

**October 27, 2005**

RAMSEY CLARK ASKS SUPREME COURT TO OVERTURN WLF VICTORY IN PLO SUIT

(Palestine Liberation Organization v. Ungar)

Former U.S. Attorney General Ramsey Clark, who now regularly represents the Palestinian Liberation Organization (PLO), this week asked the U.S. Supreme Court to overturn a \$116 million judgment imposed on the PLO and the Palestinian Authority (PA) for their roles in the deaths of Americans killed by Middle East terrorists. The Washington Legal Foundation (WLF) has played an active role in the litigation that led to the imposition of that judgment. WLF has pledged to do whatever it can to ensure that the Supreme Court does not overturn the judgment.

The U.S. Court of Appeals for the First Circuit in Boston last spring ruled that neither the PLO nor the PA are entitled to "sovereign immunity" -- the doctrine that generally protects foreign governments from being sued in U.S. courts. 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. The First Circuit also held that by relying solely on the sovereign immunity defense, the PLO and PA had waived the right on appeal to contest the merits of the suit; it thus upheld the entire \$116 million judgment. Ramsey Clark has asked the Supreme Court to review both aspects of the First Circuit's decision.

The First Circuit's decision was a victory for 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.

"American foreign policy should be made by the Executive Branch, not by the courts," said WLF Chief Counsel Richard Samp after reviewing Ramsey Clark's Supreme Court petition this week. "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, Ramsey Clark is out of line in asking the courts to second-guess 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 last spring affirmed the judgment. They have been represented by Ramsey Clark, who served as U.S. Attorney General under President Lyndon Johnson and has more recently devoted much of his law practice to representing prominent anti-American leaders, such as former Iraqi dictator Saddam Hussein.

In rejecting the PLO's and the PA's sovereign immunity claims, the First Circuit ultimately determined that it made no difference whether the courts should base their decisions on the position of the U.S. government (as WLF asserted) or on 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.