P.S. to the NEWS
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OSHA

In most cases, the individual citizen doesn't have much of a chance if he undertakes to do battle with a federal agency. One federal Goliath,however, is reeling under the attacks of several Davids who have successfully hit a vulnerable target in OSHA (Occupational Safety and Health Administration).

It looked hopeless when a small plumbing and heating contractor in Pocatello, Idaho, named Bill Barlow said "thou shalt not pass without a warrant" to an OSHA inspector. A couple of years later, in 1978, the U.S. Supreme Court agreed with Barlow, reaffirming the Fourth Amendment safeguard against unreasonable search and seizure.

Before Barlow objected, OSHA inspectors had been walking in on any business, without any warning, without any warrant, and without any reasonable cause to suspect wrongdoing of any kind. Common criminals have constitutional rights against that sort of treatment, but it was open season on innocent businessmen.

The Barlow victory was followed by the Weyerhaeuser case which held that the warrant must be based on evidence of probable cause.

In the most recent setback for OSHA, Marshall v. Gibson's Products, Inc., the Fifth Circuit Court ruled that the Secretary of Labor cannot file suit to enforce an OSHA inspection even when OSHA has secured a warrant. The court said that, since Congress had not granted the Secretary of Labor that authority, the courts lack subject matter jurisdiction to hear a suit by the government to force a business to submit to an OSHA inspection. In effect, this means that the courts will not require a businessman to admit an OSHA inspector even if he has a warrant.

OSHA hasn't raised the white flag of surrender yet. Government agencies do not, like old soldiers, quietly fade away. OSHA can be expected to fight back

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energetically, either by an appeal to the U.S. Supreme Court or by asking Congress for more authority, or both.

However, OSHA seems to be getting at least part of the message that it lacks sufficient grassroots support to remain a viable government agency. In December 1977, OSHA announced it was revoking more than 1,100 so-called "nuisance standards" governing such things as the height at which fire extinguishers could be mounted.

There is no solid evidence that OSHA regulations have reduced injuries on the job. Recent findings by the Bureau of Labor show that occupational deaths and injuries have increased dramatically. They rose 21 percent in 1977. Furthermore, when OSHA imposes excessive economic costs on small businesses, the result is more likely to eliminate jobs than to improve them.

Congressman George Hansen (R.Id.) has introduced a bill to abolish OSHA. He calls the agency "counterproductive and unnecessary." This verdict is corroborated by a recent Senate study which concluded that the government ought to abandon its efforts to set standards for job safety.

The Senate study, prepared by two professors in the John F. Kennedy School of Government at Harvard, urged that OSHA be "disbanded" and replaced with a better alternative. The study was written by professors Richard Zeckhauser and Albert Nichols.

Congressman Hansen agrees that there must be better methods of handling the safety of American workers than through an agency with OSHA's record of failure. "The incentive system has long been proven to be superior to the punitive means employed by OSHA's incompetent approach," Hansen said.

Caught between court action which has stopped OSHA's unconstitutional procedures, and congressional action to stop OSHA's unpopular procedures, it's beginning to look as though OSHA's days may be numbered.

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