimed that those organizations had aided and abetted the murders.

The district court denied the PLO's and PA's motion to dismiss on the basis of sovereign immunity, which American courts generally grant to any "foreign state." When the PLO and PA continued to insist that they should not be subject to the lawsuit, the district court entered a \$116

million default judgment against them. The PLO and PA appealed that judgment to the First Circuit, which yesterday affirmed the judgment. They are represented by Ramsey Clark, who served as U.S. Attorney General under President Lyndon Johnson.

In its brief, WLF argued that the courts should not look to international law (as the PLO and PA assert) in determining whether an entity is entitled to sovereign immunity as a "foreign state." Rather, WLF argued, the courts should follow the lead of the Executive Branch on that issue. Because President Bush has made clear that the United States does not recognize Palestinian statehood and will not do so until the PLO/PA have taken further steps to end violence in the Middle East, the courts should not second-guess that decision by granting sovereign immunity to the PLO and PA, WLF argued. The First Circuit ultimately determined that it made no difference whether, in deciding the sovereign immunity issue, the courts should look to the position of the U.S. government (as WLF asserted) or to international law standards (as the parties asserted); the court held that the PLO/PA fails to qualify as a "foreign state" under *either* standard and thus is not entitled to sovereign immunity from tort suits.

The PLO and the PA are defendants in a number of terrorism-related cases. However, this is the first such case to be decided at the appeals court level.

WLF is a public interest law and policy center with supporters in all 50 states. WLF devotes a substantial portion of its resources to promoting America's national security and to protecting the right of Americans to be compensated for terrorist acts. WLF prepared its brief with the pro bono assistance of Chicago attorneys Joel J. Sprayregen and Jared M. Wayne. WLF filed the brief on behalf of itself and the Allied Educational Foundation.

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For further information, contact WLF Chief Counsel Richard Samp, (202) 588-0302. A copy of WLF's brief is posted on its website, www.wlf.org.