

The following is taken from a September 5, 1995 press release from the George Washington University National Law Center:

COURT RULES AGAINST MILITARY IN "AREA 51" SUIT AND FINDS THAT THE "JOHN DOE" WORKERS HAVE BEEN SUCCESSFUL IN ENFORCING HAZARDOUS WASTE LAWS AT THE SECRET NEVADA BASE

Today, the parties in the Area 51 case were formally notified that the federal court had denied the government's motion to dismiss the action on grounds of national security. In a thirty-page opinion, Judge Philip Pro ruled that the national security argument of the government was "illusory" and "unpersuasive." Judge Pro, who was appointed by President Reagan in 1982, gave the military until October 2, 1995, to declassify the information demanded by Plaintiffs or secure a personal exemption from President Clinton, which would be the first of its kind under this provision. In response to the ruling, Plaintiff's Counsel Jonathan Turley stated:

"This decision resolves the core question underlying the litigation: The obligations of the military under environmental laws at all bases, including its most secret "black" facilities. If the military's most classified facility is subject to these laws, all federal facilities will need to comply with environmental laws. Despite determined opposition from the Justice Department, the court found that national security claims do not trump the environmental statutes and that the military cannot operate facilities outside the law.

"The military discovered today that its stealth capabilities do not extend into federal court. The crimes committed at Groom Lake will become all too apparent in the coming weeks as we explore the ramifications of today's decision."

Professor Jonathan Turley, a George Washington University law professor and Director of the Environmental Crimes Project, represents workers at a secret Air Force base in two cases charging that the military has committed environmental crimes at the base. Represented anonymously as "John Does," these workers allege that the military burned hazardous wastes in open pits and knowingly exposed workers to the burning. Various workers have died of cancer and other workers have become ill from a variety of complications, including a rare painful skin disease linked to the burning of hazardous wastes. The Project on Government Oversight, a national watch dog group, has assisted in the investigation of these crimes.

Since the Court also ruled that the military has met two other demands in the action, the Court's decision means that the entire complaint against the EPA will have to be satisfied before the case is terminated. Judge Pro rules that two claims in the complaint have now been satisfied by the military after completion of a formal inspection and inventory of the "black" facility. Despite their initial refusal to admit that the facility existed, the military relented during litigation and admitted the existence of the "black" facility and agreed to bring the facility into compliance by allowing EPA to inspect and take inventory of hazardous wastes at the site. While the Court called the Justice Department's argument on these matters to be "somewhat dubious," the Court allowed those counts to be closed. "Simply put," Judge Pro noted, "Plaintiffs' objective in bringing [these claims] have been accomplished."

Moving quickly to capitalize on this groundbreaking ruling, Plaintiffs have prepared an amended complaint in the second case against the military. Not only does the decision prevent the government from terminating the EPA action, but the decision also strengthens similar claims against the military. The new complaint against the military will include information confirmed in discovery that shows knowledge of possible criminal violations at the base. The expanded complaint will be filed tomorrow [September 6] in Las Vegas, Nevada.

For the moment, the military will need to decide whether to declassify the reports from the base or seek an unprecedented exemption. Previously, the Justice Department insisted that the government has authority outside the statute to exempt information from public disclosure. In arguments before the Court, Colonel Richard Sarver stated that any argument that an exemption from the President is required "is flatly wrong" and would run afoul of the President's constitutional authority as Command and chief. The decision would potentially require the President to name all "black" facilities on either the federal compliance list or the noncompliance list of Presidential exemptions.

Professor Turley and his clients were hopeful for a new attitude toward compliance: "I hope that the military will view this as more of an opportunity than a defeat. Compliance with federal law can bring untold benefits and a real sense of

citizenship."

Another issue remains unresolved. Last month, the government declared papers contained in Professor Turley's office to be top secret. In on-going sealed briefings, the parties continue to fight over these documents and Professor Turley's refusal to turn them over to the government. Professor Turley argues that such material would reveal the identities of his clients and sources, who have been threatened by the military in the past.

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