

*It is at all times necessary, and more particularly so during the progress of a revolution and until right ideas confirm themselves by habit, that we frequently refresh our patriotism by reference to*

# First Principles.

THOMAS PAINE

## NATIONAL SECURITY AND CIVIL LIBERTIES

### Surveillance and Disruption of Anti-Nuclear Protest

by Jay Peterzell

Like the anti-war and other protest movements of the 1960s and early 1970s, the anti-nuclear movement has become the object of surveillance and disruption by government and private agencies.

Much of the debate about the effects of nuclear power on the civil liberties of Americans has focused on the very real problems raised by the need to safeguard nuclear power plants and fuel against acts of terrorism. The consequences of an accident, sabotage or theft at a nuclear plant are said to justify extensive security clearance procedures for workers, exceptional secrecy for nuclear safeguards information, and extraordinary procedures in the event of a theft of nuclear material or a threat to detonate a nuclear device.<sup>1</sup>

All of these problems are serious and may become more serious as the nuclear industry develops.<sup>2</sup> Fortunately, there has never been a terrorist incident involving nuclear weapons or toxins, and the civil liberties impact of such an incident is still a matter for speculation. But the problem of surveillance and harassment of lawful anti-nuclear protest is

immediate. This article is based on a recently released CNSS report which extensively documents this problem as it has emerged over the past six years.

Unlike other threats to civil liberties posed by nuclear power, the threat posed by political surveillance does not follow from the possibility of terrorist acts. Instead, it arises from the fact that, when citizens organize to protest policies of the government or of private industry which they feel adversely affect their lives, these institutions tend to respond, not only with reasoned argument, but also by attempting to suppress the protest. This is accomplished by disrupting the protest through surveillance and other means; by cloaking the institutions' actions in secrecy;<sup>\*</sup> and by passing laws which make the protest criminal.

All these standard reactions have accompanied the growing opposition to nuclear power.

Until now these efforts have for the most part not been coordinated, but instead have been based on the differing interests of various government and private agencies. But this may change.

In a detailed report prepared for Reagan's transition team, the conservative Heritage Foundation has called for systematic internal security investigations of lawful political organizations, including "anti-nuclear lobbies and several other groups." The report recommends the use of wiretapping, illegal break-ins, mail covers and informants by federal, state and local investigative and law enforcement agencies; increased use of private corporations to gather intelligence; Presidential emphasis on "the un-American nature of much so-called 'dissidence,'" and other measures.

(continued on page 2)

**Inside:**

The Trigon Caper  
Daniel Schorr  
p. 16

In the Congress, p. 8

In the News, p. 8

In the Courts, p. 10

In the Literature, p. 12

\*A future article will discuss the government's efforts to hide the problems of nuclear power behind a veil of secrecy.

## Anti-Nuclear Protest *(continued from page 1)*

### The Record of Surveillance and Disruption

Since the mid-1970s the anti-nuclear movement has been subject to routine surveillance by government and private agencies. This surveillance takes many forms. Demonstrators are frequently photographed and their license plate numbers are recorded by local and state police or by utility security forces. In some documented cases, and presumably in many others, these records are used to identify participants in the demonstration, and information on the protesters is maintained in police or company files. Freelance private intelligence services like *Information Digest* and the U.S. Labor Party also keep files of this sort. Derogatory or other noncriminal information is disseminated between private and government agencies at all levels and is also sometimes fed to the press. The public meetings of anti-nuclear groups are often monitored and, perhaps more frequently, the groups' private deliberations are infiltrated. Allegations of wiretapping have been made against local police, utilities and freelance services, and at least one freelance service has reportedly used burglary to gather information for a utility company. (See chart on p. 4)

There is in principle a clear line between gathering information about a group and disrupting the group's activities. Proponents of preventive intelligence gathering have always argued that mere gathering inflicts no injury. But in fact, intelligence gathering can clearly chill political debate by leading people to withdraw from protest activity. Moreover, political surveillance often leads to actual disruption. In the case of the anti-nuclear movement the line between gathering and disruption has been crossed often and vigorously by intelligence agencies at every level. A few examples from each level will illustrate this chilling effect and the ease with which political surveillance can lead directly to disruption.

#### Local Police

- In 1979 the Lebanon Valley Alliance in Pennsylvania became the subject of a highly visible three month investigation by local police. No illegal activity was discovered and the investigation was closed, but three-quarters of the Alliance' members were "chilled" badly enough that they quit the group.
- In 1977 local police officers infiltrated the Abalone Alliance in California and unsuccessfully urged the group to adopt violent tactics. When the infiltrators and approximately 50 other members of the group were arrested for trespassing during a peaceful demonstration one of the infiltrators remained in the group and supplied its defense attorneys with false information harmful to the group's case.

#### State Police

- In the early 1970s the Texas Department of Public Safety compiled an extensive file on airline pilot and

environmental activist Robert Pomeroy. The file contained no indication of illegal activity, but accused Pomeroy's group of being "a front group—possibly for a Ralph Nader-type action." The file was given to Pomeroy's employer, apparently in the expectation that the pilot would be fired. Instead, the employer gave the file to Pomeroy, who made the incident public.

- Three individuals were arrested for passing out anti-nuclear literature in 1977 on the orders of former New Hampshire Governor Meldrim Thomson and other state officials. The three had been leafleting outside a state liquor store which, also at Thomson's direction, displayed petition forms in support of the proposed Seabrook nuclear power plant.
- In 1978 an employee of the New Jersey State Police turned peaceful anti-nuclear protesters away from public property by falsely telling them it was private property and that they would be arrested if they trespassed. On another occasion people trying to attend a public discussion of nuclear power were turned away by a State Police representative who falsely informed them that the auditorium in which the discussion was being held was full.

#### Federal Agencies

- An FBI informant who had been assigned to write a book on nuclear power in order to gather intelligence on the subject testified at a 1976 congressional inquiry into the death of Karen Silkwood. The informant took the occasion to deride Silkwood's character and personal habits in what she later admitted was an attempt to deflect the committee's inquiry, which had been sympathetic to Silkwood. The informant's relationship with the FBI became known during the course of the hearings and the FBI responded to the resulting unfavorable publicity by attempting to smear the reputations of the informant, her former employer, the Chairman of the congressional committee, and the committee's chief investigator.
- The Energy Research and Development Administration (ERDA) attempted to influence the outcome of a 1976 California referendum on nuclear power through massive distribution of an inaccurate and heavily pro-nuclear pamphlet which a later GAO report characterized as "propaganda." ERDA also collected files on voter initiatives in other states that year and paid special attention to the activities of student-based Public Interest Research Groups (PIRGs). The states of interest to ERDA included Michigan, where industry groups and the pro-nuclear U.S. Labor Party launched a successful attack on public funding of the state PIRG that year.
- The Nuclear Regulatory Commission has begun to demand that groups seeking to intervene in licensing proceedings for nuclear power plants (as permitted by NRC regulations) submit names and addresses of some group members to prove they have a legitimate interest in the proceedings. The tactic was first used with the Houston

chapter of the National Lawyers Guild, which argued that its intervention was based partly on opposition to the civil liberties effects of nuclear power and that submitting names would subject them to possible harassment, citing the Pomeroy and other cases. The NLG lost the issue, and the Houston decision has been used by the NRC as a precedent in subsequent cases.

### Utility Security Forces

- Between 1973 and 1977 the Georgia Power Co. maintained an intelligence division which one former division member described as a "dirt-gathering" operation the results of which were used to discredit critics of the company as "commies and queers."

- In New Jersey the Public Service Electric & Gas Co. dispatched a helicopter to hover over a peaceful demonstration held in 1977 by the SEA Alliance.

- In 1978 the Philadelphia Electric Co. disseminated photographs of demonstrators to a local television station for a story in which a company spokesman used the pictures to ridicule the demonstrators.

### Freelance Intelligence Services

- The U.S. Labor Party, whose leader described himself as "the executive of a political intelligence operation," informed New Hampshire State authorities in 1977 that a planned demonstration at Seabrook was "nothing but a cover for terrorist activity." The allegation was given wide play by Governor Thomson and the *Manchester Union-Leader*. In 1978 the Labor Party made similar allegations, this time against anti-nuclear activists in Maryland seeking to have the state celebrate "Sun Day." The following year the allegation was taken to Westchester, N.Y., where local police were told that an anti-nuclear demonstration planned in the area was "a cover for terrorist groups." Police asked for evidence to back up the charge but no evidence was produced. Instead the Labor Party asked to be allowed to hold a counter-demonstration, but permission was refused.

### The Techniques

As indicated by the chart below, surveillance and disruption of lawful anti-nuclear protest groups is fairly evenly distributed across government and private agencies at various levels. However, a number of general observations can be made about the relation between the functions of different types of agencies and the techniques they employ:

- there is a correlation between agencies' functions and the way they tend to spy on or disrupt anti-nuclear protest;
- agencies charged with keeping the public order tend to spy on the protest groups overtly and covertly but do not necessarily attempt to disrupt them;
- agencies with no legitimate interest in the protest groups do not engage in overt intelligence gathering but compensate by more extensive covert intelligence gathering;

- private agencies are less restrained (or else less discrete) than government agencies in their use of illegal intelligence gathering techniques;

- agencies which have vested policy or financial interests in nuclear power tend to disrupt the activities of anti-nuclear protest groups but do not necessarily spy on the groups.

For example, local police departments, which are charged with keeping the peace, have concentrated on identifying the membership and intentions of anti-nuclear groups. To accomplish this they have engaged in low-level monitoring and infiltration of the groups, filmed their demonstrations and recorded members' license plate numbers.\* With the exception of the Abalone Alliance infiltration, which was actually run by a regional intelligence unit, local police have not undertaken sophisticated disruption operations against the anti-nuclear movement.

State Police also have a crowd control function, and have frequently photographed demonstrators. Otherwise, state agencies have been less involved than local police in gathering information on anti-nuclear groups and more involved in using the information to disrupt the groups' activities. In some states (Texas) this has been based on a general mistrust of protest, but in others (New Hampshire) it reflected a commitment to nuclear power on the part of state governments which, unlike municipalities, make specific policies concerning nuclear power. As a result, anti-nuclear groups are sometimes perceived as direct antagonists rather than as "just one more" protest group. In these cases the state's concern is with the anti-nuclear group itself, rather than to any specific demonstration, and state agencies may try to counter the groups by disseminating derogatory information and otherwise disrupting its activities.

On the federal level this responsiveness to policy is even more pronounced. The federal agencies discussed in this report display a strong pro-nuclear bias. However, their behavior has been constrained by a post-Watergate sensitivity to the problems raised by surveillance of lawful political dissent. With isolated exceptions, the federal agencies discussed here are not known to have gathered nonpublic information on domestic anti-nuclear protestors, though they do receive some such information from other agencies and have some files on anti-nuclear activities. As in the case of state agencies, the federal bias toward nuclear power is expressed more in the control and dissemination than in the gathering of information, and is aimed at influencing the outcome of debate about nuclear power. Thus ERDA has improperly propagandized for nuclear power; the FBI has smeared critics of nuclear power; and the

(continued on page 5)

\* An alleged case of wiretapping by local authorities in Arizona is an exception to this characterization of local police spying. Discovery in that case has failed to show that police tapped the plaintiffs, and some plaintiffs now believe that the wiretapping, which they have reason to think occurred, may have been done instead by the local utility company.

**Government**  
**Local**  
**State**  
**Federal**  
**Private Sector**  
**Utilities**  
**Freelance**  
**Total**

Actors	Incidents	Incidents by Sector	Photographing	License plates	Files	Dissemination	Monitoring	Infiltration	Operations	Wiretaps	Breakins	Violates Guidelines	Total	Total by Sector
12	14	33	8	4	2	2	3	5	3	1	0	1	29	66
6	11		6	1	1	3	1	0	5	0	0	1	18	
4	8		0	1	4	5	2	2	4	0	0	1	19	
13	11	19	8	3	3	3	3	4	4	2	0	0	30	47
5	8		0	0	4	4	2	3	2	1	1	0	17	
			22	9	14	17	11	14	18	4	1	3		

**Figure 1**  
**Surveillance and Disruption of the Anti-Nuclear Movement**  
**by Sector and Technique**

**Local**  
**State**  
**Federal**  
**Utilities**  
**Freelance**

.7	.3	.2	.2	.3	.4	.3	.1	0	.1
1	.2	.2	.5	.2	0	.8	0	0	.2
0	.3	1	1.3	.5	.5	1	0	0	.3
.6	.2	.2	.2	.2	.3	.3	.2	0	0
0	0	.8	.8	.4	.6	.4	.2	.2	0

**Figure 2**  
**Uses of Technique per Actor**

A number of points should be kept in mind when drawing conclusions from these charts. First, information about spying tends by nature to be incomplete. This is especially true of certain techniques (e.g., wiretapping) and of certain sectors (e.g., freelance agencies). Second, the definition of "incident" used in constructing Figure 1 is not precise and this definition plays a role in determining the other values in the charts. Third, the values for federal agencies in Figure 2 are inflated for purposes of comparison to values for other sections due to the small number of relevant federal agencies.

The following definitions were used:

**Actor:** A government agency, utility company or freelance intelligence service.

**Incident:** Because an actor may have spied once or may have spied many times on many targets the notion of "incidents" was introduced so that the chart would be weighted to reflect the amount of known surveillance activity in different sectors. Thus several connected surveillances of a single target by a single actor are counted as a single incident. To do otherwise would have unrealistically distorted the values of the chart; it would have also made the chart too dependent on accidents of reporting in a field about which the record is clearly incomplete. On the other hand separation of the surveillances by time or other discontinuities might result in the surveillances being counted as separate incidents. A single incident may involve any number of techniques.

The criteria used for inclusion in a single incident, in order of importance, are: continuity of actor, target, and time period. Thus if a single actor infiltrated two unrelated targets at widely separated times then two values would be entered in the column marked "infiltration."

**License plates:** Recording the license plates of those at demonstrations or meetings to determine their identities.

**Files:** Refers only to nonpublic information.

**Dissemination:** Refers to improper dissemination or dissemination of improperly held information.

**Monitoring:** Attending public meetings held by the target. Does not include demonstrations.

**Infiltration:** Attending private meetings held by the target or joining the target without disclosing true affiliation.

**Operations:** Attempts to harass or discredit the target, provoke the target to commit a crime, or improperly propagandize against the target.

**Violates Guidelines:** Violates guidelines regulating the actor.

## Anti-Nuclear Protest (continued from page 3)

NRC has erected deliberate barriers to public participation in its regulatory proceedings.

Utility companies naturally perceive themselves as being threatened by the anti-nuclear movement and as having primary responsibility for controlling demonstrations at their plants. Like local police, they therefore concentrate on identifying the membership and intentions of protest groups through photographs, license plates, monitoring and infiltration. They are also either less inhibited or less discreet than local police, and have occasionally turned to wiretapping or commissioned burglaries as aids in their research. Unlike local police, utilities have a vested interest in the debate over nuclear power; thus they make specific attempts to discredit or harass their opponents.

The freelance intelligence services are primarily intelligence gathering and file-keeping operations. But they tend to operate in secret and thus do not photograph or record the license plate numbers of demonstrators, although they may receive this type of information from utilities with which they have contracts. Their information gathering depends heavily on monitoring and infiltration of target groups, and they have been accused of using wiretaps and burglary. Their information is compiled and usually sold to corporate or law enforcement consumers. Unlike the other freelance services, the U.S. Labor Party has a specific pro-nuclear policy, and accordingly is the only group which actively attempts to disrupt the anti-nuclear movement.

## The Expansion of Private Spying

Perhaps the most striking development in surveillance of the anti-nuclear movement is the relative predominance of intelligence operations undertaken by utility company security-forces and private freelance intelligence agencies like *Information Digest*. More than 40% of known spying or disruption incidents against this movement are attributable to groups in the "private sector." (See chart on p. 4) This is in sharp contrast to the intelligence operations undertaken against the civil rights and antiwar movements 5 to 20 years ago, which were predominantly attributable to local, state and federal government agencies. It is also a dangerous change. Private groups operate under few of the restraints currently placed on government agencies: they are not subject to local, state or federal guidelines on intelligence activities; they are not subject to freedom of information or other disclosure laws; and it is difficult to sue them for violating individuals' constitutional rights. In practice, the sole restraint on private spies at present is that they must obey the law—but the law with respect to private intelligence operations is permissive.

This relative predominance of private sector spying on the anti-nuclear movement might be largely explained by the nature of the movement itself, which—unlike the civil rights and antiwar movements—aims its protests more at

(continued on page 6)

## Anti-Nuclear Protest *(continued from page 5)*

corporate than at government policies. But it may also, ironically, reflect increased government sensitivity, at least at the federal level, to constitutional guarantees. The FBI presently operated under guidelines, formulated in 1976 by former Attorney General Edward Levi, which limit domestic intelligence investigations to groups and individuals suspected of criminal activity. The decline of FBI domestic security operations has left a partial vacuum which the private sector has sought to fill. In the case of the anti-nuclear movement that vacuum is being filled both by utility companies who perceive the movement as a direct threat and by freelance intelligence services like *Information Digest* and the U.S. Labor Party which see it as their mission to assist the government by reporting on lawful social protest movements. Indeed, one of these groups has begun publishing a newsletter, one stated purpose of which is to circumvent the "Levi Guidelines" by collecting information which the federal government may no longer collect for itself.

This confusion of traditional private and governmental roles in responding to the anti-nuclear movement has also prompted utilities to push in some cases for expanded authority for their security forces. In 1975 a bill was introduced in the Virginia State legislature which would have given utility security officers off-site police powers throughout the state. (A far narrower bill, giving utilities access to criminal history information for background checks on employees, was passed in place of the proposal.) A similar bill, giving utility security forces off-site police powers as well as the power to formulate criminal "rules governing the conduct of pedestrians and vehicular traffic" on company property was introduced in the Washington State legislature in 1979. This proposal, under which peaceful demonstrations at nuclear power plants could have been made criminal, was narrowly blocked in committee and may be introduced again this year.

### Anti-Nuclear Protest as Crime

Laws have also been proposed which would create a federal felony offense encompassing acts of protest which were previously legal or involved misdemeanors such as trespassing. The effect would be to make non-violent protesters subject to investigation by the FBI and to federal prosecution.

An amendment to the 1980 NRC authorization bill, as originally introduced, would have given the federal government authority to investigate and prosecute anyone who "injures or destroys . . . interferes with in any way . . . or . . . obstructs, hinders, or delays the production, utilization, or transmission of energy" from a nuclear facility, even if the facility was not yet constructed.<sup>3</sup> Under this provision a federal felony prosecution could have been brought for incidental property damage accompanying otherwise lawful protest demonstrations (as has occurred several times at Seabrook, N.H.) or even for the "willful or malicious delay"

of construction of a proposed nuclear facility through intervention in licensing proceedings.

Fortunately, this "sabotage" amendment was substantially narrowed before final passage. The version enacted is limited to actual or attempted destruction of operating nuclear facilities or nuclear fuel and does not cover incidental damage to fences or other nonessential property.

However, Congress is still considering legislation similar to the original version of the sabotage amendment. Last year Sen. Alan Simpson introduced an amendment to the federal criminal code reform bill which would create a federal felony offense for arson, criminal entry, or property damage of more than \$500

*committed on premises that are part of a facility that is involved in the production or distribution of electricity . . . or research, development, or demonstration facilities relating thereto . . . regardless of whether such facility is still under construction or is otherwise not functioning.*<sup>4</sup>

This would clearly apply to incidental property damage at any functioning or even proposed energy-related facility. The section would also punish attempts, conspiracy and solicitation to commit the offenses. Thus demonstrators who urge others to trespass at a nuclear plant site, or those who plan such demonstrations, would be subject to investigation by the FBI and to federal prosecution. The criminal code reform bill has passed the Judiciary Committees of both houses but contains a number of controversial provisions and is not likely to reach the floor this year.\*

The rationale for these proposed criminal provisions, and for much of the surveillance and disruption discussed in this report, is the need to protect nuclear facilities from acts of terrorism. However, at least two additional and potentially far broader rationales for intelligence activities against the anti-nuclear movement should be identified.

The first is simply the need of utility companies to protect their financial interest. While activities undertaken for this reason are sometimes masked by an appeal to the need for safeguards, on other occasions the motivation is transparent. The Georgia Power Co., for example, spied on anyone "who for any reason would be against the rate increases or would have some type of opposition to the operation of the power company," according to a former investigator for the company. Similarly, the Mountain Fuel Supply Co. in Utah allegedly hired a private security firm which conducted electronic surveillance of a local consumer group protesting rate increases. The motivation of financial interest was cited explicitly in a complaint filed against the Philadelphia Electric Co. for allegedly attempting to slander critics of nuclear power and advocates of non-nuclear

\* The House version does not contain the sabotage provision.



energy sources "that have been ignored because they are not as profitable for PECO and other utilities." The energy industry has also published a manual recommending that utilities establish and fund pro-nuclear citizens' groups whose ties to the industry will be hidden or downplayed. While this last example has less serious legal implications than wiretapping and slander, it has perhaps greater potential effects on the outcome of public debate and comes uncomfortably close to covert propagandizing.

The second, and potentially more significant, rationale for spying on the anti-nuclear movement arises from the overlap of nuclear power and national security issues. If the continued operation of the domestic nuclear power industry comes to be regarded as a national security priority there is a danger that surveillance of the anti-nuclear movement will be justified on national security rather than anti-terrorist grounds. Individuals would then be investigated not because they were suspected of planning to sabotage a specific nuclear facility, but because their opposition to nuclear power posed a political threat to continued operation of the nuclear industry. As with past operations against the civil rights and antiwar movements, the spying would be based on the feared consequences of successful political activity.

A national security interest in the development of nuclear power was explicitly formulated in the Atomic Energy Act of 1954, the first chapter of which states:

*The development, utilization, and control of atomic energy for military and for all other purposes are vital to the common defense and security.<sup>5</sup>*

But if the development of nuclear power is "vital to the common defense and security" then threats to that development also threaten the common defense and security.

This theme was also touched on in *The Threat to Licensed Nuclear Facilities*, a 1975 report prepared for the NRC by the MITRE Corporation. In a section recommending that the NRC maintain "a close working relationship with the intelligence community" and alert the intelligence agencies as to what types of information the NRC needs, the report states:

*In-depth information about terrorist and other threatening groups should be obtained by NRC from these agencies, including any information indicating a potential threat to the industry generally, or to a specific company.*

Again, a threat posed by nonterrorist groups to the nuclear industry as a whole can only be a political threat.

There is no reason to believe that the NRC acted on the MITRE report's recommendation and tasked the intelligence agencies with collecting information on political opponents of nuclear power. But the Department of Energy, which supplies the military with special nuclear material for

use in weapons, has on at least one occasion investigated a nonviolent citizens' group because the group's activities were considered a threat to the national defense. In April 1979 the Department's office in Schenectady, N.Y. sent the FBI a letter warning of "Possible Terrorist Activities" involving a local environmental group. After investigating the group for a month the Department sent the FBI a second letter, dropping the "Terrorist" caption. The letter, which was accompanied by an informant's report of a meeting which gave no indication of planned violence, concluded:

*The Kesselring Site, at Saratoga County (N.Y.) operates continuously as a key facility of the Naval Nuclear Propulsion Program vital to the National Defense. Interruption of its mission is unacceptable. This is reported for whatever action you deem appropriate.*

*Possible interruption of the facility's operation, rather than the threat of terrorism, became the basis of an apparent request for the FBI to control the group. ■*

---

*This article is based on Nuclear Power and Political Surveillance, a new report prepared by the Center for National Security Studies. The report and all documentary material are available from CNSS.*

---

#### Footnotes

1. Ayers, Russel W., "Policing Plutonium: the Civil Liberties Fallout," *Harvard Civil Rights-Civil Liberties Law Review*, Vol. 10, 1975.

Barton, John H., "Intensified Nuclear Safeguards and Civil Liberties," prepared under NRC Contract No. AT(49-24)-0910, October 31, 1975.

2. The danger of nuclear terrorism, with its attendant effects on civil liberties, would be greatly magnified by a decision to recycle plutonium. Unlike the fuel currently used to power nuclear reactors in the U.S., plutonium can be used to make a fission bomb. Commercial recycling would introduce large quantities of plutonium into the civilian economy, making the threat of terrorism credible for the first time. It is argued by some that continued development of nuclear power will eventually require plutonium recycling because the supply of usable uranium ore is not sufficient to last more than a decade or two.

3. Amendment to S. 562 offered by Sen. Harry F. Byrd, Jr. See *Congressional Record*, July 17, 1979, p. S 9597.

4. S. 1722 ss 1701(c)(10), 1702(c)(1), 1712(c)(7) (emphasis added).

5. Atomic Energy Act of 1954 as amended, Chapter 1, section 2.