U.S. Supreme Court Rules Against OSHA

The U.S. Supreme Court on May 23, 1978—by a 5 to 3 decision—ruled in favor of the Fourth Amendment in its historical decision involving the Barlow Case (the Idaho contractor who had refused OSHA inspectors permission to enter his property for an inspection).

In the wide-ranging decision, the nation’s highest tribunal dealt a death blow to the current inspection system utilized by the Occupational Safety and Health Administration. The upshot of the decision is that OSHA inspectors are now required to obtain a search warrant before they may enter a contractor’s job or premises.

While inspectors are not required to obtain warrants, the difficulty in obtaining such a legal authorization will not be identical with criminal requirements. The high court has allowed issuance so long as the obtaining of the warrant is considered part of an over-all investigation, i.e., not necessarily on the basis of "probable cause."

Although the decision itself is limited strictly to the OSHA matter, it is quite likely because of the impact of a decision of this kind to constrain similar inspection procedures by other government agencies. And it stops, according to iaWCC/GDCI Executive Vice President Joe M. Baker, Jr., the possibility of a flood of similar type legislation which would make a mockery of Constitutional protections against warrantless searches.

The decision is viewed as pretty much of a total vindication for iaWCC/GDCI which, alone among Washington’s construction management community, saw the importance of “keeping the heat on” in this controversy.

“I would be remiss if I did not sound a word of caution about this historical decision,” Baker warned. “This decision by no means signals the end of OSHA or that agency’s obligation to work for the health and safety of construction workers.

“The inspection procedure—searching private premises without first obtaining a warrant—is the only part of the OSH Act that has been struck down. OSHA will adjust quickly to this slight constitutional inconvenience.

“It’s just that this time around the construction community will have a reasonable opportunity to help fashion a system that will do what OSHA is intended to do: help eliminate accidents and unnecessary health hazards,” Baker concluded.