

FBI on Trial

**The victory in the
Socialist Workers Party suit
against government spying**

Edited by Margaret Jayko



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Margaret Jayko is co-editor of the *Militant* newspaper and a member of the National Committee of the Socialist Workers Party.

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STATEMENTS ON THE VICTORY AGAINST FBI SPYING

“This victory shows that if a country is going to have laws it means a country of laws for everyone, including the President of the United States.”

Merle Hansen, president
North American Farm Alliance

“The AFW congratulates the Political Rights Defense Fund for being at the forefront in the struggle for protecting the full democratic rights of those individuals and organizations which fight for political representation of workers in this country.”

Francisca Cavazos, director
Arizona Farmworkers Union

“I congratulate the Political Rights Defense Fund for waging a fifteen-year struggle to protect the constitutional rights of American citizens to peaceably assemble and express dissent without being spied upon.”

Roger L. Green, chair
Black and Hispanic Caucus
New York State Assembly

“This fight is important both for the defense of democracy within the country, as well as for stopping the pursuit of illegal policies and practices toward other peoples and countries.”

Gil Green, veteran Communist,
victim of Smith Act prosecution

STATEMENTS ON THE VICTORY AGAINST FBI SPYING

“For the first time the FBI’s disruptions, surreptitious entries and use of informers have been found unconstitutional. . . . All in all, it amounted to a domestic *contra* operation against a ‘lawful and peaceful’ political organization, for no reason other than its ideological orientation.”

The Nation

“We consider the recent victory a victory for all of us. It was the relentless pressure of the PRDF and their lawsuit backed by a large group of supporters all over the country from across the political spectrum that made it impossible for the U.S. government to wriggle out of this situation.”

Michael & Robert Meeropol,
sons of Julius & Ethel Rosenberg

“This decision will have a momentous impact upon organizations around the country. Our organization was subjected to over two years of [FBI] investigation and persecution. This process had a devastating impact on our organization, primarily composed of poor farmers. So we look to this decision to help bar the federal authorities from similar efforts to victimize groups and individuals in the future.”

George Paris, Federation of
Southern Cooperatives

“A victory for all of us who struggle for the most basic rights of our peoples.”

Rafael Anglada López,
one of the attorneys for the
Hartford/Puerto Rican 15

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Foreword

by Leonard B. Boudin

Lawyers are accustomed to describing cases in which they have been successful as "historic." But no one could challenge that description of *Socialist Workers Party v. Attorney General*.

This lawsuit represented the first wholesale attack upon the entire hierarchy of so-called intelligence agencies that had attempted to infiltrate and destroy a lawful political party. The case was a mammoth effort lasting fifteen years. It resulted in an unprecedented judgment in favor of the SWP and the Young Socialist Alliance against the FBI. The court opinions which led to that judgment were careful and thoughtful contributions to the law. Their strength was a factor in the government's decision to withdraw its appeal to the higher courts. The rulings are reprinted in full in this volume. They deserve close reading and wide circulation.

For the first time, a court has thoroughly examined the FBI's intrusions into the political system of our nation and, in unmistakable language, has condemned the FBI activity as "patently unconstitutional" and without "statutory or regulatory authority." The decision stands as a vindication of the First and Fourth Amendment rights not only of the Socialist Workers Party and Young Socialist Alliance, but of *all* political organizations and activists in this country to be free of government spying and harassment.

The court rejected the government's arguments that holding certain political beliefs and engaging in political advocacy are a basis for governmental investigation, let alone for the intensive and illegal investigation conducted by the FBI for forty years.

The lawsuit began in 1973, with the SWP's federal court complaint that the FBI and other agencies engaged in massive violations of the constitutional rights of the SWP, YSA, and their members. It turned out to be more than simply a legal case. As it unfolded, the suit became a laboratory study of how a government agency — the

FBI under J. Edgar Hoover — set out to destroy a political party and failed to do so. This laboratory study consisted in large part of the examination of thousands of government documents of a kind never before revealed to the public. In that sense, the lawsuit significantly expanded the scope of what was publicly known about the FBI's crimes, as previously revealed in the hearings held before the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, chaired by Senator Frank Church.

The case resulted in at least five major decisions of the district court, including one holding the attorney general of the United States in contempt of court for refusing to turn over eighteen informer reports that District Judge Thomas P. Griesa ordered the FBI to produce. It led to three major decisions of the Court of Appeals and to three applications to the Supreme Court.

The case was punctuated with drama. At one point, Judge Griesa, returning to court after a review at the FBI's offices of a roomful of file cabinets containing the FBI's informer reports on the SWP, said in open court: "Mr. Boudin, you would never believe what is in those files." After we succeeded in forcing tens of thousands of pages of files to be released publicly, we discovered what he meant. While the files did not reveal a single instance of lawbreaking by the SWP, they contained evidence of thousands of unlawful acts committed by the FBI and its informers.

There was the matter of Timothy Redfearn — the FBI informer who lived two lives, breaking into the offices of the SWP to steal private political records, while also breaking into people's houses to steal furniture and other items to sell for profit. His FBI affiliation was disclosed when he was caught by the Denver police burglarizing a home in 1976.

In response, for the first time in history, Judge Griesa ordered the FBI to release a complete file on one of its informers.

In 1978 Attorney General Griffin Bell was held in contempt for interposing himself between the court and the FBI, refusing to allow the disclosure of the contents of the eighteen informer reports Judge Griesa ordered produced. The government appealed this ruling. When the case came before the Court of Appeals, Judge J. Edward Lumbard stated indignantly: "You wish to put the attorney general in jail!" Of course, our main interest was not in jailing anyone, but in securing the informer reports.

The Court of Appeals reversed the contempt citation, instead ordering that an alternative method be devised by Judge Griesa to make

the FBI produce the information in the informer files.

Judge Griesa ordered the FBI to turn over the files for review by the Honorable Charles D. Breitell, former chief judge of the New York State Court of Appeals. Judge Breitell produced a report summarizing the informer files, without revealing the names of the informers. This court-ordered report is the most complete picture of the political police methods used by the FBI's informers ever made public. The facts revealed in the report led to Judge Griesa's finding that the FBI's use of informers against the SWP was a violation of the constitutional right to privacy of both the party and its members.

Ultimately, the court ruled in favor of the SWP and YSA on August 25, 1986. The opinion concluded that the FBI's use of informers, "black bag jobs" (burglaries), and its SWP Disruption Program were illegal and unconstitutional and awarded the SWP \$264,000 in damages.

As you read the court's decision, you will see that its simple conclusions were based upon a masterful factual analysis and upon the application of complex Supreme Court decisions to uphold constitutional rights. No prior court has ever had the occasion to make so thorough an analysis of an FBI attempt to destroy a political organization.

The decision was followed by additional months of litigation to determine the character of an injunction the judge had decided to issue to protect the plaintiffs and their members from government use of illegally obtained FBI documents and information developed from such illegally obtained documents. The FBI admitted to having gathered at least ten million pages of files on the SWP and YSA. Ten government agencies filed affidavits with the court, several arguing strenuously that "national security" would be adversely affected by issuance of any injunction.

These affidavits were filed by the FBI, CIA, Secret Service, Immigration and Naturalization Service, and Defense Investigative Service among others. They relied on the same national security arguments used by the FBI to justify its extensive spying and disruption activities against the SWP. The agencies claimed that the same reasons exist today to justify use of the files. In a brief filed with the court, the Justice Department stated that any injunction denying government agencies use of the files "puts the Nation's vital interest of self-preservation at risk."

The court rejected these arguments. On August 17, 1987, for the first time, we believe, a federal judge issued a broad injunction barring the government agencies from any use of the files to target people today.

The SWP and the Political Rights Defense Fund have carried to a successful conclusion a case whose victory materially advances the First Amendment rights of speech and association, and the Fourth Amendment guarantees against invasion of privacy.

Introduction

by Margaret Jayko

This book is about a historic victory for democratic rights. It contains the federal court decision that codifies the accomplishments of the successful fifteen-year legal battle waged by the Socialist Workers Party (SWP) and Young Socialist Alliance (YSA) against decades of spying, harassment, and disruption by the Federal Bureau of Investigation.

The ruling in this case places a valuable new weapon in the hands of all working people fighting to defend their rights and living standards and all those struggling for progressive social change. It can and should be used widely to win broader freedoms for everyone.

The SWP and YSA filed the lawsuit July 18, 1973, in federal court in Manhattan. They charged government agencies with "illegal acts of blacklisting, harassment, electronic surveillance, burglary, mail tampering, and terrorism" against the socialist organizations. They demanded a court injunction to halt these illegal activities and that the government be ordered to pay damages.

The trial opened in New York April 2, 1981, and continued for three months. In eight years of pretrial proceedings the plaintiffs had managed to pry hundreds of thousands of pages out of the secret files of the FBI and other government police agencies, substantiating many of the allegations made in the original complaint. Many of these documents were submitted into evidence at the trial.

Five years after the trial, on August 25, 1986, U.S. District Judge Thomas Griesa ruled in favor of the plaintiffs. The judge found the FBI guilty of violations of the constitutional rights of the SWP and YSA and of their members and supporters.

On August 17, 1987, Judge Griesa issued an injunction barring any further government use of the FBI files on the SWP, YSA, and their members and supporters that had been compiled illegally.

On January 14, 1988, the government served notice that it would

appeal Judge Griesa's rulings. Two months later, just days before the deadline for submitting its appeal brief, the Justice Department withdrew its appeal. This ended the court case. An unprecedented victory for constitutional rights had been won.

Judge Griesa's decision, reprinted in this book, represents a victory for the basic right to engage in political activity free from government interference.

The FBI investigation of the SWP started, wrote Griesa, "with a series of directives issued by President Roosevelt to J. Edgar Hoover, Director of the FBI. Roosevelt met with Hoover on August 24, 1936, and this meeting was recorded in a memorandum written by Hoover. According to the memorandum, Roosevelt 'was desirous of discussing the question of the subversive activities in the United States, particularly fascism and communism' . . .

"In 1941 Director Hoover wrote the New York office of the FBI complaining about the lack of information regarding the SWP and requesting that every effort be made 'to obtain from book shops, informants and other sources' whatever written materials existed about the SWP." Ever since then, the SWP was a target of the FBI.

Judge Griesa found that "the FBI's disruption activities, surreptitious entries and use of informants" were "violations of the constitutional rights of the SWP and lacked legislative or regulatory authority."

The court ruling provides a compelling summary of the government's illegal operations against the SWP and YSA as revealed in the case. Judge Griesa dealt extensively with the FBI's use of informers to spy on and seek to disrupt the SWP and YSA.

His decision details several of the fifty-seven disruption operations conducted by the FBI. These include poison-pen letters, malicious articles planted in the press, instances of harassment and victimization, covert attempts to get SWP members fired from their jobs, and efforts to disrupt collaboration between the SWP and Black rights and anti-Vietnam war groups.

It enumerates 20,000 days of wiretaps and 12,000 days of listening "bugs" between 1943 and 1963. It documents 208 FBI burglaries of offices and homes of the SWP and its members, resulting in the theft or photographing of 9,864 private documents.

Judge Griesa concluded that these government operations were illegal and a violation of the Bill of Rights. He ruled that appeals to "national security" — by the president or anyone else — cannot be used as an excuse to violate the Constitution. "The FBI exceeded any reasonable definition of its mandate and had no discre

tion to do so," the judge concluded.

Based on these findings, Judge Griesa ordered the government to pay the SWP and YSA \$264,000 in damages.

The decision in this case codifies significant advances for political rights. Important new ground has been conquered in extending the right to privacy of political organizations and individual activists. This, more than any other single issue, was at the heart of the case.

For the first time a federal court has ruled that the very presence of government informers in a political organization is a violation of the constitutional rights of free speech and association and the right to privacy. "The FBI's use of informants clearly constituted invasion of privacy," wrote Griesa.

After reviewing the record of more than four decades of FBI spying and disruption, Judge Griesa concluded that "there is no evidence that any FBI informant ever reported an instance of planned or actual espionage, violence, [or] terrorism." Instead, the informers helped the FBI amass "thousands of reports recording peaceful, lawful activity by the SWP and YSA." They also carried out FBI orders to "suppress recruiting activities," to "frustrate the growth of the organizations," and "to attempt to disrupt them."

Without the right to conduct their affairs in private, the decision states, the freedom of association of those whose views are opposed by the government is violated. This decision reinforces and extends important previous victories by the civil rights movement and women's rights struggles in establishing a constitutional right to privacy.

The court decision also recognizes that the government cannot ignore Fourth Amendment protections against arbitrary searches and seizure by justifying measures such as burglaries, "bugs," and wiretaps on grounds of "national security" interests.

The FBI burglaries were "obvious violations of the Fourth Amendment," wrote Judge Griesa. "The FBI knew this full well. There was no statutory or regulatory authorization for such operations."

The decision also marks the first time a federal court has ruled on the constitutional issues posed by covert government disruption operations aimed at fomenting internal divisions and making it more difficult for a political organization to collaborate with others and win new members.

The SWP and YSA lawsuit was one of several filed in the 1970s that helped expose the FBI's Cointelpro (an acronym for Counter-intelligence program).

Former FBI head J. Edgar Hoover had outlined the goals of the

Cointelpro operation directed against the “new left” in a secret memo written in 1968. “The purpose of this program is to expose, disrupt, and otherwise neutralize the activities of the various New Left organizations, their leadership and adherents,” wrote Hoover. “We must frustrate every effort of these groups and individuals to consolidate their forces or to recruit new or faithful adherents.”

Black rights organizations and the Communist Party were the primary targets of Cointelpro. But the SWP, YSA, and many other organizations were also subjected to FBI disruption operations. (A vivid description of how Cointelpro worked is contained in the Pathfinder book *COINTELPRO: The FBI's Secret War on Political Freedom* by Nelson Blackstock, with an introduction by Noam Chomsky. It includes reproductions of dozens of FBI documents.)

At the trial, the SWP and YSA submitted extensive evidence of Cointelpro operations. The trial record, in fact, constitutes the most complete account ever assembled of the goals, techniques, and effects of Cointelpro.

Passing judgment on Cointelpro, Judge Griesa ruled, “There can be no doubt that these disruption operations were patently unconstitutional and violated the SWP’s First Amendment rights of free speech and assembly. Moreover, there was no statutory or regulatory authority for the FBI to disrupt the SWP’s lawful political activities.”

Government lawyers argued throughout the course of the suit that the FBI operations were legally justified because of the SWP’s Marxist views and communist activities. This was rejected by the court.

The ruling makes clear that protection of the right to be free from unconstitutional government activities applies to communist organizations such as the SWP and YSA, as well as to noncommunist groups.

The program and activities of the SWP since its founding in 1938 were very much at the heart of this fight. The SWP called many witnesses to the stand during the trial to testify about the party’s views, organization, and actions. In addition, dozens of government witnesses, ranging from a former U.S. attorney general and other top Department of Justice officials to FBI street agents, explained the FBI’s goals and methods in combating “subversion.”

The first two witnesses were Farrell Dobbs, SWP national secretary from 1953 to 1972; and Jack Barnes, who became national secretary after Dobbs.

On the witness stand, Dobbs traced the history of the SWP, described some of the party’s fundamental political concepts, and discussed the 1941 conviction of eighteen leaders of the party and the

Teamsters union in Minneapolis — including himself. They were imprisoned under provisions of the thought-control Smith Act, which makes advocacy of communist ideas illegal. Dobbs testified that the views the SWP advocates today are the same as the ones he and others were imprisoned for during World War II. Dobbs's testimony is cited extensively by Griesa in his decision. Excerpts from this testimony are included in this volume.

One of the issues that emerged at the trial was whether the SWP favors a totalitarian society, a lie pressed by the government as justification for its violations of the Bill of Rights. SWP leader Jack Barnes was recalled to the witness stand at the end of the trial to rebut several government witnesses who testified along these lines. Brief excerpts from that testimony are also included here.

Many of the accusations against the SWP centered on the party's collaboration with revolutionaries in other countries. The FBI claimed that it had to "investigate" the SWP because the party was suspected of violating the Voorhis Act, which restricts the right of U.S. groups to maintain political collaboration with revolutionary organizations abroad.

Griesa rejected this rationale. His decision offers greater constitutional protection for the SWP and all those who work with revolutionaries, union militants, and political activists in other countries. At the trial, SWP leaders testified about the broad scope of the party's collaboration with revolutionaries throughout the world. In the decision Griesa notes that the government was fully aware of this collaboration "and has taken no steps to enforce the Voorhis Act against the SWP."

Another precedent-setting aspect of the court ruling is the award of substantial monetary damages to the plaintiffs for the FBI's illegal and unconstitutional actions. This assertion of the right of a communist organization to financial compensation for FBI crimes marks an advance for political liberties.

In his August 1986 opinion Judge Griesa declared that he would issue an injunction against government use of secret files that were "obtained illegally or developed from illegally obtained information." But, he said, further proceedings were required to determine the nature and scope of this injunction. This pointed to the next phase of the battle.

The fight over the terms of the injunction lasted another year. The Justice Department, in court papers, warned Judge Griesa not to issue any injunction, saying it would put "the Nation's vital interest of self-preservation at risk."

The Justice Department's legal brief, reprinted here, relies heavily on a 1951 Supreme Court ruling affirming the 1949 conviction of Eugene Dennis and other leaders of the Communist Party. The CP leaders had been found guilty of violating the Smith Act, just as the SWP leaders had been in 1941. Citing the *Dennis* ruling, Attorney General Edwin Meese's lawyers asserted: "The Supreme Court has noted that self-preservation is 'the ultimate value of any society.'" The need to protect this "ultimate value," the Justice Department argued, overrides constitutional protections of the rights of groups and individuals.

The brief was backed up by affidavits from government spy agencies arguing that any restrictions on their continued use of the ill-gotten files on the SWP and YSA would cripple their functioning. These affidavits are also included in this collection.

The Justice Department's brief argues that the FBI's inability to come up with any evidence of lawbreaking by the SWP despite decades of spying, "did not of itself make the investigation or the techniques used in it illegal — the FBI was and is authorized to conduct such investigations." Moreover, "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." Therefore, it argues, it is essential that the files on the SWP and YSA remain active, regardless of the fact that much of the information in them was obtained illegally.

The government's legal brief puts special emphasis on an area that directly affects millions of working people. It says the files are needed to carry out the government's political screening of unionists in plants where production under government military contracts takes place. These inquisitions, under the guise of ruling on security clearances, are used by the employers and the cops to intimidate union militants, housebreak the unions themselves, and even fire workers who refuse to accept the bosses' orders regarding what they can read or say, and who they can associate with.

The Justice Department brief also insists that the files on the SWP and YSA are critical to "the Government's interest in preventing espionage and sabotage in the Nation's defense plants." But the FBI has never offered a hint of evidence that any member or supporter of the socialists was involved in spying or sabotage.

The Justice Department's goal was to weaken Griesa's decision or lay the groundwork to have it overturned entirely by a higher court.