



FEDERAL ELECTION COMMISSION
Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
STAFF DIRECTOR
GENERAL COUNSEL
CHIEF COMMUNICATIONS OFFICER
FEC PRESS OFFICE
FEC PUBLIC DISCLOSURE

FROM: COMMISSION SECRETARY *MWD*

DATE: March 17, 2009

SUBJECT: COMMENT ON DRAFT AO 2009-01
Socialist Workers Party

Transmitted herewith is a timely submitted comment from Michael Krinsky, Esq., and Lindsey Frank, Esq., regarding the above-captioned matter.

Proposed Advisory Opinion 2009-01 is on the agenda for Thursday, March 19, 2009.

Attachment

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COMMISSION
SECRETARIAT

RABINOWITZ, BOUDIN, STANDARD, KRINSKY & LIEBERMAN
ATTORNEYS AT LAW
111 BROADWAY, ELEVENTH FLOOR
NEW YORK, NY 10006-1901

2009 MAR 17 A 9:36

TELEPHONE (212) 254-1111

FACSIMILE (212) 674-4614

www.rbkl.com

VICTOR RABINOWITZ (1911-2007)
LEONARD B. BOUDIN (1912-1988)

MICHAEL KRINSKY
ERIC M. LIEBERMAN
DAVID B. GOLDSTEIN
CHRISTOPHER J. KLATELL

LINDSEY FRANK

COUNSEL

LEONARD I WENGLASS
DEBRA EVENSON
TERRY GROSS
CRAIG KAPLAN

March 17, 2009

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

Office of General Counsel
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Dear Commissioners and Ms. Duncan:

On behalf of our clients, the Socialist Workers Party, the Socialist Workers National Campaign Committee, and committees supporting candidates of the Socialist Workers Party (hereinafter collectively, for convenience, "SWP"), we respectfully present the following comments on Draft Advisory Opinion 2009-01.

The SWP agrees with the conclusion of the Draft Advisory Opinion that "As a result of its finding that the SWP, the SWP's party committees, and the authorized committees of SWP candidates have satisfied the factors established in the case law and applied in prior advisory opinions, the Commission grants the SWP, the SWP's National Campaign Committee, the SWP's other party committees, and the authorized committees of SWP candidates a further continuation of the partial reporting exemption provided for

in the consent agreements and continued in previous advisory opinions." Draft Advisory Opinion 2009-01 at 18.

However, contrary to the suggestion of the Draft Advisory Opinion, the SWP maintains that the evidence supporting the present request, rather than being of a "lesser magnitude" or force, is, in fact, more extensive – 76 incidents in the present request compared to 74 incidents in the 2002 request and 72 incidents in 1996 request – and equally, if not more, forceful. Without limitation, we note that the incidents submitted in support of the present request include the well-publicized fire-bombing of the SWP's campaign headquarters in Hazleton, Pennsylvania shortly before the 2004 election (Ex. 1), the firing of three SWP candidates and one SWP campaigner because of their well-known association with the SWP (Exs. 20, 21, 22 and 74), and the interrogation and harassment by the F.B.I. of a SWP candidate concerning his political views and activities while running for U.S. Congress (Ex. 19). Also contrary to the Draft Advisory Opinion's suggestion, we believe that the circumstances and submitted evidence clearly establish that the firings were on account of the employees' association with the SWP.

We attach an additional declaration providing further support for the SWP's contention that the federal government continues to be interested in association with the SWP, and subjects SWP members and associates to special surveillance and harassment. We apologize for the late submission of this declaration, and ask that it be included in the record of this proceeding.

As set forth in the attached, starting in at least 2004, the federal government has placed James Harris, a long-time SWP candidate, on a "no fly" list due to "national security" concerns and as a "Department of Homeland Security matter." As a result of

his listing, Mr. Harris has been subject to special processing, missed flights and suffered extensive delays at airports. Mr. Harris was the SWP candidate for president in 1996 and 2000, ran as the party's candidate for governor of California in 2006 and ran a campaign for mayor of Los Angeles as the 2009 SWP candidate. There is no explanation for Mr. Harris being placed on a "no fly" list and being subjected to special surveillance other than his prominence as a leader of the SWP.

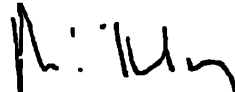
Finally, we believe that the Draft Advisory Opinion fails to give sufficient weight to the context in which the incidents of federal and other governmental interest, as well as private acts of harassment, occur: the widespread reports of stepped-up governmental spying, use of undercover informers, and other measures aimed at organizations and individuals. (Ex. P). The supposed rationale of this increase in governmental activity, concern with possible "terrorism," is particularly relevant here, for, as we have shown, the government explicitly expressed continuing interest in the SWP on that or similar grounds (Ex. M); and has never disavowed that interest. Indeed, the above "No fly" designation indicates continuing federal concern with the SWP on that very basis.

Based on the foregoing, and on our filings dated October 30, 2008 and January 13, 2009, the SWP respectfully requests that the Commission alter the language of the Draft Advisory Opinion to remove any suggestion that the present showing is any less compelling than that made for the last two reporting periods.

At the same time, we recognize that the Commission may not wish to address this request given that it is not result-determinative in any event and the recommendation in the Draft to continue the partial reporting exemption.

Thank you for your attention to this matter.

Respectfully yours,



Michael Krinsky
Lindsey Frank

DECLARATION

I, James Harris, make this declaration in support of the application to the Federal Elections Commission for an advisory opinion that the Socialist Workers Party, the Socialist Workers party's National Campaign Committee, and the committees supporting the candidates of the Socialist Workers Party are entitled to an exemption from certain disclosure provisions of the Federal Elections campaign Act.

I make this statement on the basis of personal knowledge.

- 1. I have personal knowledge of the facts set forth here.**
- 2. I was the candidate of the Socialist Workers Party for president of the U.S. in both 1996 and 2000. I was on the ballot as a stand-in for Róger Calero as SWP candidate for president in both 2004 and 2008 in states where legal requirements prevented him from gaining ballot status. I just completed a campaign for Mayor of Los Angeles as the 2009 candidate of the Socialist Workers Party. I also ran as the party's candidate for Governor of California in 2006.**
- 3. As a party candidate and spokesperson, I have traveled throughout the country and internationally, speaking publicly and participating in public forums, protest actions, conferences, and other activities.**
- 4. Beginning in 2004, I began being stopped at the airport when I traveled and told I would not be permitted to check-in and would have to step aside while some special processing concerning me was carried out. After significant delay I was usually able to board my flight. At first, I did not know the reason for the delay and special attention.**
- 5. After this happened a third time, I asked the counter personnel why I was being singled out for special attention after they told me again that I would have to step aside for a special check to be run. The agent told me that "this is a Homeland Security matter" and that I was on the federal "No fly" list and handed me a government form which detailed what being on the list meant (I have attached the form the agent handed me to the Declaration). The form, issued by the Transportation Security Administration division of the U.S. Department of Homeland Security, stated "As part of the security administered at airports, TSA prepares and maintains watch lists of persons who are known to pose, or are suspected of posing, a threat to civil aviation or national security."**

6. Over the five years since, I am often singled out for special checks as a result of being on the list. I have to get to the airport more than two hours before any flight in order to allow for the extra time such checks always take. Because of the "No fly" listing, I have missed a number of flights while held back for further investigation. I have come close to missing a number more.

7. I am unable to use airport kiosks to get my boarding pass. I am referred by them to counter agents, where I am told I have to have further processing. I am also unable to check-in on-line.

I declare under penalty of perjury that the foregoing is true and correct.
Executed March 15, 2009 in Los Angeles, California.



James Harris
March 15, 2009
Los Angeles, California



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Washington, DC 20463

MEMORANDUM

TO: THE COMMISSION
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FROM: COMMISSION SECRETARY *MWD*

DATE: March 17, 2009

SUBJECT: MISSING LAST PAGE
COMMENT ON DRAFT AO 2009-01
Socialist Workers Party

The requesters, Michael Krinsky, Esq., and Lindsey Frank, Esq. are transmitting herewith a missing last page on the comment submitted previously regarding the above-captioned matter.

Proposed Advisory Opinion 2009-01 is on the agenda for Thursday, March 19, 2009.

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COMMISSION
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2009 MAR 17 A 11:40

U.S. Department of Homeland Security
Arlington, VA 22203-4128



Transportation
Security
Administration

Dear Traveler:

When checking in for air travel, some passengers have found that they are unable to obtain a boarding pass online, at curbside check-in or from an air carrier's electronic kiosk. When this occurs, they are referred to the airline ticket counter where they may experience a delay while the agent verifies their identity. If this situation applies to you, or if you are required to undergo additional checkpoint screening each time you fly, please contact the Transportation Security Administration (TSA) toll-free at

You may also send TSA an email at

As part of the security administered at airports, TSA prepares and maintains watch lists of persons who are known to pose, or are suspected of posing, a threat to civil aviation or national security. TSA recognizes that some people have been subjected to frustrating delays at airports as a result of being mistaken for an individual who, in fact, is on a watch list. We regret this inconvenience and have developed a procedure to expedite the check-in and screening process for individuals who repeatedly experience delays.

When you contact the TSA Contact Center (TCC), a representative will explain how this process works. The entire process may take up to 45 days to complete. To better assist you, we ask that you have the following information readily available for the TCC representative:

- Your full name
- Your date of birth
- Telephone number
- Mailing address and email address

TCC representatives are available to assist you Monday through Friday, 8:00 AM to 10:00 PM (EST), and Saturdays, Sundays and Holidays, 10:00 AM – 6:00 PM (EST).