

1985 WL 3538

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United States District Court; S.D. New York.

BARBARA E. HANDSCHU, et al, Plaintiffs,

v.

SPECIAL SERVICES DIVISION, et al,

Defendants-Appellees,

v.

COMMUNIST PARTY U.S.A. and N.Y.,

NATIONAL EMERGENCY CIVIL LIBERTIES  
COMMITTEE, NATIONAL LAWYERS GUILD, et  
al, Objectors-Appellants.

No. 71 Civ. 2203-CSH. | October 31, 1985.

## Opinion

### MEMORANDUM OPINION AND ORDER

HAIGHT, District Judge:

\*1 Various parties have applied pursuant to Rule 60(a), F.R.Civ.P., to supplement the record on appeal. The threshold question arises whether or not, in the present posture of the appeal, leave of the Court of Appeals is required to make the motion. Counsel for objectors advise that they have in fact made such an application (Exhibit J to St. Clair affidavit of September 18, 1985); and that the

Second Circuit's staff has advised counsel that, in the absence of a stipulation, Rule 10(e), F.R.App.P., grants me the requisite authority. *Id.* at p. 6, ¶9. That does indeed appear to be the thrust of Rule 10(e). Accordingly I regard the motions as properly before me.

I grant the motions of objectors and of the plaintiff class to supplement the record in the particulars specified in the applications. Specifically, the Clerk of this Court is directed to supplement the record with the documents listed in Exhibit C to the St. Clair affidavit, and with the documents attached as Exhibits D to I to that affidavit.

As for plaintiffs' application, the Clerk of the Court is directed to supplement the record by including the documents attached to Mr. Chevigny's letter to the Court dated September 16, 1985.

Finally, the Clerk of the Court is directed to supplement the record to include those documents referred to in ¶2(a) and (b) of the affirmation of Robert J. Boyle dated September 25, 1985.

I assume that incorporation by reference of these designations into this order is sufficient to permit the record to be supplemented in the manner indicated. If it is not sufficient, counsel may settle a more detailed order on notice.

It is So Ordered.