

SISTER RITA GETS 6-MONTH SENTENCE—DOODER NUN AWAITS JAIL FOR PROTEST AT FORT BENNING

Doug Grow

Sometime in the next few weeks, we are supposed to believe the country will become a safer place because a 70-year-old woman, Sister Rita Steinhagen, will be whisked off our streets and hauled to a federal penitentiary to serve a six-month sentence.

Sister Rita, who has been serving the poor and downtrodden in Minneapolis for only a few decades, was among 22 people found guilty Wednesday in a federal court in Georgia of trespassing at the U.S. Army's School of the Americas at Fort Benning in Georgia. She not only was hit with the hard time, but with a \$3,000 fine as well—a hefty sum when you've been living with a vow of poverty for 47 years.

Sister Rita was surprised by the sentence. "What did you expect?" I asked.

"I didn't expect six months," she said.

"When you do the crime, you're going to get the time," I said.

But Sister Rita says that's not true. She talked of how people, allegedly taught at the School of the Americas, have murdered and raped in Latin American countries and never served any time at all. Sister Rita and others of her ilk keep thinking that if U.S. citizens ever understand that their tax money is being spent to train despots, rapists and murderers, they will be outraged and demand policy changes.

To date, it's not working out that way. So far, what's happening is that people such as Sister Rita are being sent to prison for having the audacity to peacefully protest and the rest of us are yawning. Anyway, the reason Sister Rita and the others got hit with the prison sentences for their misdemeanor offenses in November is that they were repeat offenders at Fort Benning.

So, who is Rita the Repeater?

For starters, she really doesn't look like a threat. She has white hair, a quick smile and a delightful sense of humor. For example, when she got off the plane at Minneapolis-St. Paul International Airport Thursday night after being sentenced in Georgia, she was greeted by friends and supporters clapping and singing, "When the Saints Go Marching In."

Sister Rita's response to the greeting?

"I said: 'This is peculiar. I got six months in jail, and everybody's clapping.'"

There's little in her biography to suggest that she's a threat. She grew up in Walker, Minn., learning to fish. (Her single most prized possession is her fishing rod, which she uses whenever she can.) She didn't even plan to become a nun. At 23, she went to visit a friend who was becoming a nun and discovered she felt comfortable.

"Do you think I belong here?" she asked one of the sisters.

"I certainly do," was the response.

And so it was done. Rita Steinhagen was on her way to becoming a Sister of St. Joseph of Carondelet. Sister Ann Walton, who is among the order's leadership team, said Sister Rita has represented the soul of the Sisters of St. Joseph.

"She is one of our finest," Sister Ann said. "She's in the pattern of the women [sisters] in the French Revolution who were imprisoned for their beliefs. She's in a very long line of people who have given of themselves."

Over the years, Sister Rita has worked as a medical technologist. In her career, she has founded a place called The Bridge, a shelter for runaway youth, and The Free Store. (The Free Store, founded by Sister Rita in 1968, still exists, though it no longer is affiliated with the Sisters of St. Joseph.) Of late, she

has been working with torture victims at the Center for Victims of Torture in Minneapolis.

Through the years, she has been arrested at several Twin Cities protests but never served jail time. She also has made frequent work-related trips to Latin American countries and has been horrified at what she has seen and heard. It was the Latin American journeys that led her to the protest at the School of the Americas.

This Minnesota woman who has devoted her life to quietly doing good, didn't accept her sentence in silence.

"I told the judge: 'Your honor, I'm 70 years old today, and I've never been in prison, and I'm scared. I tell you, when decent people get put in jail for six months for peaceful demonstration, I'm more scared of what's going on in our country than I am of going to prison.'"

The response of Judge Robert Elliot? "He didn't say anything," she said. "He couldn't care less."

Now, she's back in Minnesota waiting for the letter that will inform her where she's supposed to go to serve her sentence.

"There's no room," she said of the delayed sentence. "Isn't that something. You have to wait in line to go to prison."

This weekend, she planned to do her waiting by going ice-fishing in northern Minnesota. Rita the Repeater is going fishing because she needs the solitude—but beyond that, she'll be in prison when the spring opener rolls around.

#### PROHIBITION ON FEDERALLY SPONSORED NATIONAL TESTING

SPEECH OF

**HON. PATSY T. MINK**

OF HAWAII

IN THE HOUSE OF REPRESENTATIVES

*Thursday, February 5, 1998*

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 2846) to prohibit spending Federal education funds on national testing without explicit and specific legislation:

Mrs. MINK of Hawaii. Mr. Chairman, today I will vote against H.R. 2846, which seeks to prohibit the implementation of the national tests proposed by President Clinton.

The debate on national testing is not a new one. I remember these debates from the 60's and 70's and even more recently in the early 1990's. I opposed national testing then and I oppose it now.

My vote today does not reflect a change in my position on this issue, it is simply a statement that this bill is not needed at this time. We know there is a wide difference of opinion on national testing and it does always fall along party lines. In fact, the last major debate on national testing in the Congress was in 1991 and 1992 over a Bush Administration initiative to implement a much broader national testing system than what is being proposed by President Clinton.

When President Clinton offered his proposal for a national Reading test for the 4th grade and a national Math test in the 8th grade, we again embarked on this familiar debate.

With very passionate arguments on each side of this issue, the Congress—Members of the House and Senate—worked very hard last year to craft a compromise in the Labor-HHS-Education Appropriations bill. While not per-

fect, as most compromises are not, it was something that Members with very different views could agree on.

The compromise allows only the development of test, not the implementation or the distribution. It transfers the responsibility of overseeing the tests to the National Assessment Governing Board (NAGB), the same organization that conducts the well-respected NAEP (National Assessment of Education Progress) test.

The bill before us today flies in the face of that compromise. It adds no constructive element to the debate that continues on whether we should move forward on a national test and whether the Congress is ready to authorize such a measure. It seems more a political maneuver to focus on areas of disagreement, rather than to move forward on the many items of mutual agreement in an education agenda for this country.

This year the Congress must consider the reauthorization of NAGB and NAEP. It seems to me a more constructive approach would be to consider in the context of this reauthorization whether to authorize a national testing system. The compromise forged in the Labor-HHS-Education Appropriations bill will stand while the Congress works on the NAGB and NAEP legislation. Why we need to take up this legislation at this time, only a few legislative days since the passage of the Labor-HHS-Education compromise is puzzling.

Therefore, I will vote against this bill today. It is not constructive and it does nothing to further the debate on national testing in this country.

#### CONCERNING ATTORNEYS' FEES, COSTS, AND SANCTIONS PAYABLE BY THE WHITE HOUSE HEALTH CARE TASK FORCE

SPEECH OF

**HON. FORTNEY PETE STARK**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, February 4, 1998*

The House in Committee of the Whole House on the State of the Union had under consideration the joint resolution (H.J. Res. 107) expressing the sense of the Congress that the award of attorneys' fees, costs, and sanctions of \$285,864.78 ordered by United States District Judge Royce C. Lamberth on December 18, 1997, should not be paid with taxpayer funds:

Mr. STARK. Mr. Chairman, February 4, the House wasted an afternoon debating a totally meaningless "sense of the Congress" that the taxpayer "should" not have to pay about \$300,000 in lawyers' fees for a group which had sued the White House over the make-up and secrecy of the long-defunct Health Care Task Force.

It was pure partisan bashing of the Clinton's health reform efforts. I repeatedly offered a unanimous consent amendment (the parliamentary rules of germaneness prevented a regular amendment) to make the Resolution real: to save the taxpayers from paying this fine. Repeatedly the Republicans rejected the offer to do what they claimed their Resolution was "trying" to do.

All in all, their position on this Resolution was the most transparent political nonsense that the Congress has seen in years.

The following memo from the American Law Division of the Library of Congress makes the silliness of their Resolution clear:

LIBRARY OF CONGRESS,  
CONGRESSIONAL RESEARCH SERVICE,  
Washington, DC, February 4, 1998.

To: House Committee on the Judiciary.  
From: American Law Division.

Subject: Draft Joint Resolution Expressing the Sense of Congress that the Award of Attorneys' Fees in the Magaziner Case Not be Paid With Taxpayer Funds.

This memorandum is furnished in response to your request for an analysis of the above draft joint resolution, which was prompted by a recent federal district court decision. In *Association of American Physicians and Surgeons, Inc. v. Clinton*, 1997 U.S. Dist. LEXIS 20604 (D.D.C. Dec. 18, 1997), the plaintiffs sued for an injunction declaring that the President's Task Force on National Health Care Reform did "not qualify for an exemption from the Federal Advisory Committee Act [FACA, 5 U.S.C. App. 2 §§1-15] as an advisory group composed solely of 'full-time officers or employees' of the government." During the litigation, Ira C. Magaziner, Senior Advisor to President Clinton, submitted a sworn declaration that all working group members were federal employees. The court found that this declaration was false, and that "the most outrageous conduct by the government in this case is what happened when it never corrected or up-dated the Magaziner declaration." Eventually, however, the government took action that amounted to what the court called a "total capitulation."

The plaintiff then filed an application with the court for an award of attorneys' fees; i.e., it asked the court to order the government to pay its attorneys' fees. A federal court may not order the United States to pay the attorneys' fees of another party, unless a statute authorizes it to do so. FACA contains no such authorization. However, the Equal Access to Justice Act (EAJA) authorizes awards of attorneys fees against the United States in two instances. First, under 28 U.S.C. §2412(b), it authorizes federal courts to order the United States, when it acts in bad faith, to pay the attorneys' fees of the prevailing party. Second, under 28 U.S.C. §2412(d), it provides that, in any civil action (other than tort cases) brought by or against the United States, "a court shall award to a prevailing party other than the United States fees and other expenses . . . unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust." Under §2412(d), but not under §2412(b), fees are capped at \$125 per hour, and only individuals whose net worth did not exceed \$2 million at the time the civil action was filed, and organizations whose net worth did not exceed \$7 million and that had not more than 500 employees, may recover fees.

In response to the plaintiff's motion for an award of attorneys' fees, the court found that, prior to August 1994, the United States had acted in bad faith, and therefore was liable for the plaintiff's attorney's fees for that period without regard to the \$125 per hour cap. As to the subsequent period, the court found that the plaintiff had prevailed, that it was an organization with a net worth below \$7 million and fewer than 500 employees, and that the position of the United States, though taken in good faith, was not substantially justified. It therefore awarded fees for the subsequent period, subject to the cap. The total award, for both periods, came to \$285,864.78.

The draft joint resolution expresses "the sense of the Congress that the award of \$285,864.78 in attorneys' fees, costs, and sanc-

tions that Judge Royce C. Lamberth ordered the defendants to pay in *Association of American Physicians and Surgeons, Inc., et al. versus Hillary Rodham Clinton, et al.*, should not be paid with taxpayer funds." As a sense of Congress expressed in a joint resolution, this proposal will have no legal effect if it is enacted. If its language were introduced as a bill and enacted as a public law, then its effect, provided it were upheld as constitutional, would be to preclude the United States from complying with the district court's order to pay the plaintiff its attorney's fees. This hypothetical statute, by itself, would not require anyone to pay the attorney's fees, because, as EAJA permits fee awards only against the United States, there would be no legal basis to assess the fees against anyone else.

An argument might be made, however, that this hypothetical statute would violate the Takings Clause of the Fifth Amendment, which provides: "nor shall private property be taken for public use, without just compensation." The hypothetical statute arguably would deprive the plaintiff of its private property, in the form of a fee award that a court had ordered paid to it. However, *Association of American Physicians and Surgeons, Inc. v. Clinton* remains subject to appeal, and, if it were reversed on appeal, the plaintiff would lose its entitlement to a fee award. See *Poelker v. Doe*, 432 U.S. 519, 521 n.2 (1977). Consequently this property may not be "vested," and, if the hypothetical statute were to take effect prior to its vesting, then, arguably, no unconstitutional taking would occur. In *Hammon v. United States*, 786 F.2d 8, 12 (1st Cir. 1986), the court of appeals wrote: "No person has a vested interest in any rule of law entitling him to insist that it remain unchanged for his benefit." [Citations omitted]. This is true after suit has been filed and continues to be true until a final, unreviewable judgment is obtained. Chief Justice Marshall first announced that principle in *The Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110, 2 L. Ed. 49 (1801). The Supreme Court held in that case that a court must apply the law in force at the time of its decision, even if it is hearing the case on appeal from a judgment entered pursuant to prior law.

A caveat, however: the preceding quotation states only the majority view as to when "property" status attaches to a cause of action. There is also case law supporting the "contention that one has a vested property right in a cause of action once it has somehow accrued. [Citations omitted] Those cases are conceptually difficult to reconcile with cases that hold that a plaintiff does not have a vested property right in a claim unless there is a final nonreviewable judgment." *Jefferson Disposal Co. v. Parish of Jefferson, LA*, 603 F. Supp. 1125, 1137 n.31 (E.D. La. 1985).

A cause of action accrues once the injury that gives rise to the cause of action has occurred. Therefore, those cases that find accrual sufficient for vesting would ipso facto find a final lower court judgment sufficient for vesting. Other cases do not make clear whether final judgments trigger property status only once they are no longer reviewable. For example, in *O'Brien v. J.I. Kislak Mortgage Corp.*, 934 F. Supp. 1348, 1362 (S.D. Fla. 1996), the district court wrote: "Reviewing the relevant Eleventh Circuit case law, it appears clear that a mere legal claim affords no enforceable property right until a final judgment has been obtained." One might argue that, even if mere accrual is not sufficient to trigger property status, and a final judgment is necessary, a nonreviewable judgment may not be necessary. Again, however, the majority view appears to be that a nonreviewable judgment is necessary. Consequently, it appears that the stronger argument would be that a statute that over-

turned the award of attorneys' fees in *Association of American Physicians and Surgeons, Inc. v. Clinton*, before a final appeal had been decided or the time in which to appeal had run, would be constitutional.

The draft joint resolution, we reiterate, does not purport to overturn the award of attorneys' fees; it would merely express the sense of Congress that the government not pay the fee award, and does not express the sense of Congress that anyone else pay it.

## TAXPAYER REPAYMENT ACT OF 1998

HON. ASA HUTCHINSON

OF ARKANSAS

HON. ROY BLUNT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 11, 1998

Mr. HUTCHINSON. Mr. Speaker, my colleague, Mr. BLUNT, and I, would like to point out that over a year and a half ago, an historic agreement was reached under which lawsuits brought by forty states against the tobacco industry would be settled, the tobacco industry and regulation thereon would be restructured, and underage smoking would be targeted for reduction and eventual elimination. Today we are introducing legislation that guarantees that the estimated \$386.5 billion to be paid by the tobacco industry under this settlement will, indeed, compensate states and individuals for smoking-related health costs and reduce rates of teen smoking, rather than perpetuate the cancerous growth of big government.

The Taxpayer Repayment Act of 1998 mandates that money collected by the federal government from any tobacco settlement be used to fund only those programs specifically authorized in federal legislation implementing provisions of the national settlement. Any revenue collected beyond what is spent on those specifically-authorized programs—programs that include, but are not limited to youth anti-smoking campaigns, Medicaid reimbursement, FDA regulatory reform, public health programs, compensation to growers, and litigant reimbursement—will be used to pay down the national debt and provide tax relief to all Americans.

Mr. Speaker, the American people have been footing the bill for tobacco-related health costs for far too long. It is only fair that we ensure that this settlement will provide a guarantee that they will be reimbursed for their troubles and not burdened with bigger government. The Taxpayer Repayment Act will do this. It will help protect our nation's children from the ravages of smoking, but it will also protect American citizens against the equally insidious cancer of bigger government and heavier taxation. Mr. Speaker, this is a reasonable and equitable bill, and we would urge our colleagues to support it.

### HUTCHINSON-BLUNT TAXPAYER REPAYMENT ACT—SUMMARY

The Taxpayer Repayment Act guarantees that if a global tobacco settlement is enacted into law, health care, youth smoking cessation, and other programs authorized by the implementing legislation may be fully funded. At the same time, it ensures that extra revenue is used to reimburse Americans for their expenditures on tobacco-related health care costs and not burden them with bigger government and higher taxes.