

Civil Liberties and Nuclear Terrorism

Steven Goldberg

This study would not be necessary if we were willing to fight terrorism at all costs. We do not, however, live in that type of society. Indeed, as the President's Commission on Law Enforcement wrote in 1967,

What most significantly distinguishes the system of one country from that of another is the extent and the form of the protections it offers individuals in the process of determining guilt and imposing punishment. Our system of justice deliberately sacrifices much in efficiency and even in effectiveness in order to preserve local autonomy and to protect the individual.¹

The importance of preventing nuclear terrorism is so great that it is easy to believe that the usual concern with civil liberties must take a back seat. But it is precisely when emergencies are invoked that we must not forget the importance of freedoms. Emergency powers are easily abused, and, even in the absence of abuse, mistakes can be made. It is hard to understand why we care about civil liberties if every suspect is guilty, every wiretap is necessary, and every search is justified. But sometimes suspects are innocent, wiretaps are used for political ends, and searches disrupt lives to no end.

Civil liberties do not exist in a vacuum. If society is destroyed, civil liberties are likely to be destroyed as well. Virtually every legal doctrine this study addresses involves a recognition that individual rights must be balanced against valid social needs.

The civil liberties I focus on here fall under the general headings of freedom of speech and association, privacy, due process rights for suspects, and freedom from unreasonable searches and seizures. One essential point applies to all these areas: although a counterterrorist activity is legal, that does not mean the activity has no impact on civil liberties. It may be legal, for example, to have a massive federal police force that provides hundreds of guards for every shipment of plutonium. Even so, that procedure still raises

civil liberties concerns, since many Americans would feel less free in a society of that type

Thus, although I consider whether a particular counterterrorist activity is valid under current law, I do not stop there. I consider as well whether a valid activity may nonetheless have important costs for civil liberties. One of those costs may be that in the context of a terrorist emergency, the courts will uphold peremptory government actions and thus create a dangerous precedent that could be used in less drastic situations in the future. As Justice Robert H. Jackson wrote in his opinion dissenting from the exclusion of Japanese-Americans from the West coast during World War II

Once a judicial opinion rationalizes such [an illegal military] order to show that it conforms to the Constitution, or rather rationalizes the Constitution to show that the Constitution sanctions such an order, the Court for all time has validated the principle. The principle then lies about like a loaded weapon ready for the hand of any authority that can bring forward a plausible claim of an urgent need. (*Korematsu v. United States*, 323 US 242, 246 [Jackson, J., dissenting])

None of these thoughts are meant to suggest that civil liberties must prevail over all other concerns. Rather, the point is that we cannot escape hard choices by simple reference to whether a procedure is legal. Those who fight terrorism have an important responsibility to weigh carefully the civil liberties implications of what they do.

Intelligence Gathering

Gathering information on those who might engage in nuclear terrorism raises several civil liberties concerns. The existence of government surveillance programs discourages some people from engaging in legal political activity since they fear that, despite their innocence of wrongdoing, information might still be gathered and misused. Moreover, all those subject to surveillance suffer a diminution of privacy. Because different legal doctrines govern the various types of intelligence gathering, I look in turn at infiltration, wiretapping, and the maintenance of centralized computer files. Finally, I look at whether the Freedom of Information Act undercuts the government's ability to gather intelligence.

Infiltration

The use of informers to infiltrate suspected terrorist groups is a well-established method of intelligence gathering. The Supreme Court has often upheld the use of informers. Indeed, the Court has held that no warrant is necessary prior to an informer's beginning work, since, in the Court's view, individuals

have no justifiable expectation that the person to whom they are speaking will not repeat what they have said (*Hoffa v United States*, 385 U.S. 293 [1966]) Moreover, the Court, using the same theory, has allowed informants, without warrants, to carry concealed electronic devices to monitor what the suspect is saying (*United States v White*, 401 U.S. 745 [1971])

The use of informers is a classic example where the legality of a procedure does not mean it is uncontroversial When plutonium recycling was under consideration by the Nuclear Regulatory Commission, several legal authorities regarded the possibility of increased surveillance of citizens as a major threat to civil liberties² Critics of nuclear energy in Great Britain have similarly stressed the danger of spying on one's fellow citizens that they believe such energy use entails³ The source of these concerns is not hard to understand Someone who believes the government is always watching him or her will find that the surveillance inhibits freedom of speech and association, as well as a sense of privacy It is imperative, even in fighting terrorism, that infiltration be undertaken only when necessary and that the information obtained be used only for proper law enforcement purposes

Wiretapping

When the government wiretaps telephones, there is somewhat greater judicial protection, although executive self-restraint is vital When the government sought to use warrantless wiretaps to gather information on domestic organizations said to be seeking to subvert it, the Supreme Court found the practice unconstitutional (*United States v United States District Court*, 407 U.S. 297 [1972]) The Court rejected giving an exception to the warrant requirement of the Fourth Amendment on national security grounds in this case However, the Court left open the possibility that warrantless wiretaps on national security grounds could be upheld in cases involving foreign powers The matter remained uncertain until passage of the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801–1811) Although the Supreme Court has not yet ruled on the matter, the lower federal courts have upheld the constitutionality of this act (See, e.g., *United States v Duggan*, 743 F.2d 59 [2d Cir., 1984] and *United States v Falvey*, 540 F. Supp. 1306 [E.D.N.Y., 1982])

Under the Foreign Intelligence Surveillance Act, warrants are generally required but under somewhat relaxed standards Although generally warrants are issued when there is probable cause to believe that a crime has been or is about to be committed, it is possible under the act to get a warrant on a showing of probable cause to believe that the target of the electronic surveillance is an agent of a foreign power (50 U.S.C. 1805[a][3][A]) A foreign power can include a "group engaged in international terrorism or activities in preparation therefor [*sic*]" (50 U.S.C. 1801[a][4]). Among other things, the

act creates a special federal court to hear warrant requests and makes provisions for warrantless wiretaps in emergencies (See, generally, *United States v Falvey*)

The Foreign Intelligence Surveillance Act, because it generally requires warrants, may provide more protection for individuals than the Fourth Amendment to the Constitution requires since it is possible that the Supreme Court would have upheld warrantless searches in the context of foreign threats to national security (See, for example, *United States v Duggan*.) This is a case, therefore, where Congress has balanced civil liberties concerns against terrorist threats, and the courts have approved. Obtaining a warrant from a judge is not foolproof protection, but it has gone a long way toward allaying fears about wiretapping, and it does not appear to have hindered government surveillance. Of course, the warrant requirement does not afford complete protection, since the government could still conduct a warrantless and illegal wiretap, and the only likely sanction is that any information obtained from the wiretap, directly or indirectly, could not be used in a later prosecution. However, given the civil liberties costs of unsupervised wiretapping, the executive should resist any temptation to evade the limited restrictions of the Foreign Intelligence Surveillance Act.

Centralized Computer Files

Once intelligence is gathered, it is typically organized into large computer files so that it can be cross-referenced and easily accessed. These files pose a civil liberties concern in that unauthorized access to them could subject individuals to a loss of privacy, as well as job sanctions and the like. The Supreme Court has recognized that the constitutional right to privacy may require that computerized files be kept private and that they be used only for proper purposes. In the case of *Whalen v Roe* (429 US 589 [1977]), which concerned a New York State computer file of records about drug prescriptions, the Court held that the right to assemble computer files for public purposes, including enforcement of the criminal laws, is "typically accompanied by a concomitant statutory or regulatory duty to avoid unwarranted disclosures." The Court went on to say that "duty arguably has its roots in the Constitution" (429 US at 605). In *Whalen* itself, the Court found that New York had provided adequate statutory protection and upheld its record-gathering system. Under that system, the computer files were kept in secure rooms, and when the computer was in use to look at secure files, it was run off-line (that is, no terminal outside the computer room could gain access to the information).

Here is a case where civil liberties concerns and the effort to fight terrorism point in the same direction. Ensuring that the information in computer

files is accurate and up to date and ensuring that it is available to no one without proper authorization both protects civil rights and helps fight terrorism

Freedom of Information Act

The final aspect of intelligence gathering that raises civil liberties concerns is the relationship of the federal Freedom of Information Act (FOIA) (5 U S C 552), to efforts to fight terrorism. That act enables individuals to obtain certain federal government documents (There are comparable state statutes concerning access to state government documents in virtually every jurisdiction.) The FOIA reflects a concern for open government and thus, in part, the desire of civil libertarians and others to control government abuse. However, the FOIA has been identified by some as a hindrance in the fight against terrorism. For example, at a 1978 Department of State conference, some foreign participants argued that concern over the possible release of information through the FOIA made them nervous about sharing sensitive intelligence information.⁴

The FOIA is a statute, not part of the Constitution, and thus could be changed relatively easily if there were a broad societal consensus that it was hampering efforts against nuclear terrorism. Recent developments in FOIA law make such changes unnecessary, however. First, the FOIA has always exempted properly classified material from disclosure. In addition, the FOIA exempts from disclosure information "specifically exempted from disclosure by [another] statute" (5 U S C 552[b][3][A]). In 1985, the Supreme Court held that the National Security Act of 1947 was another such statute. In particular, the Court held that because of the 1947 enactment, FOIA requests that would reveal Central Intelligence Agency intelligence sources could be turned down (*Central Intelligence Agency v Sims*, 105 S Ct 1881 [1985]). In addition, Congress recently enacted the Central Intelligence Agency Information Act, Public Law 98-477 (98 Stat 2209 [1984]), which exempts the CIA's operational files from the FOIA. As a consequence, any broad attack on the FOIA would be unnecessary and misguided.

Open government is an important value in a democracy and one that must be weighed carefully against allegations of national security concerns. There is understandable suspicion, particularly since Watergate, that secrecy in government may be designed not to further national security but for personal or political gain.

Background Checks and Terms of Employment

One way to combat nuclear terrorism is to attempt to ensure that potential terrorists do not have access to strategic nuclear materials through their jobs. Thus, the screening of potential and current employees in sensitive jobs to

see if they pose a security risk is a common feature of antiterrorist programs. The civil liberties problem arises because an individual could be denied employment for activities that pose no real threat to security but rather represent the exercise of the basic rights of free speech and association.

The first legal check on the misuse of screening programs was imposed by the courts, which insisted that such programs not be undertaken unless explicitly authorized by Congress. In a leading case, *Schneider v Smith* (390 U.S. 17 [1968]), the Supreme Court held that the U.S. Coast Guard could not deny employment on merchant vessels for security reasons because it lacked the statutory authority. The Court emphasized that it was insisting on this explicit authority because of the First Amendment speech and association rights involved.

Partly in response to *Schneider*, the Atomic Energy Act was amended to give authority to the AEC (now the Nuclear Regulatory Commission) to restrict access to special nuclear materials to those persons "whose character, associations, and loyalty shall have been investigated and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security" (Public Law 93-377, sec. 7 [1974], now codified at 42 U.S.C. 2201 [1][2]).

Concern has arisen in recent years as to whether further authority is needed to screen employees at nuclear powerplants adequately. These employees typically work for utilities, and screening is generally limited to state and local police files. To allow the screening to include a check of the FBI's criminal records, recently the U.S. Congress considered S. 274, introduced by Senator Jeremiah Denton (R-Ala.). This bill would require that reactor employees be fingerprinted and their FBI records checked. In response to privacy and other concerns raised primarily by the Nuclear Regulatory Commission, the bill was amended to authorize the commission to promulgate regulations to ensure that individuals be given the opportunity to correct the information contained in the FBI file, information from the FBI file be used only to determine suitability for the job at the nuclear facility, and old and incomplete data in the FBI file not be given undue weight in employment decisions (S. 274 was added to H.R. 4151, the Omnibus Diplomatic Security and Antiterrorism Act of 1986, which was enacted into P.L. August 27, 1986.)

The amendments to the Denton bill represent a careful balancing of civil liberties and security concerns. It is certainly in everyone's interest to get up-to-date, accurate information, to be used only for its intended purpose. Even when that is done, however, a fundamental First Amendment problem remains. For what type of activity can a security clearance be denied? The courts will impose limits here because some of the most fundamental values are at stake.

The leading case of *United States v. Robel* (389 U.S. 258 [1967]) is instructive. Robel, a member of the Communist party, was prosecuted for

having worked in a shipyard designated as a defense facility, employment deemed illegal under the Subversive Activities Control Act. The Supreme Court found the relevant portion of the act unconstitutional since it was so broad that it punished people simply for their association with a group, without showing whether the individual agreed or disagreed with the group's unlawful aims. The Court emphasized that Congress could "keep from sensitive positions in defense facilities those who would use their positions to disrupt the Nation's production facilities" (398 U.S. at 267). In *Robel*, however, the Court found that Congress had swept into its security program too many people who posed no threat.

The message is clear: efforts to improve security through employment screening must be relevant and carefully tailored because of the enormous possibilities for abuse. During the debate over plutonium recycling in the mid-1970s, it was alleged that employees at the Kerr-McGee nuclear fuel processing plant had been asked, as part of a security program, "whether they had ever talked to newspaper reporters, whether they belonged to the union, whether they had ever been involved in 'anti-nuclear activities,' and whether they had ever had an affair with another plant employee."⁵ This type of overly broad, poorly conceived employment screening has the potential to chill individual freedoms and to erode public support for valid antiterrorist measures.

Physical Protection of Nuclear Materials and Prevention of Theft

The actual guarding of nuclear materials poses two major civil liberties concerns: the use of deadly force and the possible growth of a federal police establishment.

Although the legal standards are ill defined, the ability of guards to use deadly force probably increases gradually along the continuum from private guards to police to the military.⁶ In all cases, guards can use deadly force in self-defense. That power is important, since guards can be positioned to force any thief to pose a threat to the guards. The more difficult question is when guards can use deadly force to shoot an escaping felon, such as one who has stolen nuclear material. In a recent case involving police officers, the Supreme Court held that it was unconstitutional to use deadly force to prevent the escape of all felony suspects. The Court said that such force could be used only when the police officer "has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others" (*Tennessee v. Garner*, 105 S. Ct. 1694, at 1701 [1985]). Clearly someone escaping with strategic nuclear material fits that definition. The only caveat, therefore, is to be sure the guard is not shooting at, for example, a harmless

individual who has wandered into a sensitive area by mistake. Thorough training, careful positioning of guards, and vigorous security at sensitive areas can greatly increase the odds that deadly force will be used only when appropriate.

The matter of a federal police force poses a somewhat more fundamental question. Opponents of plutonium recycling often argued that the only way to secure plutonium fuel was to have a massive police presence during its shipment and use. It was then contended that that presence would inevitably lead to the growth of federal involvement, either through the military or some type of federal police.

It is important to emphasize that the civil liberties concern here is not that the government will act illegally. There is nothing illegal about having a lot of guards around a truck carrying nuclear material, and there would be nothing illegal about legislation creating a federal police force to guard the material. The concern is simply that the United States would be much less pleasant if there were police on every corner; indeed, it might eventually result in the erosion of fundamental liberties.

The British experience provides some support for the view that a federal police presence might increase opposition to antiterrorist activities. Since 1954, the British have had special Atomic Energy Authority police to guard against nuclear sabotage. The powers of these police were extended by legislation in 1976 to give them the power to carry firearms, not a routine with regular British police.⁷ There has been some opposition in Britain to these police and their powers.⁸

In the United States, there is a strong tradition of local control of police and a longstanding fear by many liberals and conservatives that the centralization of police power in Washington, D.C., might be dangerous. Under the circumstances, direct federal involvement in guarding civilian nuclear facilities might be costly in terms of public support.

Search and Recovery of Nuclear Materials

From the public's perspective, the most dramatic event in the fight against terrorism would be the theft of dangerous nuclear materials, which would result in a large-scale search. Three civil liberties concerns stand out in this situation: the legality of the search, the ability to detain and question suspects, and the legality of efforts to control the media reporting on the crisis.

Legality of the Search

The search for nuclear weapons controlled by terrorists has received considerable attention in both factual and fictional accounts. In fact, the legal

restraints in this area are not great. Of course, one cost of terrorism is the loss of privacy that comes about when massive search operations are necessary, however, the loss of privacy is one the courts would likely accept under a variety of doctrines.

The central legal questions here revolve around the Fourth Amendment's protection against unreasonable searches and seizures. The general presumption under the Fourth Amendment is that a warrant is necessary to conduct a search. However, it should be noted that even if a search were illegal under the Fourth Amendment, the most important remedy would generally be that any evidence obtained directly or indirectly from the search would not be admissible in court. In the case of a search for a concealed nuclear weapon, this deterrent would not be important. The priority of the government would be to find and disarm the weapon, with later court proceedings a secondary concern at best.

More important, it is unlikely that any responsible search, undertaken in a good faith effort to find dangerous nuclear materials, would be found wanting by the courts. First, judges will be quite willing to grant warrants promptly on a serious showing that nuclear materials might be found. In fact, it would be possible to get numerous warrants to cover the various dwellings in a search area since at least some of the occupants might not consent to a search without a warrant. It is even possible that the courts might grant a broader warrant to search a well-defined region that includes many dwellings, analogous to the regulatory searches carried out by administrative agencies under warrants that do not show probable cause to find a violation in any particular business (See, e.g., *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 320 [1978]).

Even if a warrant cannot be obtained, because, for example, time is of the essence lest a nuclear weapon be detonated, the search is likely to be upheld. Under the doctrine of exigent circumstances (see, e.g., *Michigan v. Tyler*, 436 U.S. 499, 509 [1978]), courts have upheld the warrantless search of a house where dynamite was believed to be located (*United States v. Perez*, 440 F. Supp. 272 [N.D. Ohio, 1977]) and of a hotel room where a shotgun was believed to be (*United States v. McKinney*, 477 F.2d 1184 [D.C. Cir. 1973]). As a general proposition, the American Law Institute's Model Code of Pre-Arrest Procedure has approved warrantless searches upon reasonable cause to believe that the premises contain "things imminently likely to burn, explode, or otherwise cause death, serious bodily harm, or substantial destruction of property," and leading scholars have approved of this formulation.⁹ The Supreme Court, which has approved public safety exceptions in other settings (see, e.g., *New York v. Quarles*, 104 S. Ct. 2626 [1984]), is likely to approve this one as well.

There is no denying that a broad-scale search is disruptive and invasive, nor is there any denying that such a search undertaken in error would be highly costly to the public and to an antiterrorism program. However, the

fact remains that Fourth Amendment law is sufficiently flexible that a good faith search taken on reasonable grounds is likely to be upheld in court

Detention of Suspects

The legal precedent protecting civil liberties is likely to come into sharper conflict with antiterrorism in the area of detention of suspects. Under numerous strands of US law, individuals detained by the police must be told of their right to remain silent and their right to a lawyer, and they must be brought promptly before a magistrate who can determine under what charge they are being held (See, e.g., *Miranda v. Arizona*, 384 US 436 [1966]). The US Constitution does provide for these protections to be undercut through suspension of the writ of habeas corpus but only “in cases of rebellion or invasion” (US Constitution, Art I, sec 9, cl 2). In a crisis, it might be tempting to hold suspects for interrogation for hours or days without letting them see anyone, a situation that poses tremendous possibilities for abuse and that represents an extension of police authority not approved by current US law.

This possibility of court approval of expanded police powers may pose the gravest threat to civil liberties. If a terrorist threat were genuine, there would be tremendous pressure on the courts to approve irregular procedures, particularly if doing so could lead to the punishment of an unpopular defendant. In turn, these newly approved procedures might later be employed in less dramatic circumstances. This is the sort of situation Justice Jackson warned about when he dissented from the Supreme Court opinion upholding the exclusion of Japanese-Americans from the West Coast during World War II (See *Korematsu v. United States*, 323 US 214, 246 [1944]). Moreover, experience in other countries indicates that the detention of suspects in a terrorist situation is not unlikely. Current British law allows for detaining terrorism suspects up to seven days¹⁰. In Italy there have been allegations, hotly denied, that terrorist suspects have been tortured¹¹. This is clearly an area in which an absence of self-restraint on the part of the executive is likely to be costly in the long run for the civil liberties of everyone.

Role of the Press

The final source of conflict between civil liberties and the search and recovery of nuclear materials involves a free press. It may sometimes be in the interests of those seeking to recover nuclear materials to keep their efforts secret, both to avoid public panic and to increase the odds of success. There are two distinct First Amendment issues involved here: press access to government information and press freedom to publish whatever information it obtains.

On the first issue, there is no general requirement that the government inform the media of what it is doing. Although the press has been given access to information in certain highly specialized settings, such as criminal trials (see *Richmond Newspapers, Inc. v Virginia*, 448 U.S. 555 [1980]), there is no general First Amendment right to government information. As former Chief Justice Earl Warren wrote for the Supreme Court,

The prohibition of unauthorized entry into the White House diminishes the citizen's opportunities to gather information he might find relevant to his opinion of the way the country is being run, but that does not make entry into the White House a First Amendment right. The right to speak and publish does not carry with it the unrestrained right to gather information. (*Zemel v Rusk*, 381 U.S. 1, 17 [1965])

The second question remains, however. If word of counterterrorist activities gets out, can the media be stopped from printing or broadcasting what they know? The answer is almost surely no. The unwillingness of the courts to issue prior restraints against speech is well documented, the fundamental role of a free press in a democracy makes any such restraints highly suspect. As the Supreme Court has said in tracing the history of the First Amendment, "The chief purpose of the [amendment is] to prevent previous restraints upon publication. The struggle in England, directed against the legislative power of the licenser, resulted in renunciation of the censorship of the press" (*Near v Minnesota*, 283 U.S. 697, 713 [1931])

It is true that one lower court enjoined publication of a magazine article that supposedly revealed secrets concerning construction of the hydrogen bomb (although another journal subsequently published the same article) (See *United States v The Progressive, Inc.*, 467 F. Supp. 990 [1979]). However, restraining information about terrorist activities would be much harder to justify because the public's interest in knowing would be much higher. It must be recalled that in the Pentagon papers case, the U.S. Supreme Court refused to enjoin publication of a classified study of U.S. policy making in Vietnam, despite allegations that U.S. security interests would be damaged (See *New York Times Co. v United States*, 403 U.S. 713 [1971]). Some commentators have suggested that media self-restraint is the best hope for minimizing harmful coverage in a terrorist situation.¹²

Conclusions and Recommendations

As a starting point, it is useful to summarize the legal status of various counterterrorist activities. Certain of them are unlikely to be challenged successfully in the courts. The use of informers, the use of wiretaps pursuant to current statutes such as the Foreign Intelligence Surveillance Act, the use of

properly trained armed guards, and the conduct of searches for dangerous materials are in this category

Certain other activities are more likely to be successfully challenged. If computer files are poorly maintained and improperly disseminated, if employees are fired for exercising their First Amendment rights, if suspects are detained with no statement of charges, or if efforts are made to censor the press, legal actions may well hinder executive actions. Moreover, if court challenges in these areas fail, the result may be the creation of judicial doctrines that will come back to haunt us in areas far removed from counterterrorism.

The distinction between these two categories of counterterrorist activities can be overstated. A legal activity can still impose a cost on civil liberties. Indeed, in the debate about plutonium recycling, it was precisely the areas of use of informers and of armed guards that led to the greatest protests. Since the courts are unlikely to stop these activities, many citizens regard them as particularly dangerous.

I do not recommend any change in our society's fundamental balance between civil liberties and public order as reflected in current judicial decisions. What I am struck by is that in every category covered in this study, there is an important role for executive self-restraint. Whether it is a matter of meeting legal requirements, such as in discharging employees only on proper grounds, or a matter where the courts impose few requirements, such as the use of informers, those fighting terrorism can make a vital contribution to civil liberties. I recommend that counterterrorists consider the civil liberties implications of what they are doing and, when choosing among workable alternatives, opt for the approach that poses the least threat to those liberties. This notion of the least restrictive alternative will avoid conflict with the courts and build public support for counterterrorism.

A free society can successfully fight terrorism. We need not turn into a dictatorship overnight to address this problem, and I do not believe we are about to do so. The greater danger is that we will gradually erode some important freedoms in the long struggle with terrorism. However, even that danger can be minimized, particularly if counterterrorists take it upon themselves to weigh the civil liberties implications of their actions.

Notes

1 President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 7.

2 John H. Barton, "The Civil Liberties Implications of a Nuclear Emergency," *New York University Review of Law and Social Change* 10 (1980): 299, 317. Professor

Barton refers in this article to his 1975 study on intensified nuclear safeguards and civil liberties. See also Russell W. Ayres, "Policing Plutonium: The Civil Liberties Fallout," *Harvard Civil Rights—Civil Liberties Law Review* 10 (1975) 369, 403.

3 Robert Jungk, *The New Tyranny* (New York: F. Jordan Books/Gosset & Dunlap, 1979), p. 159.

4 John F. Murphy, *Legal Aspects of International Terrorism: Summary Report of an International Conference* (St. Paul, Minn.: West Publishing Co., 1980) p. 16.

4 Ayres, "Policing Plutonium," p. 397.

5 Barton, "Civil Liberties Implications," pp. 308–309.

6 J. C. Woodcliffe, "Nuclear Power: Does It Threaten Civil Liberties?" *Public Law* (Autumn 1983) 440, 456–457.

7 *Ibid.*, pp. 456–457; Jungk, *New Tyranny*, p. 158.

8 Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* (St. Paul, Minn.: West Publishing Co., 1978), 2:456.

9 Alec Samuels, "Terrorism and English Law," *Kingston Law Review* 10 (April 1980) 3, 21.

10 Antonio Cassese, "Terrorism and Human Rights," *American University Law Review* 31 (1982) 945, 953.

11 See, generally, Abraham H. Miller, *Terrorism, the Media and the Law* (Dobbs Ferry, N.Y.: Transnational Publisher, 1982).