



For Immediate Release

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**BIPARTISAN LAWMAKERS URGE SUPREME COURT TO
REVERSE RULING AGAINST AMERICAN POWs
TORTURED IN IRAQ**

(Colonel Clifford Acree, et al. v. Republic of Iraq, No. 04-820)

The Washington Legal Foundation (WLF) filed a brief this week in the U.S. Supreme Court on behalf of itself and a distinguished bipartisan group of 20 United States Senators and Representatives. WLF urged the High Court to review and reverse a court of appeals ruling that overturned a court judgment in favor of 17 American servicemen who were brutally tortured by Saddam Hussein's forces while being held as POWs during the 1991 Gulf War.

WLF's brief was filed on behalf of U.S. Senators George Allen (R-VA), Tom Harkin (D-IA), and Patty Murray (D-WA); and Representatives Roscoe Bartlett (R, MD-06), Howard L. Berman (D, CA-28), John Conyers, Jr. (D, MI-14), Elijah E. Cummings (D, MD-07), Bob Filner (D, CA-51), Virgil H. Goode, Jr. (R, VA-05), Bart Gordon (D, TN-06), Katherine Harris (R, FL-13), Sheila Jackson-Lee (D, TX-18), James McGovern (D, MA-03), Gregory W. Meeks (D, NY-06), Major R. Owens (D, NY-11), Charles B. Rangel (D, NY-15), Silvestre Reyes (D, TX-16), Jim Saxton (R, NJ-03), Ted Strickland (D, OH-06), and Lynn Woolsey (D, CA-06).

In *Colonel Acree v. Iraq*, Colonel Clifford Acree and 16 other American servicemen filed suit against the Republic of Iraq in early 2002 seeking damages against Iraq, Saddam Hussein, and the Iraqi Intelligence Service for injuries they suffered when they were physically and psychologically tortured after being captured by Iraqi forces during the 1991 Gulf War. Under provisions of the Foreign Sovereign Immunities Act (FSIA), U.S. nationals can bring damage suits against foreign states that sponsor terrorism and commit acts of torture. The suit was filed after Iraq refused to arbitrate as provided by the FSIA. The district court entered a default judgment in their favor in July 2003 after the Iraqi government failed to contest the charges, and awarded damages.

Two weeks after the district court ruling, the Justice Department sought to intervene in the case, arguing that the April 2003 Emergency Wartime Supplemental Appropriation Act to help rebuild Iraq made the FSIA liability provision inapplicable to Iraq and thus, negated jurisdiction by the trial court over the case. The trial court rejected the Justice Department argument and so the government appealed to the U.S. Court of Appeals for the District of Columbia Circuit.

In the court of appeals, WLF argued on behalf of U.S. Senators George Allen, Harry Reid, and Patty Murray; and Representatives John Conyers, Howard Berman, and Gregory Meeks, that the court of appeals should reject DOJ's argument that the trial court lacked jurisdiction to enter the judgment in favor of the ex-POWs. In particular, WLF argued that emergency appropriations by Congress to help rebuild Iraq cannot be construed to exempt Iraq from liability or retroactively revoke the court's jurisdiction.

In its opinion issued in June 2004, the court of appeals agreed with WLF that the supplemental appropriations measure did *not* strip the district court of jurisdiction. In that respect, WLF scored a victory on this major point. However, the court of appeals reversed the district court on other grounds, ruling that while the trial court had jurisdiction over the case, there was no private right of action. In short, the American servicemen won their legal battle but lost the war.

In its brief filed in the Supreme Court, WLF argued on behalf of the 20 lawmakers that the Court should review and reverse the court of appeals' decision because it would eviscerate the anti-terrorism law designed to punish and deter those who would injure or kill Americans, including American POWs. In particular, it would negate the Flatow Amendment to the FSIA which was sponsored in 1996 by Congressman Jim Saxton, one of WLF's clients in the case, that expanded the rights of Americans to bring civil actions in federal court. Congressman Saxton referred to the measure as the "Flatow Amendment" in honor of Alisa Flatow, a 20-year-old Brandeis University student killed in 1996 by the Palestinian Islamic Jihad in a bus bombing while studying abroad in Israel.

In its brief filed this week with the Supreme Court, the Justice Department urged the Court not to take the case, arguing that it should have been dismissed by the court of appeals on *either* FSIA grounds *or* under the Appropriations measure.

"Colonel Acree and our brave American servicemen were brutally tortured during the Gulf War, had their bones broken, and were starved. Colonel Acree was forced to eat the scabs off his own body to obtain nourishment to stay alive. It is unfortunate that the Justice Department continues to fight them in court to deny their right to compensation under the law," said Paul Kamenar, WLF's Senior Executive Counsel.

The Court will decide by the end of April whether to take the case. Representing the ex-POWs are attorneys from Steptoe & Johnson, LLP, and John Norton Moore, former U.S. Ambassador and Counselor on International Law to the State Department, and a member of WLF's Legal Policy Advisory Board. Steven Perles and Edward MacAllister of the Perles Law Firm, LLC, which represents victims of state-sponsored terrorism, provided *pro bono* assistance to WLF attorneys.

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For further information, contact Paul D. Kamenar at 202-588-0302. WLF's brief is posted on its website at www.wlf.org.