

Desert Battle

A Secret Air Base Hazardous Waste Act, Workers' Suit Alleges U.S. Cites National Security In Fighting Claims Tied to Toxic Disposal Fires Plaintiffs Fear Retaliation

By MARGARET A. JACOBS
Thursday, February 8, 1996
Staff Reporter of The Wall Street Journal

LAS VEGAS -- One day two years before he died, Helen Frost says, her husband, Robert, returned from his sheet-metal job at a top-secret Air Force base with flaming-red skin that soon began peeling off his face.

"He was a pretty tough guy, but he burst through the door yelling in fear," she recalls. "Every hour, I'd have to take a washcloth" and take off some more skin.

Mrs. Frost is one of two widows who, along with four former civilian workers, are suing the Defense Department in a so-called citizen's lawsuit (rather than a claim for tort damages). They contend that it violated federal hazardous-waste law by repeatedly burning ordinary chemicals and highly toxic classified materials in open pits at the base, which is located 125 miles northwest of Las Vegas and is commonly called Area 51.

The workers, who say their exposure to toxic fumes throughout the 1980s caused health problems ranging from skin lesions to cancer, are seeking information to facilitate medical treatment and help with medical bills but no other monetary damages. As employees of government subcontractors, which aren't named in the lawsuit, some of the plaintiffs say they have no medical insurance. They also want a court order requiring the government to follow the law and dispose of such waste safely. They themselves can't bring criminal charges.

So far, the government refuses to confirm or deny their allegations or to respond to their request for criminal prosecution. Instead, it asked U.S. District Judge Philip Pro, who is overseeing the case in Las Vegas, to dismiss the lawsuit, arguing that almost any disclosure about Area 51 could pose a "serious risk" to national security.

Unusual Maneuver:

That strategy is startling because the government apparently has never before invoked the so-called national-security privilege in a case in which the effect is to shield itself from criminal liability. The privilege is intended to prevent courtroom disclosures of state

secrets involving intelligence gathering or military planning. But the burning alleged by the workers is a serious crime, punishable by up to 15 years in prison and a \$1 million fine. Indeed, the Justice Department has made the prosecution of civilians who illegally burn hazardous waste a priority.

Constitutional experts say the case could ultimately go to the Supreme Court because it tests the limits of executive-branch power. In a case involving Richard Nixon and Watergate, the high court said the president can't use executive privilege to shield evidence of a crime. But in response to the workers' suit, the government in effect argues that the national-security privilege -- a form of executive privilege -- gives the military more leeway than the president has to keep information secret, even if it involves a crime.

The case is also significant because it could determine whether the military will be held accountable for what many observers consider its dismal record of compliance with environmental laws. A government task force estimated in 1995 that cleaning up hazardous waste at federal facilities, mostly military-related, would cost \$234 billion to \$389 billion.

Information at Risk:

"What I fear is the broadening of a principle that could block access to a whole range of information that should be available to the public," says Stephen Dycus, an expert on national security and the environment at the Vermont Law School.

At almost every turn since filing suit 18 months ago, the workers have been stymied by Justice Department lawyers. For several months last year, the lawyers even refused to acknowledge the existence or name of the base. Only after the workers introduced 300 pages of references to it in government documents, including the Congressional Record, did the lawyers relent somewhat.

The government lawyers also classified documents retroactively, preventing the workers from using them as evidence, the workers say. They refused to acknowledge that any of the men except Mr. Frost ever worked at the base. They even obtained a court order preventing the workers' lawyer from removing files from his own office.

In a special filing required from agency heads who want courts to recognize the national-security privilege, Secretary of the Air Force Sheila Widnall explained why the military is so cautious about disclosing anything about Area 51. "Collection of information regarding the air, water and soil" around a base, she said, "is a classic foreign intelligence practice because analysis of these samples can result in the identification of military operations and capabilities....Disclosure of such information increases the risk to the lives of United States personnel and decreases the probability of successful mission accomplishment."

The Air Force declines to comment on specific allegations or on the

lawsuit, but a senior attorney for the service defends its record.

"We take our responsibility concerning protection of the environment seriously, and we also take seriously our obligations to protect national security," he says. "We believe protecting the environment and national security are not incompatible." In addition, a spokeswoman says that in 1993 the government's Council on Environmental Quality rated the Air Force's environmental-management program the best in the government.

Although the plaintiffs concede Area 51 harbors military secrets that must be protected, Jonathan Turley, a George Washington University law professor who represents the plaintiffs and more than two dozen other Area 51 employees who so far haven't joined in the suit, says the government's position is too extreme.

"The government claims that revealing any information about Area 51 would jeopardize American lives," he says. "The only American lives lost so far are those of their own workers."

Base Not So Secret:

The plaintiffs disparage the government's response, partly because Area 51 isn't much of a secret. Until access to a nearby ridge was restricted last year, Area 51's runways, radar towers and many of its 200 buildings could be seen by anyone who looked. Just off the Las Vegas strip, in fact, is a bar called Area 51.

The base has had a local reputation as a big employer since the 1950s. Well before dawn most weekdays, hundreds of civilian workers can be seen parking in a far corner of McCarran International Airport. From there, they fly free of charge in unmarked planes to the base, which sits on a dry lake bed called Groom Lake near where atomic bombs were once tested. The Area 51 name is derived from its designation on Nevada test-site maps.

Area 51's 1,000 civilian and 2,000 military employees sign oaths to keep all information about the base confidential, and the former workers who sued take it seriously. Fearing government retaliation for whistle-blowing, they have obtained unusual permission from Judge Pro to be known publicly as John Does.

Speaking nervously in interviews in Las Vegas hotel rooms, where their lawyer had taken precautions to prevent government monitoring, the men recently described the illegal burning and what they view as the military's indifference to their health. They spoke on the condition that they not be identified in any way.

They say the illegal burning grew out of the extreme secrecy at the base, where U-2 spy planes, F-117 stealth bombers and other secret aircraft have been developed and tested. In military parlance, it is a "black" base: Access is granted only to people with top-secret security clearance.

Nothing left the facility except the workers, they say. All else, including office furniture, jeeps and leftover lobster and prime rib,

was either burned or buried.

Frequent Fires:

During the 1980s, the men say, classified materials were burned at least once a week in 100-yard-long, 25-foot-wide pits. With security guards standing at the edge, Air Force personnel threw in hazardous chemicals such as methylethylketone, a common cleaning solvent, and other things, such as computers, that produce dioxin when burned. The toxic brew, including drums of hazardous waste trucked in from defense facilities in other states, was ignited with jet fuel and typically burned for eight to 12 hours, the men say.

Helen Frost says her husband, after being exposed to the thick, black fumes, endured constant headaches and itchy eyes. But, like many of the men, he continued to work because his pay -- about \$50,000 a year -- was high and the work was consistent, she says.

In the mid-1980s, however, dozens of Area 51 workers began developing breathing difficulties, chest pains, neurological problems and chronic skin inflammation -- all classic signs of exposure to toxins. The burning especially affected those who worked outdoors in maintenance and construction, about 150 to 300 yards downwind from the pits.

The skin condition, which they called "fish scales," broke out on their hands, legs, backs and faces. They say they used emery boards and sandpaper to remove the embarrassing scabs. "I never saw anything like it. We would get it dried up in one spot, and then it would pop up somewhere else," says Stella Kasza, another plaintiff. Last April, her husband, Walter, a sheet-metal worker, died at age 73 of liver and kidney cancer, which his wife blames on a decade of exposure to the burning.

The workers contend that when they asked for protective gear, Air Force officers rebuffed them. "They told us we could buy our own masks and then pointed to the gate and told us we could leave if we didn't like it," recalls one of the John Does, who, like the others, believes that the officers resented the civilians' higher wages. Though the workers used gloves they purchased themselves, they say base-security policy prevented them from bringing in any other protective gear.

Reticent Patients:

Many refused to seek medical help or gave doctors incomplete explanations for their symptoms. They say they feared 10-year prison terms for talking about the base, as, they say, Air Force security police repeatedly warned them.

But after Mr. Frost died of cirrhosis of the liver in 1989 at age 57, many felt they had no choice but to seek legal advice. A study of Mr. Frost's fatty tissue by Peter Kahn, a Rutgers University biochemist and expert on chemical and hazardous substances, found unusually high levels of dioxins and other carcinogens in Mr. Frost's cells that he

attributed to industrial exposure. Dioxins typically target the liver and cause severe skin reactions, Mr. Kahn says. Though not the cause of Mr. Frost's liver ailment, Mr. Kahn adds, exposure to the chemicals could have accelerated its progress, resulting in premature death. But the government had denied Mr. Frost's request for worker's compensation.

Prof. Turley and his clients say they can prove the government violated the Resource Conservation and Recovery Act, the federal law regulating hazardous waste. And they say they can do this without revealing anything that would undermine national security.

The law makes it a crime for anyone who handles hazardous waste, including owners of oil-change shops such as Jiffy Lubes, to do so without getting a permit or transportation manifest. It also requires Environmental Protection Agency inspections. Early in the litigation, the government conceded that it had never applied for a permit or manifest for Area 51.

But the government has consistently refused to acknowledge that hazardous wastes of any sort were kept at the base or that common industrial chemicals such as trichloroethylene were used there. The solvent, found in most machines with moving parts, is on the list of toxins that must be reported and are regulated under the law.

"Acknowledging that a large military base has trichloroethylene is like saying that a cleaning crew has ammonia. It would hardly be cause for celebration in the Russian intelligence services," Prof. Turley says.

Evidence in a Manual:

The government's position outraged some Area 51 workers, who sent an unclassified government security-training manual to Prof. Turley. It confirms the existence of a "vehicle paint and body shop" and "base battery storage" operations that typically produce hazardous waste. When Prof. Turley asked Judge Pro to accept the manual as evidence, however, the plaintiffs say the government classified it retroactively. Government lawyers then tried to retrieve the document from Prof. Turley and from news reporters even though it was available on the Internet.

The government also asked the judge to seal the transcript of a telephone conference call he held with attorneys for both sides about the manual. At the government's request, the judge placed Prof. Turley's office under seal until he decides what to do.

"The government has been simply stonewalling," says Steven Aftergood of the Federation of American Scientists, a Washington group concerned with, among other things, what it considers excessive government secrecy.

The workers' attorneys have repeatedly asked Judge Pro, who once found that the government wasn't liable for injuries to 216 workers exposed to radiation at the Nevada test site between 1951 and 1981,

to limit the material the government can restrict under the national-security privilege to truly sensitive information. In other privilege cases, the lawyers say, judges have segregated sensitive material and given the public access to the rest. A few courts have enlisted special judges with high-level security clearance or held secret trials rather than dismiss cases against the government, Vermont's Prof. Dycus says.

The 'Mosaic' Theory:

The Defense Department, however, claims to have properly asserted the national-security privilege. Though conceding that its position will result in some routine information about the base being withheld, government lawyers argue that they can't acknowledge seemingly innocuous facts without creating a "mosaic" that an enemy could use to figure out what the military considers a secret.

While Judge Pro hasn't ruled on the government's motion to dismiss the case, he has decided in its favor on most important issues, including the "mosaic" theory. Last month, he found that the government had properly refused to provide virtually all of the material sought by the plaintiffs and that the government had properly classified the manual. He also rejected without explanation the workers' argument that the government can't use the privilege to conceal evidence of a crime. Prof. Turley's office remains under seal and off limits to faculty members and students. He says his clients intend to appeal many of the judge's rulings.

On one important point, however, the workers prevailed. Last spring, the government disclosed that the EPA had begun inspecting Area 51, making it the first "black" base opened to public inspection. But, citing the privilege, the government refused to make the inspection report public, as required by law. After the plaintiffs objected, Judge Pro ruled the government could withhold the report only if it got an exemption from the president.

Shortly afterward, President Clinton, who the same week publicly apologized to the victims of radiation experiments and who is opening up long-classified files about public exposure to atom-bomb tests in the 1950s, granted the exemption. His memo said keeping the reports secret was in the nation's "paramount interest."

Copyright © 1996 Dow Jones & Company, Inc. All Rights Reserved.

LOSING A FRIEND

[**VINNIE'S UNTIMELY DEATH**](#)

[**VINNIE'S INTERROGATIONS**](#)

SATELLITE INFORMATION

[ALIEN INVASION](#)
[BATTLELAB](#)
[CANCER DETECTION](#)
[COSMIC CONSPIRACY](#)
[EOS: NEXT GENERATION](#)
[GPS FROM THE USAF](#)
[PACHYDERM PATROL](#)
[RAPID TARGETING CAPABILITY](#)
[SATELLITE OR UFO?](#)
[SPACE WARS](#)

UFO RELATED

[AREA 51](#)
[FOO FIGHTER](#)
[WHAT'S A UER?](#)
[UFO SHOT DOWN](#)

[UFOs & ASTRONAUTS-1](#) [ASTRONAUTS-2](#)
[GORDON COOPER-1](#) [COOPER-2](#)

THE MOON

[MOON FACTS](#)
[WATER ON THE MOON](#)

GENERAL

[HYPERSONIC MISSILE](#) **NEW**
[MICROCHIP IMPLANTS](#)
[RUSSIAN BOMBS](#)
[TITAN ROCKET EXPLODES](#)

ROSWELL

[J.BOND JOHNSON](#)
[SYMBOLS?](#)

1947 PHOTOS

[Scan 2](#) [Scan 3](#) [Scan 4](#)
[Scan 5](#) [Scan 6](#) [Scan 7](#)
[MORE SCANS](#) **UPDATE!**

RONALD REGEHR

[BIO](#)
[UPCOMING ENGAGEMENTS](#)
[LINKS](#)



[EMAIL](#)

[ALIEN CHASER INDEX](#)

This page hosted by  Get your own [Free Home Page](#)