



**CONGRESSMAN
HOWARD L. BERMAN**

Please deliver immediately

Date: February 3, 2003

To: Dr. Nira Schwartz

Fax: 310-782-9074

From: Bob Blumenfield
District Director

Number of Pages (including cover sheet): 2

Message (if any):

Nira,

Per our conversation, here is the joint letter from Congressman Berman and Senator Grassley referred to in today's New York Times article.

- Bob

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Congress of the United States

Washington, DC 20515

December 3, 2002

Attorney General John Ashcroft
U.S. Department of Justice
950 Pennsylvania Avenue, NW.,
Washington, DC 20530

Dear Attorney General Ashcroft:

We are writing regarding the Qui-Tam Case of UNITED STATES OF AMERICA, ex rel., DR. NIRA SCHWARTZ; vs. TRW, INC., and BOEING NORTH AMERICA, INC. (CASE NO. CV 96-3065 RSWL (RMCx) Hon. Ronald S. W. Lew). Specifically, we are concerned that the State Secrets Privilege may unnecessarily prevent the facts in this case from ever being tried.

Dr. Schwartz has alleged in the attached letter that the use of the State Secrets Privilege in this case may be in violation of White House Executive Order 12598, an order that prevents the use of classifications to conceal violations of law. The documents in question are being sought by TRW/BOEING. Dr. Schwartz does not need these documents to argue her case. She believes TRW/BOEING is merely seeking these documents to trigger the State's use of its Secret Privilege. Without these documents TRW will argue that it cannot properly defend itself, and the case will likely be dismissed before the facts are ever vetted.

This case has the potential of being one of the largest Qui-Tam cases in history, thus it is important that this case be tried on its merits. If there is a way to provide "redacted" versions of the documents being sought by TRW or to be more selective about which documents warrant protection under the State Secrets Privilege, we urge you to pursue this course.

As the principal House and Senate sponsors of the 1986 False Claims Act amendments we have a particularly strong interest in insuring that it is implemented properly. To date, the Qui-Tam provisions or their amendments have resulted in cases that have returned over \$3 billion to the federal treasury. We also sponsored a GAO study earlier in the year that validated many of the concerns raised in Dr. Schwartz's Qui-Tam case. The results of this study highlighted previously undisclosed problems with the 1997 missile tests and underscored the importance of this Qui-Tam case.

Please look into the questions raised by Dr. Schwartz in the attached letter and please do everything possible to insure that the State Secrets Privilege is not misused in this case. We look forward to hearing from you on this matter in the near future. Thank you for your time and consideration.

Sincerely,


HOWARD L. BERMAN
Member of Congress


CHARLES E. GRASSLEY
U.S. Senator

cc: The Honorable Donald Rumsfeld
Secretary of Defense
The Pentagon
Washington, DC 20301

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February 3, 2003

U.S. Seeks Dismissal of Suit by Critic of Missile Defense

By WILLIAM J. BROAD

The government has moved to dismiss the lawsuit of a vocal critic of antimissile technology, saying her case will jeopardize military secrets.

The critic, Dr. Nira Schwartz, has long argued that the heart of the nation's main antimissile system is faulty but that industry and the government have conspired to cover up its flaws. Dr. Schwartz, who became familiar with the system when she worked at TRW, a company involved in the work, said the administration hoped to quash her suit because it was "afraid that if it goes to trial the truth will come out — that the technology doesn't work."

The dispute centers on whether the government is permitted to invoke the state secrets privilege, a provision of common law, and argue that hearing her suit in court will result in public disclosure of information that will harm national security. Private experts say that the Bush administration has invoked its powers before, last November, for instance, in seeking to throw out a case against the Federal Bureau of Investigation, and that courts usually defer to the government's judgment.

"It's the neutron bomb of litigation," said Tom Blanton, executive director of the National Security Archive, a private group in Washington that studies federal secrecy.

Under the provision, the leader of the federal department that has authority over the sensitive matter must evoke the privilege and a court must rule whether the claim has merit — yet do so without forcing a disclosure of the very thing the privilege is meant to protect.

Dr. Schwartz has support from Senator Charles E. Grassley, Republican of Iowa, and Representative Howard L. Berman, Democrat of California, who wrote Attorney General John Ashcroft recently to ask that Dr. Schwartz's case, now nearly seven years old, be allowed to advance to trial. They said a trial would endanger no military secrets.

In Dr. Schwartz's case, the government invoked the privilege on Jan. 15 in Federal District Court in Los Angeles. A hearing on its motion for dismissal is set for next Monday.

The case began when Dr. Schwartz, a senior engineer in 1995 and 1996 at TRW Inc., a military contractor owned by the Northrop Grumman Corporation, accused her employer of faking test results on a prototype antimissile sensor meant to distinguish enemy warheads from decoys. After TRW fired her, Dr. Schwartz filed suit in 1996 under the False Claims Act, a federal law that allows heavy fines against contractors who lie about their government work.

Her case recently began moving into pretrial discovery of relevant papers. TRW, the defendant, which has long denied wrongdoing, subpoenaed 38 military documents, including one that spelled out the technical requirements for its work on the antimissile system. These are the documents the government

<http://www.nytimes.com/2003/02/03/politics/03MISS.html?pagewanted=print&position=top> 2/3/03

says must not be made public.

"We're dealing with an extremely sensitive matter," Dennis C. Egan, a Justice Department lawyer, told the federal court on Nov. 13.

Only three people in the Pentagon — the secretary of defense and two other people — will be allowed to see a crucial declaration of what harm public disclosure of the information could do, Mr. Egan said, adding, "That's how important it is to the government that this be handled very carefully."

Washington, he told the court, was weighing whether to invoke the state secrets privilege.

Hearing about the threatened move, the two main sponsors of 1986 amendments to the False Claims Act, Representative Berman and Senator Grassley, wrote Mr. Ashcroft on Dec. 3 saying they feared that the privilege "may unnecessarily prevent the facts in this case from ever being tried."

They said that Dr. Schwartz did not need secret documents to argue her case and that she claimed TRW was seeking them just to activate the privilege.

"Without these documents," the lawmakers wrote, "TRW will argue that it cannot properly defend itself, and the case will likely be dismissed before the facts are ever vetted."

Dr. Schwartz's lawsuit against TRW could become one of the largest of its kind, Mr. Berman and Mr. Grassley added. "It is important that this case be tried on its merits."

Mr. Ashcroft never replied, an aide to Mr. Berman said. Instead, federal lawyers filed the motion for dismissal. Mr. Ashcroft has not spoken publicly about the case.

The federal motion charged that Dr. Schwartz had revealed military secrets during the litigation and might do so again. The motion included a declaration by Paul D. Wolfowitz, the deputy secretary of defense, on behalf of the secretary.

In a long rebuttal dated Jan. 27, Dr. Schwartz told the court that no secret documents, just the basic laws of physics, were needed to make her case. She denied leaking any secrets. The government's move for dismissal, she said, "should be dismissed."