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9

10 UNITED STATES DISTRICT COURT FOR THE
11 CENTRAL DISTRICT OF CALIFORNIA

12

13	ALAN GELFAND,	)	CASE NO. 79-02710 MRP (TX)
14	Plaintiff,	)	MOTION TO DISMISS PRESENTING
15	v.	)	DEFENSES OF FAILURE TO STATE
16	UNITED STATES ATTORNEY GENERAL	)	A CLAIM, LACK OF SUBJECT
17	GRIFFIN BELL, DIRECTOR OF THE	)	MATTER JURISDICTION AND
18	FEDERAL BUREAU OF INVESTIGATION,	)	INSUFFICIENCY OF PROCESS UNDER
19	WILLIAM H. WEBSTER, DIRECTOR OF	)	RULE 12(b)
20	THE CENTRAL INTELLIGENCE AGENCY,)	
21	STANFIELD TURNER, DIRECTOR OF THE)	
22	NATIONAL SECURITY AGENCY, VICE)	
23	ADMIRAL BOBBY INMAN, JACK BARNES,)	
24	LARRY SEIGLE, PETER CAMEJO, DAVID)	
25	JEROME, MARY ROCHE, DOUG JENNESS,)	
26	SHARON CABANAS, PEARL CHERTOV,)	
27	BRUCE MARCUS, SOCIALIST WORKERS)	
28	PARTY,)	
29	Defendants.)	

1 The defendants Jack Barnes, Larry Seigle, Peter Camejo, David
2 Jerome, Mary Roche, Doug Jenness, Sharon Cabanas, Pearl Chertov,
3 Bruce Marcus, and Socialist Workers Party move the court as
4 follows:

5

6 1. To dismiss the action because the complaint fails to
7 state a claim upon which relief can be granted.

8

9 2. To dismiss the action on the ground that the court lacks
10 jurisdiction because there is no diversity of citizenship,
11 the matter in controversy does not exceed the sum or value
12 of \$10,000, and does not arise under the Constitution, laws
13 or treaties of the United States.

14

15 3. To dismiss the action as to defendants Jerome, Roche,
16 Jenness, Cabanas, and Marcus and Socialist Workers Party
17 because they were not served with process, as appears more
18 fully in the Affidavit of Mary Roche, annexed to the
19 Memorandum of Law accompanying, and in support of, this
20 Motion.

21

Signed: Margaret Winter

22

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CERTIFICATE OF SERVICE

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I certify that I served a copy of the above Motion to Dismiss, together with the accompanying Memorandum of Law in support thereof and annexed affidavits of Larry Seigle and Mary Roche, to each of the parties to the complaint, this 14th day of September, 1979, as follows:

To plaintiff Gelfand, by mailing a copy to the office of his attorney Robert L. Allen.

To defendants Griffin Bell, William H. Webster, Stanfield Turner and Bobby Inman by mailing copies to the clerk of the court.



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13 UNITED STATES DISTRICT COURT FOR THE
14 CENTRAL DISTRICT OF CALIFORNIA

15	ALAN GELFAND,	)	CASE NO. 79-02710 MRP(TX)
16		)	MEMORANDUM OF LAW IN SUPPORT
17	Plaintiff,	)	OF MOTION TO DISMISS FOR
18		)	FAILURE TO STATE A CLAIM,
19	v.	)	LACK OF SUBJECT MATTER
20		)	JURISDICTION, AND INSUFFI-
21	UNITED STATES ATTORNEY GENERAL	)	CIENCY OF PROCESS UNDER
22	GRIFFIN BELL, DIRECTOR OF THE	)	RULE 12(b)
23	FEDERAL BUREAU OF INVESTIGATION,)	
24	WILLIAM H. WEBSTER, DIRECTOR OF)	
25	THE CENTRAL INTELLIGENCE AGENCY,)	
26	STANFIELD TURNER, DIRECTOR OF THE)	
27	NATIONAL SECURITY AGENCY, VICE)	
28	ADMIRAL BOBBY INMAN, JACK BARNES,)	
29	LARRY SEIGLE, PETER CAMEJO, DAVID)	
	JEROME, MARY ROCHE, DOUG JENNESS,)	
	SHARON CABANAS, PEARL CHERTOV,)	
	BRUCE MARCUS, SOCIALIST WORKERS)	
	PARTY,)	
)	
	Defendants.)	

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1 MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS
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4 I. Preliminary Statement

5 The Socialist Workers Party (hereinafter "SWP") is an
6 unincorporated association, whose purpose is stated in Article II
7 of its constitution (Exhibit A)¹:

8 "The purpose of the party shall be to educate
9 and organize the working class for the abolition
10 of capitalism and the establishment of a
11 workers government to achieve socialism."

12 The SWP has been the target of an intensive forty-year
13 campaign of harassment and disruption by the FBI and other
14 federal intelligence agencies.² In 1973, the SWP filed suit
15

16 ¹ The Exhibits referred to herein are the documents referred to
17 by the plaintiff in his complaint. They are annexed to the
18 Affidavit of Larry Seigle accompanying this Motion and Memo-
19 randum of Law. In considering the sufficiency of a complaint
20 on a Motion to Dismiss, the court must accept as true only the
21 well pleaded facts, not mere conclusory allegations of law or
unwarranted deductions of fact, especially where such allegations
are contradicted by documents referred to in the complaint. See
Blackburn v. Fisk University, 443 F. 2d 121, 123-24 (6th Cir.
1971); Associated Builders, Inc. v. Alabama Power Company,
505 F2d. 97, 100 (5th Cir. 1974).

22
23 ² The court may take judicial notice of this fact, which is a
24 matter of public record. See Final Report of the Select
Committee to Study Governmental Operations With Respect to
Intelligence Activities, United States Senate, 94th Cong., 2d
25 Sess. (1976), Book II, page 8, Book III, page 17-18; Investiga-
tive Report of the Select Committee on Intelligence, United
26 States House of Representatives, 94th Cong., 1st Sess. (1975),
published in the Village Voice, February 16, 1976.
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1 against these federal agencies, seeking damages and injunctive
2 relief from this disruption campaign, including the use of
3 informers against the SWP.³ In December, 1978, when this case was
4 before the Second Circuit on an appeal by the Attorney General,⁴
5 Gelfand intervened in the litigation by attempting to file an
6 amicus brief with the court (Paragraph 16, Complaint; Exhibit B).
7 The "brief" was a statement accusing Joseph Hansen, a leading
8 member of the SWP who was a named plaintiff in the SWP litigation,⁵
9 of being an FBI agent or informer.

10 Gelfand's intervention in the SWP litigation was not his first
11 public attempt to brand SWP leaders as informers. As the allega-
12 tions of the complaint demonstrate (Paragraphs 11-14, Exhibit C),
13

14 ³ Socialist Workers Party v. Attorney General, 73 Civ. 3160 (TPG)
15 (S.D.N.Y.) The suit has been in active pre-trial discovery for
16 more than six years. In 1976, as a result of the national
17 publicity surrounding the suit and the attendant public criticism
18 of the FBI for its actions against the party, the Attorney Gen-
19 eral ordered the FBI to halt its investigation of the SWP and
20 to remove its informers. See Socialist Workers Party v. Attorney
21 General, 458, F. Supp. 895, 898 (S.D.N.Y. 1978). However, the
22 Attorney General refuses to reveal the identities of any of the
23 FBI informers, and the litigation has been three times to the
24 Second Circuit and the Supreme Court on that issue. Two of the
25 named individual SWP defendants in the case at bar (Jack Barnes
26 and Peter Camejo) are plaintiffs in that litigation.

27 ⁴ The appeal was from a contempt citation against the Attorney
28 General for refusing to obey a discovery order to reveal informer
29 identities, an order that had earlier been upheld by the Second
30 Circuit, In Re Attorney General, 565 F.2d 19 (2d Cir. 1977),
31 cert. denied, 436 U.S. 962 (1978). The contempt citation was
32 vacated by the Second Circuit, ___ F.2d ___ (March 19, 1979), and
33 the SWP filed a Petition for Writ of Certiorari to the Supreme
34 Court, No. 78-1702, which has not yet been acted upon.

35 ⁵ Hansen died in January, 1979.

1 his amicus brief was the culmination of a year-long campaign.
2 Gelfand admits (Paragraphs 11-15, Complaint) that he was warned,
3 on each occasion when he raised the accusation, that his acts were
4 considered disloyal to the party and a violation of the party's
5 decisions and policies, and would subject him to expulsion
6 (Paragraphs 11-15, Complaint; Exhibits D and E, referred to in
7 Paragraphs 14 and 15).⁶

8 As Gelfand admits (Paragraphs 16, 17, Complaint, Exhibits F
9 and G), his intervention in the SWP litigation repeating his
10 accusations against Hansen resulted in formal charges being
11 brought against him for undisciplined and disloyal behavior in
12 violation of the organizational principles of the SWP, whose
13 constitution provides:

14 "Article III, MEMBERSHIP":

15 "Section 1. Every person who accepts the program
16 of the party and agrees to submit to its discipline
17 and engage actively in its work shall be eligible
18 to membership."

19
20 "Article VIII, DISCIPLINE":

21 "Section 1. All decisions of the governing bodies of
22 the party are binding upon the members and subordinate
23 bodies of the party."
24

25 ⁶ Exhibit E is a letter from defendant Seigle to Gelfand, dated
26 April 7, 1978, setting forth in detail the SWP's policies
27 against making such accusations, explaining how the charges
28 against Hansen had been exposed as slander, and warning Gelfand
that he would be expelled from the SWP if he persisted in
conduct incompatible with membership.

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

5 The SWP constitution further provides (Article VIII, Section
6 3) that charges against a member are to be made in writing in
7 advance of trial and that the accused member shall be furnished
8 with a copy of the charges; and that trial is to be either by the
9 branch to which the member belongs (in which case the member is
10 summoned to appear), or by a higher body, which may in its discre-
11 tion decide to act directly in the case (in which case there is no
12 provision for the presence of the accused member). There is no
13 provision in the SWP constitution entitling the accused member
14 to confront or cross-examine witnesses.

15 Gelfand admits (Paragraph 16, Complaint) that he was furnished
16 in advance of trial with a copy of the written charge (Paragraph
17 17, Exhibit G), informing him of the time of trial and the body
18 that would hear the charges (the Political Committee of the SWP).
19 He does not allege that he either submitted a response to the
20 Political Committee before trial, appeared or requested to appear
21 in person, or requested a continuance of the trial. The charges
22 were heard, and Gelfand was thereupon expelled, in complete
23 conformity with the provisions of the SWP constitution. As more
24 fully appears in the annexed Affidavit of Larry Seigle, the sole
25 fact in dispute is whether or not Gelfand was given the opportunity
26 to appear in person. In any event, this disputed fact does not
27 relate to a material issue in the case, since under the provisions
28

1 of the SWP constitution, appearance in person before a higher
2 body hearing the charges is left to the discretion of that body.

3 Gelfand's complaint alleges that the SWP, in expelling him,
4 has violated two protected interests: a contract right, and a
5 constitutional right under the First Amendment. As we will
6 demonstrate below, neither theory states a claim upon which relief
7 can be granted. The SWP has breached no contract with Gelfand; and
8 if it had, this court would be without subject matter jurisdiction
9 to hear the claim, since there is no substantial federal issue
10 stated by the complaint and no other jurisdictional basis for the
11 contract claim. Nor has the SWP deprived Gelfand of any constitu-
12 tional right. The right he asserts--namely, to remain a member
13 of a voluntary political association while persisting in conduct
14 that violates the association's most basic requirements of member-
15 ship--is nonexistent. The First Amendment right squarely present-
16 ed by the allegations of the complaint is not Gelfand's, but that
17 of the SWP membership: its freedom of association, which would be
18 vitiated if it could not expel from its ranks members who commit
19 disloyal acts in defiance of the party's decisions.

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1 II. Grounds For Dismissal of the Complaint

2 A. Failure to State a Claim Upon Which Relief Can Be Granted
3 and Lack of Subject Matter Jurisdiction.

4
5 1. First claim for relief, under the First Amendment.

6 Gelfand asserts that the named individual SWP defendants⁶
7 violated his First Amendment rights of free speech, association,
8 and political expression. This claim is evidently based on the
9 Supreme Court's holding in Bivens v. Six Unknown Named Agents of
10 the Federal Bureau of Narcotics, 403 U.S. 409 (1971) that federal
11 agents may be sued directly under the Constitution for violations
12 of the Fourth Amendment.⁷ In order to bring the SWP defendants
13 within the purview of Bivens, Gelfand has alleged that each of
14 them is in fact a secret government agent (Paragraph 21,
15 Complaint).⁸

16 The Complaint on its face reveals that no First Amendment
17 right was violated by Gelfand's expulsion. Voluntary political
18

19 ⁶ Barnes, Seigle, Camejo, Jerome, Roche, Jenness, Cabanas, Chertov,
20 and Marcus.

21 ⁷ We assume here, arguendo, that the court would recognize a
22 similar claim against federal agents arising under the First
23 Amendment, a question left unanswered by Bivens and which the
24 Supreme Court explicitly declined to answer in Butz v. Economou,
25 438 U.S. 478, 486 n.8 (1978).

26 ⁸ A reading of the Complaint reveals that that assertion is based,
27 in turn, solely on the allegations that each of the SWP defen-
28 dants either protested his accusations against Hansen (Cabanas,
29 Jerome, Marcus, Paragraphs 11, 13) or warned him that his accu-
30 sations would subject him to expulsion (Chertov, Camejo, Seigle,
31 Paragraphs 12, 14, 15) or took some step in the procedures
32 leading to his expulsion (Jenness, Barnes, Seigle, Roche,
33 Paragraphs 16-20).

1 organizations that exist purely for the purpose of furthering
2 particular social goals (unlike unions, professional organizations,
3 or other voluntary associations, membership in which has important
4 economic ramifications) have the unfettered right to exclude or
5 expel from membership those who violate the organization's rules
6 and requirements of membership. This autonomy is essential,
7 because:

8 "The functioning of a political group requires loyalty
9 to protect the solidarity necessary for effective
10 political action, and the group should be free to use
11 internal disciplinary sanctions...or to expel in order
12 to prevent disloyalty. The harm inflicted on the
13 individual by an expulsion under such circumstances
14 is mitigated by his freedom to act individually or to
15 affiliate with another political group. Further, he
16 has shown a lack of sympathy with such a necessary condi-
17 tion of group political action that he has essentially
18 disqualified himself, and expulsion seems justified."

19 Judicial Control of Actions of Private Associations, 76 Harvard
20 Law Review 943, 1008 (1963).

21 Moreover, any interference with a political party's freedom
22 to expel those members whom it perceives as disloyal or undisci-
23 plined would itself be a serious violation of the First Amendment
24 rights to freedom of association: for, "any interference with the
25 freedom of a party is simultaneously an interference with the
26 freedom of its adherents," Sweezy v. New Hampshire, 354 U.S. 234,
27 250 (1957); and see Kuser v. Pontikes, 414 U.S. 51,56-57 (1973);
28

1 NAACP v. Alabama, 357 U.S. 449, 460-61 (1958). Therefore, the
2 courts will not intrude on the internal governance of political
3 associations,⁹ for:

4 "[A] party's choice, as among various ways of governing
5 itself, of the one which seems best calculated to
6 strengthen the party and advance its interests, deserves
7 the protection of the constitution as much if not more
8 than its condemnation. The express constitutional rights
9 of speech and assembly are of slight value if they do
10 not carry with them a concomitant right of political
11 association. Speeches and assemblies are after all not
12 ends in themselves but means to effect change through
13 the political process. If that is so, there must be a
14 right not only to form political associations but to
15 organize and direct them in the way that will render
16 them most effective."

17 Ripon Society v. National Republican Party, 525 F.2d 567, 585
18 (D.C. Cir. 1975), cert. denied, 424 U.S. 933 (1976).

19 Such unfettered control over internal matters is especially
20 "vital to the small party advocating a particular doctrine such as
21 socialism", 76 Harvard Law Review 982, supra, at 1060-61. A
22 party's First Amendment right of association in preserving internal
23 party autonomy is so strong that the Supreme Court recently held
24

25 ⁹ The sole modification of the general principle is that the courts
26 will not permit racial discrimination in "private" party
27 elections which are de facto part of the state election machin-
28 ery, as this would be an abridgment of the franchise. See Terry
29 v. Adams, 345 U.S. 461 (1953). Obviously, no such issue exists
in the case at bar.

1 that even a state's electoral laws may have to give way to it.
2 Cousins v. Wigoda, 419 U.S. 477, 489 (1975).

3 Thus, Gelfand's Complaint alleges no facts that could sustain
4 a claim for violation of the First Amendment. The courts will not
5 permit Eivens-type claims unless the complaint alleges facts
6 sufficient to show an identifiable violation of a clearly identi-
7 fied constitutional right. Compare Dellums v. Powell, 566 F.2d 167
8 (D.C. Cir. 1977); cert. denied, 483 U.S. 916 (1978) (lawful assembly
9 and demonstration at the Capitol were "basic constitutional rights
10 in their most pristine and classic form," clearly infringed by
11 illegal arrests and detention of the demonstrators); Paton v.
12 LaPrade, 524 F.2d 862, 869-72 (3d Cir. 1975) (interception by the
13 FBI of a letter from plaintiff to the SWP, because of a mail-cover
14 directed against the SWP, posed the question of whether the mail
15 cover was illegal and hence whether there had been a violation of
16 a First Amendment right); Wounded Knee Legal Defense/Offense
17 Committee v. F.B.I., 507 F.2d 1281, 1284 (8th Cir. 1974) (alleged
18 arrests and physical assaults and aggression by FBI agents toward
19 legal defense volunteers raised the issue of invasion of a Sixth
20 Amendment right to assistance of counsel).

21 The First Amendment "right" Gelfand alleges is the right to
22 remain a member of a voluntary political association while
23 violating its fundamental requirement of membership. No such
24 right exists. The SWP has in no way prevented Gelfand from
25 pursuing his defamatory campaign against its members; it has merely
26 refused to let him mount it from within the party, as a member.
27 "One has no right to a 'remedy' against the lawful conduct of
28
29

1 4. By letter of January 29, Gelfand wrote to the Political
2 Committee "rejecting" the fact that he had been expelled,
3 stating that the action was taken by the government, not
4 the SWP.

5
6 5. By letter of February 24, 1979, on behalf of the Political
7 Committee, I informed Gelfand that no further correspondence
8 from him would be acknowledged.

9
10 6. After Gelfand filed his complaint, it was my responsibility
11 to be informed as to whether each of the SWP defendants had
12 been served with a copy of the Complaint.

13
14 7. On information and belief, to this date SWP defendants David
15 Jerome, Mary Roche, Doug Jenness, Sharon Cabaniss, Bruce
16 Marcus, and the Socialist Workers Party have not been served
17 with a copy of the Complaint.

18
19 /s/ _____
20 MARY ROCHE

21
22 SUBSCRIBED AND SWORN to before me
23 this ____ day of September, 1979.

24
25 _____
26 NOTARY PUBLIC
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/s/ _____

LARRY SEIGLE

SUBSCRIBED AND SWORN to
before me this ____ day of September, 1979.

NOTARY PUBLIC

1 7. On January 11, the Committee considered all the evidence before
2 it and voted unanimously to find Gelfand guilty as charged and
3 to expel Gelfand from the party.
4

5 8. By letter of January 15, Mary Roche informed Gelfand of the
6 action taken by the Committee.
7

8 9. On January 29, Gelfand wrote Political Committee "reject~~ing~~"
9 the fact that he had been expelled. He asserted that he had
10 "been purged, not expelled; and that this action was taken by
11 the government, not the SWP." In response to Gelfand's total
12 rejection of the constitutional framework of the Socialist
13 Workers Party, Mary Roche, acting for the Political Committee,
14 informed Gelfand that "no further correspondence from you will
15 be acknowledged."
16

17 10. The entire file of correspondence and other materials on the
18 Gelfand affair was made available to all the members of the SWP
19 National Committee prior to the May 1979 meeting of the National
20 Committee. No dissent was voiced in the National Committee with
21 the action taken by the Political Committee.
22

23 11. A summary of the case and the key items of correspondence were
24 circulated to the entire membership of the party prior to the
25 Party's August, 1979 National Convention. No delegate to the
26 convention raised any disagreement with the action taken by the
27 Political Committee in expelling Gelfand.
28
29

1 Exhibit I, letter from Roche to Gelfand (Paragraph 20,
2 Complaint)

3
4 3. The provisions of the SWP Constitution relating to expulsion
5 from membership are contained in Articles VIII, Sections 1
6 through 8.

7
8 4. At all times, the provisions of the SWP Constitution were
9 followed to the letter by the Political Committee and every
10 other party body in their actions in regard to Gelfand.

11
12 5. On January 5, 1979, Jack Barnes filed charges against Gelfand
13 with the Political Committee in accordance with Article VIII
14 Section 3 of the SWP Constitution. As provided by this
15 section, Gelfand was furnished with a copy of the charges by
16 mail, together with a copy of the SWP Constitution.

17
18 6. On January 8, Mary Roche, acting for the Political Committee,
19 informed Gelfand by phone that the Political Committee would
20 hold a trial on January 11. Mary Roche informed Gelfand that
21 he had the right to submit any written material he chose to
22 the Committee in advance of the trial, and that he had the
23 right to request to personally appear before the Committee.
24 Gelfand submitted no material to the Committee, nor did he
25 appear in person, nor did he make any request to postpone or
26 reschedule the trial.

27

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1 B. Insufficiency of Process.

2

3 Defendants David Jerome, Mary Roche, Doug Jenness, Sharon
4 Cabanas, Bruce Marcus and Socialist Workers Party have not been
5 served with a copy of the complaint as required by Rule 4, Federal
6 Rules of Civil Procedure (see Affidavit of Mary Roche, annexed
7 hereto).

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CONCLUSION

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The Motion to Dismiss should be granted.

13

14

Respectfully submitted,

15

Margaret Winter

16

17

Margaret Winter
14 Charles Lane
New York, N.Y. 10014
(212) 254-1408
Attorney for SWP Defendants

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19

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615 South Flower Street
Suite 1900
Los Angeles, California 90017
(213) 623-3145
Local Counsel, designated
pursuant to Local Rule 1.3(b)(2)

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Dated: September 12, 1979
New York, New York

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1 Yorkshire Club, 340 F. Supp. 628, 631 (N.D. Iowa 1971). Clearly,
2 the courts should not intrude where the grounds upon which a
3 member is expelled "are those expressly stated in its charter as
4 acts which violate the very precept for which the organization was
5 founded." Ibid. Even in organizations of "immense power and
6 importance" holding "an economic stranglehold" over the members,
7 the courts will interfere with the association's own procedures on
8 expulsion only to the extent of insuring rudimentary principles of
9 fair hearing--e.g., notice of charges, and opportunity to prepare
10 and present a defense. McCreery Angus Farms v. American Angus
11 Association, 379 F. Supp. 1008, 1010 (S.D. Ill. 1974). Even if
12 the association engages in a quasi-governmental function, thereby
13 rendering its action state action and subjecting itself to consti-
14 tutional limits, the courts will require no more than procedural
15 "reasonableness." Marjorie Webster Junior College, Inc. v. Middle
16 States Association of Colleges and Secondary Schools, Inc., 432 F.
17 2d 650, 655-56 (D.C. Cir. 1970), cert. denied, 400 U.S. 965 (1970).
18 This judicial principle against non-interference applies all the
19 more strongly in cases of expulsion by organizations that are pure-
20 ly social and political in nature, and that wield no economic power
21 over their members. See Frieden, J., Judicial Review of Expulsion
22 Actions in Voluntary Associations, 6 Washburn Law Journal 160,
23 166-69 (1969). Thus, the contract claim fails to state a claim
24 upon which relief can be granted.

1 alleged facts upon which special damages could be based, even if
2 he were permitted to amend. The defect is fatal to jurisdiction
3 under Section 1332. St. Paul Mercury Indemnity Co. v. Red Cab Co.,
4 303 U.S. 283, 289 (1938); DeLoach v. Woodley, 405 F.2d 496, 497
5 (5th Cir. 1968). As to the requirement of diversity, the claim
6 fails on the face of the complaint. Unincorporated associations
7 will be considered to be citizens of every state in which the
8 association has members, and therefore, where, as here, the
9 association has members whose state citizenship coincides with the
10 opposing party's, a federal court has no diversity jurisdiction.
11 Baer v. United Services Automobile Association, 503 F.2d 393, 395-
12 396 (2d Cir. 1974); United States Steelworkers v. R.H. Bouligney,
13 Inc., 382 U.S. 145, 149-153 (1965).

14
15 3. Civil rights jurisdiction, under 28 U.S.C. 1343.

16 28 U.S.C. Section 1343 confers jurisdiction for civil
17 actions authorized by the civil rights statutes. The complaint
18 alleges no facts bringing an action on the claimed "contract"
19 within the purview of 42 U.S.C. Section 1985(3).

20
21 b. Failure to state a claim.

22 Finally, even if this court had jurisdiction over the contract
23 claim, the allegations of the complaint, when read with the docu-
24 ments relied upon therein, conclusively show that the SWP breached
25 no contractual duty to Gelfand (supra at 1-5).

26 Moreover, the scope of the courts' review of expulsions by
27 voluntary associations is "severely limited", Jackson v. American
28

1 a. Subject matter jurisdiction.

2 The court is without subject matter jurisdiction to hear this
3 contract claim, under 28 U.S.C. Section 1331 (federal question),
4 28 U.S.C. Section 1332 (diversity of citizenship), or 28 U.S.C.
5 Section 1343 (civil rights and elective franchise).

6 1. Federal question jurisdiction under 28 U.S.C.
7 Section 1331.

8 28 U.S.C. Section 1331 confers jurisdiction only when the
9 matter in controversy arises under the Constitution, laws or
10 treaties of the United States. The courts of this circuit have
11 consistently held that the "arising under" provision of Section
12 1331 requires that the facts alleged present a "substantial"
13 federal question. Garfinkle v. Wells Fargo Bank, 483 F.2d 1074,
14 1076-77 (9th Cir. 1973); Smith v. Grimm, 534 F.2d 1346, 1349-50
15 (9th Cir. 1976), cert. denied, 429 U.S. 980 (1976). Gelfand has
16 made no allegations that would show how the contract claim "arises
17 under the Constitution, laws or treaties of the United States",
18 and the federal courts have power to hear pendent state claims only
19 when a substantial federal claim has been stated. United Mine-
20 workers v. Gibbs, 383 U.S. 715, 725 (1966).

21 2. Diversity jurisdiction under 28 U.S.C. Section 1332.

22 28 U.S.C. Section 1332 confers jurisdiction only when (a)
23 the matter in controversy exceeds the sum or value of \$10,000
24 exclusive of interest and costs and (b) the suit is between
25 citizens of different states (the applicable provision in this
26 case). Neither requirement is met here.

27 Gelfand has neither alleged damages in any amount, nor
28
29

1 prevent or aid in preventing the acts complained of herein." This
2 claim must be dismissed, as it is well established that Section
3 1986 gives rise to no claim except upon the basis of a valid claim
4 under Section 1985. Hahn v. Sargent, 523 F.2d 461, 469-70 (1st
5 Cir. 1975), cert. denied 425 U.S. 904 (1976); Taylor v. Nichols,
6 558 F.2d 561, 568 (10th Cir. 1977).

7
8 4. Fourth Claim for Relief, under 42 U.S.C. Section 1988.

9 Gelfand alleges that the acts described "violate the common
10 law as modified by the Constitution and Acts of Congress", giving
11 rise to a claim under Section 1988. It is well established that
12 this section creates no independent cause of action, but merely
13 authorizes resort to common law to make fully effective the redress
14 available when a valid claim is made out under Sections 1983 or
15 1985. See Moor v. Alameda County, 411 U.S. 693, 701-704 (1973);
16 Taylor v. Nichols, 558 F.2d 561, 568 (10th Cir. 1977); Schatte v.
17 International Alliance of Theatrical Stage Employees and Moving
18 Picture Operators of United States and Canada, 70 F. Supp. 1008
19 (S.D. Cal. 1947), aff'd, per curiam, 165 F.2d 216 (9th Cir. 1948).

20
21 5. Fifth Claim for Relief, under 5 U.S.C. Section 702.

22 This claim is not directed against the SWP defendants.

23
24 6. Sixth Claim for Relief, for breach of contract.

25 Gelfand alleges that the defendant SWP "breached his con-
26 tractual right to a trial before expulsion and to an appeal of
27 his expulsion."
28
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1 denied, 423 U.S. 930 (1975) (police forcibly seized and destroyed
2 an anti-Nixon sign held by a peaceful spectator at a presidential
3 motorcade, while permitting pro-Nixon signs; obvious invidious
4 discrimination that "struck at the very heart of the protection
5 afforded all persons by the First and Fourteenth Amendment");
6 Hampton v. Hanrahan, 600 F.2d 600, 635 (7th Cir. 1979) (suppression
7 of plaintiffs' speech through violence, harassment and intimidation
8 "would constitute violation of a clearly established right");
9 Means v. Wilson, 552 F.2d 833, 838-41 (8th Cir. 1975), cert.
10 denied, 430 U.S. 966 (1976) (interference with right to vote in
11 a federally protected tribal election through violent harassment
12 by political opponent's "goon squad" would be deprivation of fun-
13 damental right of national citizenship).

14 In the case at bar, the SWP accomplished a lawful purpose
15 (enforcing associational loyalty) through lawful means (expulsion).
16 Under these circumstances, no valid claim for conspiracy under
17 Section 1985(3) can be stated. Jones v. Hopper, 410 F.2d 1323,
18 1329-30 (10th Cir. 1969), cert. denied, 397 U.S. 991 (1970). The
19 holding of the Ninth Circuit in Lopez v. Arrowhead Ranches, supra,
20 523 F.2d at 927, is dispositive of the claim: where there is "no
21 legal right per se to be free of the discrimination," defendants'
22 act "does not deprive [plaintiff] of the protection of the laws,
23 and hence is not per se actionable under Section 1985(3)".
24

25 3. Third claim for Relief, under 42 U.S.C. Section 1986.

26 Gelfand alleges that the SWP defendants violated his rights
27 under 42 U.S.C. Section 1986 by "refus[ing] and neglect[ing] to
28
29

1 any class "invidiously" discriminated against within the meaning of
2 Section 1985(3).

3 The only class to which Gelfand could be said to belong would
4 be a class composed of "members of the SWP who violate the agreed-
5 upon rules and policies of the organization." Discrimination
6 against such a class obviously would not be invidious. Harrison v.
7 Brooks, 519 F.2d 1358, 1359-60 (1st Cir. 1975) ("The class asserted
8 by appellants...is descriptive of one group affected by appellants'
9 dispute with appellees, but has little to do with appellees'
10 reasons for advocating positions opposed by appellants"); Ohio
11 Inns, Inc. v. Nye, 542 F.2d 673, 679 (6th Cir. 1976), cert. denied,
12 430 U.S. 946 (1977) ("Defendants are alleged to have been motivated
13 by their support of [union] locals...and by unspecified political
14 considerations. There are no facts alleged...which if proven,
15 would establish class-based invidious discrimination"); and see
16 Rogers v. Tolson, 582 F.2d 315, 317-18 (4th Cir. 1978); Hahn v.
17 Sargent, 523 F.2d 461, 469 (1st Cir. 1975); cert. denied, 425 U.S.
18 904 (1976); Furomoto v. Lyman, 362 F. Supp. 1207 (N.D. Cal. 1973).

19 Since the very basis of membership in the SWP is agreement to
20 abide by rules and policies governing political behavior and
21 expression, expulsion for persistent and deliberate violation of
22 those rules and policies is not a deprivation "of equal protection,
23 or equal privileges and immunities", Griffin v. Breckenridge,
24 supra, 403 U.S. at 102. The First Amendment does not shield mem-
25 bers of a political association from expulsion for their expression
26 of ideas inimical to those of the group. Compare Glasson v.
27 City of Louisville, 518 F.2d. 889, 890 (6th Cir. 1975), cert.
28
29

1 another", Senn v. Tile Layers Protective Union, 301 U.S. 468, 483
2 (1937) (Brandeis, J.) The First Amendment right posed by the
3 Complaint is thus not Gelfand's but the SWP's: its right to
4 freedom of association, which would be vitiated if it were not
5 free to expel from its ranks any member who commits disloyal acts,
6 in defiance of the decisions of the party.

7
8 2. Second Claim for Relief, under 42 U.S.C. Section 1985(3).

9 Gelfand alleges here that the SWP defendants "were engaged in
10 a conspiracy to deny plaintiff his rights as provided under the
11 constitution of the United States" in violation of 42 U.S.C.
12 Section 1985(3).

13 In order to state a claim under Section 1985(3), the plaintiff
14 must allege facts showing an invidiously discriminatory, class-based
15 animus, motivating the deprivation of a protected right. Griffin
16 v. Breckenridge, 403 U.S. 88, 102-03 (1971); Life Insurance Company
17 of North America v. Reichardt, 591 F.2d 499, 502-03 (9th Cir. 1979);
18 Lopez v. Arrowhead Ranches, 523 F.2d 924, 926 (9th Cir. 1975).

19 Gelfand has failed to allege an invidiously class-based animus
20 motivating the claimed deprivation of right. The Ninth Circuit
21 holds that failure to do so is fatal to the statement of a claim
22 under Section 1985. Phillips v. International Association of
23 Bridge, Structural and Ornamental Iron Workers, Local 118, 556 F.2d
24 939, 941 (9th Cir. 1977); Briley v. State of California, 564 F.2d
25 849, 858-59 (9th Cir. 1977). Moreover, it is evident from the
26 allegations of the Complaint that, if permitted to amend, Gelfand
27 would be unable to allege facts showing himself to be a member of
28