

News Release

Washington Legal Foundation
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WLF URGES STRONGER RULES FOR CHARGES BEFORE MILITARY TRIBUNALS

The Washington Legal Foundation (WLF) today urged the U.S. Department of Defense to tighten the provisions of its proposed list of crimes to be tried before military tribunals. The proposal applies to captive Al Qaeda and Taliban members, Iraqi military leaders and soldiers, and other U.S. enemies who may be tried for war crimes in a military tribunal. While supportive of the Pentagon's proposal overall, WLF argued for certain provisions to be revised to avoid the inadvertent creation of legal weapons that would benefit accused terrorists and war criminals.

In its proposal, issued February 25, 2003, the Pentagon set out a list of violations of the law of war that may be tried and punished by a military tribunal. In addition, it set out the elements of those offenses that must be proven in a prosecution. The offenses covered by the instructions include willful killing of non-combatants, attacking civilian property, pillaging, denying quarter, taking hostages, employing poison weapons, using noncombatants as shields, using protected places (such as schools or houses of worship) as shields, mutilation, misuse of a flag of truce or surrender, degrading treatment of a dead body, rape, hijacking, aiding the enemy, spying, and terrorism. It also sets out elements of aiding or abetting, soliciting, attempting, or conspiring to commit the substantive offenses.

In its submission to the Department of Defense, WLF argued that the document should be amended to make clear that it does not limit the Department's prosecutorial discretion or create a right of judicial review. With regard to the offense of employing poison weapons, WLF urged that the elements should be expanded so as to punish the use of bacteriological weapons, which are prohibited by international law. On the offense of misusing a flag of truce or surrender, WLF argued that the offense is punishable under international law whether or not the ruse is successful -- unlike the proposed instructions, which make it punishable only in cases of "death or serious bodily injury." WLF recommended that the offense of terrorism not be limited to incidents resulting in death or bodily harm, but rather that the offense should also cover operations that inflict pain without death or bodily harm (as in the release of mace-type gases within a subway system). WLF also recommended technical changes to a variety of other provisions of the Pentagon's proposal.

The General Counsel's Office of the Defense Department has stated that it is likely to adopt a final version of the instructions in early March after reviewing comments. President George W. Bush authorized the trial of non-citizens for war crimes and terrorism offenses before military tribunals in an executive order on November 13, 2001.

WLF was assisted in the preparation of its comments by George Mason University law student Jason Daniel Wright.

WLF is a public interest law and policy center with supporters in all 50 states. It devotes a significant portion of its resources to advocating for free enterprise and national security before courts and government agencies nationwide.

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For further information, contact WLF Senior Vice President for Legal Affairs David Price, (202) 588-0302. WLF's comments are posted on its web site, www.wlf.org.