

**Statement of
Judith Loether
Before the
Subcommittee on the Constitution,
Civil Rights, and Civil Liberties
of the
House Judiciary Committee
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I'm Judy Loether. I am an ordinary housewife from the suburbs of Boston. You might call me Chief Cook and Bottle-Washer. I've come to tell you my story.

Six years ago, I didn't know the first thing about the state secrets privilege.

Almost sixty years ago, when I was just seven weeks old, my father, an engineer for Radio Corporation of America (RCA, an Air Force contractor), was killed in the crash of a B-29 Superfortress. This put the death of my father and my mother's subsequent lawsuit against the United States government squarely in the center of the landmark case United States v. Reynolds.

My mother remarried and while growing up I knew very little about my own father and the lawsuit. My mother got some money; I thought she had won. I never knew her case had gone to the Supreme Court. The death of my father was quite a mystery to me; the newspaper clippings in the attic had pictures of the wreckage and talked of secret missions and cosmic rays. My uncle used to tell me that he thought the Russians blew up the plane. After I had my own children I became very interested in this man who was my father, the man whose pictures and documents of life and death had resided in the attic.

When the Internet came to my house I searched for information about anything related to his work and his life. One day I happened to type into the search engine B-29 + accident. It was only chance that brought me to accident-report.com which provides accident reports for Air Force accidents from 1918 to 1953. My first thoughts were that this might tell me about the secret project he was working on, this might tell me if the Russians blew up the plane! When I read this report I felt a great deal of disappointment as there was no information about the project, the mission, or the equipment. Instead, it contained a truly sad and very dark comedy of errors that lead to the terrible death of my father and eight other men. Just some of these terrible mistakes: with engine number 1 in flames, the pilot shut down engine number 4 by mistake; the co-pilot, a survivor, thought he corrected that by turning back on engine number 4, but he didn't; finally, the engineer, charged with the task of cutting the fuel to the burning engine, cut the fuel to engine number 2 by mistake. Now we have the largest bomber in the world, flying on only one of its four engines. What's more, a heat shield to be retrofitted into B-29s to prevent fires was never installed.

The report did spur me on to look for and find another little girl who had lost her father on that plane, now grown and living in my own state of Massachusetts. It was through her that I learned about the Supreme Court case and that very day I looked up the Reynolds decision on my computer. What I read there sent me on a journey that has brought me here today. I read a decision that hinged on this very same accident report, an accident report that the government claimed told of the secret

mission and the secret equipment. All I could think was, *no*, it doesn't! Part of the *Reynolds* decision stated:

"Certainly there was a reasonable danger that the accident investigation report would contain references to the secret electronic equipment which was the primary concern of the mission."

This accident report was *not* about secret equipment. This accident report was *not* about a secret mission. Even more telling, this accident report was not even stamped SECRET. I now understood that my mother had *lost* her case, that she had settled for less money than the Federal court had awarded her. How could the government *lie* in the Supreme Court of the United States of America!?

As time passed I came to understand the significance of the *Reynolds* case in establishing the State Secrets Privilege. I learned that it was discussed in law school courses on national security law. The more I understood what had happened to my mother and why, the more betrayed I felt. It seemed that *the* case that allows the Executive to keep its secrets was, at its very foundation, a gross overstatement by the government to forward its own purposes; to get themselves a privilege. At what cost? The cost was truth and justice and faith in this government.

Five years ago I stood in the woods in Waycross, Georgia, the crash site. I thought about my father who spent his entire career working for the government, developing technical equipment for the B-29. He sacrificed his life for it. His last thoughts must have been for the wellbeing of his family and who would take care of them. Mistakes *were* made on that plane and the Air Force should have done the right thing. The average American who backs out of his driveway and accidentally runs over his neighbor's mailbox, will stop, walk up to his neighbor's house, knock on the door, and own up to his mistake. However hard it is to look the fool, however hard it is to fork over the cash, it is simply the right thing to do, and it's how we all expect our government to act when it makes a mistake. For the other families, for my father, my mother, my two brothers and me, my America did not see fit to do the right thing, to step up, admit to their mistakes, and compensate three widows. It was more important for them to get a privilege. I decided that day to try to let the people of this country know that an injustice had been done. This is not the American way, and is contrary to what I believe America stands for in the minds and hearts of its people.

The judiciary cannot give up any of the checks and balances that make this country great. Judicial review must be the watchdog that guards against actions by the Executive that chip away at the moral character of this country.