

RESPONSE

ALLETTA D'ANDELOT BELIN

I will just give a couple of my own reactions to what we have heard so far today. First of all the issues of nuclear power and civil liberties shouldn't break us down into two separate camps of those who are for civil liberties and those who are against them. We are all concerned about civil liberties and we are all concerned about nuclear power. Since nuclear power plants are already operating in this country and throughout the world, their safe operation is of concern to all of us.

The second point that comes to my mind is that these are problems that do not come into play only at some point in the future; if sabotage occurs, if plutonium reactors become a major part of our economy, or if hundreds of additional plants are built and licensed. Nuclear power is a problem which is with us today and has been with us for the past 30 years.

What comes to my mind is the fact that safeguards at nuclear power plants have been uniformly judged inadequate, as far as I know, by virtually every agency or analyst examining the problem in the last eight years. The NRC, companies the NRC has hired, and the National Resources Defense Council all have issued reports, year after year, studying the problem of safeguards at nuclear power plants, virtually every one of which has concluded that the safeguards are inadequate. There may be disagreement as to what the inadequacies are and to what extent they are inadequate, but everybody seems to agree that with the way the safeguards are right now, something needs to be done.

The question is: what can be done to provide adequate safeguards while minimizing infringements of civil liberties? Another very current aspect which Kairys referred to is that utilities already collect a lot of information about nuclear power opponents. They freely acknowledge taking pictures and collecting publicly available information. Who knows exactly how far the industry and its consultants or the federal government go beyond the collecting of publicly available information? We know at least that collection of public information is already going on.

Those are just a few dimensions of the fact that the problem is with us right now—today. It should have been addressed a long time ago. It should have been publicly discussed before, and that is what we should be doing here now.

RESPONSE

RENEE PARSONS

My first experience with political surveillance came in the early 1970's, when I lived in midstate New York. A group of like-minded people and I set up a card table on street corners, circulating anti-Viet Nam War petitions. Someone complained and the police department sent a plainclothesman to check us out. My Uncle George was very shocked to find his favorite niece sitting at a card table on a street corner. He never really did recover, and never really did understand why I was there, and I am afraid that my Uncle George is representative of Main Street America.

While I was on vacation in August, I read the book *Judas Squad*, supposedly fictional, about an international ring that deals in everything from drugs to weapons. This international ring realized that there was quite a market for plutonium, so they put together the "Judas Squad"—a band of Americans, dissident Green Berets, and former mercenaries—to capture a breeder reactor, hold it and ultimately take off with the plutonium. They would then sell the plutonium on the black market. It was really a pretty interesting book. It made me think about coming here today, and it also made me wonder how the Reagan administration, and how we as a community would respond if the Judas Squad were to hit tomorrow.

Recent administrations, at least in my mind, have not made statements about civil liberties along the lines that some have. They have not flailed away at the exercise of civil liberties as, for example, Spiro Agnew used to. But this administration, I would suggest, is a real cause for concern. We have Secretary Watt, who asked in 1978 whether the real motive of the environmental extremists was simply to protect the environment, or to delay and deny energy development and thereby weaken America? Secretary Evert, just this last summer in South Carolina, said that energy is tied so closely to the economic lifeblood of this country that it is absolutely essential to get rid of these strident voices, these roadblocks. He claimed that subversive elements were using these people. Of course, Edwin Meese, the President's very close advisor, is sympathetic to these views. Members of the Republican Senate actually believe the rhetoric of *The Spike*. We have attempts now in the Senate to undermine the Freedom of Information Act and to attack the need for environmental impact statements relating to Department of Energy nuclear facilities. We even have a new suggestion from the Reagan administration to reprocess spent commercial fuel for defense program weapons.

There is already only a very fine line between the commercial industries and these defense facilities. And now there is the potential for bringing the commercial nuclear power industry under the blanket of national security altogether. This will certainly further dampen democratic government and cut into civil liberties. I think that today we face a very serious threat to our

most basic freedoms as the administration begins to gear up for war, which is what I see happening in all the activities going on in the Department of Energy. The Department keeps as much information away from the public, under wrap, as they can. This is what they have always wanted, whether they were ERDA or the AEC before that. As they gear up for war, our civil liberties and our access to information will be sacrificed.

RESPONSE

PETER BRADFORD

I am suffering, nearly two hours into the conference, from the lack of a working definition of "civil liberties." If anyone is prepared to provide it, I would be glad to yield a moment or two of my time for it. I think it is important because it is one thing to talk about constitutional rights, and it is another to talk about civil rights, and another to talk about statutory rights. And it is still another if we are talking generally about the right to life, liberty and the pursuit of happiness. There are some areas in which nuclear power does impinge on what I think anyone would agree are constitutionally protected civil liberties. There are some things that can be done about it. There are some potential future developments in the field of nuclear power which are going to make the matter worse.

I think that we make the subject unmanageable if we try to discuss nuclear safety issues and all nuclear proliferation issues under the heading of "threats to civil liberties." I am afraid that some of the discussion up till now has tended to go off in that direction. The subject is fascinating in its own right, but I do not see any prospect of a disciplined discussion of civil liberties emerging, for example, from a further search for flaws in the Rasmussen Report.

Just to roam at random through some of the earlier presentations, I am concerned about the proposition that nuclear power, at least as we now know it, is unique among energy sources in posing threats to civil liberties. I realize that what I am about to say may sound overstated, or almost seem to trivialize the point. But I do think it is true that, in general, whenever mankind has sought to extract energy from sources outside himself, in one way or another, civil liberties problems have emerged. The most dramatic example I think is human slavery in the last century. Someone mentioned "Jeffersonian democracy" earlier. A lot of its energy came from a source which we would all recognize as being reprehensible in civil liberties terms. The violence in the coal fields in the last century was, I think, another dramatic example. The repression of the civil liberties of the workers and union organizers was worse than anything I can think of that goes on with respect to nuclear power today. In the early years of the last decade, there was talk about how best to plan for war in the Middle East in the event that our access to oil was cut off. I think there were some particularly severe implications in those plans, both for our own civil liberties, and for those which we would be willing to recognize in the countries which would have been invaded had those plans been carried out.

None of which is to say that there are no special threats to civil liberties that attach to nuclear power, but I think it is a mistake to assume that other energy sources are devoid of them. In fact, electric energy in particular is

susceptible because it has specific points of vulnerability in its transmission systems. I came from a relatively isolated state before going to Washington. I was once told by a utility executive there that there were a very small number of points on which a skilled marksman could have focused a rifle and effectively isolated the state of Maine, electrically, from the rest of the country. That has nothing to do with nuclear power. A study which reveals those points would certainly have been classified secret, and I do not think any of us would actually quarrel with that classification. So, civil liberties problems did not begin with nuclear power.

That having been said: there are a couple of aspects of nuclear power that do pose unique concerns and these concerns may become worse. I have in mind, in particular, a step that has not yet been taken by the nuclear power officials in the U.S., and that is the resort to plutonium as a fuel, either in light-water or in breeder reactors. I do not have time to get into the technical reasons why, but the safeguarding of plutonium is a much more difficult problem than the safeguarding of the fuel and waste of the current generation of reactors. If, in fact, the currently proposed plans for reprocessing and for the Clinch River breeder fuel reactor are carried out, then I think the civil liberties problems associated with safeguarding the nuclear fuel cycle increases by several orders of magnitude. At the present time, the civil liberties problems associated with light-water reactors are not dispositive. In other words, I do not feel that my own civil liberties would increase a great deal if nuclear power were put away right now and forgotten. I do not feel that the likely increase in the number of light-water reactors is going to change my civil liberties situation very much. But I do not think that would be true if we resort to plutonium as a fuel. Therefore I would differentiate nuclear power with plutonium very sharply from nuclear power without it.

I think Mr. Diamond is quite right in the other matter he touched on, but I would like to emphasize that the people who regulate nuclear energy and the people who are in charge of building the plants are not noted civil libertarians, myself included. The administration of things like a clearance rule is an example. The decision as to whether someone's sexual preference or the fact that their spouse may have relatives coming from an Iron Curtain country makes them more of a security risk with regard to access to nuclear material is not something the NRC is going to administer gracefully.

The lack of any continuing basis for forcing civil libertarian considerations on nuclear regulators, on state public utility commissions, and on utility executives is a serious problem in itself. It is not, as a prior panelist observed, that there are people who are opposed to civil liberties, but it is certainly true that there are some who are more sensitive and some who are less sensitive to the civil liberties consequences of what they do. There is nothing about nuclear regulation as it is done today that makes one conscious, on a day to day basis, that there are particular civil liberties implications.

One more quick rush of considerations, and then I will stop. Surveillance was mentioned repeatedly as an activity by which the nuclear power industry was felt to have lowered the quality of civil liberties in the country. Certainly I hold no brief for utilities which are infiltrating other groups. I am not sure that is a civil libertarian concern in a narrow legal sense, as there have been court decisions holding that what the utilities do is not state action and therefore not constitutionally prohibited. For that matter, I think there have been court decisions protecting the rights of surveilling organizations to the fruits of their surveillance under a property right that some might call a civil liberty. That is not really the point. It is not an activity I like and if it could be legislated away I would support such legislation. But surveillance itself is not something that I think is universally accepted as evil. As nearly as I can tell, the camera above that exit sign, though I do not know if it works or not, means that if NYU wants to, it can tell whether any of us are putting our initials in the furniture while this conference is going on. When I came to the conference, I flew in on a plane from Washington and went through the standard airline check-in procedure. I was swept by the scanning machine and my luggage was at least subject to search. I do not know that it was. I could have been frisked, but I wasn't. Banks have cameras that record you as you make your transactions. Police radar comes to mind as another example of a form of surveillance none of us like very much, but I do not think we could argue that it was an infringement of civil liberties. It really is an issue of degree. I do not mean in any way to apologize for or defend the actions of the Georgia Power Company and the California utility companies mentioned in the paper. But there are areas in which we do accept surveillance of our activities and I think one has to inquire with some precision as to when an activity steps over the line and becomes a transgression.

I will close with one final anecdote. While I was on the Maine Public Utility Commission we held a hearing into Central Maine Power Company's desire to increase its rates. About two weeks into that hearing a group of individuals planted a bomb in Central Maine Power's computer center and wrecked it. They then sent a letter to the Maine Utilities Commission saying in effect, "You're next. We don't like rate increases, and the next time you hold a hearing, the room's going up." As you can imagine, my regard for the civil liberties of the public that might have wanted to come in, as you all have, and sit in our hearings, dropped a little after I received that letter. I felt, and the other commissioners agreed, that the hearings were going to have to be held in a situation which infringed on people's civil liberties. I hasten to add that nuclear power was not an issue here, but energy systems were. We wound up holding the hearings in a police station, or actually a state armory. People had to submit their names which would not have been the case without that kind of a threat.

As long as there are individuals out there who intend to do violence to energy systems, nuclear or not, then the people who regulate those systems, such as the regular police forces, the regulatory commissions, and to some extent the utilities themselves, are going to do a certain amount of what would be called "looking out." And it takes some care to define the difference between self-defensive looking out and abusive surveillance.

RESPONSE

GERALD CHARNOFF

I would like to respond to Stuart Diamond's paper from the text that I had the opportunity to examine before the talk was delivered. I think that it ought to be made clear that concern for the civil liberties implications of nuclear power or nuclear energy is not a new phenomenon in this country. Certainly before there was commercial power from nuclear energy, in the late 40's and the early 50's when we did not yet have that first nuclear power that Herb Kouts referred to, the AEC, had an intensive clearance program and there were enormous questions raised about the civil liberties aspect of the administration of that program. I think it is pretty clear that there were many people, both in and outside of the AEC, who were sensitive to that issue. Certainly the famous Oppenheimer case brings to mind all the questions that a number of us who were in the agency, and some who were not, were sensitive to. So the question of secrecy and clearance and all of the difficult problems that go along with them started way back.

In 1975, the NRC had commissioned a study of the questions associated with nuclear safeguards programs, and it commissioned a paper by one of the speakers who will be here tomorrow, John Barton. Then last year, the NRC concluded a year-long rule-making proceeding on the kinds of clearance programs that might be appropriate for employees of fuel cycle and reactor operators. Civil liberties questions were raised in that context and considered.

While thumbing through some of the material I had on my shelf when I was first apprised of this conference, I found an article in the *Harvard Civil Rights-Civil Liberties Law Review*. It was entitled, "Policing Plutonium: The Civil Liberties Fallout."¹ The author observed that safeguard procedures existed in the private nuclear industry since its beginning two decades earlier, without posing serious threats to civil liberties, though he then went on to say that the existing safeguard systems might have become inadequate. The interesting observation was that twenty years of civilian power programs had passed and, at least in that author's view (and he certainly was sensitive to and concerned about civil liberties), there had been no serious threat to civil liberties in that period. Even now, five years later, while nuclear energy is providing ten or twelve percent of our nation's electrical energy, or four percent of our total energy, we really have not had serious civil liberty problems. There have been incidents, some of which have been referred to, but I do not think that there is a pattern.

1. Comment, *Policing Plutonium: The Civil Liberties Fallout*, 10 HARV. C.R.-C.L. L. REV. 369 (1975).

The ACLU has a publication which most of you, I assume, are familiar with, called *Civil Liberties Review*. There was an article in it which raised the issue of the compatibility of nuclear energy with civil liberties,² and it stirred up quite a debate among members of the ACLU and the readers of the magazine, which really demonstrated what we may have seen here tonight. It may not be possible to talk about civil liberties implications without getting mired down in the broader questions associated with the nuclear debate. I am afraid that the Diamond paper reflects the same sort of difficulties. I think it tried hard to find current civil liberties issues, but it is really overloaded with anti-nuclear rhetoric dealing with the critique of the Atoms for Peace program. The *Progressive* magazine controversy, underground siting, nuclear parks, the litany of alleged unanswered questions—all of which are important questions, but which do not belong in this particular forum. The premise of Stu Diamond's paper is that nuclear power is growing and we have got to get in there and deal with these questions. I am sorry to say that nuclear power is hardly growing. In fact, it is contracting rather rapidly. Hardly a week goes by without a cancellation of another nuclear power plant. So I do not see this burgeoning industry with burgeoning threats.

While the question of government secrecy is a traditional civil liberties question, it is not clear to me from Stuart Diamond's paper whether secrecy is good or bad. On the one hand, the NRC and its predecessors are criticized for their concern for national security and the information they withhold and, on the other hand, they are criticized because they released certain information on how to penetrate the security of a nuclear plant, and for the inadvertent disclosure at Los Alamos of certain weapon-type information.

I also do not know from the article whether Diamond thinks that infiltration of groups is good or bad. It seems to be bad when the utilities do it, but he seems to imply that when *Mother Jones* magazine does it, that that is all right. I want it to be clear that I am opposed to it. But the paper is not clear whether infiltration is good or bad per se or whether it is good or bad depending on who is doing it.

Let me try to answer Commissioner Bradford's question. I have been thinking about the traditional civil liberties concerns and how they focus this discussion. Certainly one of the first ones that comes to mind is something called secrecy—the overclassification of documents. It is a historic civil liberties problem. It is not really present as a basic principle in the field of nuclear power. As long ago as 1958, there was a declassification of all civilian nuclear power technology. As a matter of principle, despite deviations in practice, the name of the game in nuclear power is that you live in a fishbowl and everyone watches it.

2. Gravel, *Plutonium Recycle: The Civil Liberties View*, *Civ. Lib. Rev.*, Apr.-May 1976, at 38.

Now, mistakes have been made and practice has, occasionally, deviated from the principle, but I do not think that that is a civil liberties question associated with nuclear power per se. Sure, there have been occasional incidents of abuse, such as the surveillance of dissidents by some utilities, but these occurrences are uncommon. I worked for about twenty different utilities. I do not know for certain whether any of my clients are surveilling anyone, but I do not believe they are and I do not know what I would do with that information if I had it. I am opposed to collecting it. But bureaucracies being what they are, whether government or industry bureaucracies, they just collect things. They are collectors! So newspaper articles and pictures are collected. If you are a lawyer who has to oppose organizations, whether they be nuclear or non-nuclear, or are routinely involved in anti-trust actions, you collect some of the billions of pieces of paper which are circulating. I do not think one ought to characterize the industry as a monolith engaged in these practices or even that such practices are prevalent.

There are instances where the industry has opposed a government proposal that would have adversely affected civil liberties. For example, there was a proposal to require loyalty tests for employment. In the proceedings completed last year, the NRC was proposing a clearance program for reactor employees similar to governmental clearance programs. The industry opposed that rather strongly, and the NRC eventually relented, concluding that for reactor employees, there was no need for a government-type loyalty clearance program. The NRC did accept the industry type of program which does have some background and psychological checks, but that program does not consider beliefs, sexual practices, and those kinds of things. It considers only reliability and trustworthiness. Mr. Diamond was wrong when he wrote that the NRC requires utilities to thoroughly investigate the backgrounds of employees. They considered it but decided not to require it for employees, although that kind of check does apply to employees of the fuel manufacturers.

I think it is really wrong, perhaps "arrogant" is the word, to define some of us as professional protectors of civil liberties and to suggest that the rest of us, from government employees to utility operators, are not sensitive to civil liberties. Let me remind you that on behalf of three or four utilities, we filed a petition with the NRC opposing pat-down searches. We did not file these objections at my behest. We did so because some executives of some of my clients approached me saying, "We don't like that; it infringes on the civil liberties of our employees." What I am suggesting is this: we are all, to a greater or lesser degree, aware of civil liberties questions. It is not fair, and it is almost a violation of civil rights and civil liberties ideals to suggest that *all* government employees and utility operators think and behave the same way and that they have set about to violate the civil liberties of others.

Let me mention briefly some other traditional civil liberties considerations and see whether they are involved here. First, the area of sanctions on the press. I do not think that that is involved here. Nor are there any of the kinds of restrictions on travel that some of us have fought over in the past. There may be a civil liberties problem in the exercise of extraordinary police power during emergencies. This is discussed in some of the papers here. My only observations on that are that first, emergencies are not unique to nuclear power. Indeed, we have a pretty good record of not having them. Second, the courts have developed principles used to review the exercise of power by government agencies when it is alleged that they have exceeded what is appropriate in an emergency. I do not think that is uniquely a nuclear power question, though it ought to be considered in the context of how we might respond given an emergency.

What I think we need is perspective. Mr. Diamond's paper talks about background investigations, metal detectors, TV cameras, as all being troublesome issues. I think I have dealt with where we stand on background investigations. As to metal detectors, there is no question that there is some invasion of privacy, but we live with that at the airport, too. Indeed, we have armed guards at the airports, who are authorized to shoot in certain situations. While that is not very pretty from a civil liberties standpoint, it functions well in this country without any significant infringements on our liberties. We also live with surveillance cameras at airports, banks and stores. I got a letter from my son enclosing the first paper he wrote in his college writing course. He had to write a paper on the library. In his opening paragraph, he makes the observation that "At the library, hardly a citadel of reactionary movements, there was a guard behind a machine capable of detecting unchecked books hidden in bags or briefcases." Underlying all of this is the question: what is appropriate under the circumstances?

In short, although there are major questions related to nuclear energy, they are not necessarily related to civil liberties. Civil liberties concepts may be involved but it is my view that Congress, the NRC, the industry and the industry's opposition are not insensitive to potential problems. The real civil liberties questions are elsewhere. I am sorry I did not bring with me an ACLU membership recruitment letter I received in the mail a few weeks ago. It listed all the current civil liberties issues and there was nothing in there relating to nuclear power. Maybe the ACLU is unaware of any problem.

What I see in this issue is a bunch of "what ifs." Mr. Diamond raises the question, what if there is a terrorist incident? But, of course, in twenty years we have not had one. What if there is a major emergency? But in twenty years we really have not had that, either. What if police powers extended to the infrastructure of the nuclear power industry? Again, in twenty years, it has not been extended to the industry that makes the valves and the pipes for the plants.

I would like to raise a question for debate, perhaps today, perhaps tomorrow. Several years ago, when people were more serious about introducing plutonium technology into the nuclear power industry, there was a good deal of debate about the possible effects on civil liberties. I would agree with Mr. Bradford, the questions are certainly more troublesome there than they are with the present reactor technology. Everybody said then that nuclear power facilities are more likely targets for terrorists than are conventional power facilities. Mr. Diamond also made that observation, repeating some statements other writers had made. The interesting thing is that we have not had destruction of electrical sub-stations. We have not had terrorist attacks on nuclear plants. I do not know sophisticated terrorists, but I submit to you that sophisticated terrorists probably know that seizure of a nuclear plant would probably turn the public against their cause, rather than toward it. Therefore, it is too pat to say that nuclear power facilities are ideal terrorist targets. They have not been, and I think we should consider that. If nuclear power plants are so ideal for attack, why is it that it has not been done? We have had more than ten years of terrorist activity throughout the world, and it has never been tried.

In conclusion, let me pose some "what ifs" of my own. What if nuclear power is cheaper for consumers? I agree that there is a debate about that. But what if it is? What about the civil liberties of those in the lower classes who might be economically affected if we were to limit nuclear power because of the "what ifs" that Mr. Diamond raises? What if alternative energy sources kill more people? I was intrigued by Mr. Diamond's statement, at the very end of his paper, that coal may kill more people than atomic power, but it does not raise fundamental issues of democracy. Well, I am intrigued by that. I think it raises fundamental questions about the civil liberties of those people who will be killed. We better consider that. Furthermore, while Mr. Diamond advocates solar power as being a great alternative, and while I happen to represent some people who make and sell and hope to sell solar power facilities, the problem is that it is not feasible to rely on it to the exclusion of other sources. Israel, for instance, is a leader in the use of solar power, on a per capita basis. They have a number of very interesting solar energy projects. But even they are not relying on solar power exclusively, or even primarily. They are going to central station power: coal, nuclear, and whatever energy source they can get. And remember that they are not blessed with coal, uranium or anything else. So we should not grab at solar power and say that it is the answer, because we have to consider the civil liberties of those who would be affected if we did not have enough energy. Finally, what if nuclear power reduces the U.S. need for imported oil? Would that give the U.S. more leverage in dealing with some of the civil liberties problems involving the populations of some of the feudal Arab countries? You have to ask those kinds of "what ifs" because those are a lot more real than the hypothetical "what ifs" that may be motivating most of the civil liberties questions raised about the present reactor program we have in this country.