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A Petition to the Congress of the United States

In accordance with the First Amendment to the Constitution of the United States, we hereby petition the Government, as represented by the Congress, to redress the grievances cited below by investigating the performance of employees and members of the Securities and Exchange Commission with a view to taking appropriate remedial action. The following specific improper actions are alleged:

Violations of S.E.C. Procedures

1. Violations of the S.E.C.'s established procedures purporting to protect the rights of persons interrogated have been as follows:

a. The S.E.C. has stated in a letter to Representative Silvio Conte dated December 6, 1974 that its rules relating to investigations require, among other things, that ". . . . a formal order of investigation is issued by the Commission which delineates the scope of the Commission's investigation and is *shown to all persons called as witnesses* in the course of the investigation." This procedure was violated by *not* showing most of the witnesses the formal order; in fact the order was not made available until most of the witnesses had testified, as is clearly revealed by the following extract from a letter the S.E.C. wrote to our attorney dated October 10, 1974, which was after several witnesses had been required to testify:

"Reference is made to your letter of September 30, 1974 requesting a copy of the formal order of private investigation in the above matter on behalf of your clients American Institute for Economic Research and American Institute Counselors, Inc. Pursuant to Rule 7(a) of the Commission's Rules Relating to Investigations, your request has been granted and we herewith enclose a copy of the formal order of investigation."

b. Browbeating of witnesses by having two or more interrogators asking questions nearly simultaneously and insisting on answers even when witnesses had testified that they did not know the answers and an attorney objected; this insistence being carried so far as to demand that witnesses guess or indicate what they supposed to be the answer. Not only did the S.E.C. officers thus violate their own purported procedures, but also they subsequently reported falsely in regard to this aspect of the matter to Congressman Conte. See below under the allegation of a "coverup" by members of the S.E.C. staff.

c. "Leaking" news about the investigation. In a letter to Congressman Conte dated December 6, 1974, the S.E.C. stated, "Insofar as the private nature of our investigations is concerned, our investigations must and will remain private for obvious reasons." With reference to this assertion I wrote Congressman Conte on December 20, 1974, pointing out that I should clarify the matter of publicity via the Wall Street Journal. One of the news editors telephoned to me October 9 or 10 and said that he regretted to have to inform me that he had bad news: the S.E.C. was investigating A.I.C. Obviously, he would not thus have called me if we had been the source of his information. Having seen on many occasions how Government agencies have "leaked" news, we had been expecting such a "leak," and I therefore told the editor that we would welcome all the publicity we could get on the matter. He mentioned this in the article he wrote. My opinion is that the S.E.C. deliberately "leaked" the story, but probably only a Congressional investigation could determine this.

d. In the letter to Congressman Conte dated December 6, 1974, the S.E.C. states, "Where, in the course of the Commission's inquiry, it becomes necessary to subpoena records, or take testimony under oath, the staff must report to the Commission, and the Commission pursuant to its statutory authority will, if it deems it appropriate, authorize a formal investigation." This procedure was violated in that two junior officers, without first obtaining a formal order, did take testimony under oath.

e. Also in the same letter to Congressman Conte the S.E.C. state, "An investigation does not involve any charges or any accusation against anybody." Nevertheless, in this instance accusations had been made, were involved very much in the investigation, and at least one officer of the S.E.C. conspired with the accuser not only to conceal those accusations, but also to keep them anonymous. In this connection see also the allegation of conspiracy to deny my Sixth Amendment rights, below.

Conspiracy to Violate Constitutional Rights

2. Conspiracy involving one or more officers of the S.E.C. to violate a citizen's rights under the Constitution. The Commission's investigation apparently was initiated on the basis of a report by a former employee of A.I.C. who had resigned and sought unemployment compensation. After appeal to a Massachusetts Board of Review, such unemployment compensation was denied to her on the grounds that she had made "unsupported allegations against her employer." In the meantime, she had threatened the Institute Director, Mr. C. Russell Doane, that if he did not assist her to obtain unemployment compensation she would complain to the S.E.C. He of course told her he would not lie to assist her.

a. Apparently on the basis of her complaint, an S.E.C. officer undertook to see her at least on one

occasion. Thereafter, he drafted a long report embodying her allegations and mailed it with a letter to her inviting any revisions she desired to make but cautioning her neither to sign the report nor even to acknowledge having received it. As it happened, misdirection or misdelivery of the communication resulted in it being placed on my desk, not, of course, in the envelope in which it presumably was mailed. I forwarded it to her.

b. I also know that the complainant subsequently responded by returning the draft with many suggested revisions in her handwriting, which I have seen and recognized when it was shown to me by a Government official. Presumably, this is now in S.E.C. files. These communications are evidence of a conspiracy, a principal objective of which presumably was to deprive me of my Constitutional rights under the Sixth Amendment. Furthermore, prospective witnesses could testify that the complainant has told two of our employees that she, with the cooperation of the S.E.C., would stop the activities of A.I.C.

Ignoring Limits of Statutory Authority

3. The S.E.C. has ignored the limitations of its statutory authority by ranging far beyond the borders, specifically:

a. The MAUSA contracts involve claims on the delivery of any currencies of the world measured as to amount by changes in the free-market price of gold. As the S.E.C. presumably is well aware, such contracts for currencies, by the terms of a U.S. Supreme Court decision, are not within the classification of securities subject to S.E.C. jurisdiction even if issued by a domestic corporation, instead of a foreign corporation as in this instance.

b. Acquisition of gold coins abroad was specifically provided for by U.S. Treasury regulations and official Treasury press releases. Even the purchase of gold coins outright within the United States is in no way under the jurisdiction of the S.E.C.

c. Much time and effort was focused by the S.E.C. investigators on the Reserved-Life-Income Contracts issued by A.I.E.R. As the investigators readily could have ascertained, both A.I.E.R. and A.I.C. are charitable and educational organizations, although the latter is required to pay taxes. The statutes that provide for the existence of the S.E.C. specifically exclude such contracts from its jurisdiction.

d. Apparently the S.E.C. does have statutory authority to visit our offices and examine our files to ascertain that proper records of advice to clients are retained for the specified five years. We have offered to any S.E.C. representative unrestricted access to all files subject to the limitation that we would not permit copying names and addresses of clients nor would we provide a list of them or of our subscribers in the absence of an order confirmed by the highest court. We have offered to cooperate fully in bringing this aspect of the matter through the courts to a final decision.

Abuse of the Subpoena Power

4. Officers of the S.E.C. have grossly abused the subpoena power. The power to subpoena is an awesome power reserved to the courts except in a few instances to such as the S.E.C., which is presumed to act responsibly. The subpoena power has been grossly abused by the junior officers of the S.E.C., specifically:

a. They subpoenaed records including about two tons (15 file cabinets) of correspondence demanding delivery of the same records on the same date to the S.E.C. office at Washington, D.C. and to the Boston office, which was practically impossible. Fortunately, our attorney was able to convince them that a more useful procedure would be to visit our office and examine the files in order to judge their adequacy and to microfilm any documents covered by the subpoenas. The two came to our office.

(1) On the days of their visit, I happened to be absent until near the end of the first day. I learned that one had taken from my desk drawer the file of correspondence with our attorney on the S.E.C. matter. Obviously, this correspondence was outside the scope of any subpoena, even one issued by the highest court in the Nation. He perused the correspondence and then called it to the attention of his associate who also read it. To both of these young men the fact that this correspondence could not have been covered by their subpoenas must have been immediately apparent. There was nothing in the file that we here would have any reason to conceal from the S.E.C., but a vital principle is involved. If officers of the United States cannot be trusted by giving them full access to files with the understanding that they will examine in detail only documents covered by their subpoena, where can a citizen repose his trust?

(2) Further along the same line, when I returned I examined some of the material the two young men had microfilmed, which had been left upright in various files. Certain documents were prominently dated 1966 and 1967, a few years before the beginning of the period covered by their subpoenas. I asked them how it happened they were microfilming records outside the scope of their subpoenas (not that it mattered to us except for the basic principle involved). One of them replied to the effect that they were just obtaining background material. To me this is not a satisfactory explanation for disregarding the time limit of the subpoenas.

(3) Recently I have learned that one of these men has subpoenaed bank records for the past five years with resulting inconvenience and expense to three banks. This was wholly unnecessary inasmuch as we had offered to make available all financial records of A.I.C. and A.I.E.R. from 1933 to date. The complete record of every dollar received and spent, all cancelled checks and bank statements, all paid bills, all payroll records, everything is readily available and can be reviewed here by S.E.C. representatives (or microfilmed and taken to Washington if desired).

b. In this instance, there has been no necessity for use of the subpoena power. The S.E.C. was invited to examine all pertinent records in our offices. Moreover, the S.E.C. was offered all pertinent records in my personal

possession or in the possession of anyone else subject to their subpoena. All persons concerned in our organization would have freely answered any pertinent questions without being subpoenaed.

Star Chamber Procedures

5. More than three centuries ago, Star Chamber procedures were discontinued in Anglo-Saxon legal proceedings after many decades of serious abuses. Certain provisions of the Constitution of the United States and its amendments were intended to assure that never would Star Chamber procedures be applied against citizens of the United States. For the purpose of this Petition I am using the phrase Star Chamber procedures to refer to aspects of them involving vague accusations not specific as to what, when, and where even including an escape clause rendering them potentially null and void but used by law enforcement officers in embarking on a "witch hunt" or fishing expedition thereby unduly and improperly invading the privacy of citizens and harrassing them. Therefore, I urge the Congress of the United States to investigate, among other matters, the following S.E.C. procedures that apparently constitute Star Chamber proceedings.

a. The S.E.C. order for a private investigation is dated August 15, 1974, pertinent portions follow:

"Members of the staff have reported information to the Commission which tends to show that, from on or about January 1, 1970 to the present:"

b. Then follows two typewritten pages, not of "information" in the legal sense meaning "formal accusation of crime" nor a detailing of evidence specifying what, when, and in what manner, but a long list of suspicions in general terms. Obviously, these include many form paragraphs, some not remotely applicable. Phrases such as "untrue statements," "devices, schemes, and artifices to defraud," fraud and deceit, "misleading," etc. are used without in any instance citing specific acts or writings. Although it would shock many naive readers, it is about as meaningful as a statement something like this: "A report received inclines me to suspect that John Jones is a liar and a thief, but I am not able to specify that anything was stolen nor am I able to assert that John Jones told any particular lie."

c. The order in the final section says: "The Commission, having considered the staff's report, and deeming such acts and practices, if true, to be in possible violation . . ." Thus the S.E.C. order in effect asserts that if the rumor about John Jones is true he is in possible violation of the law.

d. Such an order is a "smear and scare" tactic. Most individuals and most corporations would be intimidated by such an order. Investment advisors are especially dependent on public confidence, and few have a record, as we do, of protecting the interests of investors far better than the S.E.C. has for more than four decades. For nearly all investment advisors challenging in the courts thereby making public an order for a private investigation would be suicidal even if they won their case. Moreover, the financial "torture" of legal costs could debilitate financial health, just as the Star Chamber resort to physical torture was dangerous to physical health.

e. Especially in the instance of A.I.C. and Progress Foundation, there was no excuse for such an order authorizing use of the subpoena power. Our attorney had offered all information desired including freedom to examine all pertinent files and financial records extending back to 1933.

Cover Up

6. Cover up activities by S.E.C. staff were engaged in as follows:

a. On November 15, 1974, I testified at the S.E.C. Washington office. One of the interrogators opened the proceeding by inserting in the record a self-serving, exculpatory statement concerning his improper activities in our Great Barrington office as described in paragraph 4a(1), above. He stated, in effect, that I had been present and had acquiesced when he took and read our correspondence with our attorneys. This statement by him was false, inasmuch as I was not then present and had not acquiesced. Evidently his purpose in placing this false statement in the record was to facilitate later reference to it as part of the record in the case.

b. An Associate Director of the S.E.C. wrote to Congressman Conte on December 6, 1974 stating, among other things, that proper procedures had been followed as indicated in paragraph 1a, above. Either he was participating in a cover up or he had been misinformed by the juniors involved.

c. The Associate Director also described the procedures used by the S.E.C., one step being the issuance of a formal order and showing it to all witnesses. (Clearly, unless such an order were shown to witnesses about to testify they would have little basis for judging whether or not to claim their Constitutional rights.) Later, the Secretary of the S.E.C. wrote similar letters to several Congressmen, but he omitted the assertion that the formal orders are shown to witnesses. Has the S.E.C. changed its rules of procedure, or did the Secretary omit that step in his description to aid in the cover up of earlier improprieties? (see paragraph 1a, above.)

d. Also in the nature of cover up activities is the Commission's failure, to date, to reply to the request made in my letter dated October 7, 1974, to Congressman Conte. That was: "Would you please request the S.E.C. to preserve the *tapes* of the depositions? They will reveal more clearly than a transcript the manner of conducting the investigation." I therefore respectfully suggest that, as soon as a Committee of the Congress undertakes the investigation herein requested, it take into its custody *all* tapes involved in this matter. On November 15 I requested assurance that all tapes would be preserved. For the remainder of my deposition during the next two days tape recording was not used. I have every reason to believe that the stenotype reporter did an excellent job (although the transcript has not yet been delivered) but of course a transcript does not reveal some aspects of the proceedings such as manner of questioning, tone of voice, etc.

Should the S.E.C. be Terminated?

7. Is the S.E.C. worse than useless? We began a research study more than a year ago (long before any S.E.C. inquiry) in order to ascertain whether or not the S.E.C. had safeguarded the interests of investors. In the spring of 1974, some preliminary results became available, which were published in our *Investment Bulletin* dated August 5, 1974, two weeks prior to issuance of its Formal Order by the S.E.C. Extracts from that bulletin follow:

"In the 1920's, a total of $7.7 billion worth of new stocks were issued in the years from 1925 to 1929 inclusive. Not surprisingly, the amounts issued in each year thereafter decreased greatly to relatively negligible totals (only $0.1 billion in 1932).

"Just as the great rise of the 1920's in stock prices ended late in 1929, the post World War II rise ended in January 1966. However, the tremendous bulge in new issues has come *after* rather than *before* the peak in recent years. In the 5 years 1969 to 1973 inclusive, new corporate issues of common stock sold in the over-the-counter market alone totaled approximately $42 billion, which was roughly 4 times the annual rate prior to the peak and nearly 5½ times the 1925 to 1929 total.

"Presumably effective in sustaining investor confidence in new issues was the fact that all (with minor exception) had to be registered with the Securities and Exchange Commission.

"Sellers of new issues are *not* permitted to represent that the Securities and Exchange Commission has approved or recommended any security. Nevertheless, anyone familiar with what actually occurs in brokers' offices through the Nation has seen ample evidence that the general public assumes that the S.E.C. somehow is safeguarding the investors' interest. [If not, why does it exist?]

"Any experienced observer of the securities market also has observed how, in most instances during recent years, new issues were rapidly bid up to levels above the offering price, usually to at least double and in many instances to several times the offering price within a few months. This is the classical procedure for "pulling in the suckers." One result is that the initial offering brokers "make a killing" and most of the buyers among the general public pay far more than the original offering price for the stock.

"Whether or not the public was protected is a fact that will not be known finally and in detail for a few more years. Nevertheless, some striking figures already are available as a result of a study we have initiated.

"Approximately 6,000 new corporate stocks, S.E.C. registered of course, were issued in the last 5 years and sold over the counter. As the initial step in our study we selected what is believed to be a representative sample and find that:

"a. By the end of 1972, [before the more recent extensive decline] nearly half of the stocks sold to the public since 1967 had declined 87 percent from the peak prices reached earlier.

"b. By mid 1974, current quotations could be found over a two-week period for less than 10 percent, even dealer bid prices were available for only a few more, and for by far the most no record of any market was available. In other words, for most of them an investor would have a difficult time finding a buyer at any price.

"c. If the sample thus far tested is representative, and we believe that it is, investors have lost in only a few years much of the $42 billion placed in new stock issues sold over the counter since 1968. In fact, they may have lost more, because relatively few bought at the offering price on which the $42 billion figure is based; most probably paid more than the original offering price, perhaps two to five times as much."

"The facts raise serious questions:

1. Has the S.E.C., unwittingly, served as a Swindlers' Encouragement Commission?

2. Does the S.E.C., unintentionally, serve as a Suckers' Entrapment Commission, by inducing confidence where there should be skepticism?

3. Is the whole idea of an S.E.C. a basically mistaken one in that it seeks to substitute voluminous representations of facts, accounting records, etc., for what we believe is the investor's only practicable protection, finding wise and honest men who will safeguard his investment to the best of their ability? That the S.E.C. (and the "baby" S.E.C.s in many States) has been a wonderful thing for the legal profession, for accountants, and for printers of prospectuses seems indisputable, but that the funds of the average investor thus have been safeguarded seems open to question."

We suggest that the Congressional investigators carry to a conclusion the research we have initiated in order to provide answers to the questions raised. Only a Congressional investigation has the means to follow through on other aspects also such as the rumors that some S.E.C. staff and their friends profited from the manipulation of newly registered stocks by brokers and dealers.

Respectfully submitted for myself and all who choose to join in this petition

15 January 1975

E. C. Harwood