

## *Special Report*

### **Authentic journalism knocking on U.S. Supreme Court's door**

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August 9, 2005 ([Narcosphere](#))—A story first reported by Narco News has shown up in a Supreme Court petition filed recently by [Sibel Edmonds](#), a former FBI translator who is seeking to take on the White House over a national-security nuclear option known as state secrets privilege.

Edmonds was fired from her job after blowing the whistle on alleged espionage being carried out by a fellow FBI employee. She is now being prevented from pursuing a whistleblower retaliation lawsuit filed in 2002 (based on alleged violations of her civil rights) because of the state secrets privilege claim. The claim essentially shuts down her ability to present evidence in the case under the smokescreen that it would jeopardize national security.

Edmonds' petition for review, called a [writ of certiorari](#), states the following:

Petitioner Sibel Edmonds, a former translator for the Federal Bureau of Investigation (FBI) who was terminated in retaliation for reporting serious security breaches and potential espionage within the FBI's translation unit, seeks review of the judgment of the United States Court of Appeals for the District of Columbia affirming the dismissal of her retaliatory termination case on the basis of the state secrets privilege. Petitioner (Edmonds) also seeks review of the Court of Appeals' . . . exclusion of the press and the public from appellate argument.

The state secrets privilege claim, which was established as part of a 1953 Supreme Court ruling known as the [Reynolds case](#), allows the government to deep-six information in a court case by simply claiming that it is a threat to national security.

This is an extremely important issue in terms of the future direction of free speech and whistleblower law in the United States. The issue has come to the forefront under the Bush administration because of its boldness in asserting the state-secrets claim. According to Edmonds' Supreme Court petition, during the first term of the Bush White House, the privilege has been employed at least eight times—including in the case exposed by Narco News and cited in the petition.

#### **FBI Spy**

Another related case covered by Narco News also involves a former FBI employee, [Lok Lau](#)—who, as a FBI agent, was tasked by the bureau to spy overseas on China. Like Edmonds, Lau has been prevented from presenting evidence in his civil rights lawsuit against the FBI due to national security claims invoked by the government.

Lau, too, was fired from the FBI, allegedly for a shoplifting incident. He claims his deep undercover assignment against China was so pressure-packed that it led him to act out by shoplifting, a claim supported in the court record by the FBI's own undercover operation specialists.

However, Lau never received proper treatment for his diagnosed post traumatic stress disorder and, due to the cloak of national security, he has been restricted from disclosing the details of his undercover assignment in court, which makes it impossible for him to prove his claim that the work itself is the source of his mental disability.

Lau's case does not involve a direct assertion of state secrets privilege by the government. However, his case has yet to proceed to trial, as it was dismissed on summary judgment prior to the evidence-gathering phase of the litigation. So the privilege could yet be invoked if his pending appeal is successful and the case is remanded back to federal district court for trial.

But even short of such an assertion, the government has already employed extraordinary methods to prevent information in Lau's case from remaining in the public record. After a story appeared in a small Texas business weekly based on court documents filed by Lau's attorney, U.S. prosecutors successfully petitioned the court to have portions of those court pleadings retroactively declared classified, even though they had been in the public record for several weeks.

Following is an excerpt from one of Lau's court [pleadings](#):

In November of 1987, on the eve of an historic overseas trip, FBI management advised me that one of FBI's highly placed assets had betrayed me to the subjects concerning my true identity as a FBI agent. I did not cancel my trip for it would confirm asset's allegation. During this trip, stress and fear were constant companions.

During November of 1987, the historic trip turned out to be very stressful with subjects giving me enhanced scrutiny during the visit, personnel armed with machine-guns were a constant reminder to me of my fate if something went wrong, and there were frequent roadblocks on my route of travel. I anticipated death on several occasions, but I somehow survived it all.

The U.S. Ninth Circuit Court of Appeals in San Francisco is slated to hear Lau's appeal later this month.

### **War of Pretense**

The story cited in Edmonds' recently filed Supreme Court brief refers to an article published by the Internet-based publication Online Journal.

However, that article is actually an opinion piece—written by a Narco News reporter—and based exclusively on a [Narco News investigative article](#) about the case of former DEA agent, Richard Horn.

The passage from the Supreme Court brief:

The need for this Court to clarify the state secrets privilege is urgent because the government's use of the privilege is on the rise. . . . In the first term of the present Administration, the government invoked the privilege in at least eight cases. *Id.* at 109, n88 (reporting seven cases); see also Bill Conroy, DEA Whistleblower Exposes CIA's "War of Pretense," [Online Journal](#), Sept. 15, 2004, (reporting that government had successfully invoked the state secrets privilege in a case brought by a former Drug Enforcement Agency employee)."

The Online Journal story itself also credits Narco News:

However, the lid was blown off the whole affair recently when someone leaked documents from Horn's sealed 1994 legal case to an online publication called Narco News.

To date, not one major mainstream publication has picked up on the Narco News investigative report about Horn. That might explain why Edmonds' Supreme Court brief has to rely on Narco News to prove to the Supreme Court that state secrets privilege was even invoked in the case.

Horn is a DEA whistle blower who claims his civil rights were violated overseas but the court hearing his case refuses to allow him to present evidence to prove his claims because the government contends it would hurt national security.

The government makes that claim by simply asserting state secrets privilege. Consequently, Horn's entire case has been sealed. Had it not been for the documents leaked to Narco News, which became the basis for the investigative story in Narco News and a related opinion article written for the Online Journal, no one would even have known the government had invoked the state secrets privilege claim in Horn's case.

From the September 2004 Narco News story about Horn:

Former DEA agent Richard Horn has been fighting the U.S. government for the past 10 years trying to prove the CIA illegally spied on him as part of an effort to thwart his mission in the Southeast Asian country of Burma.

After being removed from his post in Burma, Horn filed litigation in federal court in Washington, D.C., in 1994 accusing top officials for the CIA and State Department in Burma of violating his Fourth Amendment rights.

After languishing in the federal court system for some 10 years, Horn's case was dismissed in late July of this year after crucial evidence in the case was suppressed on national security grounds. Because the entire court record had been sealed by the judge, no one would have even known that Horn's case was torpedoed, if it were not for the fact that an anonymous source leaked the judge's ruling to Narco News.

Horn served in the early 1990s as the DEA country attaché to Burma—which ranks as one of the top opium poppy producing countries in the world.

As the highest-ranking in-country DEA representative in Burma (also known as Myanmar), Horn was charged with overseeing the agency's mission in that country of eradicating the opium poppy, which is used to produce heroin.

From the start, Horn ran into problems with the top U.S. State Department official in Burma, Charge d'Affaires Franklin Huddle Jr., and the CIA chief of station in Burma at the time, Arthur M. Brown.

However, Horn . . . had made inroads . . . in working toward opium poppy eradication in Burma. Horn's success set in motion a series of overt and clandestine efforts on the part of Huddle and Brown to undermine DEA efforts in the region, Leighton (Horn's attorney) alleges.

. . . The intelligence game in the region . . . involves penetrating both worlds, and using information gained to manipulate the politics and forces in the region. As a result, the CIA would have assets planted inside both the government and the major trafficking organizations—with some of those assets likely working both sides of that fence. The CIA officials handling these human assets have built their careers on the information obtained from this spying game, and in some cases may have become corruptly involved in the system itself, according to sources in the intelligence community.

. . . The intelligence community has a lot of motivation to keep a lid on the Horn case. Because the DEA agent actually wanted to do his job and take down the narco-trafficking trade in Burma, he was in fact likely threatening the opposing mission of the State

Department and CIA in the region. Their mission was to maintain the status quo so that the information pipeline could continue to prop up careers and U.S. interests in the region—which had nothing to do with eradication of the opium market.

So the Horn case, like the Lau and Edmonds cases, all have one thing in common: They involve government employees and agents who exposed information that was embarrassing to high-level career bureaucrats within their agencies—and ultimately to the Executive Branch that employs those bureaucrats.

And in each case, the Executive Branch (through the Justice Department) is seeking to assert near dictatorial powers—by invoking the claim of state secrets privilege—to prevent the whistleblowers from pursuing civil-rights protections in the courts and to assure that their revelations are suppressed and concealed from public scrutiny.

In Horn's case, he exposed the CIA's efforts to undermine the so-called war on drugs, exposing the government's policy in that area as a farce.

In [Lau's case](#), he exposed—long before the terror attacks of 9/11 and the subsequent passage of the Patriot Act—that the CIA and FBI worked together closely in the spying game, despite the pretense of limits on the FBI's ability to operate overseas.

In Edmonds case, she exposed that the government, even after 9/11, was willing to be extremely lax in pursuing espionage charges if such an investigation might threaten to up-end the careers of top bureaucrats—and expose the serious gap between talk and walk in the White House's "war on terrorism."

Edmonds, in essence, argues that state secrets privilege and its close cousin, the national-security mantra, is being abused by the Executive Branch as a cover for the White House's failure to do its job.

Now the question is: Will the Judicial Branch do its job in protecting what's left of U.S. democracy?

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