

Government tries to buy-off SWP suit

By Richard Goldensohn

DURING THE LAST SIX MONTHS, the federal government twice offered substantial cash payments to the Socialist Workers Party in attempts to settle out of court a controversial \$40 million damage suit that has embarrassed the government for more than five years. The offer was made public last week by party political member Lawrence Siegle in an address to the closing session of a week-long SWP national conference in Oberlin, Ohio.

The SWP's suit, which recently caused Attorney General Griffin Bell to be held in contempt of court by Federal District Judge Thomas Griesa, has presented the government with a series of uncomfortable dilemmas. The government is attempting to prevent the release of any of its files on the 1,300 informants who the FBI says spied on the SWP since 1960. The out-of-court settlement proposed by the government would have restricted access permanently to any of the 8 million pages of government files on the SWP in return for a cash payment.

The SWP rejected both offers, according to Siegle. Another member of the SWP's political committee, Sydney Stapleton, confirmed that he and the SWP's lawyer, Leonard Boudin, met in February and April with Barbara Babcock, the Assistant Attorney General for the Civil Division of the Department of Justice, to discuss the settlements.

Dealing for dollars.

According to Siegle, the first offer was for \$200,000 and the second for "some-what more." Siegle also stated that the government had offered to seal the files in the National Archives, forbidding access to anyone "for any reason"—except the Attorney General. Stapleton stated

that the amount of the second offer was left "vague" but was still considerably less than the SWP had spent so far in fighting the suit, which he estimated to be around \$1 million.

Leonard Boudin declined to comment on the announcement by Siegle, saying, "It is my preference not to comment on any negotiations that I may or may not have had with government officials." A report that such negotiations had taken place appeared in an article by Stephen Brill in a recent issue of *Esquire*. No details were given. Such negotiations are normally kept secret, but Stapleton said that a decision had been made by the SWP to discuss them openly after Brill's report appeared.

Although the government routinely settles cases out of court, the offer of a settlement to the Socialist Workers Party is unusual because of its magnitude and the kind of government malfeasance charged in the suit.

David Hamlin, executive director of the Illinois American Civil Liberties Union, which itself is suing the government in two suits similar to the SWP's, stated that he was not surprised that the government wants to negotiate its way out of this suit. "The government is faced with hundreds of such suits, and they hope that if they throw money at them they will go away." Hamlin praised the SWP for turning down the settlement offers at this time. "There has not yet been a good judicial review of the principles involved. There is no dollar value that can be placed on the damages. The legal principles must be resolved."

Committing crimes to collar citizens.

The SWP, a Trotskyist party with 2,500 members, filed suit in July 1973 claiming \$40 million in damages and asking the courts to stop further spying and disruption against it. The case has yet to go to

trial, and may not for years, but the pre-trial hearings have brought out much about political counterintelligence in the U.S. The most notorious revelation concerned the existence of "COINTELPRO," a program of disruption of the left that was launched in 1961 by former FBI director J. Edgar Hoover. Although, to date, the party has seen fewer than 1 percent of the mountain of documents the government says it has filed on it, break-ins, burglaries, wire-taps, and character assassination, carried out with astonishing frequency, have been disclosed. In the period 1960-66, it has been shown that the FBI burglarized the SWP's offices at least 94 times, an average of once every three weeks. Among the 1,300 informants who were used against the SWP in the period since 1960, 300 became members of the party.

Throughout the entire period of their activities against the SWP—dating back to the founding of the party in 1938—government investigators never found any evidence with which to charge an SWP member with a crime, much less win a conviction. This fact has proved extraordinarily embarrassing to the government and helpful to the SWP's suit that claims the government's activities were not related to criminal activity but were conducted solely to disrupt the party. The SWP claims, therefore, that the government violated the First and Fourth amendments to the Constitution.

Protecting stool-pigeons.

In the five years since the suit was filed, the government has been stalling and trying to prevent a cascade of new revelations about political suppression. The government has repeatedly refused to cooperate with the pre-trial "discovery" process, arguing that the release of 18 of the 1,300 informer files to the SWP's attorneys would violate "informant privilege"

and compromise the informant system of fighting crime.

In June, U.S. Attorney General Griffin Bell decided to take "personal" control of the files and was held in contempt of court by Judge Thomas Griesa on July 6, for not releasing them. Bell's lawyers, the U.S. District Attorney's office for the Southern District of New York, are now appealing Griesa's ruling. Although Bell has said he will comply with a Supreme Court decision on the matter, his appeal is regarded as highly unusual and a measure of the government's determination to avoid turning over the files. "Discovery" orders in civil cases cannot normally be appealed. Arieh Neier, outgoing executive director of the ACLU, called Bell's personal intervention "a naked display of power."

Although the government claims its ability to fight crime will be dangerously impaired if it discloses the identity of informants by releasing the files, SWP members attending last week's conference argued that the government does not want to release the files so that it can continue to carry out disruption in the future. They point out that legislation is now under consideration to legalize otherwise illegal activities of informants through the use of court orders.

Jumping on the bandwagon.

Although Judge Griesa has ordered that the files turned over to the SWP's attorneys must be kept secret (they would not even be allowed to tell their clients what was in them), the government fears that they would eventually become public. If so, officials may be worried that the information in them could encourage more suits like the SWP's. The National Lawyers Guild, for example, filed suit last year for \$65 million in damages in an action modeled on the SWP case.

According to Roger Rudenstein, a spokesman for the Political Rights Defense Committee, an SWP-run group which is financing and publicizing the case, the SWP's suit has already spawned hundreds of similar suits.

Asked how the case was going for the government, Frank Wohl, the head of the Civil Division of the Department of Justice for the Southern District of New York, which is in charge of arguing the case, would not comment. To the same question, SWP lawyer Winter replied, "We're winning the case. We're right on the law. We're right on the informer privilege. We're just right."

Former judge held in contempt.

The SWP is helped in its already strong case by excellent lawyers. Leonard Boudin is regarded by many as the foremost civil liberties lawyer in the country. Furthermore, the SWP is blessed with "a good judge." Judge Griesa, a 48-year-old Nixon appointee, has been hearing the case with relentless patience, persistence, and intelligence. Although he has made many rulings adverse to the SWP—refusing to request relevant files from the CIA and the National Security Agency—he has ultimately refused to bow to the extraordinary pressure that the government has placed on him. In particular, his willingness to order Bell, a former District Court Judge, held in contempt was seen by many observers as a demonstration of his determination to see the case fairly heard. In addition, Griesa's careful conduct of the case leaves little chance that the decision will be overturned on procedural grounds.

No one involved in the case will estimate how long it will be before it finally comes to trial. Margaret Winter believes that the government's strategy is to try to conduct "a war of attrition" with the SWP. "We've been litigating this informer issue for two years now," she points out. "They could drag it out for another two." Ironically, according to Winter, when the case finally goes to trial, it may last no longer than a month. Most of the evidence for the case is in documents and it is unlikely that the government will call witnesses to contest what is in them.

Already the case is the longest running case of its kind in history. Says Boudin, "The case poses for me the question of whether this is really a government of laws or whether the illegalities of government agencies directed at the destruction of political parties can receive judicial protection." ■