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Attorney for PLAINTIFF

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

ALAN GELFAND,)
)
) Plaintiff,)
)
 vs.)
)
) UNITED STATES ATTORNEY GENERAL,)
) GRIFFING BELL, DIRECTOR OF THE)
) FEDERAL BUREAU OF INVESTIGATION,)
) WILLIAM H. WEBSTER, DIRECTOR OF)
) THE CENTRAL INTELLIGENCE AGENCY,)
) STANFIELD TURNER, DIRECTOR OF THE)
) NATIONAL SECURITY AGENCY, VICE)
) ADMIRAL BOBBY INMAN, JACK BARNES,)
) LARRY SEIGLE, PETER CAMEJO, DAVID)
) JEROME, MARY ROCHE, DOUG JENNESS,)
) SHARON CABANAS, PEARL CHERTOV,)
) BRUCE MARCUS, SOCIALIST WORKERS)
) PARTY.)
)
) Defendants.)

CASE NO. 79-02710 MRP (TX)
PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO MOTIONS
TO DISMISS; AFFIDAVIT OF
ALAN GELFAND.
DATE: November 19, 1979
TIME: 9:30 A.M.
PLACE: Room 20

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BRUCE MARCUS, SOCIALIST WORKERS)
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PARTY,)
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Defendants.)

CASE NO. 79-027k0 MRP (TX)

MEMORANDUM OF LAW

IN OPPOSITION TO MOTIONS TO DISMISS

PRELIMINARY STATEMENT

In order to provide the Court with a full perspective of the factual and legal issues involved, a brief historical background is presented.

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1 Trotsky and Lenin were leaders of the Russian Revolution.
2 Although Trotsky served as leader of the Red Army, he was also a
3 leader of the Russian Communist Party and the Comintern (Third
4 International).

5 Following Lenin's death, the Russian Communist Party became
6 more conservative and gave its leadership to Stalin. Stalin's
7 policies became anti-Marxist and gave rise to the attitude of peace-
8 ful coexistence as a form of socialism in one country.

9 In response to this conservative trend, Trotsky organized
10 the Left Opposition as a faction within the Communist Party. How-
11 ever, by 1927, the Stalinist faction had become dominant to the
12 extent that it decisively defeated the Left Opposition and began
13 imprisoning or exiling its leaders, including Trotsky who was
14 deported in 1929.

15 Trotsky, while in exile, began to make plans to transform
16 the remnants of the Left Opposition, which were scattered through-
17 out the world, into the Fourth International. This was accomplished
18 in 1938, but not before the GPU (Stalin's secret police) hunted
19 down and murdered many of the leaders of the Left Opposition. This
20 liquidation of Trotskyists outside the Soviet Union coincided with
21 Stalin's infamous purges within the Soviet Union. Trotsky was tried
22 in absentia and sentenced to death.

23 The Socialists Workers Party supported the position of Trotsky
24 and became a fraternal section of the Fourth International. One of
25 the SWP's responsibilities was to protect the life of Trotsky who
26 was residing in Mexico. Joseph Hansen, a member of the SWP was
27 sent to Mexico to ostensibly help perform this assignment. On
28 August 20, 1940, Trotsky was assassinated by a GPU agent.

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1 No serious investigation of this assassination has ever
2 been undertaken by the SWP. However, in the last few years documents
3 have been made public which raised questions about Trotsky's assass-
4 ination and in particular, Joseph Hansen. These documents indicate
5 that Joseph Hansen was involved to some extent with both the GPU
6 and the FBI. Joseph Hansen died as a prominent SWP leader approxi-
7 mately one week after the plaintiff was expelled from the SWP.

8 The SWP, through the SWP's moving papers, hold that the plain-
9 tiff has accused Joseph Hansen of being an FBI or GPU agent. The
10 SWP's Exhibits "B" and "C" illustrate the plaintiff's inquiries and
11 show that no accusations were made but rather that the plaintiff
12 sought answers, clarifications and explanations to logical and
13 obvious questions. The SWP leadership has used this technique in
14 converting plaintiff's questions into accusations apparently to
15 avoid answering them (See Exhibit "A", May 6, 1979 letter).

16 Further, plaintiff's efforts during this inquiry were not
17 public, as the SWP's moving papers would have us believe (see Page 2
18 lines 10-11, SWP's Preliminary Statement), but rather, private in
19 that those questions were asked at various meetings not open to the
20 public and in private discussions with party leaders.

21 The SWP would also have this Court believe that a member
22 does not have the right to be present at a trial convened by a higher
23 body (see page 7, lines 10-12; SWP's Preliminary Statement). A
24 quick reading of the pertinent section, Article VIII, Section 3 of
25 the SWP Constitution will dispel this notion. (See Exhibit "B",
26 Article VIII Sec. 3).

27 Exhibit "B" of the SWP's moving papers, is purported to have
28 provided proper and adequate notice to the plaintiff regarding his

1 trial. However, this letter does not indicate what type of meeting
2 is to be held, nor at what time it is to be held. In response to
3 this letter, plaintiff spoke to defendant MARY ROCHE by telephone,
4 who informed him that since the Political Committee was handling the
5 matter, no right to trial attached. Plaintiff then specifically
6 requested a trial, the right to attend the trial, to call witnesses
7 on his behalf, and to confront and cross-examine his accusers.

8 The plaintiff contends that the SWP has been transformed from
9 the purpose it was intended, to an agency of the U.S. Government
10 which serves as an instrument to not only inform upon various
11 Trotskyists and Socialists, but to also be in a position to actively
12 misrepresent, distract, weaken and ultimately destroy Trotskyism.
13 The expulsion of plaintiff from the SWP was then an act of the U.S.
14 Government in violation of the plaintiff's First Amendment rights.

15 ARGUMENT

16 I. PLAINTIFF'S FIRST CLAIM FOR RELIEF STATES
17 GROUNDS UPON WHICH RELIEF CAN BE GRANTED.

18 A. Rule 12(b) Federal Rules of Civil
19 Procedure.

20 A motion to dismiss for failure to state a claim fails where
21 from the pleadings it appears that there are facts in dispute and
22 those facts give rise to a claim for relief. Conley v. Gibson
23 (1957) 78 S.Ct. 99, 355 U.S. 41, 2 L.Ed. 2d 80. For purposes of
24 this motion then, the "SWP" and "Government" defendants must admit
25 the facts alleged and those facts must be viewed in a light most
26 favorable to the plaintiff. Conley v. Gibson, supra; Radovich v.
27 National Football League (1957) 77 S.Ct. 390, rehearing denied
28 77 S.Ct. 716, 353 U.S. 931, 1 L.Ed.2d 724; Davis v. Turner (1952)

1 5th Cir., 197 F.2d 847.

2 The plaintiff's complaint alleges a fact of grave importance
3 in paragraph 21, and in so doing puts into issue the question of the
4 "Government's" involvement with the SWP. This allegation places the
5 responsibility for the conduct of the SWP defendants squarely on the
6 shoulders of the Government. This allegation is not whimsical but
7 rather it is entirely within the realm of reality. The U.S. Govern-
8 ment has used at least 1331 informants against the SWP and the
9 Young Socialist Alliance. (See SWP v. Attorney General, 458 F.Supp.
10 895, 908; and see the Government's moving papers page 7 and Exhibit
11 A).

12 The test placed upon these alleged facts is clear and well
13 settled. Unless it can be said that it appears "beyond doubt" that
14 the plaintiff can prove no set of facts upon which relief can be
15 granted, the motion must be denied. Sherman v. Yakahi (1957) 9th Cir.,
16 549 F.2d 1287; Thomas v. Younglove (1976) 9th Cir., 545 F.2d 1171;
17 Conley v. Gibson, supra.

18 The SWP has presented nothing on this motion to show that
19 the Government has not infiltrated or continued to infiltrate its
20 party. Additionally, the Government merely offers an exhibit
21 (Exhibit A) which indicates that the FBI has not continued investi-
22 gations of party members, but which was signed in August of 1978.
23 Secondly, the Government offers Exhibit B which in its ambiguity
24 indicates the FBI has suggested to informant members of the SWP that
25 they withdraw from the SWP. These documents do not eliminate the
26 possibility that the Government, in some manner, controls or has
27 infiltrated the SWP, and that possibility being a real one, there
28

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1 is then, a possibility that the plaintiff can prove the facts as
2 alleged in the complaint and the plaintiff must be given the oppor-
3 tunity to do so.

4 B. The First Amendment Right,

5 The freedom to associate has become a part of the First
6 Amendment with as much vitality as the freedom of speech.

7 NAACP v. ALa. ex. rel. Patterson, (1958) 78 S.Ct. 1163, 357 U.S. 449,
8 2 L.Ed. 2d 1488; NAACP v. Button (1963) 83 S.Ct. 328, 371 U.S. 45,
9 9 L.Ed. 2d 405; Elfbrant v. Russell (1966) 86 S.Ct. 1238, 384 U.S.
10 11, 16 L.Ed. 2d 321.

11 Political questions involving at the same time a private
12 legal right afforded by the Constitution or Statute have been held
13 enforceable in equity in the absence of an adequate remedy at law.
14 Hume v. Mahan (1952) DC. Ky. 1 F.Supp. 142, 53 S.Ct. 223, 77 L.Ed
15 505, 287 U.S. 575. In fact, party officers or the party itself may
16 be enjoined from conduct which violates the rights of another person.
17 Maxey v. Washington State Democratic Committee (1970) D.C. Wash.,
18 319 F. Supp. 673,

19 Direct actions under the Constitution of the United States
20 have been received by the Courts and remedies have been granted.
21 Bivens v. Six Unknown Named Agents of the Federal Bureau of Narco-
22 tics (1971), 403 U.S. 388, 91 S.Ct. 1999. See Writers Guild v.
23 F.C.C. (1976) C.O.Cal., 423 F.Supp. 1064. In holding that the
24 plaintiff's claim was neither insubstantial or frivolous, Justice
25 Black stated:

26 "... where federally protected rights have been
27 invaded, it has been the rule from the beginning
28 that courts will be alert to adjust their remedies

1 so as to grant the necessary relief."

2 Bell v. Hood (1946) 327 U.S. 678 at 684.

3 The SWP contends that no First Amendment right was violated
4 by virtue of the expulsion of the plaintiff from the SWP (page 6,
5 SWP's moving papers). In so doing the SWP alleges that it is a
6 voluntary organization existing purely for the purpose of furthering
7 particular social goals (pages 6-7, SWP's moving papers). This con-
8 tention puts into dispute the central and basic allegation of this
9 complaint. Is the SWP a voluntary political organization or, is it
10 an agency or quasi-agency of the U.S. Government?

11 The nature of the plaintiff's right to associate is very
12 unique in this context as it borders on and overlaps his right to
13 participate in American politics. A political right has been
14 defined as a right exercisable in the administration of government
15 (Fletcher v. Tuttle, 37 N.E. 683, 151 Ill. 41) and as a right
16 afforded by the Constitution to every citizen to participate,
17 directly or indirectly, in the establishment or management of
18 government (Blackman v. Stone D.C. Ill., 17 F.Supp. 102, 57 S.Ct.
19 514, 300 U.S. 641, 81 L.Ed. 856). In the instant case, the plain-
20 tiff seeks the right to participate in the political activities of
21 the SWP and thereby have an affect upon the policies that are
22 developed and the candidates selected so that an impact will be
23 made upon the various governments within the United States. There
24 is no party which holds to the unique premises of the SWP.

25 The SWP cites Sweezy v. New Hampshire as controlling. How-
26 ever, it is submitted that this case does not support the SWP's
27 contention for two reasons. First, the holding had the effect of
28 protecting the individual from the government's intrusion into his

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1 rights of association with a political party. Secondly, this case
2 was not based upon the First Amendment. (See dissent of Clark, J.
3 354 U.S. 234, at 270.)

4 It is therefore submitted that if:

5 "... where the group's action is imputable to
6 an arm of the government, one claiming injury
7 caused by that action can invoke the due pro-
8 cess limitations on governmental action set
9 forth in the Fifth and Fourteenth Amendments."

10 Judicial Control of Actions of Private Associ-
11 ations, 76 Harvard Law Review 444, at 1055,

12 then an individual ought to be afforded a remedy through the use of
13 the First Amendment as well. To deny the plaintiff membership in
14 the SWP is to deny him the right to participate in the political
15 process. (By analogy, see Nixon v. Herndon 273 U.S. 536, 475 S.Ct.
16 446.) It is within the court's judicial power to provide a remedy
17 where a fundamental and substantive constitutional right has been
18 infringed. See 85 Harvard Law Review 1532, at 1540.

19 II. THE COMPLAINT STATES GROUNDS SUFFICIENT FOR
20 RELIEF ON THE SECOND, THIRD AND FOURTH CLAIMS
21 FOR RELIEF.

22 A. The relationship of 42 U.S.C. Section
23 1985(3), 42 U.S.C. and 42 U.S.C. Section 1988.

24 As the SWP points out, there is no right to relief under
25 42 U.S.C. Section 1986 unless a valid claim under 42 U.S.C. 1985(3)
26 is established. Further, relief under 42 U.S.C. Section 1988 is
27 contingent upon the success of the claim under 42 U.S.C. Section
28 1985(3).

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1 B. The 42 U.S.C. Section 1985(3) Claim.

2 This section creates a civil action for damages against
3 those persons engaging in conspiracies to deprive others of equal
4 rights. Private conspiracies having the effect of denying First
5 Amendment rights come within the purview of 42 U.S.C. Section 1985(3).
6 Puentes v. Sullivan (1977) E.D. Texas, 425 F.Supp. 249. Glasson v.
7 City of Louisville (1975) 6th Cir. 518 F.2d 899, cert. denied
8 423 U.S. 930, 96 S.Ct. 280, 46 L.Ed. 2d 258.

9 The SWP asserts that the plaintiff fails to allege facts
10 showing an invidiously discriminatory class-based animus motivating
11 the deprivation of a protected right. It is well settled that the
12 purpose of such a requirement is to avoid making 42 U.S.C. Section
13 1985 into a general tort law. Griffin v. Breckinridge (1971)
14 403 U.S. 88, 91 S.Ct. 1790, 29 L. Ed. 338.

15 The question of how clearly defined a class must be to
16 support a Section 1985(3) claim has been dealt with in a fact situ-
17 ation analogous to the instant case. A college professor was denied
18 tenure for cooperating with representatives of the C.I.A. The court
19 held that the plaintiff be given an opportunity to prove the class-
20 based discriminatory animus at trial. Selzer v. Berkowitz (1978)
21 459 F.Supp. 347. The court indicated the appropriate class consisted
22 of members of the teaching profession who talked or associated with
23 the C.I.A., or who wish to talk to or associate with the C.I.A.

24 "The fact that plaintiff may not be able to
25 identify specifically other class members or
26 even prove similar conspiracies directed
27 against such other class members does not pre-
28 vent this Court from finding a sufficiently

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1 defined class."

2 Selzer v. Berkowitz, supra at page 350.

3 The Selzer case does not stand alone. Thus, courts have
4 upheld as proper classes for Section 1985(3) claims those consisting
5 of political demonstrators, (Glasson v. City of Louisville, supra;
6 environmentalists (Westberry v. Gilman Paper Co. (1975) 5th Cir.
7 507 F.2d 206); political campaign workers (Cameron v. Brock 1974
8 6th Cir., 473 F. 2d 608); striking teachers (Bradley v. Clegg 1975,
9 E.D. Wisc., 403 F.Supp. 830); and even a single white middle-class
10 family (Azar v. Conley 1972, 6th Cir., 456 F.2d 1382).

11 Reading the complaint in a light most favorable to the plain-
12 tiff it can be said that the plaintiff is situated in a class of
13 persons belonging to the SWP who have expressed a desire to know,
14 or wish to know about the Government's infiltration into the SWP or
15 its manipulation of the SWP and/or the activities of Joseph Hansen.

16 III. THE COMPLAINT STATES GROUNDS SUFFICIENT FOR
17 RELIEF ON THE FIFTH CLAIM FOR RELIEF.

18 A. Case or Controversy.

19 The Government alludes to the contention that the complaint
20 filed herein fails to give rise to a case or controversy (page 7,
21 Government's moving papers).

22 A controversy is one that is distinguishable from a dispute
23 of a hypothetical or abstract nature. Aetna Life Co. v. Haworth
24 (1937) 300 U.S. 227, 57 S.Ct. 461, 81 L.Ed. 617, rehearing denied
25 300 U.S. 687, 57 S.Ct. 667, 81 L.Ed. 889. There is nothing hypothet-
26 ical about the plaintiff's allegations. The plaintiff was expelled
27 from the SWP for raising certain questions and the Government has
28 been involved in surveillance and infiltration of the SWP. It is

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1 interesting to note that the affidavits on file herein from defen-
2 dants LARRY SEIGLE and MARY ROCHE do not contain a statement deny-
3 ing that they are agents, representatives or informers for the
4 Government. Further, the affidavits filed on behalf of the Govern-
5 ment do not conclusively exclude that possibility.

6 Where there is a concrete case admitting of an immediate and
7 definitive determination of the legal rights of the parties in an
8 adversary proceeding upon the facts alleged, the judicial function
9 is to be exercised even though the rights of the litigants may not
10 require the award of money damages. Aetna Life Co. v. Haworth,
11 supra.

12 B. Injunctive Relief.

13 It is premature to determine whether injunctive relief and
14 the disclosure of informants should be granted. Political rights
15 may be protected by injunctive orders. Dastague v. Cohen, 131 So.
16 746, 14 La. App. 475; Maxey v. Washington State Democratic
17 Committee, supra.

18 The Government does not contend that this Court lacks injunc-
19 tive powers but asserts that since the surveillance has ceased,
20 there is nothing to enjoin. A close examination of the Government's
21 Exhibits A and B reveal that there is no documentation indicating
22 that the C.I.A. or the N.S.A. are not surveilling or infiltrating
23 the SWP.

24 It would be helpful to examine the experiences of Judge
25 Griesa:

26 "However, certain instances of misrepresentations
27 by the FBI in connection with discovery have
28 occurred. These unfortunate instances furnish

1 some plausibility for plaintiffs' assertion, in
2 connection with their request for informant files
3 that they need at least a representative sample
4 of actual, complete files, and that they should
5 not be relegated to summary information or expur-
6 gated documents prepared for them by the Govern-
7 ment.

8 One critical instance where the FBI was less
9 than candid occurred in connection with plaintiffs'
10 first set of interrogatories directed to the FBI.
11 These interrogatories were served in December 1973.
12 By the time of these interrogatories plaintiffs had
13 obtained, among other things, a copy of a memorandum
14 dated April 28, 1971 from the Director of the FBI
15 announcing the discontinuance of certain "counter-
16 intelligence programs"--including programs entitled
17 "COINTELPRO--New Left" and "Socialist Workers
18 Party--Disruption Program." The FBI furnished sworn
19 answers to the interrogatories February 5, 1974.
20 These answers stated, among other things, that
21 COINTELPRO--New Left was not applicable to either
22 the SWP or the YSA; and that the purpose of the
23 Socialist Workers Party-Disruption Program "was to
24 alert the public to the nature and activities of
25 the Socialist Workers Party and thus to neutralize
26 the Socialist Workers Party." The answers further
27 described the tactics employed in the Socialist
28 Workers Party--Disruption Program as consisting of

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1 the furnishing of information to law enforcement
2 agencies regarding violations of the law by SWP
3 and YSA members, furnishing the news media perti-
4 nent information regarding the objectives and
5 activities of these organizations, and furnishing
6 "information concerning the nature and activities
7 of SWP and YSA to organizations and individuals
8 associated with SWP, YSA or their members."

9 In March 1975 the FBI produced documents which
10 showed that COINTELPRO--New Left was in part
11 directed to the SWP and YSA. The documents showed
12 FBI plans and activities of both COINTELPRO--New
13 Left and Solcialist Workers Party--Disruption
14 Program which were far different from the bland
15 descriptions in the answers to interrogatories.
16 The documents indicate that the purpose of the
17 FBI in these programs was to destroy or cripple the
18 SWP and YSA by a host of covert means--to isolate
19 the SWP and YSA from sympathetic organizations, to
20 turn members against one another, and to impose
21 burdens and barriers to the functioning of the SWP,
22 the YSA and their members. These are activities
23 which are not countenanced in the prosecution and
24 punishment of actual criminals, under our system
25 of government."

26 SWP v. Attorney General, supra, at 904 and at page 906;

27 "In the summer of 1976 one Timothy Redfearn was
28 arrested by the Denver police. It was quickly

1 revealed that he was an FBI informant against
2 the YSA, and that, among other things, he had
3 committed burglaries of YSA premises. It was
4 apparent that the FBI had full knowledge of
5 these burglaries. Finally, it was clear that
6 the FBI had intentionally falsified the answers
7 to the interrogatories to conceal the fact of
8 the burglaries."

9 And again at page 907:

10 "To turn to the subject of the interrogatory
11 answers--following the revelation of false ans-
12 wers in connection with the informant Redfearn,
13 the FBI undertook a review of the answers as a
14 whole. On October 8, 1976, the FBI filed amend-
15 ments to the answers relating to 22 of the infor-
16 mants. A special review at FBI headquarters in
17 Washington was made with respect to the answers
18 to interrogatories filed with respect to the
19 eighteen informants whose files were the subject of
20 plaintiffs' motion. This review resulted in amend-
21 ments to the interrogatory answers in ten instances,
22 filed October 15, 1976. Under the circumstances,
23 there inevitably remains some question as to the
24 accuracy and completeness of the interrogatory
25 answers as to the FBI informants."

26 These comments by Judge Griesa strongly support the pro-
27 priety of the plaintiff's prayer for injunctive relief and disclo-
28 sure of informants as well they explain that such relief at this

1 point, would be premature.

2 C. Jurisdiction.

3 Under 28 U.S.C. 1331, this court has jurisdiction over the
4 agency defendants as well as the individual officers in their
5 official capacity. Jurisdiction under 28 U.S.C. 1332 does require
6 an allegation of \$10,000.00 in damages. Further, 28 U.S.C. 1343
7 does not provide for jurisdiction over federal officers but as to
8 all other defendants, this court does have jurisdiction under that
9 section.

10 In 1976, 28 U.S.C. 1331 was amended to eliminate the require-
11 ment of a \$10,000.00 allegation for claims brought under the Consti-
12 tution, laws or treaties of the United States. The expressed legis-
13 lative intent was to extend federal jurisdiction to include all
14 matters invoking the enforcement of federal rights, irrespective of
15 monetary value. Russell v. Town of Manaroneck, 440 F.Supp. 607.

16 Jurisdiction also obtains under 28 U.S.C. 1343(1) as it pro-
17 vides for such in those matters involving a violation of 28 U.S.C.
18 1985. Since the complaint alleges a violation of 28 U.S.C. 1986,
19 jurisdiction also attaches under 28 U.S.C. 1343(2). Federal juris-
20 diction should also attach under 28 U.S.C. 1343(3) as it provides
21 such when state action has deprived an individual of any right,
22 privilege or immunity secured by the Constitution.

23 It is submitted that "state action" should include "federal
24 action." It has been held that 42 U.S.C. 1985(3) was aimed at all
25 conspiracies, whatever their source and this included actions taken
26 by federal officers. See Stith v. Barnwell, 447 F.Supp. 970; Alvaraz
27 v. Wilson, 431 F.Supp. 136. Should the plaintiff prove that the SWP
28 defendants were acting as agents, representatives or informants of

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1 the Government, they would then be within the jurisdiction of the
2 court.

3 D. The Allegations.

4 The Government contends that the allegations are too general,
5 conclusionary and vague. The test to be used by the court is whether
6 or not the facts alleged are sufficient to put the defendants on
7 notice of the claim in a manner which will allow them to prepare a
8 defense. Finley v. Rittenhouse (1969), 9th Cir. 416, F.2d 1186.

9 The plaintiff's complaint, in contrast to those cited by
10 the Government, describes with particularity the specific action
11 taken (paragraphs 11-20), by named defendants and where appropriate
12 the location of such activity. Further, a nexus, or causal connec-
13 tion between the actions of the federal defendants and the injury
14 suffered. Oster v. Aronwald (1977), 2d Cir., 567, F.2d 551. The
15 conduct of which the plaintiff complains was, as alleged, carried
16 on by the named SWP defendants acting as agents, representatives or
17 informants for the Government. The basis for this relief can be
18 inferred from the complaint and the documents filed with this plead-
19 ing.

20 CONCLUSION

21 The Motion To Dismiss filed by the Government and the SWP
22 should be denied.

23 Respectfully submitted,

24
25
26 ROBERT L. ALLEN,
27 Attorney for Plaintiff
28

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Attorney for Plaintiff

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT

ALAN GELFAND,)
)
Plaintiff,)
)
vs.)
)
UNITED STATES ATTORNEY GENERAL,)
GRIFFIN BELL, DIRECTOR OF THE)
FEDERAL BUREAU OF INVESTIGATION,)
WILLIAM H. WEBSTER, DIRECTOR OF)
THE CENTRAL INTELLIGENCE AGENCY,)
STANFIELD TURNER, DIRECTOR OF THE)
NATIONAL SECURITY AGENCY, VICE)
ADMIRAL BOBBY INMAN, JACK BARNES,)
LARRY SEIGLE, PETER CAMEJO, DAVID)
JEROME, MARY ROCHE, DOUG JENNESS,)
SHARON CABANAS, PEARL CHERTOV,)
BRUCE MARCUS, SOCIALIST WORKERS)
PARTY,)
)
Defendants.)

CASE NO. 79-02710 MRP (TX)

AFFIDAVIT OF ALAN GELFAND

I, ALAN GELFAND, state:

I was a member of the Socialist Workers Party from March of 1976 until January of 1979.

In August of 1977, at the SWP National Convention, copies of governmental documents were distributed by members of the Workers League (political opponents of the SWP). The documents

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1 on their face suggested that Joseph Hansen, a prominent leader of
2 the SWP, had, in the past, some type of relationship with the F.B.I.

3 These documents were interpreted by the SWP membership in
4 essentially three ways. One section considered these documents to
5 be outright forgeries manufactured by the Workers League. Another
6 section considered the documents to be authentic but their content
7 to be untrue. Some members, including myself, thought that the doc-
8 uments were authentic and their content to be true, but that a logi-
9 cal political explanation existed which eliminated any sinister
10 implications.

11 In seeking a logical political explanation, I conferred with
12 Lilian Curtis, one evening at the convention. Ms. Curtis is a long-
13 time member of the Los Angeles Local. She felt the documents were
14 untrue but conceded that she had not really examined them. She did
15 suggest that perhaps other members of the party might be better able
16 to discuss the subject and that I should speak to them.

17 The very next morning, as I was walking to the convention
18 hall, I was approached by defendant Jack Barnes, the National Secre-
19 tary of the SWP. This was the first time I had ever spoken to
20 BARNES. As we were passing members of the Workers League who were
21 attempting to hand out these documents, BARNES began to discuss them.
22 I expressed my concern about the numerous conflicting positions that
23 existed regarding these documents. BARNES then went on to state
24 that these documents were absolutely true, that they were not any
25 big secret in that they had been released seven or eight years be-
26 fore, and that it is well known that Joe (Hansen) met with the F.B.I.
27 for about six months following the assassination of Trotsky, so that
28 we could tap all sources of information regarding the assassination.

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1 BARNES further indicated that Joe (Hansen) will write a reply which
2 would be published shortly in Intercontinental Press (SWP periodical)
3 explaining all of this.

4 The next day during the convention I was approached by
5 Lyle (last name unknown), a member of the Los Angeles Local, who
6 advised me that there was a matter he wanted to discuss with me
7 outside.

8 Once outside Lyle informed me that he had heard I had some
9 questions about Hansen and perhaps he could answer them because he
10 was very familiar with the campaign against Hansen. Lyle initially
11 took the position that these documents were F.B.I. "dirty tricks."
12 As proof of this he informed me of the time in another city (I
13 believe Denver) in which he saw documents which indicated that he
14 (Lyle) was an F.B.I. informant, but that this was just a "dirty
15 trick." This astounded me.

16 During the next months I studied all the materials that I
17 could obtain regarding the Workers League's campaign against Joseph
18 Hansen. In mid-September at a Los Angeles SWP meeting, I raised the
19 issues related to these documents. At the conclusion of these
20 remarks Fred Haldstad, a National Committee member rushed to the
21 podium to explain that my remarks were out of order but that perhaps
22 we would have an educational on the subject in the future.

23 By January of 1978, no response had been published by Hansen,
24 or any party member, nor had any educational ever been held.

25 From this point on I was unable to get the SWP officials to
26 explain the documents and Hansen's relationship to the F.B.I.

27 ...

28 ...

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1 Finally, I was expelled from the party without being present at the
2 trial, not being able to bring witnesses in on my behalf, nor being
3 able to cross-examine my accusers.

4 Since that time I have been unable to fully practice the
5 politics of my choice and associate with the SWP. I believe that
6 the named defendants and perhaps others, have conspired to remove
7 me from the SWP and I further believe that the SWP has not "purged"
8 the party of government agents. Further, I am certain that there
9 are other members of the SWP who would like to have the issues that
10 I have raised clarified and that they would be subject to expulsion
11 also, if they sought answers as I did.

12 Attached are Exhibits D and E which are copies of the docu-
13 ments to which I have referred.

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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of December, 1979, at Los Angeles, California.



Alan Gelfand,
Declarant.

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May 6, 1978

Dear Comrade Larry Seale and the Political Committee:

I have received your April 7, 1978 letter from the Political Committee. After reading it, it becomes clear why it has taken the Political Committee so long to respond to the numerous letters I have written over the last several months. That is, because it confirms my worst suspicions that a section of our leadership is unable to answer the most basic revolutionary questions raised by Sylvia Franklin and Joseph Hansen's respective involvements with the GPU and the FBI, and as a consequence thereof, is consciously covering up these involvements.

Reading your April 7, 1978 letter reminded me of Watergate and the struggle that Woodward and Bernstein engaged in against Nixon. They patiently and meticulously gathered evidence which brought them progressively closer to the White House. With each new revelation Nixon responded by saying that these charges were lies and slanders. He consistently refused to answer any questions directly and tried to concentrate instead on attacking the "source" which he claimed to be the news media, and his asserted political enemies. Through this strategy a new word was coined, "Stonewalling."

This is the same strategy that at least a section of our leadership has decided to implement regarding Franklin and Hansen. If such a strategy resulted in forcing from office the most powerful capitalist politician in the world, its impact on a small socialist party might well result in destroying not just one or two individuals, but the whole party itself.

I again therefore, in the strongest of terms, urge the Political Committee to reverse its position of covering up for Franklin and Hansen and openly and honestly answer, criticize, repudiate or otherwise explain their respective involvements with the GPU and FBI.

I would now like to respond specifically to several issues raised in your April 7, 1978 letter. You begin by stating, "You have asked for our opinion about how you may proceed to press your charges against Joseph Hansen." This statement is simply a lie. If you reread the series of communications which you have received from me, it becomes apparent that I have only asked for answers to basic revolutionary questions. Up to this point I have never asked that Joseph Hansen be charged with anything. By elevating questions into charges you have conveniently created a situation where you can hopefully avoid answering any questions. Isn't this an example of one of those "outright lies and crude amalgams" which you accused the Socialites of on page 2 of your letter?

EXHIBIT A

Your letter, next raises the issue of agent-baiting. This is a curious term, a term which I have never read about in any writings by Lenin or Trotsky. In 'red-baiting' one is baited for being a communist. It seems therefore in 'agent-baiting' one would be baited for being an agent. One who opposes agent-baiting is therefore saving agents should not be exposed, harrassed, ridiculed, or otherwise deterred from their conduct. This rather bizaare position may perhaps explain the resistance of a certain section of our leadership to answer any questions concerning Franklin and Hansen.

Later on you describe how a comrade in the national office was "falsely" accused of being a Stalinist agent in the 1940's. This is then used as an example of how "spy scares" can cause damage to the party.

What you fail to analyze however, was the manner in which Cannon proceeded when this particular accusation was made. He did not summararily dismiss the accusation as agent-baiting. He did not remain silent. He did not refuse to respond to the accusation. What he did was to convene our Control Commission to investigate what was essentially a mere accusation.

Cannon's method is in sharp contrast to the way our leadership is proceeding with regard to Franklin and Hansen. This contrast is even more striking when one considers the multitude of documents, testimony, statements and admissions which have been compiled against Franklin and Hansen as opposed to the "mere accusation" which alone was sufficient enough for Cannon to convene our Control Commission.

Your letter also reiterates our position as to why the Healyite charges are slanders. You cite certain issues of Intercontinental Press and a National Education Bulletin that attempted to answer these charges. As you know comrades, I have studied these materials thoroughly and far from answering any basic questions concerning Franklin and Hansen's GPU and FBI involvements, these materials, because of their inconsistencies, contradictions, evasions, and outright distortions, became the primary source for the questions which I have raised.

You then refer to a verdict from those who had "examined the evidence on both sides." I of course totally reject this "verdict" for a variety of reasons. First, it is absurd to have a verdict without having a trial or some type of investigation. You claim that they investigated the evidence on both sides. If that is so, when and where was this done, what evidence was examined, and who defended each position? I of course know you have no answers to these basic questions because no trial or investigation has ever taken place.

This so-called "verdict" is similar to those obtained in the Moscow Trials, however, this "verdict" has gone one step

EXHIBIT A

further by its elimination of the expense and inconvenience of rigging a trial or investigation.

You also erroneously state that virtually all Trotskyists accepted this "verdict". In my March 26, 1978 letter I pointed out to you how Jean Van Heijencort, Trotsky's secretary, and Michel Pablo, former secretary of the Fourth International, both declared that Sylvia Franklin was in fact a GPU agent.

In addition, I am probably one of the few people that have taken up a very serious investigation of this issue. Based upon my investigation as well as the expertise which I can lend to it as an attorney, I can unequivocally state that the verdict is not only not yet in, but still in doubt as to its ultimate outcome.

Lastly, it must be mentioned that you candidly admit that the "verdict" was in long ago. This factor alone discredits your so-called "verdict" by the fact that in August 1977 new information was published, including US government documents which indicated that Joseph Hansen asked for and received a confidential relationship with the FBI. Based on this fact alone, your "verdict" which was obtained "long ago" was clearly in haste, premature and totally inadequate.

You conclude your letter with the following threat, "...any further steps by you to circulate slanders against Joseph Hansen or any other party member will be in violation of the organizational principles of the party, and will not be tolerated."

This threat in and of itself is a slander against me because I have never circulated any slanders. What I have done is to ask questions and to demand answers to fundamental questions concerning the security and integrity of our party.

To transform a question into a slanderous charge not only negates one's right of discussion, but presupposes that a "charge" is slanderous without having to offer any proof of its falsity. In any action for libel or slander, the truth is always an absolute defense. In order to prove that a statement is defamatory one must first prove factually that it is false. This is the very method which Trotsky used when he went before the Dewey Commission. At that time Trotsky testified for 13 days before the Commission and made available to it all of his writings, correspondence, etc. In this way, Trotsky was able to prove through facts that the Stalinist charges made against him were slanderous.

What you have done, contrary to Trotsky, is to eliminate the factual investigation and proof which is essential to prove a slander, and conclude in the absence of any factual determination

EXHIBIT A

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that a charge is slanderous. For this reason, the arbitrary and capricious conclusion which you have reached in characterizing certain charges made by others to be slanders, must be rejected.

It is apparent therefore that what is crucially needed at this time, is a full and complete investigation of all the issues raised by Sylvia Franklin and Joseph Hansen's GPU and FBI involvements.

Our Control Commission is specifically designed to meet just this type of need. It can carry out such an investigation with the minimum disruption to other party activities and can insure that the reputation of loyal comrades will be protected as well as the security of the party.

In this light I formally propose that our Control Commission be convened to investigate the following:

1. Sylvia Franklin's alleged GPU involvement taking into account the multitude of new evidence that has been produced since our last Control Commission cleared her. This new evidence, includes among other items, the following:
 - A. A 1960 US Government indictment naming Sylvia Franklin as an unindicted co-conspirator in a Soviet espionage trial.
 - B. Sworn testimony during a Soviet espionage trial by Jack Soble, a convicted GPU agent, that Franklin was a GPU agent.
 - C. Declaration by Michel Pablo and Jean Van Heijennort in March 1977 that Sylvia Franklin was a GPU agent.
2. Joseph Hansen's GPU involvement. In investigating this issue our Control Commission must demand answers to the following questions:
 - A. Why was it seemingly unknown that Joseph Hansen met with the GPU for 3 months in 1939 until the Healyites published this fact in 1976?
 1. If it was known before this, when was it known, by whom, and what published material confirms this fact?
 - B. What was the "valuable information" which Joseph Hansen has admitted he received as a result of his involvement with the GPU?
 1. Who else knew about the "valuable information" and why has it not been made available to our membership?

EXHIBIT A

3. Are US Government documents which indicate that Joseph Hansen had requested and received a confidential relationship with the FBI true?
- A. If they are false, why did Comrade Jack Barnes state they were absolutely true?
- B. If they are true:
1. Who authorized this involvement?
 2. What was the political motivation in authorizing such an involvement?
 3. What written material is available to confirm this authorization and the discussion which led to it?
 4. What information did Joseph Hansen give to the FBI?
 5. What information did we obtain from the FBI?
 6. Why have we failed to disclose to the membership any of the above-mentioned facts?

To facilitate our Control Commission in their investigation I will provide to it information which I expect to receive from the government in the near future, in response to my Freedom of Information Act request which I made in March regarding many of these issues. Additionally, I agree to make available to our Control Commission my services as an attorney in any manner which it deems to be beneficial to the investigation.

I am confident that by convening our Control Commission, and having them investigate and demand answers to the issues and questions which I have set forth, this matter will be satisfactorily resolved to the benefit of our party as a whole.

Comradely,
Alan Gelfand
 Alan Gelfand

EXHIBIT A

who shall pay two dollars (\$2.00). In addition, all members are expected to make regular voluntary contributions according to their means.

Section 3. Where branches are joined in local, state, or district committees, 75 cents from each dues dollar shall go to the National Office. Where local, state, or district committees do not exist, dues shall go in full to the National Office. Dues of members-at-large shall go in full to the National Office.

Section 4. Members who are three months in arrears in payment of dues shall cease to be members in good standing, and shall be so notified by the branch executive committee. Members six months in arrears shall be stricken from the rolls of the party.

ARTICLE VIII. DISCIPLINE

Section 1. All decisions of the governing bodies of the party are binding upon the members and subordinate bodies of the party.

Section 2. Any member or organ violating the decisions of a higher organ of the party shall be subject to disciplinary actions up to expulsion by the body having jurisdiction.

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Section 3. Charges against any member shall be made in writing and the accused member shall be furnished with a copy in advance of the trial. Charges shall be filed and heard in the branch to which the member belongs, or in a higher body which may decide to act directly in the case. Charges filed before the branch shall be considered by the branch executive committee (or a subcommittee elected by it) at a meeting to which the accused member is summoned. The branch executive committee shall submit a recommendation to be acted upon by the membership of the branch. Charges considered by higher bodies of the party shall, however, be acted upon by said bodies.

Section 4. Action by any unit or organ in disciplinary cases deemed improper by a higher unit may be changed by direct intervention of a higher body.

Section 5. Any member subjected to disciplinary action has the right to appeal to the next higher body, up to and including the national convention. Pending action on appeal, the decision of the party body having jurisdiction remains in full force and effect.

Section 6. Persons who have been expelled from the party or who have resigned from it may not be readmitted to the party without the approval of the National Committee.

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EXHIBIT B

January 29, 1979

Dear Political Committee,

I have received a letter dated January 15, 1979 from a Mary Roche, which indicates that I have been expelled from the SWP.

Initially one must ask who is Mary Roche? She is not a member of the political committee and holds no elected party office; yet she was given the task of not only responding to my telephone inquiry of Jan. 8, 1979, but then proceeded to sign a most critical party communication which notified me of my expulsion from the SWP.

I of course must reject Ms. Roche's contention that I have been expelled from the SWP as well as the other essential allegations contained in her letter. I acknowledge that I have been purged, not expelled; and that this action was taken by the government, not the SWP.

This purge is the result of my persistent and principled fight over the last 18 months to obtain satisfactory answers and explanations to the various questions raised by Joseph Hansen and Sylvia Franklin's relationship's with the FBI and GPU. Despite my writing numerous letters to the political committee about this subject as well as my attempts to discuss this subject with numerous leaders of the SWP, including Jack Barnes, Peter Camejo, Pearl Chertov, Larry Seigal, and George Novack; no one has ever answered the most fundamental questions raised by these relationships. Most importantly Joseph Hansen has never confirmed, denied, or otherwise explain any of the multitude of government documents which have been published since August 1977; documents which on their face suggest the most sinister and criminal relationships with both Stalinism and imperialism. Unlike Trotsky, who fought everyday of his life to refute and expose the charges lodged against him by the Stalinists, Hansen, who I have been informed has recently died; goes to his grave with a reputation that is protected only by a shallow and cowardly wall of silence.

The highpoint of my persistent and principled struggle to expose the agents within the SWP was my filing of an amicus curiae brief on behalf of the SWP in the Federal Court of Appeals. The essence of this brief was to inform the court of the vital necessity of disclosing government informants within the SWP.

Such disclosure is of particular importance today in light of the threats as well as actual physical attacks perpetrated against the SWP this past year, including the murder of a member in Salt Lake City. These factors coupled with Larry Seigal's remarks at Oberlin in August as well as at a PRDF rally in December in which he clearly intimated that a monetary settlement for the SWP's lawsuit against the government was openly being considered as a satisfactory alternative to having the informants disclosed; compelled me to file this brief in order to give further support to the argument that the informants must be disclosed. This action was certainly consistent with any revolutionary's fundamental duty to protect ones party from government infiltration.

Jack Barnes, however, considered this brief to constitute an "attack on and slander against the party" and as a consequence thereof filed charges against me. In that even a cursory reading of this brief will indicate that it attacks the government, not the SWP, one can only conclude that it was the government faction within the SWP that took

objection to this brief and that charges were filed against me in an attempt to protect their threatened informant status.

When I was apprised of these charges I immediately attempted to contact the political committee. Curiously however, the only person who would speak to me was Ms. Roche. Contrary to her letter of Jan. 15, 1979 Ms. Roche never informed me that the political committee would be acting as a trial body and in fact informed me that I only would have had a right to have a trial if a branch executive committee was the body designated to hear the charges. Since the political committee was assuming this task instead; no right to trial attached. It was only after I read to Ms. Roche Article 8 Section 3 of the SWP constitution which expressly provides for a trial did Ms. Roche then suggest that perhaps if I submitted a written statement, the political committee "might" consider it. My specific request for a trial, for my right to attend this trial to present my position, to call witnesses in my behalf, and to confront and cross-examine my accusers, was denied by Ms. Roche. At no time did Ms. Roche ever inform me that if I came to New York the political committee would consider inviting me to the "trial". This is further confirmed by the fact that I was never informed either in writing or orally, of where and at what time my "trial" was to be held.

Clearly the proceeding that did take place was a rubber stamp in camera witch hunt which was in conformity with those procedures implemented by the Stalinists during the infamous Moscow Trials. It is also consistent with the position of the government today with respect to the their informants in the SWP; that is they must not be disclosed and any proceeding that is held to discuss these informants must be conducted in secret.

It is not surprising therefore that a guilty verdict was obtained from a proceeding that was conducted in direct contravention of the SWP constitution (Art. 8 Sec. 3) as well as the most basic institutional and organizational principles of the SWP.

I pledge, however, to continue this fight and in doing so hereby formally notify the political committee that I am appealing this action to the national convention as is provided for in Art. 8 Sec. 5 of the SWP constitution.

In order to adequately prepare my appeal I request that the following be provided to me forthwith:

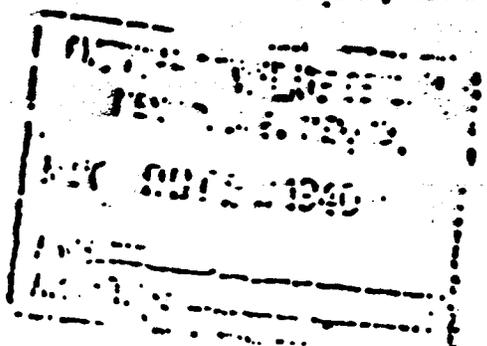
1. A copy of any transcript, tape recording, notes, or other record of the proceeding which was held on or about Jan. 11, 1979 in New York City which resulted in Alan Gelfand's expulsion from the SWP.
2. Names of all person present.
3. Names of all persons who testified against Alan Gelfand
4. Names of all persons who testified on behalf of Alan Gelfand.
5. A list describing all documents and other exhibits introduced against Alan Gelfand.
6. A list describing all documents and other exhibits introduced on behalf of Alan Gelfand.
7. Copies of any items listed in requests 5 and 6 which the political committee knows or should know that Alan Gelfand does not have in his possession.

Alan Gelfand offers to reimburse the SWP for any reasonable expenses incurred in providing Alan Gelfand with any of the above-enumerated items.

Sincerely,
Alan Gelfand

EXHIBIT

OCTOBER 23, 1940



Mr. Geo. F. Shaw
American Consul
American Consulate General
Mexico, D.F., Mexico

Dear Mr. Shaw,

I received your letter concerning Mr. Sack-
ett in poor condition and shall visit him shortly.

There was a little delay in my receiving
your communication due to my absence from New York for
some days while I was at Boston.

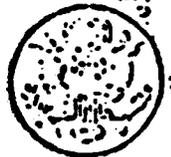
Respectfully,

Joseph Hansen

Joseph Hansen
115 University Pl.
New York City, N.Y.

EXHIBIT E

DEPARTMENT OF STATE
FILE NO. 12345



DEPARTMENT OF STATE
RECEIVED
SEP 25 1940
OFFICE OF THE ATTORNEY GENERAL
AND RECORDS

AMERICAN CONSULAR SERVICE

México, D. F., México, September 25, 1940

DEPARTMENT OF STATE

AIR MAIL - Strictly Confidential

*File
RM 117
E*

Dear Murphy:

I am resorting again to a personal letter in order to acquaint you with a desire of Mr. Joseph Hansen, secretary to the late Mr. Trotsky, to establish confidential means by which he may be able to communicate with you and through you to this office from New York City.

Mr. Hansen calls this evening from Veracruz with the remainder of the late Mr. Trotsky's archives, which are destined to Harvard University. He will not return to Mexico. In New York City he may be reached at 116 University Place.

Prior to leaving Mr. Hansen said that he was going to follow very closely all leads in New York pertaining to the identity of the assassin of Mr. Trotsky. He believes it possible that certain information may become available to him in which the Department will be interested, and there may develop certain clues which would lead back to Mexico City, and which could be of value to this office. For this reason he wishes to be put in touch with someone in your confidence located in New York to whom confidential information could be imparted with impunity.

I would greatly appreciate if if you would let me know the name of the person whom you indicate to Mr. Hansen.

With kind regards,

Sincerely yours,

Geo. P. Shaw

Raymond E. Murphy, Esquire,
Department of State,
Washington, D. C.

SEP 26 1940
RECEIVED

EXHIBIT D

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF

I, the undersigned, say:

I have read the foregoing _____ and know its contents.

CHECK APPLICABLE PARAGRAPH

I am a party to this action. The matters stated in it are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I am an officer a partner _____ a _____ of _____

a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for and on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in it are true.

Executed on _____, 19____, at _____ California.

I declare under penalty of perjury that the foregoing is true and correct.

(Signature)

ACKNOWLEDGMENT OF RECEIPT OF DOCUMENT
(other than summons and complaint)

Received copy of document described as _____

on _____ 19____.

(Signature)

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: _____

6725 Sunset Blvd., Suite 421, Los Angeles, CA 90028

On November 2 1979, I served the foregoing document described as PLAINTIFF'S

MEMORANDUM OF LAW IN OPPOSITION TO MOTIONS TO DISMISS; AFFIDAVIT OF

ALAN GELFAND on the following parties

in this action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid in the United States mail at: Los Angeles

addressed as follows:

ANDREA SHERIDAN ORDIN
United States Attorney
STEPHEN D. PETERSEN
Asst. U.S. Attorney
1100 U.S. Courthouse
312 North Spring Street
Los Angeles, CA 90012

MARGARET WINTER
14 Charles Lane
New York N. Y. 10014
Attorney for SWP Defendants

MICHAEL MYERS
615 So. Flower Steet
Suite 1900
Los Angeles, CA. 90017

Attorneys for Defendants: _____, 19____ at Los Angeles, California.

Executed on November 2, 1979, (check applicable paragraph below)

(State) I declare under penalty of perjury that the above is true and correct.

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.