P.S.. to the NEWS

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OSHA INSPECTIONS STOPPED

Those who believe in freedom from meddling Federal interference have a new hero: Bill Barlow of Pocatello, Idaho. An independent businessman who runs a plumbing and electrical business with 35 employees, he successfully went into Federal court and dealt a body blow to OSHA -- the Occupational Safety and Health Act.

As a result of Barlow's lawsuit, a three-judge Federal District Court in Boise declared the inspection provision of OSHA "unconstitutional and void in that it directly offends against the prohibitions of the Fourth Amendment."

The decision enjoined the Secretary of Labor "forever and permanently ... from acting or attempting to act pursuant to or in furtherance of Section 8(a) of OSHA ... and from conducting or attempting to conduct any general searches or inspections of the non-public portions of the premises of the plantiff herein pursuant to Section 8(a).[11]

When the OSHA Act was passed in 1970, Secretary of Labor James D. Hodgson called it the "most significant legislative achievement of the year, perhaps the decade, for the American worker."

Others were less enthusiastic. They saw it as an attempt, under cover of do-good liberal semantics, to rescind the 4th Amendment of the U.S. Constitution which guarantees not only our right to be secure in our "persons, houses, papers, and effects against unreasonable searches and seizures," but also our right not to have a search warrant issue except "upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Barlow was not the first businessman with a case against OSHA. In Texas, New Mexico, Oregon and Ohio, other employers had previously and successfully

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resisted OSHA searches on 4th Amendment grounds. They won because the OSHA searches were arbitrary or conducted without a valid warrant.

However, even though OSHA has not won any major case, those previous cases were decided on the assumption that OSHA searches could be undertaken once a valid search warrant was obtained.

The Idaho case is different. Bill Barlow was not merely resisting an OSHA search as arbitrary or warrantless. He went into court to assert a 4th Amendment challenge to OSHA's very right to inspect.

The Federal court agreed, holding that Congress never authorized OSHA inspections at all, with or without a warrant.

The original purpose of OSHA was to provide workers with safe and healthful working conditions. The Act required employers to comply with safety and health standards promulgated by OSHA, and to maintain records and file reports.

The problem is not so much with the standards as with the enforcement. Labor Department safety inspectors were authorized to enter businesses without notice. Businessmen look upon this as bureaucratic harassment of lawabiding citizens against whom there is no evidence of any wrongdoing whatsoever.

Citations for serious or nonserious violations can carry monetary penalties of up to $1,000 per violation. Failure to correct violations within the prescribed time may result in a penalty of up to $1,000 per day. Wilful or repeated violations may result in a penalty of $10,000 per violation.

The upshot of this case is that a Federal Court may have put a Federal agency out of business by halting its major activity: inspection of business premises. It will be interesting to watch what happens on appeal.

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