



For Immediate Release

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**WLF URGES APPEALS COURT TO ALLOW
NEW CRIMINAL TRIAL IN ABUSIVE PROSECUTION CASE**
(United States v. San Diego Gas & Electric Co.)

The Washington Legal Foundation (WLF) filed a brief last week on behalf of itself and the National Association of Criminal Defense Lawyers (NACDL) urging the U.S. Court of Appeals for the Ninth Circuit to uphold a district court ruling that granted a new trial to San Diego Gas & Electric Company, an employee, and a contractor, who were all convicted for technical violations of the Clean Air Act for removing a multi-layered wrap around pipes that contained a small amount of asbestos. There was no evidence that a single asbestos fiber was released into the air or soil; indeed, test results affirmatively showed there was no such release.

The district court ordered the new trial because the Environmental Protection Agency's (EPA) test results to prove whether the wrap even exceeded the one percent jurisdictional threshold of asbestos content violated the EPA's own regulations on how EPA analysts are to conduct the tests of multi-layered wrap. The court ruled that the wildly inconsistent test results of unrepresentative samples confused the jury, which, along with the misleading closing argument of the prosecutor, merited a new trial to prevent "a serious miscarriage of justice" and "arbitrary" enforcement.

In its brief, WLF further argued that the government abused its prosecutorial discretion by arbitrarily using felony criminal prosecution for this alleged technical infraction when there were more suitable administrative and civil remedies available. WLF cited both EPA and Department of Justice guidelines that instruct employees to use non-criminal remedies in minor cases such as this, especially where there was legitimate dispute as to whether the pipe wrap even met the jurisdictional standard.

"This is an outrageous example of overcriminalization of legitimate business activity," said Paul Kamenar, WLF's Senior Executive Counsel. "One can only wonder why the Department of Justice would want to send hard-working employees to prison and punish the shareholders and customers of the company where no environmental harm occurred," Kamenar added.

WLF's brief was filed with the *pro bono* assistance of Michael L. Kichline and Adam T. Moore of Dechert LLP in Philadelphia.

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For further information, contact Paul Kamenar, WLF Senior Executive Counsel, at 202-588-0302. A copy of WLF's brief is posted on its website at www.wlf.org.