

Lecture to the SEP 2025 Summer School

The Gelfand Case: Depositions and the fight against summary judgement

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This lecture, delivered by John Burton, a lead attorney for Alan Gelfand, covers the period from the initiation of depositions to the trial of the Gelfand case in March of 1983. It was given to the 2025 Summer School of the Socialist Equality Party (US) on the history of the Security and the Fourth International investigation. Parts one and two of the lecture “The Gelfand Case: 1978-1982” are here and here.

Comrades, having the privilege of working on the Gelfand Case changed my life dramatically, first in September 1980 when I was introduced to it, and then even more so in March 1982 when I began taking depositions.

I was a 27-year-old civil rights lawyer one year out of law school, just hired at Fisher & Moest, a firm specializing in First Amendment cases, located in Century City on the west side of Los Angeles, next to Beverly Hills.

Over lunch, my boss Barry Fisher asked whether I wanted to work on a case that turned on who killed Trotsky. I responded, “Sure, but didn’t they get the guy?” Barry said, “That’s right, but there’s a back story that people are very interested in.”

Later that day, Barry introduced me to Alan Gelfand, who gave me a stack of case documents, including Judge Pfaelzer’s recent order denying the motion to dismiss, Gelfand’s letters, along with several large formatted publications on Security and the Fourth International designed by David King. One that stuck out was *How the GPU Murdered Trotsky*.

I still have similarly formatted “dossiers” on Sylvia Franklin and Ramon Mercader. I remember over the next few weeks how heads turned as I walked in and out of the building’s main lobby carrying these huge, bold publications back and forth from home. Their text, photos and supporting documents riveted me, even though I had, at that time, little background in socialist politics.

The publications described the Trotskyists in Europe supporting left oppositionists trapped in the Soviet Union, and the GPU murders facilitated by “Etienne,” Marc Zborowski. I read about Sylvia Callen-Franklin-Caldwell-Doxsee and other agents infiltrated by the GPU here and abroad, as the Socialist Workers Party struggled to establish the American section of the Fourth International.

These publications described Trotsky’s heroic final exile in Mexico, the May 24, 1940 assassination attempt, the disappearance and murder of guard Robert Shelton Harte, and the brutal August 20, 1940 blow struck by Mercader, who at the time had passed away recently in Havana after his 1960 release from a Mexican jail.

Security and the Fourth International gave context to understand the machinations of recently deceased Joseph Hansen, his contacts with the GPU before the assassination, and then with the American Consulate in Mexico City and the FBI in New York afterwards.

I studied Gelfand’s correspondence asking about the publications, and

the SWP’s evasions and threats.

Gelfand brought David North and Larry Porter to our office. In our first conversation, North explained the Tim Wohlforth/Nancy Fields story. I remember asking him about Pabloite revisionism, which was entirely new to me.

That evening, Barry Fisher took us to a nice dinner, and we were off and running.

Here’s a photo of Comrade North and me taken a little later.

Because the opportunity might not last, the very first thing we did was subpoena Sylvia Doxsee for a deposition in Chicago through a local attorney, Edward Stein. Alan Gelfand questioned her on September 22, 1980.

Attorney Margaret Winter and Political Committee member and Cadelton College graduate Larry Seigle attended for the SWP. Stanley Wright from the Justice Department represented the US government, as he would throughout the case. For this deposition only, out of all the depositions in the case, FBI lawyer Grant Harmon also attended.

After confirming a few details of her early life, including her marriage to Zalmond Frankin, Doxsee claimed to know nothing about his affiliation with the Communist Party or reason for traveling to Spain. Doxsee evaded and deflected Gelfand’s questions, claiming 231 times that she had no recollection, including whether she was recruited in Chicago to infiltrate the SWP. This is typical of page after page of the testimony:

Q- Is your testimony under oath that at no time did you ever have any discussion with any individuals at the Drake Hotel concerning your infiltrating the Trotskyist movement?

A. Oh. God. I can’t recall anything of this sort.

Q- Are you willing to deny that under oath?

A. I will say I can’t recall anything like that, that’s right. I can’t. But I can’t remember things clearly either. And under oath, I’m afraid to say yes or no. How can I when I can’t remember?

These events were 40 years old for her at the time, less than the events of 45 years ago I am recalling for you right now.

Gelfand attempted to tape record this testimony, but there was a malfunction. We only have a brief sequence during his second round of questioning, but in this excerpt Doxsee’s response to Gelfand’s questions about the SWP Control Commission investigation is typical of all her answers. (Watch the accompanying video for audio of this and the next exchange).

Gelfand: Do you recall who came to your defense during this meeting?

Doxsee: What?

Gelfand: Who came to your defense during this meeting?

Doxsee: I can't remember any details.

Gelfand: Did anybody come to your defense?

Doxsee: I wasn't really accused of anything. What do you mean come to my defense?

Gelfand: But how were these accusations dealt with? Were you asked any questions?

Doxsee: I can't remember any details. It's 40 years ago, probably. Or 35 years ago, I can't remember. I just know that somebody brought some accusations and we discussed it.

After Gelfand finished his first round of questioning, Doxsee took the lunch break with Winter and Seigle. She then responded in an entirely different manner to Winter's sympathetic, softball questions.

Winter: The FBI and various agents of the FBI have been spreading rumors that you are some kind of agent.

Doxsee: Spreading rumors? How do you mean?

...

Winter: Were you ever an agent of the Stalinists?

Doxsee: I told you that I wasn't.

Winter: Were you ever an agent of the Young Communist League?

Doxsee: Never. I'm sure never. I couldn't have been.

Winter: Were you ever an agent of the Communist Party?

Doxsee: I don't see how I could have been, the way I feel about them.

Winter: Were you ever an agent of the Soviet secret police?

Doxsee: Oh, I'm sure not. A person would know something like that, wouldn't they?

Doxsee's denial that she was a Stalinist agent committed perjury in front of the FBI lawyer.

This GPU plant, who facilitated the assassination of Trotsky and has the blood of humanity dripping from her hands, really hammed it up for Winter and Seigle.

Winter: When you look back on your membership in the Socialist Workers Party over 30 years ago, how do you view it now? How do you feel about those years?

Doxsee: Sometimes I feel those were the only productive years of my life to tell you the truth. It was very satisfying to a young, idealistic person.

I feel guilty that I don't do anything about the condition in the world today, but I don't know what to do and I don't trust anybody anymore. Even the Socialist Workers Party. I don't know what they are, who they are. I'm so out of touch with everything, but I feel this world is so polluted. It needs so much work and I feel guilty that I don't even try to write my congressmen about the hazardous waste because I'm too lazy. But I do think along these lines and it bothers me.

Winter: Can you recall how you felt about the Socialist Workers Party when you left the party over 30 years ago?

Doxsee: I felt very guilty about leaving. I felt like I was being very selfish, but I just felt like I had to have time to myself. I just I

was tired, I was lonesome, I needed a change in my life.

I wanted to go home. I really did. My mother was such a good cook and I was lonesome, I really was, for a change in my life.

Winter: Did you feel hostile to the party?

Doxsee: Oh, of course not!

We had an opportunity to subpoena Ed Heisler, then living in Los Angeles. Heisler was a paid FBI informant inside the SWP for a decade before joining the National Committee and, eventually, the administrative secretariat. He is the highest-level acknowledged US government agent in the SWP, and his exposure discredited earlier government reports about SWP informants being low level.

Heisler testified, incredibly, that he stopped working as an agent once he joined the National Committee. He denied knowing whether other SWP members were agents.

Heisler testified on December 16, 1975 as the national chairperson for the SWP presidential campaign of Peter Camejo before the US Senate Armed Services Committee, which was then considering Gerald Ford's nomination of George Bush, senior, as CIA director. This exchange, edited for clarity, took place with Chairman John C. Stennis, a foul, old school segregationist Democrat:

Stennis: Do you favor opening up all FBI files?

Heisler: Which files do you have in mind specifically?

Stennis: FBI files, all of them, every one. Whatever they have.

When Heisler kept beating around the bush, Stennis added, "If you cannot answer 'yes' or 'no' that is all right."

The motion for summary judgment

On September 22, coincidentally the same day as Doxsee's deposition, the SWP followed Pfaelzer's lead by filing a motion for summary judgment under Federal Rule of Civil Procedure 56, claiming that the case should be dismissed because Gelfand had no evidence.

The SWP also set Gelfand's deposition and demanded documents, initiating its red-baiting campaign to discredit him because of the First Amendment-protected support he received from the Workers League, the predecessor of the Socialist Equality Party, and the International Committee.

In October, Gelfand produced his documents and sat for his own two-day deposition. The SWP, while claiming its own First Amendment rights were under attack, attacked Gelfand for exercising his constitutional right to petition for redress of grievances.

Gelfand served formal written questions, interrogatories, and demands for the production of documents, asking the US government directly to confirm whether the SWP leaders who engineered Gelfand's expulsion were its agents. Under Pfaelzer's order upholding Gelfand's claim those interrogatories should have been answered, but we were under no illusions that they would be.

On November 17, 1980, Gelfand filed his first brief in opposition to the SWP motion for summary judgment. At this early stage of the civil litigation, with no discovery other than the Doxsee and Heisler depositions, Gelfand had only publications of Security and the Fourth International and his own correspondence with the SWP leadership. While arguing that this evidence established Gelfand's expulsion was

accomplished by US government agents in the SWP, we asserted Gelfand's democratic right to first conduct discovery, as required under Federal Rule of Civil Procedure 56(f).

Barry Fisher represented Gelfand at the first hearing on Summary Judgment before Judge Pfaelzer on January 7, 1981. I sat at counsel table. We obviously touched a nerve. Pfaelzer responded with unbridled hostility.

Pfaelzer: Mr. Fisher, this is a lawsuit.

Fisher: Yes, your Honor.

Pfaelzer: You can sit in your room or at your typewriter as long as you want to and think that the reason that this is happening is because of thus and such and so and so, but you are now on a motion for summary judgment.

Fisher: Yes, your Honor.

Pfaelzer: There isn't one shred of evidence whatsoever that the persons who engineered, as you, all of this were government agents. There isn't any evidence.

You can't prove anything. I'm talking about nothing. There is nothing at all there now.

But I am saying, Mr. Fisher, you have no evidence as opposed to some, or a little, you have none.

Now I advise you of the following: You are that close to being out of Court with respect to them. I do not want to minimize the danger you are in because you have not got that nexus between the persons who made these decisions and the infiltration. You just don't have it yet.

Despite her threats and bluster, Pfaelzer did not grant summary judgment, which would have resulted in a judgment for the government and the SWP, and sent the case to the Ninth Circuit on appeal, where we would have argued the denial of discovery. Instead, she continued the hearing, but with a stay on all discovery, imposing an impossible contradiction.

On the one hand, Pfaelzer demanded that Gelfand present enough legally admissible evidence to establish what the Federal Rules of Civil Procedure call a "genuine issue of fact" to be resolved at a trial on his claim that US government agents expelled him from the SWP, while at the same time denying him the power to compel the SWP and the US government to produce that evidence.

In other words, having affirmed Gelfand's fundamental First Amendment right to conduct political activity in the SWP free from governmental interference, Pfaelzer denied him the democratic right to vindicate that principle in federal litigation under the applicable rules of civil procedure.

As a conscious representative of the ruling capitalist class from a liberal background, Judge Pfaelzer recognized Gelfand's core First Amendment claim. At the same time, however, she instinctively defended the state, protecting government agents from exposure even as she declared their actions unconstitutional. This duality permeated the case and effectively disabled Pfaelzer from adjudicating the actions of the SWP defendants under the political criteria of a revolutionary party.

Gelfand filed a supplemental brief in opposition to summary judgment on May 17. This time, however, with the International Committee's new evidence that Jack Barnes, Larry Seigle and at least 10 other high-level SWP leaders attended Carleton College and were groomed by Joseph Hansen for SWP leadership.

July 17, 1981 was the second hearing on the SWP's summary judgment motion. Pfaelzer started up where she left off, berating Barry Fisher.

Pfaelzer: Well, we have finally come to the point where I must tell you that the motion for summary judgment is going to be granted. I have many, many doubts about this case as we have gone along. But I still do not see any connection here.

There are all kinds of suspicions. There is conjecture. There are accusations, some of which are real, and some of which may be real.

But there is no significant connection between the defendants here such that I can find that there is any ground for liability. Nothing has been shown by way of facts that would indicate there is liability on behalf of these defendants to this plaintiff.

Pfaelzer then appeared to relent.

Well, the court has to give you some discovery before it decides that the motion for summary judgment is to be granted because you are almost out of court. I doubt seriously that you are going to find anything, but I now will order the defendants to sit with you and discuss what they can give you. Then I will reset the motion for summary judgment with no more papers.

He [Gelfand] has to be given the opportunity to see whatever those documents are with respect to the expulsion and certainly other discovery which I recall that bears on this issue. If he can't produce anything then, then he is out of court.

All Pfaelzer would allow, however, was an agreement that the SWP and US government file formal responses and objections to the written discovery Gelfand served more than eight months before. No depositions were allowed.

The SWP's written discovery responses were incomplete and evasive. Those from the government consisted solely of objections based on the "informant's privilege," the refusal to admit or deny that any of the SWP members involved in Gelfand's expulsion was an agent.

Although we knew the government would never identify its SWP agents, to keep the case moving we had to make a motion to compel before US Magistrate Vanetta Tassopulos, a lower-level judge, and then appealing her inevitable ruling upholding the informant's privilege to District Judge Pfaelzer.

The SWP did not support our efforts to force the US government to disclose its agents. Instead, the SWP renewed its motion for summary judgment.

This timeline illustrates how, for a year-and-a-half, Gelfand pressed forward on his due process rights under Federal Rule of Civil Procedure 56(f) to conduct discovery before the SWP's summary judgment motion could be decided on the merits.

This brings us to the critical third hearing on summary judgment, February 1, 1982, the last court appearance in the case by Barry Fisher. After some back and forth on the status of the motion to compel discovery responses from the US Government that was then set for hearing before Magistrate Tassopulos, Pfaelzer told Fisher, "I have nothing whatsoever in this record of an evidentiary nature that will keep this plaintiff in court, nothing."

Pfaelzer then abruptly shifted gears. "I will place the motion for summary judgment off calendar," and "you can take whatever discovery that you wish to take. But the discovery cut-off date will be three months from now, May 3." She then threatened that if Gelfand did not produce evidence, he was "going to be paying all the costs" and "liable for damages under the tort of malicious prosecution," the latter threat directed to us, his attorneys, as well.

Comrades, at this point we finally had an opportunity to address the historical issues raised by Security and the Fourth International. We could finally question witnesses at depositions and dig deeper into GPU penetration. We could press the SWP on Hansen's lies and machinations, "Healy's Big Lie," and the phony "Verdict" declaring Security and the Fourth International a "Shameless Frame Up."

But 90 days is not much time. Our backs were against the wall. This would be our only shot, and frankly Alan Gelfand and I, with intense support from Comrade North and the International Committee, gave it our all to make the most of it.

After a month of planning, scheduling and serving subpoenas, in early March Alan Gelfand and I traveled from Los Angeles to New York City for the first round of depositions. On the way we stopped at the Workers League facilities in Michigan. I remember Comrade North stressing the historical importance of the work we were about to undertake. He told us that the coming weeks would change history and profoundly affect us. He was right on both counts.

I need to get a bit personal here. Despite working on the case for 18 months, I had not been won over to Trotskyism. That would happen the weekend of March 6, 1982, after I commenced the four-day deposition of Jack Barnes in Manhattan.

As soon as questioning began, Barnes's appearance, demeanor and strange answers made me think he was a government agent. He came off like a zealous Marine Corps sergeant assigned to impersonate a Marxist and run a party of quislings. The more Barnes testified, the more clearly I felt this.

Barnes could not recall whether he was a member of the Young Republicans or Young Democrats in high school. His political career started after a Carleton College professor set him up with a Ford Foundation grant for a Cuba trip. He joined the Fair Play for Cuba Committee that had been used to create a cover for Lee Harvey Oswald, history that I already knew quite well.

Barnes was flippant, ignorant, obnoxious and provocative. He did not know the date of Trotsky's assassination. When asked about Sylvia Ageloff's relationship with Mercader, Barnes responded, "I'm not a pornographer," adding, "the details of their relationship were boring." In fact, he found the details of Trotsky's assassination "boring."

Barnes acknowledged that the FBI flooded the SWP with agents but said they could be "helpful and active." He testified that "GPU agents have rights," including Marc Zborowski. Rather than condemn the Stalinists who murdered the old Bolsheviks and purged the revolutionary movement of its most promising young cadre, Barnes testified that "there has never been anything as degenerate as the International Committee in the history of the socialist movement."

Barnes acknowledged that Peter Camejo, the SWP's 1976 candidate for US president, who played a key role in suppressing Gelfand in the Los Angeles branch, had abruptly left the party. Barnes testified that it would be "stupid" to inform the membership. I knew about the Fausto Amador connection. When I asked whether it was possible that Camejo's sudden resignation had to do with intelligence work, Barnes responded, "What if he resigned because he was a three-headed calf," and "It's possible you are a robot and not a person."

I give these few examples among many from a deposition that lasted four days to give some idea of what a distorted individual Jack Barnes is. That such a person could lead what was supposed to be a revolutionary, Trotskyist movement is absurd.

Barnes made me realize that what I had read in Security and the Fourth International was all true: the US government was, in fact, running the SWP as a massive anti-working class intelligence and disruption operation. There was no doubt about it in my mind. I was so overwhelmed that I became concerned for my personal security. That led me to appreciate that such a monstrosity could not develop absent the historical

necessity of the capitalist state to defend its own class interests by suppressing the revolutionary vanguard of the working class embodied in the Trotskyist movement.

With one important exception, Vaughn T. O'Brien, Barnes is the only past or current SWP member we deposed who described having any discussion whatsoever with Hansen regarding his pre-assassination GPU contacts first revealed by Security and the Fourth International.

To reconcile the absurd and contradictory explanations in "Healy's Big Lie," Barnes described Hansen's GPU meeting as by chance, but "Joe was to give the impression that he was available to meet with the GPU to pass valuable information," adding, "the GPU was too suspicious to go for the bait." Barnes testified it would be "idiotic" to expose the identity of the GPU agent, and that Trotsky "did not care about his name."

Barnes was the only witness who testified that he spoke with Hansen about the series of US government contacts after the assassination. Barnes said Hansen met with US Consulate Official Robert G. McGregor "a couple of times," but when pressed (the documents show at least five meetings, not the one Hansen acknowledged after the initial Security and the Fourth International publication), testified, "Who cares?"

Barnes acknowledged that after returning to New York from Mexico in 1940 Hansen maintained contacts with US agents. He agreed the government documents published by Security and the Fourth International were legitimate, and that Hansen met with Special Agent B.E. Sackett at FBI offices on multiple occasions over the course of a year. When asked where that information appeared in "Healy's Big Lie," the document to which the SWP referred Gelfand, Barnes testified, "It's not there."

Barnes gave the following remarkable testimony:

Q. Did anyone in the party have a right to those facts?

A. No.

Q. Did you have a right to those facts?

A. Yes.

Q. Why are you any different?

A. Because I am elected national secretary of the Socialist Workers Party and a member of the Political Committee.

Q. And you decide which facts members are entitled to?

A. In many cases, yes.

Q. In what cases?

A. In cases where the elected—democratically elected bodies use facts and carry out work and then decide to who and how much of it is to be discussed exactly and precisely.

Q. Who, besides yourself participated in the decision to withhold facts from Mr. Gelfand?

A. There was no decision to withhold facts from Mr. Gelfand. There was instead a decision not to give any special consideration to Mr. Gelfand beyond and above anyone else.

Q. Mr. Gelfand was making requests that you provide him with certain facts, among other things, that you contend he did; isn't that correct?

A. Mr. Gelfand had access to all of the facts that every other member of the party had access to.

Q. But not access to all the facts that you had?

A. Correct.

Q. Do you have a right to withhold these facts from the membership of your party?

A. That's correct.

Q. Do you have a right to withhold these facts from the workers movement?

A. Correct.

Q. Do you have a right to withhold these facts from the Fourth International?

A. Correct.

Barnes denied there was any evidence whatsoever that Sylvia Caldwell was a GPU agent. He called her “self-sacrificing” and described the deposition taken by Gelfand as “clearing her,” although he never reviewed it. When asked what would be the significance of her being a GPU agent, Barnes responded, “none whatsoever,” adding, “What’s the significance of the fact that you are a secret baby eater?”

Comrades, after listening to Barnes for four days my life would never be the same. I believe to this day that we proved Gelfand’s case then and there.

We deposed SWP national leaders Larry Seigle, Doug Jenness and Mary-Alice Waters, Carleton graduates involved in Gelfand’s purge, along with Peter Camejo and Los Angeles local leaders, Pearl Chertov, Bruce Marcus and Joel Britton.

None testified to having any knowledge whatsoever about Hansen’s contacts with the GPU, US consular officials in Mexico or the FBI in New York City. Each defended Sylvia Caldwell and each testified that Gelfand’s questions were disruptive “agent-baiting slanders” answered in “Healy’s Big Lie.”

In addition to the seven SWP defendants, we deposed eight non-party witnesses, each dating back to the founding of the Fourth International in 1938. Each had to be located, scheduled for a nearby location and served personally with a subpoena.

The SWP filed a motion for a protective order to block them, including, incredibly, that of Marc Zborowski, the GPU mole directly responsible for the deaths of Erwin Wolf, Ignace Reiss, Rudolf Klement and Leon Sedov.

Magistrate Tassopoulos ruled against the SWP on March 22, 1982. That cleared us to depose founding SWP members Morris Lewit, George Novack, Farrell Dobbs and George Weissman, as well as Trotsky’s former secretary Jean van Heijenoort.

None testified to having any knowledge that Hansen had been in contact with the GPU before the assassination, or with the US government afterwards. None. Only van Heijenoort would acknowledge that Sylvia Caldwell was an agent of the GPU. That includes George Weissman, who circulated the so-called “Verdict” for signature by the others declaring Security and the Fourth International “A Shameless Frame-Up.”

Founding SWP political committee member Felix Morrow, the author of *Revolution and Counter-Revolution in Spain*, was deposed on March 24, 1982. Although Morrow broke with revolutionary politics after being expelled with Albert Goldman in 1946, and subsequently pursued a lucrative career in publishing, he was far more principled and honest than those witnesses who remained in the SWP.

Morrow confirmed the interview he gave Security and the Fourth International that Hansen had no responsibility to contact the GPU, US Consulate or FBI, and that in investigating the assassination there was no reliance on the US government. None.

Contrary to Barnes’ testimony that GPU agents have rights, Morrow testified that the SWP was highly concerned about GPU agents. There was no prohibition against “agent baiting,” no issue about party life being disrupted by members who had suspicions about other members. To the contrary, Morrow personally exposed Floyd Cleveland Miller, a writer for *The Militant* later listed along with Sylvia Doxide as an unindicted GPU co-conspirator. Morrow estimated five to 10 other lower-level members were exposed as GPU agents during that period, and that the consensus in the leadership was that Robert Sheldon Harte was a GPU agent.

Morrow said the leadership would never send a “meathead” like Hansen to meet with a GPU agent, and that Cannon and Shachtman would never have approved such an operation or written it down. Trotsky’s and the SWP’s policy was always to publicize and expose the GPU whenever possible. Had the leadership known that Hansen “chanced to meet” a

GPU agent who tried to recruit him, that fact would have been exposed in the pages of *The Militant*.

Morrow testified that he knew Louis Budenz “quite well,” and did not doubt Budenz’s identification of Caldwell as a GPU agent.

Finally, Morrow found it “incomprehensible” that the SWP had filed a motion to block Marc Zborowski’s deposition.

Another more honest and principled witness was Albert Glotzer, a stenographer by profession who recorded the testimony given during the Dewey Commission hearings in Coyoacan. Glotzer split from the SWP with Max Shachtman in 1940, and was somewhat hostile at his March 26, 1982 deposition. He confirmed, however, the details of the interview he gave to Security and the Fourth International.

Glotzer described his initial conversations when “Sylvia Caldwell”—he insisted that was not a party name—presented herself at his Chicago SWP branch. He said it was “weird” because “She didn’t seem to know why she was joining.” Glotzer was “shocked” when he saw her working for James Cannon in the New York National Office a few months later.

Glotzer described accompanying Shachtman to the SWP headquarters in 1947 to pass on information, which they understood through contacts had originated from the FBI, that Caldwell, still working in the National Office, was a GPU agent. James Cannon “was none too pleased,” Glotzer said.

In terms of getting new information, however, the most significant deposition occurred on March 31, 1980, at the deposition of Vaughn T. “Irish” O’Brien, Hansen’s long-time friend, who, while in the SWP briefly, served as a guard for Trotsky in Coyoacan.

O’Brien was the only person then alive cited by Hansen as knowing about his GPU contacts. “Healy’s Big Lie” included excerpts from his 1976 letter to Hansen that supposedly corroborated Trotsky’s telling Hansen to go to New York and “take on a GPU agent.” To keep Trotsky informed, Hansen and O’Brien purportedly communicated by letters with invisible ink and secret codes.

I expected O’Brien to repeat this bizarre cloak-and-dagger story, denying that he made it up with Hansen, as O’Brien’s wife, Fanny, had told Harold Robins on the phone. I was shocked when he gave the following testimony as if memorized from a script:

When Joe was preparing to return to New York, he told me that he and L.D. [Trotsky] wanted me to handle some correspondence between them and it was very confidential and that I was not to tell anyone about it, and for the record, I haven’t told anybody about it until about five years ago.

Joe and L.D. had dreamed up a scam. Joe was to take, presumably, the only copy of the life of Stalin to New York, hand-delivered, presumably, and when he got there, he was to look up the GPU, the Stalinists, in New York, and tell them that he was a disillusioned Trotskyist and that for \$25,000 he would sell them the only copy of the manuscript on Stalin. And, let me repeat, this was Trotsky’s idea.

Joe had gone directly to the Communist headquarters, which was just a block or two away from SWP headquarters there, and told them that he had some important communications with one of their top people and they set him up with someone, I never did get a name on it, and he gave the proposition and the [GPU agent] said he would have to communicate with Moscow, and he set up another meeting.

And they talked again, and it became evident—oh, and Joe had put down as a pre-condition in this scenario that he was just—he wanted \$25,000 to buy a ranch out in Utah, you know, and he was not going to do anything to endanger Trotsky or to divulge anything there.

And as the two or three meetings took place, it became quite evident that they were not going to give him the \$25,000, and all they were ever interested in was finding out what was going on in Mexico, and so Joe broke off the contact....

Q. So this was a scam to get money from the GPU for the Fourth International?

A. That's right.

Q. It wasn't a scam to get information?

A. No. They were trying to get information from him.

O'Brien testified that he kept the "rip off" story to himself until "the early 1950s, when he ran into "a former comrade Pearl Kluger," who "informed him that she was doing typing for Budenz," and "Budenz says your friend Joe Hansen worked for the GPU."

Suddenly all the pieces came together. Sylvia Caldwell was in the same GPU ring as Hansen, but the US government chose to maintain Hansen's cover, because following the assassination Hansen started informing for them. Hansen would have invaluable services to provide in the future.

Two weeks later, on April 15, 1982, Marc Zborowski appeared for the deposition the SWP had tried to block at the Law Offices of Altshuler & Berzon in downtown San Francisco.

After providing a few family background details, on the instruction of his attorney James Larson, Zborowski invoked the Fifth Amendment right against self-incrimination and refused to answer any further questions. I made a series of statements on the record urging him to testify. I'd like to read one passage.

Our contention is that the Soviet secret police infiltrated the Trotskyist movement internationally on a massive scale during the 1930s. It is our belief that you were one of the agents who infiltrated the movement in Europe and in Paris. Other agents infiltrated the Trotskyist movement in the United States.

And that's a particular concern to us, because the Trotskyist organization in the United States was the predecessor and later the Socialist Workers Party. We feel that many of these agents were operating within the Socialist Workers Party and that you have knowledge as to the operations of these agents and, perhaps, to their identity, that this apparatus of the Soviet secret police, of which you were a part, was international in scope, and the fact that many of your activities occurred in Europe and many of the activities that we're interested in occurred in the United States does not necessarily mean that you don't have information which is reasonably calculated to lead us to the discovery of evidence as to the identity of agents operating in this country.

We want to learn about the modus operandi of the Soviet secret police in order that we can evaluate evidence that we have that certain individuals who played predominant roles for a long time in the Socialist Workers Party were agents of the GPU.

When you came to the United States, you came to the United States, we believe, with the aid of people who were members of the SWP and who were affiliated with the SWP, and we believe that those individuals may have been involved in the same secret police apparatus that you were a part of and that these individuals were long-time leaders of the Socialist Workers Party, but were, in fact, Soviet secret police, like yourself, and we'd like to probe your recollection of those events and obtain your testimony as to any knowledge you might have, because we believe that that is reasonably calculated to lead to the discovery of admissible evidence.

We believe that when you came to this country in 1941 that you

continued to operate as an espionage agent for the Soviet secret police within the Trotskyist movement. In particular, you were a part of the same espionage ring which included Jack Sobel, Lucy Booker, Floyd Cleveland Miller, Sylvia Callen, who is also known as Sylvia Caldwell, Sylvia Franklin and Sylvia Doxsee, and that you would have knowledge about operatives within that spy ring which was successful in penetrating the Socialist Workers Party.

We believe that you continued your activities on behalf of the GPU and the Soviet secret police until you were publicly identified as a Soviet secret police agent in part by Alexander Orlov in 1954, 1955.

We believe that you had certain relationships with the government which resulted in your eventually being tried for perjury and convicted and serving a sentence and then being allowed to pursue your academic career.

We also believe that you may have knowledge as to how the Soviet secret police agents within the SWP were turned by the US government so that they began to serve as agents for the US government against the Socialist Workers Party and the Trotskyist movement. We believe you may have knowledge as to how this turn, as I call it, took place and as to the circumstances under which these agents, which I believe that you can identify and which I believe include Joseph Hansen and other members of the Socialist Workers Party, how these agents were turned and then were instructed by the federal government to train agents, such as Jack Barnes, Larry Seigle, Peter Camejo, Doug Jenness and other FBI and/or CIA agents, agents of the US government, secret police agents of the US government, who entered the Socialist Workers Party on a massive scale during the years beginning around the end of 1958 and continuing through the 1960s.

Zborowski, of course, did not change his position. As the 74-year-old man shuffled out of the waiting room he suddenly approached me. "Have you read Kafka?" he asked, before leaving with Larson for the elevator. He was no victim, I thought to myself, he victimized the working class.

With the impending discovery cut-off, our efforts to compel Zborowski to testify would have to wait.

While we pushed to accomplish as much as possible before the May 3 deadline, the SWP continued to assault Gelfand's right to bring the case. SWP lawyer Winter deposed Alan Gelfand for two more days, grilling him about his salary as a Los Angeles public defender and his savings, his contacts with members of the Workers League and International Committee, and how the money was raised to support the litigation. The SWP also took the unusual step of forcing the deposition of attorney Barry Fisher. They came up with nothing.

With the depositions ongoing, we also had to press forward to compel the US government to disclose whether Gelfand was expelled by its agents in the SWP, although we had no illusions that the government would disclose its agents. That required an appeal of the ruling by Magistrate Tassopoulos upholding the claim of informant's privilege. Judge Pfaelzer ruled on May 3, the discovery cut-off date, after reviewing the US government's submission "in camera," that is, privately, that the "informant's privilege" allowed the US government to refuse "to confirm or deny whether any named individual" involved in Gelfand's expulsion was its agent.

After these busy 90 days of discovery in Los Angeles; New York; Cambridge, Massachusetts; and San Francisco, Pfaelzer upheld the informant's privilege, making it official that Gelfand would get no discovery from the US government. Of course, we never expected the intelligence agencies to disclose their agents. We always knew we would rely on the historical evidence to prove the case.

Facing a judge who had made clear three times that she intended to grant the SWP's motion for summary judgment and throw the case out of court, we had to synthesize more than 10,000 pages of deposition transcripts with the archival documents implicating Hansen and Sylvia Caldwell and the outstanding record Gelfand made within the SWP when posing his questions.

Organizing such a brief presented significant, unique challenges. Our team traveled to England to discuss the approach with Gerry Healy, Alex Mitchell and other comrades in the IC leadership, but on arrival we found that they had not kept up with the developments on the case and had no meaningful help to offer.

We returned and worked day and night out of the Fisher & Moest Law Office to meet Pfaelzer's rapidly approaching June 28 deadline. Fortunately, Fisher & Moest had the latest word processing technology from Wang. There were two workstations, which we could use after hours.

There was not even a hard drive. The data was written to 8.5 inch floppies. Here's one.

The year before we would have written out the brief by hand or dictation, and revised it on a typewriter, a cumbersome and inefficient process. The Wang gave us a freedom to compose that everyone takes for granted now but compelled us to do much of the drafting after hours. The key for us was placing Hansen's machinations and the stonewalling by the SWP defendants within its historical context, which meant explaining the life-or-death struggle against Stalinism. Here are two pages from our original brief.

Allow me to read, beginning on line 11, second sentence:

On the one hand he is told that, if he can prove that the leaders of the Party are agents of the United States government, he will establish the violation of his constitutional rights. Yet the most straightforward method of proof—examination of relevant government documents and direct responses to questions aimed at government agencies—has been denied to him.

It is within these limitations that plaintiff proves his case. The proof depends on an intricate web of circumstantial evidence which leads inexorably to the nexus between the infiltration of the SWP by agents of the federal government and the expulsion of plaintiff. The facts of this case are embedded in great historical events. Their ever-widening spiral sweeps back into the past, embracing within its bounds an increasing number of individuals, including Trotsky himself and those closest to him during his last heroic exile. If a more direct and less arduous road to truth were available, plaintiff gladly would have taken it. Nonetheless, when fact is added to fact, and each is evaluated in its proper relationship to the other, the conclusion becomes inescapable that something is very, very wrong with the leadership of the Socialist Workers Party.

Agents can, perhaps all too successfully, conceal their duplicity for long periods of time, but, inevitably, when they perceive a direct threat to their role as agents, the mask will be set awry. This case thus depends on the meticulous study of defendants' actions. Their conduct should be interpreted not as the conduct of typical individuals, but in light of who the defendants purport to be—the most faithful proponents and followers of Trotsky's highly principled politics. A legitimate leadership would have had no difficulty in dealing with plaintiff's questions, in accordance with the constitution of the SWP and the proud traditions it claims to represent. The questions would have been answered forthrightly and as completely as possible. Instead, plaintiff's persistent but appropriate questioning about matters pertaining to party security

created a crisis among the agents and forced them to show their hands. Had plaintiff's actions warranted discipline, the leadership could have taken any necessary measure within the democratic procedures of the Party. But the SWP defendants' efforts to silence plaintiff and to isolate him from the balance of the Party's membership expose the extinction of those very democratic procedures.

This excerpt succinctly states our approach. The brief took hours to print out. It had to leave Century City, located on the Los Angeles Westside and, despite rush hour traffic, be in the doors of the downtown Los Angeles federal courthouse before they locked at 4:30 on June 28, 1982. Larry Porter and I drove like madmen and got it filed, just in the nick of time. Here it is, all 146 pages, including 67 footnotes.

The complete brief is reprinted in Volume 1 of *The Gelfand Case*, and I urge comrades to read it. We began with a detailed summary of Gelfand's three questions, why was Hansen meeting with the GPU, why was he giving information to the US government, and why was the SWP defending Sylvia Caldwell, a GPU agent.

We explained what the depositions revealed, the contradictions, lies and cover-ups, and how the SWP's response to Gelfand's legitimate questions contrasted with the history of the Trotskyist movement. We explained that the only explanation was that the current SWP leadership was groomed by Hansen, heir to the GPU apparatus infiltrated from Stalinist parties into the Trotskyist movement to disrupt its operations and, ultimately, assassinate its leadership more than four decades before.

The summary judgment motion came to a hearing on July 12, 1982 at 10:00 a.m. Judge Pfaelzer was clearly furious. The first words out of her mouth were: "Mr. Burton, let's discuss how many depositions you have taken since I permitted you to do that," and then, "Who paid for those depositions? Now, just so that the record is clear, I am asking you: Who put up the money for the costs of the depositions?"

Were this case between Ford and General Motors no such question would have been asked.

Nevertheless, after brief argument, Pfaelzer said, "I don't think I can grant the motion for summary judgment," acknowledging that Gelfand had, in fact, produced evidence of a government takeover of the SWP, insuring that the case would continue to trial.

After hearing more from SWP attorney Winter, however, Pfaelzer ruled that the Workers League and the International Committee, and only those organizations, could not publish the deposition transcripts. "You are through with abusing the discovery process. It is all over," Pfaelzer told me. I responded, "It seems highly irregular and unconstitutional to hold that the press of one organization cannot publish something."

"Mr. Burton, let's cut this short," she said. "You will go outside and work out the terms of the order. If you can't do that, you will come back this afternoon at 1:30 and I will do it for you."

The gag order was entered the next day. We redacted the deposition passages from the closing brief so it could be published for the working class. Here's a page from the original redacted copy.

The gag order did not remain in effect for long, however. We immediately appealed, and after the Ninth Circuit Court of Appeals indicated that it would review Gelfand's emergency motion for a stay pending full appellate review, Pfaelzer withdrew the gag order. The uncensored closing brief was published.

There were two important matters left incomplete after discovery closed: a motion to compel Marc Zborowski to testify and a petition to obtain the release of Sylvia Dooze's testimony to the 1957 grand jury that indicted Robert Soblen as a Soviet espionage agent, the one naming Dooze as an "unindicted co-conspirator."

To proceed against Zborowski, we first had to obtain an order from

Pfaelzer, over the SWP's objection, relieving us from the discovery cut off. We got it on October 18, 1982. We then had to file a motion in San Francisco, where the April 15 deposition, at which Zborowski had refused to answer any substantive questions, invoking the Fifth Amendment, had occurred. Zborowski's lawyer, James Larson, filed an affidavit referring repeatedly to his collaboration with the SWP's legal team, arguing that Gelfand's "purpose in seeking Mr. Zborowski's deposition is to obtain information for use in a private war between political factions, thereby abusing this court's process."

Larson raised a new ground—that Zborowski's testimony should be blocked because it threatened to expose US intelligence agents in the SWP. On June 23, 1982, after Zborowski's deposition, but before Gelfand's motion to compel, then-president Ronald Reagan signed the Intelligence Identities Protection Act, making it a federal crime, punishable by up to 10 years in prison, for "any person" to knowingly disclose "information which identifies a US covert intelligence agent."

Gelfand's motion to compel Zborowski came to a hearing on January 4, 1983, only two months before the trial date, before US Magistrate J. Steele Langford of the Northern District. The following remarkable exchange took place:

THE COURT: Supposing this witness were ordered to answer these questions, and he said, "Okay, Mr. A, B, C and D are members of the Socialist Workers Party, but I know for a fact, from my past experiences and dealings with them, that they are, in effect, agents of the Central Intelligence Agency or the FBI, who were put into that party in an undercover capacity in order to infiltrate. I know this for a fact. These are their names. This is where they live. Here is their phone numbers."

And some endeavoring reporter from the *Washington Post* picks up this transcript and decides to publish a book and, in short, these people have been exposed.

Isn't that what that act is all about?

MR. BURTON: This is, in fact, what our case is all about.

THE COURT: Wait a minute. I know what your case is about, but timing-wise, this particular enactment that I'm concerned about has just recently come out of the Congress of the United States and has been signed by the president of the United States, and says that everybody who does that goes to jail.

The motion to compel was denied, solely on the basis that Zborowski might incriminate himself under the new law by naming US government agents in the SWP. "I don't buy the business about the other objections," Langford ruled, transferring jurisdiction over Gelfand's appeal to Judge Pfaelzer.

At a pretrial hearing on February 7, 1983, Pfaelzer indicated that she sympathized with our contention that the new law could not override Gelfand's constitutional claim, but then quickly, and cynically, denied the motion to compel. Zborowski would pass away eight years later.

Finally, we made a motion to the federal court in New York City to release the transcript of Sylvia Doxsee's testimony to the 1957 grand jury that indicted Robert Soblen for Soviet espionage and named Doxsee as an unindicted co-conspirator.

It was the same grand jury that Zborowski lied to about not knowing Jack Soble, which would later result in his conviction for perjury.

I drafted a detailed affidavit, attaching multiple exhibits, setting out our need for the transcript in light of the false testimony Doxsee gave during her deposition. We engaged the New York firm of Kornstein, Meister & Veisz to file the petition. The SWP filed an opposition to the release of the secret testimony given by its long-time secretary in the national office to

US government prosecutors investigating Soviet espionage, writing that the "request for grand jury minutes is just another example of abusive discovery."

The hearing on January 19, 1983, before United States District Judge Robert J. Ward was full of surprises. The assistant US attorney assigned to the matter, David Hammer, began by stating the following:

MR. HAMMER: Your Honor, I went through all the boxes in the possession of the National Archives on both the Jack Soble case and the Robert Soblen case. I also arranged for a special truck to have those boxes all brought to our offices and they are now in our offices.

I have only been able to find one transcript in those boxes, the October 7, 1954 testimony before the October regular grand jury in a matter called *United States v. John Doe*, where Sylvia Doxsee testified.

It is my impression from going through those boxes that what in fact happened was apparently an ongoing ten-year investigation into various matters beginning in the late '40s, continuing on through 1962, and it is my impression what happened is simply the notes, the files, the grand jury transcripts were essentially compiled at some point and used to obtain various indictments, the indictment in 1957 against Mr. Jack Soble and the indictment in 1960, I believe, against Mr. Robert Soblen.

In any event, I have been unable to find any later testimony than 1954 by Mrs. Doxsee, notwithstanding the submission by counsel for Mr. Gelfand of a Freedom of Information Act document indicating there was a 1957 transcript. All I have is what I provided to Your Honor.

I will say in conclusion, although I will not refer to the substance of this transcript, that I cannot see any continuing interest on the government's part or on the part of the public in keeping the testimony in this transcript secret.

Two things jump out here. First, we did not know about the 1954 testimony. Second, the US government was not asserting any continued interest in secrecy, which should have made release automatic. Instead, Judge Ward said that in his opinion, "nothing within that transcript supports the plaintiff's contention in the pending case in California that the Socialist Workers Party leaders are agents of any government." He cited Doxsee's invoking the Fifth Amendment right against self-incrimination to questions about whether she attended the founding convention of the SWP, whether she was Cannon's secretary, or whether she corresponded with Mrs. Trotsky.

There was much dialogue regarding searching for the missing 1957 transcript. Then SWP attorney Shelley Davis interjected, "There is absolutely no connection between anything Sylvia Doxsee may have said in the 1950s about alleged Soviet spying in the United States and any infiltration of the Socialist Workers Party by the FBI and CIA in the late 1970s. Plaintiff has shown absolutely not one shred of evidence to make that connection. Before anyone goes to any more trouble or we go to the burden and expense of further litigation, I think that that fact should stop this inquiry right here."

Judge Ward periodically mused about the contents of the 1954 transcript. For example, "There was a great deal of interest expressed as to whether she met her former husband at the pier upon his return from Spain. Apparently she did."

Sitting at counsel table, I, of course, understood the significance of this connection to Stalinism and Zalmond Franklin, although Judge Ward obviously did not. I asked the Court, "If Your Honor could transmit the

transcript in the court's possession now under seal to Judge Pfaelzer so that the motion could be renewed at trial or at an appropriate moment before Judge Pfaelzer so that she could make the relevancy determination at that time."

SWP Davis responded, "This is worse than general discovery. This is a pig in a poke. They don't have any reason to believe there is any evidence of any value in these transcripts and we would certainly oppose your transferring them."

After more back and forth about looking for the missing 1957 transcript, and a representation that Gelfand would reimburse the Government \$500 for its expenses, Judge Ward agreed to transmit, under seal, the 1954 transcript to Judge Pfaelzer.

Another Assistant US Attorney, Linda Cromwell, stationed in Los Angeles, handed Judge Pfaelzer the 1954 transcript in Court during our pretrial conference on January 31, 1983. She said she would review it and decide whether to release it.

We had another hearing the following week, February 7. To our surprise, Cromwell appeared again. She told Pfaelzer that a second transcript had been located and turned over Doxsee's testimony of June 18, 1958. Judge Pfaelzer told me that her courtroom deputy, Robert Flores, would be contacting me about their release. It was at that hearing that Pfaelzer said, "Gay-Pay-U" instead of GPU, which had never been said in court.

We had heard nothing about releasing the transcripts. When I asked as the trial started on the afternoon of March 2, Judge Pfaelzer replied that she had the request in mind.

On March 4, I had the following exchange with Larry Seigle:

Q. Is there any doubt in your mind whether or not Sylvia Caldwell was an agent of the GPU when she was a member of the Socialist Workers Party?

A. I have no doubt that she was not.

On the last day of trial, March 9, I had the following exchange with Jack Barnes:

Q. Now, was it your opinion at the time you received [Gelfand's letter] that there was no evidence whatsoever to indicate that Sylvia Franklin was an agent of the GPU?

A. All the evidence is just the opposite. Her whole comportment not only when she was in the movement but everything that's happened since she left indicates that she is exactly what she was: a loyal, hard-working, and model member of our movement.

Q. That is still your opinion today?

A. Well, my opinion today is she is one of my heroes after the harassment and what she's been through in the last couple of years. I would even feel more strongly about her, her character, than I did then.

After admitting all our exhibits, Judge Pfaelzer asked whether we had any further evidence to offer. We rested. She then handed Mr. Flores a manilla envelope, which was then turned over to us. It was the 1958 Doxsee grand jury transcript, a detailed confession of her anti-Trotskyist GPU activities from within the SWP national office. I remember turning directly to this passage:

Q. Mrs. Doxsee, again, if we can summarize just a little bit: you

have indicated after going to this Jack's apartment you then began going to another apartment, the apartment of a woman.

A. Yes.

Q. And in the apartment of that woman you also met a man whom you know as Sam?

A. Yes.

Q. And that Sam gave you money and that you typed reports and gave information?

A. I remember Jack giving me money and I am pretty sure I must have gotten some from Sam, and that was some years later, but I'm assuming, I don't recall it definitely.

Q. Do you recall how you knew—commenced going to this apartment that you're now describing, the woman's apartment?

A. No, I don't.

Q. Now, you described the mimeographed material which you gave, can you recall the contents of the material that you typed?

A. Well, I remember I used to just type up—it was mostly during the faction fights in the party and political committee meetings, who was fighting with who, and then if there was correspondence from Leon Trotsky that I saw, I would try to remember what was in the letters and write that all out, who's going with who and that kind of thing, personal things like that, I remember, how much money they had—I knew, you know, bank balances and stuff like that.

I turned to Comrade Don, who was with me in court and reading what I was reading, and said, "It's her confession." The 1954 transcript was released later that day. I still have this original copy, on old fashioned photocopy paper.



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