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RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.  
ATTORNEYS AT LAW  
740 BROADWAY AT ASTOR PLACE  
NEW YORK, N.Y. 10003-9518

TELEPHONE (212) 254-1111  
CABLE "RABOUDIN, N.Y." TELEX 225028  
FACSIMILE (212) 674-4614

LEONARD B. BOUDIN (1912-1989)  
MICHAEL B. STANDARD  
MICHAEL KRINSKY  
ERIC M. LIEBERMAN  
ELLEN J. WINNER  
EDWARD COPELAND  
ELIZABETH ST. CLAIR  
TERRY GROSS

BETH M. MARGOLIS  
NICHOLAS E. POSER  
DAVID B. GOLDSTEIN  
DAVID GOLOVE\*  
HILLARY RICHARD  
LINDA S. BOSNIAK

\*ADMITTED IN CALIFORNIA ONLY

COUNSEL  
VICTOR RABINOWITZ  
HAYWOOD BURNS  
LEONARD I. WEINGLASS  
JOHN MAGE  
JUDITH LEVIN

July 9, 1990

AOR 1990-13  
[Supplement & correction]

**HAND DELIVERED**

90 JUL 10 PM 1:19

RECEIVED  
FEDERAL ELECTION COMMISSION  
MAIL ROOM

90 JUL 10 PM 2:51

FEDERAL ELECTION COMMISSION  
OFFICE OF GENERAL COUNSEL

Via Federal Express

Federal Election Commission  
Office of General Counsel  
999 E Street N.W.  
Washington, D.C. 20463

Dear Sirs:

I enclose herewith the document which should have appeared as Exhibit NN to my July 2, 1990 letter to you on behalf of the Socialist Workers Party National Campaign Committee but which was apparently omitted from the materials. I also enclose a corrected copy of the July 2, 1990 letter and request that this corrected copy be substituted for the letter previously submitted.

Sincerely yours,

*Edward Copeland*  
Edward Copeland

ED:me

May 24, 1985, Militant

# Candidate demands investigation of attack on Atlanta SWP headquarters

**BY JIM BLACK**

**ATLANTA** — The socialist bookstore and campaign headquarters for Sara Jean Johnston, Socialist Workers Party candidate for mayor of Atlanta, was shot into during the night of May 12.

On Monday morning, May 13, Atlanta socialists found a single 38-caliber bullet hole in the front-door window of their headquarters. The bullet was lodged in a book at the rear of the bookstore. No one was in the bookstore at the time. So far no group or individual has claimed responsibility for this terrorist attack.

When R.L. Lindsey, one of the cops sent to investigate the shooting, was asked if the police would add more patrols to catch the perpetrators, he essentially said that the police can do nothing. He then turned the discussion on its head. He asked, "You had a lot of trouble here

lately, right? Aren't you the group that organized the IBM demonstration?" referring to the anti-apartheid demonstration here April 29.

Most Atlanta socialists had been in Greensboro, North Carolina, for the weekend. They were attending an educational conference on the history of the civil-rights movement. Before they left Atlanta on Friday, two anonymous, threatening phone calls were received. Recently Sara Jean Johnston has received sexually harassing letters placed on her car. The letters, clearly from a racist, show hatred toward the fact that she (who is white) is married to a Black man.

Johnston explained that the attack was a "cowardly act" against her campaign for mayor. She said, "I call upon Atlanta mayor Andrew Young and Georgia governor Joe Frank Harris to act with deliberate

speed to apprehend these criminals. We are holding an emergency defense rally to protest this terrorism on Sunday, May 19, at 7:30 p.m. at our headquarters. It's clear pressure is needed on both the mayor's office and the governor's office. A representative of the mayor's office has stated 'We don't have to contact them because this is a police matter.'

"We disagree. The mayor and governor are responsible. We are asking that telegrams and letters be sent to the offices of the governor and mayor." (Mail to: Mayor Andrew Young, City Hall, Atlanta, Ga. 30303; and Gov. Joe Frank Harris, State Capitol, Atlanta, Ga. 30334)

Immediately responding to calls for support were Joe Beasley of the Georgia Rainbow Coalition; Willia Ray Harris of the National Alliance Against Racist and Political Repression; and a representative of the Atlanta chapter of the National Black Independent Political Party. All three came to the headquarters to show their support.

Support was also received from Ardy Blandford, cochair of the Atlanta NBIPP; Leamon Hood, American Federation of State, County and Municipal Employees; Prof. Mac Jones, Political Science Dept., Atlanta University; Rev. Emory Searcy, Jr., Clergy and Laity Concerned; and Janet Callum, Feminist Women's Health Center.

Exhibit NN

CORRECTED COPY

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN, P.C.  
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JOHN MAGE  
JUDITH LEVIN

July 2, 1990

AOR 1990-13  
(as corrected by  
Copeland 7-9-90)

Via Federal Express

Federal Election Commission  
Office of General Counsel  
999 E Street, N.W.  
Washington, D.C. 20463

Dear Sirs:

This is a request for an advisory opinion pursuant to 2 U.S.C. § 437(f) and 11 C.F.R. § 112.1 concerning the application of certain sections of the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, et seq. ("FECA" or "the Act") to the Socialist Workers Party National Campaign Committee and committees supporting candidates of the Socialist Workers Party (the "SWP"). The SWP seeks an advisory opinion acknowledging that committees supporting candidates of the Socialist Workers Party continue to be entitled to the same exemptions and other provisions of the order, judgment and decree entered in 1985 in Socialist Workers 1974 National Campaign Committee v. Federal Election Commission, No. 74-1338 (D.D.C.). The failure to provide these protections would result in an unconstitutional application under the First

Amendment of the reporting and disclosure provisions of FECA, 2 U.S.C. § 434, requiring, inter alia, public disclosure of the names and residential addresses, occupations, and business addresses of contributors (§ 434(b)(3)(A)), political committees or candidates (§ 434(b)(3)(B)(C)(D)), lenders, guarantors, endorers (§ 434(b)(3)(E)), persons providing rebates, refunds or other offsets to operating expenditures (§ 434(b)(3)(F)), persons providing any dividend, interest, or other receipt (§ 434(b)(3)(G)) and persons to whom expenditures have been made (§ 434(b)(5)(6)).

#### Legal Framework

In Buckley v. Valeo, 424 U.S. 1 (1976), the Supreme Court recognized that the requirements of the Federal Election Campaign Act as applied to minor parties and independent candidates may be unconstitutional because of the danger of significant infringement on First Amendment rights. Buckley, 424 U.S. at 71. The Court recognized that "the governmental interest in disclosure is diminished when the contribution in question is made to a minor party with little chance of winning an election" 424 U.S. at 70. As the Court pointed out, the situation of minor parties is further unlike those of the major parties because "as minor parties usually represent definite and publicized viewpoints, there may be less need to inform the voters of the interests that specific candidates represent." Id.

The Court, while refusing to endorse a blanket exemption for all minor parties, held that particular minor parties might present circumstances similar "to those before the Court in NAACP v. Alabama, [357 U.S. 449 (1958)] and Bates [v. Little Rock], 361 U.S. 516 (1960)], where the threat to the exercise of First Amendment rights is so serious and the state interest so insubstantial that the Act's requirements cannot be constitutionally applied", 424 U.S. at 71, providing as an example of such a case the allegations set forth in Doe v. Martin, 404 F.Supp. 753 (D.D.C. 1975) (three judge court), involving a branch of the Socialist Workers Party.<sup>1/</sup> The Court described the required showing as follows:

Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals

<sup>1/</sup> The Martin case cited with approval by the Supreme Court concerned the constitutionality of portions of the 1974 District of Columbia Campaign Finance Reform and Conflict of Interest Act, Pub. L. 93-376, 88 Stat. 446, requiring, inter alia, every political committee to keep records showing the name, address and place of business of contributors of \$10 or more, the designation of a depository bank through which the political committee will conduct all of its financial business, and the filing of publicly available reports listing the name, address and place of business of each contributor of \$50 or more as well as civil penalties for non-compliance. See 404 F.Supp. at 755 n.1. In Doe, the plaintiffs asserted that the name, address and places of employment of those supporting the SWP "will be noted by the FBI and others and that inquiries or other detrimental social pressures will ensue affecting employment and privacy." 404 F.Supp. at 755. The court had before it affidavits showing that party members had been harassed by government agencies and private employers and the findings of the Minnesota Ethics Commission exempting the Minnesota Socialist Workers 1974 Campaign Committee from the disclosure requirements of the Minnesota Ethics in Government Act of 1974. See 404 F.Supp. at 756-57 at n.4.

from either Government officials or private parties. The proof may include, for example, specific evidence of past or present harassment of members due to their associational ties, or of harassment directed against the organization itself. A pattern of threats or specific manifestations or public hostility may be sufficient.

424 U.S. at 74 (emphasis added).

The Buckley test was applied to the disclosure provisions of a state campaign reporting statute in 1982 in a case involving the Socialist Workers Party. Brown v. Socialist Workers '74 Campaign Committee (Ohio), 459 U.S. 87 (1982). In Brown, the Court found that

[t]he District Court properly concluded that the evidence of private and Government hostility toward the SWP and its members establishes a reasonable probability that disclosing the names of contributors and recipients will subject them to threats, harassment and reprisals. There were numerous instances of recent harassment of the SWP both in Ohio and in other States. There was also considerable evidence of past Government harassment. Appellants challenge the relevance of this evidence of Government harassment in light of recent efforts to curb official misconduct. Notwithstanding these efforts, the evidence suggests that hostility toward the SWP is ingrained and likely to continue.

459 U.S. at 100-101.

The evidence leading to this controlling holding included the following:

- threatening telephone calls and hate mail;
- the burning of SWP literature;

- the destruction of SWP members' property;
- police harassment of a party candidate;
- the firing of shots at an SWP office;
- job firings of SWP members;
- a past history of government harassment including massive surveillance, and the conduct of a counterintelligence program against the SWP by the FBI;
- the extensive use of informers for the FBI against the SWP;
- the maintenance of massive files by the government on the SWP.

See 459 U.S. at 99-100.

Prior to the Brown decision, the United States Court of Appeals for the Second Circuit held that a campaign committee of the Communist Party could not be required to comply with the disclosure and record keeping provisions of FECA under the First Amendment. In Federal Election Commission v. Hall-Tyner Election Campaign Committee, 678 F.2d 416 (2d Cir. 1982), cert. denied, 459 U.S. 1145 (1983), the court considered the application of FECA to the campaign committee for the Presidential and Vice Presidential candidates of the Communist Party. In holding that this campaign committee could not be compelled, consistent with the First Amendment, to comply with the FECA's disclosure and recordkeeping provision, the court stated:

[W]e note that Buckley did not impose unduly strict or burdensome requirements on the minority group seeking constitutional exemption. A minority party striving to avoid FECA's disclosure provisions does not carry a burden of demonstrating that harassment will certainly follow compelled

disclosure of contributors names. Indeed, when First Amendment rights are at stake and the spectre of significant chill exists, courts have never required such a heavy burden to be carried because "'First Amendment freedoms need breathing space to survive.'" Keyishian v. Board of Regents, 385 U.S. 589, 604, 87 S.Ct. 684, 17 L.Ed.2d 629 (1967), quoting NAACP v. Button, 371 U.S. 415, 433, 83 S.Ct. 328, 338, 9 L.Ed.2d 405 (1963). Breathing space is especially important in a historical context of harassment based on political belief.

678 F.2d at 421-22. The Court then found that based upon "the treatment historically accorded persons identified with the Communist Party" and a survey of statutes purporting to subject Communist Party members to civil and criminal liability, the minimal government interest in obtaining the information could not justify the restraint upon the First Amendment rights of the committee and its supporters. 678 F.2d at 422. Indeed, the Court admonished the FEC that in light of this factual record, it had proceeded with an "appalling disregard for the needs of the free and open political process safeguarded by the First Amendment." 678 F.2d at 424.

Subsequent to the decisions in Buckley, Brown v. Socialist Workers Party 1974 Campaign Committee (Ohio) and Hall-Tyner, there have been no reported decisions raising the constitutionality of forced disclosures under FECA. In 1979 and again in 1985, the Federal Election Commission entered into voluntary consent decrees which acknowledged that the SWP was exempt under the First Amendment from disclosure under FECA. See Stipulation of Settlement, filed January 3, 1979, and



Stipulation of Settlement, filed July 24, 1985, in Socialist Workers 1974 National Campaign Committee v. Federal Election Commission, Civil Action No. 74-1338 (D.D.C.).<sup>2/</sup>

In a series of decisions beginning in 1974 and continuing through last year concerning state law disclosure requirements, the SWP has been exempted from reporting requirements in Florida, Minnesota, Wisconsin, California, Washington, the District of Columbia, and Illinois. See, e.g., 1980 Illinois Socialist Workers Campaign v. State of Illinois Board of Election, 531 F.Supp. 915 (N.D. Ill. 1982); Wisconsin Socialist Workers 1976 Campaign Committee v. McCann; Doe v. Martin, 404 F.Supp. 753 (D.D.C. 1975); In Re Manual No. AE 77,005 (California Fair Political Practices Commission, March 1977); Socialist Workers 1974 Washington State Campaign v. Washington Public Disclosure Commission, Nos. 52,505, 54,772 (Wash. Sup. Ct., April, 1977) (transcript of oral opinion), AR at 427-59; In the Matter of Minnesota Socialist Workers 1974 Campaign Committee Request for Exemption, No. H-0001 (Minn. State Ethics Comm., October, 1974), AR at 692-97.<sup>3/</sup>

Last year, the United States District Court for the Southern District of Florida held that election laws requiring disclosure of contributions or recipients were unconstitutional as applied to individuals associated with, or seeking to

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<sup>2/</sup> Various materials reflecting incidents of harassment and violence were submitted to the FEC in connection with that case.

<sup>3/</sup> One court refused to grant the SWP an exemption. Oregon Socialist Workers 1974 Campaign Committee v. Paulus, 432 F.Supp. 1255 (D. Or. 1977).

associate with, the SWP and a campaign committee supporting an SWP candidate. The evidence there showed that "compliance with the challenged provisions would subject the plaintiffs to threats, harassment and reprisals from private persons. This evidence completely satisfies the Supreme Court's test. . . ." McArthur v. Smith, 716 F.Supp. 592, 594 (S.D. Fla. 1989).

### Factual Background

#### 1. Facts With Respect to the SWP

The SWP has consistently nominated and run candidates for elective office since it was founded in 1938 and has had a candidate in every presidential race since 1948, and numerous other federal, state, county and municipal offices. No SWP candidate has ever been elected to public office in a partisan election and the votes recorded for the candidates of the SWP remain quite small. In the three most recent Presidential elections, the SWP candidates received 15,604 votes in 16 states in 1988, 24,681 votes in 24 states in 1984, and 40,105 votes in 29 states in 1980.<sup>4/</sup> The SWP has asserted its First Amendment right against disclosure since the FECA was enacted and no SWP campaign committee has ever disclosed contributors' names or disclosed recipients' names since 1985.

In addition to participation in election activities such as petitioning, literature distribution, speaking engagements and the like, SWP candidates have been faced with

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<sup>4/</sup> In the 1988 senatorial elections, SWP candidates received 11,239 votes in New York, 5,192 votes in New Jersey, 4,821 votes in Michigan, 3,105 votes in Minnesota, 3,026 votes in Wisconsin and 1,233 votes in Utah.

formidable barriers to their appearing on ballots such as loyalty oaths and overly burdensome requirements. These barriers have resulted in substantial litigation over the years.<sup>5/</sup>

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<sup>5/</sup> These cases include: Socialist Workers Party v. Hechler, 890 F.2d 1303 (4th Cir. 1989), cert. denied, \_\_\_ U.S. \_\_\_, 110 S.Ct. 2173 (1990); Munro v. Socialist Workers Party, 479 U.S. 189 (1986) (upholding requirement that minor-party candidate receive at least 1% of all votes cast in primary before candidate's name placed on general election ballot); Illinois State Board of Elections v. Socialist Workers Party, 440 U.S. 173 (1979) (challenge to petitioning requirements); Jenness v. Fortson, 403 U.S. 431 (1971) (challenge to petitioning requirements); Socialist Workers Party v. Hardy, 607 F.2d 704 (5th Cir. 1979) (challenge to loyalty oath for candidate); Socialist Workers Party v. March Fong Eu, 591 F.2d 1252 (9th Cir. 1978), cert. denied, 441 U.S. 946 (1979) (challenge to ballot requirements); Socialist Workers Party v. Hill, 483 F.2d 554 (5th Cir. 1973) (challenge to loyalty oath); Socialist Workers Party v. Davoren, 378 F.Supp. 1245 (D. Mass. 1974) (challenge to petitioning requirements); Baird v. Davoren, 346 F.Supp. 515 (D. Mass. 1972) (challenge to ballot requirements); Jennes v. Miller, 346 F.Supp. 1060 (S.D. Fla. 1972) (challenge to filing fee); Socialist Workers Party of Illinois v. Ogilvie, 357 F.Supp. 109 (N.D. Ill. 1972) (challenge to age requirements); Socialist Workers Party v. Welch, 334 F.Supp. 179 (S.D. Tex. 1971) (challenge to property requirements and registration fee for candidates); Socialist Workers Party v. Rockefeller, 314 F.Supp. 984 (S.D.N.Y.), aff'd, 400 U.S. 806 (1970) (challenge to petition requirements); Socialist Workers Party v. Hare, 304 F.Supp. 534 (E.D. Mich. 1969) (challenge to petition requirements); Jenness v. Little, 306 F.Supp. 925 (N.D. Ga. 1969), appeal dismissed, 397 U.S. 94 (1970) (challenge to filing fee); Socialist Workers Party v. Secretary of State, 412 Mich. 571, 317 N.W.2d 1 (1982).

## **2. The Harassment and Hostility Directed At the SWP and Its' Members**

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In view of the history of the United States over the past five decades, it is beyond dispute that the FECA cannot be constitutionally applied to require the disclosure of the contributors to the campaigns of candidates of the Socialist Workers Party, or recipients of disbursements, particularly in view of the decisions of the Supreme Court in Brown v. Socialist Workers Party '74 Campaign Committee (Ohio), 459 U.S. 87 (1982) and Buckley v. Valeo, 424 U.S. 1 (1976). This history makes apparent that there is a reasonable probability that disclosing the names of contributors and recipients will subject them to threats, harassment or reprisal. It is that history which we now briefly summarize, mindful of the Supreme Court's conclusion after reviewing part of this history in 1982 that this "hostility toward the SWP is ingrained and likely to continue." Brown, 459 U.S. at 101.

For decades the SWP and its supporters have been selected out for investigation and harassment by the government, subjected to repeated violations of their civil and constitutional rights, their landlords and employers interviewed repeatedly, their homes and offices burglarized by government employees, their political plans, events and relations affirmatively disrupted by government employees, their telephones and offices tapped and bugged, their files stolen and their ranks infiltrated by government informers. This governmental and private animus was intended to, and did,

interfere with individuals lives and employment and continues in the form of harassment and violence directed at the SWP, its candidates and its supporters.

Beginning in 1941, the Federal Bureau of Investigation began a generalized investigation of the SWP which was to last for at least the next 35 years. Socialist Workers Party v. Attorney General, 642 F.Supp. 1357 (S.D.N.Y. 1986).<sup>6/</sup> The investigation began in roughly the same time period that 18 members of the SWP were prosecuted and convicted for conspiring to advocate the violent overthrow of the government under the Smith Act, 18 U.S.C. § 2385. Dunne v. United States, 138 F.2d 137 (8th Cir. 1943), cert. denied, 320 U.S. 790 (1943).

In the course of its investigation, the FBI amassed over 8 million documents. Between the years 1960 and 1976, the FBI employed approximately 1,300 informers, of whom approximately 300 became or were members of the SWP, paying over \$1.6 million to the informers alone. The informers routinely and regularly reported upon the lawful political activities, discussions, and debates of the SWP as well as

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<sup>6/</sup> The facts concerning the government's generalized investigation of the Socialist Workers Party are drawn from this decision unless otherwise noted. In 1976, over the objections of the FBI, the Attorney General ostensibly terminated the generalized domestic security investigation of the SWP, 642 F.Supp. at 1400. In doing so, he specifically left open the possibility of reopening the investigation in the future, instructing that information concerning an asserted link between the SWP and a foreign-based political group "should be carefully watched" and that the emergence of "new facts or circumstances" may "justify investigation" and "a reconsideration would be in order." 642 F.Supp. at 1401.

reported the names, addresses, descriptions and places of employment of members and their families. The informers reported, again on a regular basis, a host of personal information including information on marital or cohabitational status, marital strife, health, travel plans and personal habits.<sup>7/</sup>

The SWP was also the subject of the Counterintelligence Programs implemented by the FBI over a period of at least 25 years. The avowed purpose of the program was to disrupt "the SWP on a national, as well as local level." Socialist Workers Party v. Attorney General, 642 F.Supp. at 1384. Under the Cointelpro Program directed specifically at the SWP,<sup>8/</sup> at least 46 specific disruption operations were conducted by the FBI. The disruption included, among other activities,<sup>9/</sup> attempts to embarrass SWP candidates, cause the arrest of candidates, foment racial strife within the SWP and between the SWP and other groups, and cause strife between SWP supporters and others in a variety of political movements and coalitions.

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<sup>7/</sup> Annexed as Exhibit A hereto is the Report of the Special Master in the litigation against the Attorney General, the Honorable Charles D. Breitel. This report was prepared at the direction of the district court on the basis of a review of 18 informer files which served as a representative summary of the total of 1,300 informer files amassed between 1960 and 1976.

<sup>8/</sup> The SWP was also targeted for disruption under the auspices of the Cointelpro Programs directed against the Communist Party and the "New Left." 642 F.Supp. at 1385.

<sup>9/</sup> An overview of the disruption activities is set forth in Socialist Workers Party v. Attorney General, 642 F.Supp. at 1385-1389. A more detailed description of many of the disruption activities can be found in Nelson Blackstock, COINTELPRO: THE FBI'S SECRET WAR ON POLITICAL FREEDOM (3rd ed. 1988).

For a period of approximately 20 years the FBI conducted warrantless electronic surveillance of the SWP, the conventions and National Committee meetings of the SWP, the home telephones of a number of leaders, the office of one leader and the hotel rooms of other leaders. 642 F.Supp. at 1389-90. In total, electronic surveillance was conducted for 32,000 days. Id. The electronic eavesdropping resulted in the collection of all manner of information on political matters as well as a host of information on more personal matters.

In the same time period, the FBI conducted at least 204 black bag jobs, i.e., burglaries of the offices of the SWP. 642 F.Supp. at 1393. These burglaries were, of course, not the only means by which the government obtained documents; the informers regularly provided documents to the FBI and indeed themselves stole documents which were then given to the FBI. 642 F.Supp. at 1382.

From 1940 until at least 1976, the FBI maintained lists of the names, addresses, and employers of SWP members -- variously identified on the Custodial Detention List, the Security Index and the Administrative Index -- which targeted individuals for detention in the event of a "national emergency." 642 F.Supp. at 1395. The purpose of these lists was to identify those individuals "considered by the FBI to be . . . potentially dangerous to the public safety and the internal security of the United States." Id. From at least 1946 until 1976, membership in the SWP was a basis for inclusion on these list. Id. Aside from the designation

itself and the potential for detention of the individual, the fact of listing led to interviews of the individuals' landlords and employers which, at least until 1971, were conducted every 45 days. 642 F.Supp. at 1395.

Beginning in 1948, the SWP was included on the Attorney General's list of organizations designated pursuant to Executive Order 9835 establishing the Employee Loyalty Program for certain employees of the executive branch of the government.<sup>10/</sup> Under the program, an employment application by a member of a listed organization was subjected to a full field investigation by the FBI, questioned concerning his or her loyalty and this fact was used to determine whether to hire the individual.<sup>11/</sup> 642 F.Supp. at 1396-97.

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<sup>10/</sup> E.O. 9835 provided that in determining loyalty to the government, one of the factors to be considered was an individual's membership in an organization designated by the Attorney General

as totalitarian, fascist, communist, or subversive, or as having adopted a policy of advocating or approving the commission of acts of force or violence to deny others their rights under the Constitution of the United States, or as seeking to alter the form of government of the United States by unconstitutional means.

Executive Order 9835 was subsequently amended by Executive Order 10241 and superceded by Executive Order 10450 so as to include all government civilian employees. The Attorney General continued to maintain his list including the SWP throughout these changes.

<sup>11/</sup> There have been a number of instances in which the fact of the individual's association with the SWP affected his or her employment. See 642 F.Supp. at 1398-99.



Even after the Attorney General's list was terminated in 1974, the FBI continued to report an individual's membership in the SWP. In later years, the FBI is prepared to describe the SWP as follows:

The SWP is a revolutionary, Trotskyist-communist organization which has as its purpose the overthrow of the U.S. Government and the institution of a dictatorship of the working class and the eventual achievement of a communist society.

The FBI ceased investigating the YSA/SWP in September 1976, pursuant to the Attorney General's Guidelines for Domestic Security Investigations. Therefore, receipt of an allegation that an individual is a member of the YSA/SWP would no longer warrant an FBI investigation.

642 F.Supp. at 1399.<sup>12/</sup>

It is, of course, against this extensive background of government harassment that any application of FECA must be gauged. Standing alone this background provides an overwhelming basis for non-disclosure under FECA. Indeed, as noted earlier, the history of political life in this country over the last five decades makes clear that persons associated with the SWP are reasonably probable to be the subject of harassment or threats from the government or private individuals.

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<sup>12/</sup> In 1986, after 13 years of litigation, the SWP received a damages award for the violations of its rights against the United States for the acts of the FBI in burglarizing its premises, conducting affirmative disruption operations against it, and employing informers to report on the SWP, its members, meetings and activities.

Lest there be any question that this general and specific hostility which has been part of national policy for decades has continued, we briefly address some of the manifestations of this hostility in just the last few years.

As recently as 1987, in opposing a prohibition on the use of information obtained illegally by the FBI, the federal government asserted an interest in and need to know and record the names of members and individuals associated with the SWP. See Socialist Workers Party v. Attorney General, 666 F.Supp. 621, 623 (S.D.N.Y. 1987). The government asserted its needs because, in its words, "it was -- and is -- reasonable for the FBI and other agencies of the Government to believe that the SWP and its members have a revolutionary ideology whose goal is the violent overthrow of our democratic processes and form of government." Ex. B at 9. In the government's view, this "revolutionary ideology . . . poses a threat to the fundamental interest of self-preservation," id. at 10, and the information on members was still essential to the government's loyalty-security program. Id. at 10-11.

Representatives of various government agencies expressed their intent to use such information, and their fundamental antagonism toward the SWP, in clear terms. For example, the Office of Personal Management argued that such "information [is] important because these organizations in the past were opposed to our form of Government and the national interest. " Declaration of Gary B. McDaniel ¶ 6, Exhibit C hereto. The Department of State asserted its need for access

to these files because of a need for information about, in its representative's words, "interaction with a group advancing a hostile ideology" for security clearances, and "information about any hostile organization which has consistently posed a threat to free governments. . . ." Declaration of Roger H. Robinson, ¶¶ 4, 6, Exhibit D hereto. The Immigration and Naturalization Service claimed a need to know the identities of SWP supporters in order to enforce laws making an individual who advocates world communism or the establishment of totalitarian dictatorship deportable from this country, excludable from this country or ineligible for naturalization. Declaration of Edwin W. Dornell, ¶¶ 5, 6, Exhibit E hereto.<sup>13/</sup> See also Exhibit F, Declaration of Thomas J. O'Brien ¶¶ 3-9 explaining need for access to FBI files on the SWP because they "may serve to corroborate or establish an affiliation with "an organization "characterized by Executive Order 10450" for the purposes of investigations of members of the armed services, civilian employees and employees in industry by the Defense Investigative Service.

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<sup>13/</sup> See 8 U.S.C. §§ 1182(2)(28) (D) and (F), 8 U.S.C. § 1251(a)(6)(D) and 8 U.S.C. § 1424(a)(3). There are numerous statutes in addition to these immigration provisions which place supporters of the SWP in danger of legal sanctions or harassment if their associations were made public. In addition to the Smith Act, 18 U.S.C. § 2385, there is a host of other legislation which potentially expose individuals to civil and criminal sanctions. See discussion in FEC v. Hall-Tyner Election Campaign Committee, 678 F.2d at 422 and statutes surveyed in Appendix to Brief of Defendants-Appellee filed in that case.

In ordering that illegally obtained information in the files amassed by the FBI not be made public or used in any way,<sup>14/</sup> the court specifically included in its order a presumption that the identities of "members" of the SWP were presumed to be protected from disclosure precisely because such information was not made public by the SWP and the individuals and precisely because such information was a primary goal of the extensive use of informers outlined previously. 666 F.Supp. at 626.

These assertions of need and pronouncements of intended uses, make clear that, at least in the government's view, membership in and association with the SWP still provide a basis for harassment on the job, investigation and other deleterious impacts.<sup>15/</sup> Indeed, where the government characterizes the SWP as a "hostile organization which has

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<sup>14/</sup> The order provided that the information could not be used except pursuant to a court order or in response to a Freedom of Information Act, 5 U.S.C. § 552 request. Of course, FOIA itself provides privacy protection. See 5 U.S.C. § 552a.

<sup>15/</sup> The potential negative impacts of even a minor association with the SWP continue as is illustrated in Clark v. Library of Congress, 750 F.2d 89 (D.C. Cir. 1984). There, a relatively low level employee of the Library of Congress was subjected to a full investigation by the FBI and apparently refused promotions to numerous low level positions based on the individual having attended several meetings of the Young Socialist Alliance (a group supportive of the SWP) and his name appearing on a mailing list of that group. Moreover, as the district court indicated in Socialist Workers Party v. Attorney General, there may be situations in which the fact of association with the SWP would be the subject of inquiry in a loyalty-security investigation in connection with employment. See 642 F.Supp. at 1427-28 outlining the factors which would be relevant.

consistently posed a threat to free governments", the reasonable probability of negative consequences from disclosure is readily apparent.

An equally open indicator of the reasonable probability of harassment is reflected in an article published in the Midlands Business Journal of April 21-27, 1989. The article promotes a security firm's services in connection with labor disputes and urges the companies to "screen" their employees. The services offered include access to an "extensive data base and information index on violent domestic organizations and communist and Marxist groups. . . ." including both names and photographs. Exhibit G. The security firm identified as an example of the problems the firm addresses the "local union involved in the strike against Hormel [which] was absolutely infiltrated by the Socialist Workers Party, which is largely Marxist/Leninist", and claimed that in another case purportedly involving "sabotage of products", they checked their index and found several names of people "involved . . . with the Socialist Workers Party." Exhibit G.

An employee of the same company testified at a hearing over the firing of a meatpacker by Geo. A. Hormel & Co. in Fremont, Nebraska. The individual was fired, for among other reasons, speaking at a meeting in Des Moines, Iowa sponsored by the Militant, a socialist newsweekly, on the labor battle against Hormel in Austin, Minnesota. Exhibit H. The employee admitted that he had videotaped a rally in support of

the union. At the same hearing, another private investigator admitted that he had taped the meeting sponsored by the Militant newspaper by perching in a trash dumpster and holding a tape recorder to an air vent. Exhibit H. See also Exhibits I and J.

Other private groups have also harassed individuals associated with the SWP. From 1979 until 1989 an individual brought suit against the SWP and six of its leaders as well as various government agencies. After 10 years of litigation, the court dismissed the case, finding that the individual used the litigation in furtherance of his "motivation to disrupt the SWP", and had engaged in abusive, harassing discovery which had as one of its "main purposes . . . to generate material for political attacks on the SWP" by other groups. Exhibit K at 8-9. Indeed, the same private group which played a role in supporting this harassing litigation published materials identifying various individuals as members of the SWP, accusing SWP members of participating in intelligence-gathering for the government and coal companies and urged that "their activities should be treated accordingly." Exhibit LL.

The continued antagonism toward the SWP and the principles for which it stands has been reflected in a series of threats and violence over the last few years. For example, in February 1990, the local office of the SWP (located in the same premises as a bookstore in New York City) received threatening telephone calls the night before a meeting on Cuba

was to be held in the premises. The callers referred to "you communist bastards" and threatened the individuals receiving the calls. Exhibit L.

In January, 1990, a series of threatening telephone calls were made to the storefront where the local SWP headquarters are located in Kansas City immediately after a meeting criticizing the U.S. invasion of Panama. Exhibit M. The calls included the threat ". . . we're going to get you, you pinko pigs" and ". . . you should be shot." Exhibit M. Shortly thereafter, a rock was thrown through the window. Exhibit M.<sup>16/</sup>

In December 1989, an anonymous caller threatened to bomb the building in which the SWP national offices are located in New York City. The caller stated that "we're going to blow you up" and that "we're going to kill you commie motherfuckers." Exhibit O.

The telephone threats were preceded by newspaper articles criticizing the preparation of a mural on the side of the building, known as the Pathfinder Mural, celebrating and depicting a number of revolutionary socialist figures and labor leaders, including Farrell Dobbs, James P. Cannon, Fred Halstead, Joseph Hansen, Evelyn Reed (all longtime leaders of the SWP), Karl Marx, Vladimir Lenin and other leaders of the Communist International, Fidel Castro, Ernesto Che Guevara and

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<sup>16/</sup> In March 1989, the plate glass windows of the SWP office in Omaha, Nebraska were broken by bricks thrown through the windows. Exhibit N. Similar incidents have occurred over the years. See, e.g., Exhibit MM (brick thrown through window of campaign office).

Malcolm X. Exhibit O. One newspaper denounced the mural as a "celebration of totalitarianism" and questioned "whether . . . it's appropriate to inflict such a mural on the sensibilities of ordinary New Yorkers" under the headline "Off the wall - and that's where it belongs". Exhibit P, New York Post, November 19, 1989. Another suggested that the words "R.I.P." and "never again" be added to the mural in the course of an editorial denouncing it. Exhibit Q, The Daily News, November 19, 1989.

Shortly after the telephone calls, the mural on the building was defaced with paint thrown in bottles bearing swastikas. Exhibit O.<sup>17/</sup>

In Miami, Florida, over the past 10 years, there have been a series of fire bombings, threats and harassment of individuals who espouse or associate with individuals who espouse left-wing political views. See Exhibits R, S, T, U, V, X, Y, Z, AA, BB and CC. These incidents range from the fire bombing of the bookstore in which the SWP maintained its local office in 1983, Exhibits S and T, to the bombing of a local community college professor's home in 1988. Exhibit V. The Socialist Workers Party was specifically denounced in 1985 by a mayoral candidate in Miami for what she described as setting

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<sup>17/</sup> There have been a number of other incidents of violence and attempted intimidation over the years. See, e.g., Exhibit NN (shot fired into campaign headquarters), Exhibit W (crowd chanting "Kill Communists" and "Communists out of San Jose" outside SWP offices forcing evacuation of offices).



"up a stand to sell openly communist books" as "these communists, enemies of liberty and democracy, openly conspire against the stability of this nation. . . ." Exhibit X.<sup>18/</sup>

Aside from these acts of violence, individuals continue to be harassed by government authorities. On numerous occasions individuals distributing campaign and/or other literature have been subjected to harassment including arrest. For example, an SWP candidate was forced by police officers to remove a campaign literature table in 1988 in Charleston, West Virginia, with the police telling the candidate "I don't like what you have on your table and I order you to take it down." Exhibit DD. A week later, the candidate returned and was again ordered to remove the table under threat of arrest. Exhibit EE and Exhibit DD. A number of individuals have been arrested for distributing such literature and convicted for connected offenses,<sup>19/</sup> in February 1989 a contribution form was return to the SWP in an official Minneapolis Police Department envelope with "Bullshit" stamped on the form (Exhibits HH and II), and in 1987 the University of Houston revoked the YSA's campus

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<sup>18/</sup> The incidents set forth in Exhibits S-V, and X-CC were submitted to the court in McArthur v. Smith, 716 F.Supp. 592 (S.D. Fla. 1989).

<sup>19/</sup> Each of the convictions was subsequently reversed on appeal on First Amendment grounds. For example, in 1987, an individual selling The Militant was arrested in Masontown, Pennsylvania, convicted and fined \$350. His conviction was reversed on appeal because his "primary purpose was to discuss political ideas and topics contained in The Militant." Exhibit FF at 4-5. In 1986, an individual was prosecuted for selling a book when she was handing out political fliers and selling books on the streets of Newark. Exhibit GG. Her conviction was overturned on appeal on First Amendment grounds. Exhibit GG.

organization status after a literature table was opened on the campus. Exhibit JJ. In Philadelphia, Pennsylvania in 1987, armed security guards ordered a campaign literature table removed from a public sidewalk, and two weeks later a literature table was overturned while local police officers watched. Exhibit KK.

### Conclusion

Based on the foregoing, there is a reasonable probability that the compelled disclosure of the Socialist Workers Party's contributors and recipients will subject them to threats, harassment or reprisals. Brown, supra, 459 U.S. at 100. The showing reflects a deeply held hostility by the government and certain private groups against the SWP spanning decades and which for long periods of time was implemented by an intrusive investigation, harassment of members, burglaries, wiretaps, disruption and other equally oppressive activities. The hostility on the part of the federal government has continued with various agencies expressing their need to know of individuals' associations with a group espousing a "hostile ideology". The hostility has erupted in numerous acts of violence, and threats of violence, including bombings and smashing of windows of SWP offices as well as other harassment. Individuals in the course of campaigning or distributing political literature have been harassed, threatened, and subjected to arrest.

The FEC should recognize, as it has in the past, that under the First Amendment the Socialist Workers Party campaign committees can not be compelled to disclose information concerning their contributors or recipients.

Sincerely yours,

A handwritten signature in cursive script, reading "Edward Copeland". The signature is written in dark ink and is positioned above the typed name and title.

Edward Copeland  
Counsel to the Socialist  
Workers Party National  
Campaign Committee

EC:anb