

The UAW vs. the NCLC

Appeal raises key questions of legal ethics

An appeal now pending before the U.S. Court of Appeals for the Second Circuit in *United Autoworkers of America vs. National Caucus of Labor Committees, et al.* raises the question of the role of former government officials in exercising undue influence over the judicial process with a vengeance. Recent American Bar Association discussions have proposed a series of strictures on the activities of former government officials, particularly attorneys, that many claim would discourage most people from ever entering government service. The appeal brief, excerpted below, makes startlingly clear that the "revolving door" problem is not to be resolved by any particular set of rules, whether they be strict or lax. Rather, the nature of the ethical conflicts which arise, no matter what the "rules," is strictly political and must be recognized by the Congress and the courts as such.

In brief, the matter described below involves a trademark suit brought by the United Auto Workers against the National Caucus of Labor Committees, Campaigner Publications, and New Solidarity International Press Service. The lawsuit, the UAW admits in memoranda now public, was instituted solely to bankrupt those organizations, which the UAW perceived as major political enemies. To create a cause of action, the UAW claimed that the newspaper *New Solidarity*, published by Campaigner Publications and employing New Solidarity International Press Service, infringed on the UAW's trademark rights in its monthly magazine *Solidarity*. To strengthen their claim, the UAW, after filing the lawsuit, applied for a trademark.

Four years of litigation followed just as the matter was to come to trial, the defendants in the case discovered that the UAW, through their attorneys Steven Schlossberg and the New York firm of Cowan, Leibowitz and Latman, were employing former FBI in-

formant Gregory Rose as their star witness in the case. Rose had also infiltrated the offices of the defendants' attorney and removed the case files concerning the UAW. Informed of this gross breach of ethics, the court, through its magistrate, disqualified the UAW's attorneys.

The UAW then determined to exercise its political muscle to rescue a collapsing case and hired the law firm of former U.S. District Court Judge Harold J. Tyler, Patterson, Belknap Webb & Tyler, to defend its disqualified attorneys. This decision came at the recommendation of the well-known political "fixer" Joe Rauh, Jr.

Rauh's intent was so brazen that the NCLC and Campaigner Publications almost overlooked it. Judge Tyler had been the U.S. Deputy Attorney General who had ordered a reluctant FBI to pursue its investigation of the NCLC (now discontinued) and who effectively oversaw Rose's informant activities at the time he was filching files! Judge Tyler, himself a leading expert in legal ethics, insisted there was nothing improper in his firm maintaining its appearance in the case. District Court Judge Lawrence Pierce obsequiously agreed. The irony is that, had Judge Tyler's firm accepted the case 30 days earlier, the firm would have been *criminally* liable under U.S. statutes designed to prevent influence peddling.

The case is now on appeal to the Second Circuit Court of Appeals in New York. As the excerpted brief demonstrates, this ethical issue is of the greatest importance to any individual or corporation excepting a case to be tried on its merits, rather than on the influence, power, and particular knowledge of former government officials who may have been investigating them in the course of one of any number of regulatory procedures.

— Felice Gelman