

the *Tribune*. He called Maldonado into court and vacated the fine. The secretary of state's office agreed to lift the license suspension.

The *Tribune* told in detail the experiences of people brutalized by police in more than thirty specific cases. The reaction to the series came on numerous fronts as public officials announced determination to halt police brutality once and for all. Cook County state's attorney Bernard Carey summoned a grand jury to investigate police brutality and shortly afterward three policemen were named in indictments. They face charges ranging from attempted murder to perjury and false arrest reports. More grand jury action is expected.

Marlin Johnson, president of the Chicago Police Board, ordered acting police superintendent, James M. Rochford, to:

¶Prepare a new psychological screening program for recruits.

¶Set up a plan to re-evaluate policemen already on the force who show signs of emotional instability.

¶Investigate police recruiting methods which have been admitting a decreasingly small number of applicants from minority groups.

Mayor Daley spoke out against police brutality and has said he would seriously review a proposal for an independent city agency to investigate police conduct, a plan he had rejected in late 1972. State's attorney Carey said he would form a special unit in the prosecutor's office to handle police brutality cases. At the same time, new legislation was introduced in the Illinois General Assembly which would make it mandatory for all police agencies in the state to give psychological and other testing to policemen. The state agency would have the power to suspend a policeman found guilty of brutality.

It is possible, but not yet certain, that Chicagoans may soon be able to look on a policeman, whose salary they pay, without having the blood freeze in their veins. □

THE ROOTS OF WATERGATE

Impeachment Is Only a Crossroads

ARTHUR I. WASKOW

The Watergate coup of 1972 was a walloping deviation from the American norm, but it was not *just* a deviation. It had deep roots in the American social and political process that began forty years earlier, when Franklin Roosevelt came to power at the bottom of the Great Depression. To put it bluntly, "Watergate" was an attempt to create a Presidential dictatorship. The attempt did not come to an end when Watergate broke open: the Nixon proposals for broad new Presidential power to allocate energy were simply another version of it. So if Congress presses forward with impeachment, that might deal with the Watergate deviation of the moment and for the moment; but to prevent another such attempt in the future it will be necessary to dig painfully deep—to the roots of those forty years.

The most important roots are in the failure of American capitalism to "work" in the 1930s. The emergency of the Great Depression changed in form and impact but it never went away, and neither did its most important product—the magnification of Presidential power. That power ultimately grew into Watergate, and it is still necessary for us to solve the problems of the 1930s by some method other than the Presidency if we are to prevent two, three, many Watergates.

In the 1930s we learned that private investment and the profit system could not of themselves keep creating jobs for everyone. When Roosevelt took office, the economy was in collapse, and he responded by focusing all

public attention on himself and seizing enormous power to deal with the disaster. But the drama of Presidential activity alone—even given the new Presidential power over the media that was made possible by radio and the "fireside chat"—could not make the factories hum again. The question was, what policy would Roosevelt follow and whose interests would he support? Socialists, some of the labor movement and some liberals urged that the government undertake huge public works and transfer huge amounts of wealth and income to the poor and the working class—creating huge deficits in the federal budget as a way to re-employ people and keep the cash registers dingling.

But Roosevelt realized that such a policy would bring him into head-on collision with the great American corporations, and he refused to follow that line. Instead, beginning with an invitation to the great corporations to join in the National Recovery Administration, he tried to create a Presidential-corporate alliance that would end the depression. The New Deal spent *some* money on public works, redistributed a small amount of income and created small deficits, but not nearly enough. By 1938 even these measures—which had produced a slight improvement—were reduced, and the depression continued to deepen.

The problem was that the corporations feared that any massive redistribution on public works would undercut the whole system of capitalism. If producing things for public use to meet public needs worked better than private enterprise producing for profit, why stop at "public works?" Why not include oil, electric power, transportation? So the corporations forbade the New Deal to do what would have been necessary to end the depression.

Until 1940. By then, the Great Depression had so badly damaged the governments of Japan, Germany,

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Italy, France and England that there was an international crisis and finally war. The American Government believed that interests it viewed as crucial were endangered by that war. Its response was first to create the mechanisms for an Army; then to become more and more overtly involved in the combat; then to create an enormous military system. And that system became the basis for an enormous federal budget deficit, an enormous "public works" program, and—in this way—solved the Great Depression.

What the great corporations would not allow if it were to benefit the poor and working people, they did allow when it benefited themselves and the military services. Indeed, the great corporations sent their managers to Washington to help put the war effort together, and they became central figures in the new, greatly expanded national security system that emerged from the war.

And on its side of the new Presidential-corporate alliance, the Presidency also gained from the bargain: gained not only the public prestige of directing a highly successful war but the actual power of controlling the largest armed forces in American history, the first sizable international espionage agency ever run by the United States (the Office of Strategic Services [OSS]) and the new military-scientific establishment built around the atomic bomb. By the time the war ended, the Presidency had gained powers over the economy, foreign affairs and domestic politics that could be compared only to those Lincoln grasped in order to put down the Confederacy.

But the Civil War Presidency was put back under the control of the traditional checks and balances almost at once. Congress impeached Andrew Johnson because it decided he was using the newly increased Presidential powers, especially the power to use the Army, to decide basic political issues. Although the Senate failed to remove him, the impeachment restored something like the pre-Civil War balance between Congress and the Presidency. After World War II, however, the United States rapidly entered a period of cold war. The draft was preserved, and though the number of enlisted men and women in the Army was reduced, the professional military structures were kept and strengthened. From the OSS was created the Central Intelligence Agency; from the atom bomb project the Atomic Energy Commission, an Air Force with nuclear weapons and a far-flung academic-military interface; from the military production of World War II an entire "military-industrial complex."

At the peak of this new machinery stood the Presidency and the corporations. The President was now operating with very few of the old constraints from Congress; for example, executive agreements, without Senatorial consent, replaced treaties for many crucial acts of foreign policy. Just beneath the President now stood not Congress but the president of General Motors, the key lawyers of Wall Street firms, presidents of giant foundations, who for part of their lives redefined themselves as Secretaries of Defense and State, CIA directors, special White House assistants—the recirculating elite which moved to and from high policy posts in Washington, New York and the other great corporate headquarters. In short, the Eastern Establishment which had controlled the country ever since

1870, usually by controlling Congress, now was sharing power with the Presidency. Their policy was massive investment in the military, in the technological ghettos of the universities, and in the automobile/highway system, but not in any other public works. The urban and rural substructures of life—education, health, sewage, mass transport, recreation—kept eroding.

From the solidification of the cold war in about 1948 to about 1960, this system worked. But its own dynamic was preparing to tear it apart, since it was creating two new forces: a new base for popular insurgency, and a new set of powers that be who were not comfortable with the Eastern Establishment.

On the one hand, the creation of campus "youth ghettos," rotting rural areas and dilapidated cities led directly to a new alliance of insurgents. The black communities in the rural South and the urban Northeast turned themselves from pools of misery into rivers of insurgent political energy. They created a whole stream of demands for reinvestment in rural and urban substructures—demands that began to put pressure on the whole Establishment strategy of military investment.

Meanwhile the military system itself had become a focus of doubt, anger and insurgency. For the new high-technology military had turned out to be both very frightening (it could blow up the world) and very feeble (it could not win in Korea, Cuba or Vietnam). And the military investment became so skewed as to begin damaging the economy it had propped up since 1940. For one thing, the insistence on fantastically swift changes in military technology created more and more capital-intensive military industry—especially aerospace—and fewer and fewer new jobs. Thus the corporations kept their stake in the military, but workers had less. Second, the investment of 10 per cent of the gross national product in the military for an entire generation was a continuous inflationary pressure, since workers and soldiers were being paid to produce products that no one could eat, wear or live in. Third, the new global military system required spending billions overseas, thus tilting the international balance of payments. So the external and internal usefulness of the military—to win wars at low risk and to keep the economy going—both began to dissolve in the 1960s.

The result was an anti-military movement that began with demonstrations against fallout shelters and H-bomb tests and grew into anti-war teach-ins, draft resistance, the siege of the Pentagon in 1967, the Chicago collision in 1968 and the Cambodia uprising of 1970. As students organized large-scale disruptions, the new middle class and even the government bureaucracy began to be affected, and so the anti-military sentiment also created the McCarthy and Kennedy campaigns of 1968, the nationwide Moratorium days in 1969, demonstrations of federal employees against the war, and the leaks of secret information about the SALT arms-management talks, the Indo-Pakistani war, and of course the Pentagon Papers. By 1970 both the black and the anti-military insurgencies had created major strains on the Presidential-corporate political arrangements that began in 1940.

But the process of militarization since 1940 had had another major effect, alongside the sparking of insurgency: the creation of an independent power center uneasily

coexisting with the Eastern Establishment. This new center, made up of the military and paramilitary institutions themselves and the Southwestern oil and aerospace industries, has been called the "Cowboys," as against the older corporate "Yankees." (Carl Oglesby was the first to employ this terminology.) Its power is clearest in California and Texas, but more important than its geographic base has been its ideological orientation—to Asia rather than Europe, to military rather than commercial ways of controlling other countries, to repression rather than co-optation in domestic politics. The Cowboys' power grew through the 1950s and 1960s but leaped forward when Nixon became President. (The appointment of John Connally, a Cowboy, to the special preserve of Eastern financial power, the Treasury, was an index of the shift.) And during the first Nixon Administration the growing divergence between Cowboy and Yankee interests became an open break—defined most openly when *The New York Times* published the Pentagon Papers and the Administration responded with a historic attempt at prior censorship.

One major cause of this break was the fact that the military machine was putting greater and greater pressure on Eastern economic and financial arrangements. After the Tet offensive in 1968 the dollar went through its first major post-depression crisis. That crisis helped force many of the Easterners to oppose sending more troops to Vietnam. "The dollar or the war" became the crucial issue dividing the two power centers. From 1968 on, Nixon's insistence on prolonging the war helped keep the dollar in trouble and exacerbated Cowboy-Yankee relations. Meanwhile, the economic pressures began to affect the working and middle classes, through the price-wage-tax bind. In 1970 postal workers carried out and won the first massive illegal strike of federal employees in American history. Demands for tax reform spread; wildcat strikes multiplied; consumer protests against unsafe, unhealthy products began to be heard. Some response to these pressures, as well as to those of the black and anti-militarist movements, became necessary.

The response was what might be called *the two Watergates*: one in the political sphere, one in economics. Both were a reaching out for ultimate Presidential power to control American society: in short, Presidential dictatorship. In politics, the Presidency brought the techniques of covert war home, first against the Left and then against the Center itself, against the Democratic Party. In economics, the Presidency took direct control of wages, prices, the international monetary standard, even—through impoundment—the federal budget. And when the energy policies of the Presidential-corporate alliance brought on the energy famine of 1974, the response of the alliance was again to manipulate the crisis by Presidential power for the benefit of the oil oligopolies, and to demand even more dictatorial Presidential powers over the economy.

Using the techniques of war at home was not totally new: the goal of Watergate was. In World War II, Franklin Roosevelt had ordered all persons of Japanese descent on the West Coast—citizens and aliens—to be sent to "detention" camps as if they were prisoners of war. He had ordered his Attorney General to begin using illegal

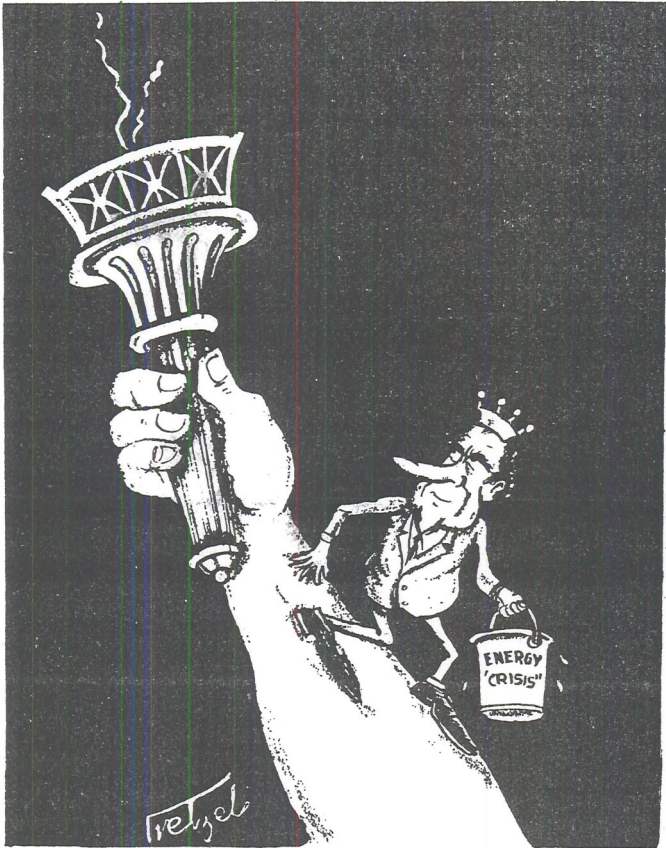
wiretaps against "subversive" groups. In the period of renewed crisis late in the 1960s, the Johnson administration first ordered military intelligence to spy on and make dossiers for black and anti-war activists—a list that soon ran to millions of names. Then, as leaks of foreign-policy information began to distress the Nixon Administration, the targets shifted to senior staff of the government itself, and to reporters of the Eastern Establishment press. And finally, when the Nixon White House realized in 1971 that the Democrats led in Presidential polls, the target shifted to the Center. To those in power, the most crucial element in American constitutional arrangements—the free flow of office from one Establishment-oriented political party to another—had become illegitimate.

Why so? Because, since the Civil War, the Eastern Establishment had controlled both Democrats and Republicans—with the one exception of 1896—and had never therefore seen the imminent possibility of losing power, no matter which party came to office. But by 1970, an independent power center had to make its own judgments of the future. The Cowboys no longer had any serious stake in the Democratic Party. If Nixon lost, they were out. So they wanted to prevent the Yankees from nominating a Democratic candidate whom the Yankees could elect and control, and to do that they had to bug, tap, sabotage and burglarize the Democratic Party. To do that, it should be noted, they had to use not merely analogically but in actual fact, the expertise of the CIA: Nixon's old war against the Cuban Revolution came home, and the enemy now was the Eastern Establishment.

But the policy was to subdue, not smash, the Yankees: to force them on the one hand and cajole them on the other to support Nixon. So, simultaneously with the secret action to break the Yankees' control of the Democratic Party, came public actions intended to disarm them by incorporating part of their policy. After the first Cowboy-Yankee open skirmish over the Pentagon Papers, the Nixon Administration adopted much of Yankee foreign and economic policy: détente with China and Russia, an attempt to reach a Titoesque settlement (including American aid) with North Vietnam while preserving U.S. interests in South Vietnam, reform of the international monetary system, wage and price controls so arranged as to permit greater corporate profits than ever.

This two-pronged policy was able to call on tens of millions of anonymous dollars from the corporate leadership. It did not need to compromise with the "Progressive Yankees" who were arguing for massive redirections of money from the military into domestic reconstruction and the pursuit of some kind of welfare capitalism as the ultimate solution of the Great Depression. Indeed, on the most immediate surfacing of this issue—the 1972 Congressional appropriation of billions for health, education and anti-pollution public works—the President demanded and almost got from Congress permission for an item veto; and when denied, he took the power anyway through impoundment.

The combination of White House sabotage and Left insurgency gave the Democrats a Presidential candidate with few ties to the Eastern Establishment or even to its labor lieutenants. So most of the Yankees felt compelled to support Nixon—which had been exactly the point of



both the secret and public halves of the Nixon policy. After the election the Administration repaid its corporate contributors by taking the lid off prices, which began to climb at a record rate for peacetime. And it moved to consolidate its control of the country by staffing the sub-cabinet with men beholden to no political interest at all—except the White House. It even decided to give legitimacy to its domestic covert war against the Left and Center. It proposed an Official Secrets Act which would have muzzled the press against printing such material as the Pentagon Papers or the Watergate revelations, and its Supreme Court proposed rules of evidence that would have allowed the Executive to exclude any evidence from the Court on the ground of “national security.”

Thus the stage was being set to put all the pieces of Presidential dictatorship into place, with the color of legality, during the second Nixon Administration. But the balkiest elements of the Eastern Establishment, *The Washington Post* and *The New York Times*, with the help of a few other surviving elements of the liberal society—an intransigent judge and a few intransigent Senators—prevented the scenario from being played out as intended, by forcing open the Watergate story. They precipitated a major crisis: that is, a major crossroads for decision.

However, what remains is a decision, a choice, not an inevitable process. The revelations by themselves do not mean that the Watergate danger has been ended. The first clumsy effort to establish a Presidential dictatorship need not be the last. For example, the Nixon White House tried to do the whole affair on its own, even asking the CIA to immolate itself for the President’s sake. A

more intelligent effort at Presidential dictatorship would try to align the CIA and FBI with its interests.

Ten years ago, who could have imagined that any President would remain in office after the public discovery of the grossest use of the White House, CIA and Justice Department to make covert war on the leading opposition party, so as to make the Presidential election a farce? If Nixon even stays in office after trying to take over the whole political process, he—and, more important, irresponsible Presidential power—will have won, just as Nixon won in 1970, after he weathered the Cambodian ruckus. Then the next President to try for a coup will do it much more intelligently and effectively.

The only way to defeat Presidential power is to create other power that is stronger—and the only way to show it is stronger is to win the political war that Nixon initiated. If the Eastern corporate, Establishment forces Nixon to leave office, it will gain more power; if the Congress does so, it will; if an insurgent public, it will. If Nixon stays in power, it is he and his successors who will gain power. They will not be able at once to install a Presidential dictatorship of the kind Nixon was trying to create, but there will be a new “floor” under what is conceivable; even at its weakest, the Presidency will not be weaker than the early Nixon-Pentagon-CIA-FBI-Justice complex was, and at its strongest, next time around. . . .

Yet, even now, the Eastern Establishment and Congress have by no means decided to win the political war. It shows many signs of still hoping that the Cowboys can be tamed without being broken: that a somewhat better policy mix can be wrung from Nixon, who is now subject to political blackmail, or from Ford, who has exactly the same politics as Nixon but will be somewhat weaker and more open to compromise. When the first serious political issue—the alleged “energy crisis”—came along, the Yankees immediately acquiesced in the closest Presidential-corporate alliance imaginable, even though it was turned to the uses of the oil oligopoly: as an excuse to push independent oil dealers out of business, raise prices and violate environmental protections. The Eastern Establishment accepted all this. It rejected only the most extreme of Nixon’s requests for new Presidential power over energy, while adding major new dimensions to Presidential power through the authority to allocate energy. Even while it talked about restraining the Presidency, its actions increased that power.

Moreover, most of the liberal members of Congress and liberal counter-Establishment figures like Ralph Nader and Jerome Wurf discouraged such techniques for building a massive organized public movement for impeachment as rallies and town meetings. They want Nixon forced out by less disturbing means and by the *threat* of mass public upheaval. But even if this closet-impeachment approach could work, it would leave the American people less than citizens.

Indeed, the way in which impeachment is demanded will probably have deeper political effects than whether it actually takes place. Compare two almost polar possibilities: on the one hand, if there is little popular action and the President is actually removed by House and Senate action focused solely on his most outrageous obstructions

of justice, while simultaneously the Presidency is given added powers to control commerce, commodities, energy, wages—and therefore strikes—then the process leading toward Presidential dictatorship will simply have been slowed, or redirected into seemingly economic channels. For example, imagine the possibility that a Presidential board might be appointed to allocate scarce newsprint; or to allocate energy, when certain industries or universities are the base of an insurgency. Already some political activists have noted that before spring, civilians may not have enough gasoline to be able to *choose* whether to mount a large-scale demonstration in Washington, even though, or because, the military will have all the gasoline it requests.

On the other hand, a massive public campaign for impeachment which did *not* win removal of the President but which *did* assert the right to strike against Cost of Living Council wage guidelines, which demanded major cuts in military stocks of gasoline, which created local and regional planning of the economy, etc., would begin the process of real reductions in Presidential power that would prevent future Watergates.

An impeachment campaign that wants to reduce Presidential power permanently rather than for a moment should therefore set its goals beyond impeachment—on two levels. First, it must focus on the institutions whose existence made Watergate possible. The Cowboy corporations and paramilitary institutions like the CIA and FBI were willing to join in making covert war against the Left, and provided expertise and the social base, though not full partnership, in the war against the Center. The first job, therefore, is to tame or break the power of the Cowboy-military-police coalition. Covert war abroad *and* at home must be forbidden.

Much of the necessary legislation already exists in Congressional committee files, but it was written only one piece at a time, and each piece has only a tiny lobby. It should be brought together into an Act to Enforce and Implement the Bill of Rights—an act that should become a major demand of the impeachment campaign. For instance, there should be provisions:

¶Protecting working reporters in doing muckraking, *at the same time* provision is made for broader access to ownership and control of the media through automatic subsidies for small magazines, film makers, etc.

¶Prohibiting surveillance, eavesdropping and the placement of informers in political groups, the press, unions, or government offices.

¶Defining war crimes in detail and specifying criminal punishments for them.

¶Prohibiting covert interventions in the economies and politics of other countries by the CIA and other agencies.

¶Strengthening legal oversight powers of Congress by giving additional powers to the General Accounting Office and perhaps by creating a Standing Committee on Impeachment to review possible high crimes and misdemeanors of Cabinet and other high officials, to deal with cases where the Executive wants to commit or to hide rather than prosecute crimes.

¶Giving the citizenry itself new avenues of access to the courts and new legal standing to create court cases on such questions, through suits for injunctions, manda-

mus and tax relief and through the rehabilitation of grand juries so that they represent the people, not the Executive.

Just as the outrages of George III sparked not just a rejection of British rule but the creation of new and strengthened institutions of self-government, so the Nixon outrages should spark not only impeachment but what might be almost a new Bill of Rights. And while such demands are being posed to Congress, the impeachment campaign should be pressing at the local level such related demands as the review by city and state authorities or by special independent commissions of all ties between federal police and local "Red Squads" in placing informers, bugs, etc., and the creation of groups to watch constantly over telephone companies, banks and other such centers of information often illegally spied upon by police.

Second, we must focus attention on the "economic Watergate" of this Administration—the President's seizure of greater and greater powers to rule the entire economy—power to write and rewrite the federal budget, to turn price and wage controls on and off, to control the monetary system, to allocate energy. We must understand how Watergate is connected to these bread-and-butter issues. The power to decide them must be returned to public control, at the national and local levels. For instance, such a program would prohibit the use of federal troops to break strikes. It would provide for elected, not Presidentially appointed, worker-consumer boards to review the pricing and production policies of major companies in the energy, food, transport and similar industries.

It would include a reassertion by Congress of its obligation to decide issues of rationing, taxation, tariffs, spending, etc., rather than turning these over to the President. And it would include state and local entry into fields of industrial and agricultural production to by-pass the corporate oligopolies: thus, state purchase of farms to grow cheap food and state assistance to food co-ops to deliver it; state investments in solar and wind energy, etc.

Such experiments and pilot programs would be the first step in going beyond this last generation's basic policy of dealing with the problems of American capitalism through huge military expenditures at home and global dominance abroad. The elephantine armed forces, intelligence agencies, covert mercenaries, etc., that have been essential to the global empire, have necessarily come home to make war here too. If these are to go, we must work out some other way to deal with the crisis of American capitalism for which the military system acted as a temporary solution. Thus, we cannot simply go back to 1940; we must go forward to a form of self-government that meets public needs, that puts the economy under the control of workers and consumers, that puts the political process under the control of real live citizens. The only complete answer to Watergate, as to any effort at dictatorship, is the creation of means by which the people can govern the institutions which govern their lives. Every demand for immediate partial redress should keep that long-run goal in view. The Republic *as it was* can never be restored; whether the U.S. Government can be made into an institution that serves the public, now depends entirely on whether the public acts.

As for how to begin the process: individual acts by lonely citizens, like the flood of telegrams after the Sat-

urday night massacre, are not enough to create new centers of local power. Not only impeachment but with it a program of democratic renewal might become the focus of thousands of town meetings all across the country—town meetings at workplaces, union halls, synagogues, and churches, neighborhood community centers, schools and campuses—all the places in which Americans have and occasionally use real power. If it were possible for a network of impeachment-oriented groups like the new National Campaign to Impeach Nixon to address the broader issues without defining one particular line of policy, such

a group could probably multiply the present political energy behind impeachment by focusing on a nationwide Week of Emergency Town Meetings to discuss these questions. But even in the absence of such a national call, an explosion of local town meetings would change the situation and raise more basic issues. To do less, to depend on Congress alone to impeach the President, or the Establishment alone to force his resignation, is to reinforce the apathy and the dependence on the Presidency to solve problems that will soon put us back into some new version of Watergate—with or without impeachment. □

ALIEN DISCRIMINATION

The Case of a Mexican Seamstress

MARVIN M. KARPATKIN

Not all of the inhumane decisions of the Supreme Court can be blamed on Nixon's appointees. Shortly before its year-end recess, the Court voted 8 to 1 that the Farah Manufacturing Co., well known for its anti-union activities, could continue to deny employment to Mexican-American aliens, notwithstanding the Civil Rights Act of 1964 which bars discrimination based on "race, color, religion, sex or national origin." [See "Farah Slacks and Pants: Chicanos Extend the Boycott" by Philip D. Ortego, *The Nation*, November 20, 1972.] The basis for the Court's holding was a rigid, technical distinction between "citizenship" and "national origin," which would satisfy the most vociferous advocate of "strict constructionism."

The case involved Mrs. Cecilia Espinoza, a lawfully admitted Mexican-born resident alien. She lived in San Antonio, Tex. with her husband, a U.S. citizen. Mrs. Espinoza sought employment as a seamstress at Farah's San Antonio factory, but was rejected because of a "policy" against employing aliens. The Espinozas complained to the local office of the Equal Employment Opportunity Commission, and the EEOC found that the federal anti-discrimination law had indeed been violated, since one of its own regulations provided:

Because discrimination on the basis of citizenship has the effect of discrimination on the basis of national origin, a lawfully immigrated alien who is domiciled or residing in this country may not be discriminated against on the basis of his citizenship.

Farah did not yield to the EEOC, and the Espinozas sued in federal court. Since the issues in the case involved not just the Espinozas, and not just Chicanos but hundreds of thousands of lawfully admitted resident aliens of a multiplicity of national origins, it had attracted considerable attention by the time it reached the Supreme Court. Supporting *amicus curiae* briefs were filed by the Mexican American Legal Defense Fund and the Employment Law Center, one of the highly respected

OEO legal services "backup" centers. An employer group with interests in Guam, the Facilities Management Corporation, represented by a prestigious Wall Street firm, sought to persuade the Court, via an *amicus* brief, that any decision it made should not interfere with the firm's practice of paying lower minimum wages to aliens.

But the array of *amici* was made even more dramatic by the divided position of the U.S. Government. This was a civil case between a private employee plaintiff and a private employer defendant, yet different agencies of the government were before the Court, on opposite sides. The EEOC was an *amicus* in support of the Espinozas, and the Justice Department had previously filed a brief urging the Court not to take the case.

The Supreme Court, in ruling for Farah, disregarded the EEOC regulation, thereby rejecting a customary Court maxim that, where a statute is to be construed, the opinion of the agency charged by Congress with its day-to-day enforcement is entitled to great deference. This rule was discarded because the Court concluded that the EEOC was wrong, since Congress, as the Court saw it, never intended the ban on national origin discrimination to include "alienage" discrimination.

According to the Court's super-refined analysis, when Congress enacted a ban on discrimination because of national origin, this did not necessarily include a ban on discrimination against noncitizens. The Court's logic has a surface appeal, because Congress did not include the word "citizenship" in the statute, and it is possible for a citizen to be the target of discrimination because of national origin. On the other hand, Congress could have written a narrow definition of national origin discrimination by allowing discrimination against aliens, but it did not. Since the group of potential victims of such discrimination obviously includes noncitizens as well as citizens, it is at least as logical to assume that Congress intended to legislate broadly, especially in a civil rights statute.

In attempting to divine Congress' intention, the Court majority pointed to some ambiguous language in the House debate, but admitted that the evidence was "meager." The Court cited no legislative history to show that the bill's sponsors intended to allow discrimination against

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