

Are pipeline companies buying justice?

Mike Soraghan, E&E News reporter

Published: Monday, January 4, 2021

The officers who cuffed and arrested Cindy Spoon wore badges and gun belts. At least one wore a ball cap marked "POLICE." But these weren't traditional beat cops. They were Louisiana state probation and parole officers.

Just as importantly, they were in the pay of Energy Transfer LP, the company building the Bayou Bridge pipeline, the project Spoon was protesting.

Spoon paddled through the Atchafalaya Basin to a work site in a canoe that day — Aug. 9, 2018 — possibly to put herself in the way of construction. She believed she'd found a way to do that while staying within the law — by staying on the water.

The officers arrested her anyway, along with two fellow protesters. In a lawsuit, Spoon says the officers were allegedly egged on to grab her out of her canoe by company officials who appeared to be giving orders.

Attorneys for the officers say the protesters were arrested for breaking the law. Prosecutors don't seem so sure. They've never pursued charges, raising questions about whether police being paid by a private company can navigate fairly the fraught politics of environmental protests.

Across the country, protesters and their attorneys are accusing police of siding with pipeline builders against them. They say they've been arrested unjustly, manhandled and bullied by armed officers sworn to protect the public but paid by private interests. And they say hiring the officers amounts to multibillion-dollar companies buying justice for themselves.

"Law enforcement should not be for sale or for rent," said Jim Craig, director of the Louisiana office of the MacArthur Justice Center, which is suing the pipeline company and others on behalf of Spoon and her colleagues. The officers, he said, "were essentially doing the bidding of these private companies."

The police agencies involved say their officers were simply enforcing the law, and it doesn't make any difference who was paying them.

"Our officers have the ability to work overtime," said Ken Pastorick, spokesman for the Louisiana Department of Public Safety and Corrections, which includes the probation and parole office. "They have the ability to enforce the law."

Pipeline developers and security companies say it is environmental activists and protesters who have been pushing boundaries and crossing lines. They say they've had to step up security because of civil disobedience, threats and sabotage.

"If pipeline protesters are engaged in peaceful protests, then no one has anything to worry about," said John Stoodly, vice president of government and public relations at the Association of Oil Pipe Lines.

Conflicts have flared far from the cypress swamps of southern Louisiana.

Privately paid officers in police cruisers followed a Texas television crew investigating security arrangements on Kinder Morgan Inc.'s Permian Highway pipeline. A Michigan activist named Matthew Borke says sheriff's deputies improperly targeted him based on false claims from a pipeline company's private security firm, which was also paying deputies for security on the Rover pipeline in Michigan. Opponents of the Trans-Pecos pipeline in Texas say deputies who had off-duty jobs with the pipeline were abusive with protesters.

"When they're motivated by that kind of money, they're pretty zealous," said Mark Glover, who was arrested twice in protests. His wife, Lori, was arrested three times.

Some see little similarity to the allegations of systematic racism and police misconduct that have spurred protests, riots and a national debate in the months since George Floyd died under the knee of a Minneapolis police officer. But others see a connection, such as Borke, the Michigan activist who also protested against the Dakota Access pipeline in North Dakota.

"There's an overall double standard," Borke said. "From the angle I see, we lack real justice. And it's by system design."

Some of the issues overlap. The Trump administration faced criticism for deploying corrections officers with no insignia or name badges to handle protesters. The Louisiana parole officers work for the Department of Public Safety and Corrections and, according to the arrested Bayou Bridge protesters, refused to identify themselves. And the debate over moonlighting for private companies is now playing out against the backdrop of efforts to "defund the police," which could potentially strain the resources of some departments.

No rules

Many police leaders defend accepting money from energy companies as a way to provide more services without asking for more tax money. It's also a way for officers, some poorly paid, to earn extra income.

Sometimes officers are paid directly for the off-duty details through their departments. Experts say the side gigs are popular with officers, who usually get paid time and a half or better.

Some police chiefs and other leaders have refused to allow their officers to work for pipeline companies. But such off-duty jobs are common. Movie theaters hire officers to watch over the teenagers who congregate in their lobbies. Deputies direct traffic at concerts and fairs.

In Atlanta, for instance, the city website offers instructions for hiring its officers at \$35 an hour. Security companies, including some that have worked for pipelines, advertise online their ability to hire sworn police officers for off-duty details.

"Athos Group Security officers have the authority to make arrests, keep the peace, and do it professionally," states the [website](#) of Athos Group, based in the Dallas area, which was one of the security contractors on the Bayou Bridge pipeline.

Athos Group did not respond to requests for comment. But its website warns pipeline companies that environmental protesters have created a "new normal" for their projects by interfering with construction and using social media to drive public opposition. Developers risk their projects, it says, if they don't prepare for such tactics.

As common as off-duty details are, there are no established rules or even general principles that cover police officers working for private interests.

"We have about 18,000 police departments in this country," said John DeCarlo, a former police chief and professor of criminal justice at the University of New Haven in Connecticut. "So there's about 18,000 sets of rules."

The Commission on Accreditation for Law Enforcement Agencies has "extra-duty employment" standards for departments to use in overseeing their officers' side jobs. But those are not rules so much as a requirement that a department have rules. And fewer than one-third of the police officers in the country are in accredited departments.

Pitfalls were well-known long before the latest round of major pipeline projects. Experts worry that officers fatigued from working extra shifts are more likely to make mistakes. And the money can create improper incentives for officers.

The Department of Justice in 2011 called the off-duty detail system in the New Orleans Police Department (NOPD) an "aorta of corruption." Its report said the city's system "contributes to compromising officer fatigue," "contributes to inequitable policing," and "facilitates abuse and corruption by NOPD officers."

And side jobs on pipelines have led to problems for police officers themselves. In Texas, a police chief announced his retirement last year shortly after a local television news station reported he'd been working private security on the Permian Highway pipeline. Two Pennsylvania constables who provided security for Energy Transfer's Mariner East 2 pipeline are facing felony bribery charges, as are several contractors ([Energywire](#), Oct. 19, 2020).

And police officers, along with their departments, are defending against a slew of lawsuits brought on behalf of protesters from Louisiana to Michigan.

But in Oregon, Coos County Sheriff Craig Zanni said the agreement he reached with a company building a gas pipeline and export facility was a good way to stretch his rural department's dwindling resources.

"I said, 'I will provide you with law enforcement if you pay the tab.' I thought it would be a reasonable trade-off," Zanni said of the now-defunct arrangement. "If that's selling out, I don't know what to say."

Canadian developer Veresen Inc. was planning a large liquefied natural gas facility in his county called Jordan Cove, along with a pipeline. The company gave his department money to hire and outfit a team of deputies who would be responsible for helping with security several times a week, when tankers sail into Coos Bay from the Pacific Ocean to dock at the facility. The rest of the time, they could do other police work.

But no tankers have shown up as the project has gotten bogged down in permit fights ([Energywire](#), Sept. 9, 2020). And the officers did more than patrol the roads of Coos County. The deputies in the "Combined Services Unit" handled demonstrations against the project and helped to monitor some of those who protested. Zanni said it made sense to him to have the same officers handle the protests. Support for the program wound down after Pembina Pipeline Corp. bought the project and withdrew financial support for the arrangement. The program had grown to five deputies. Originally it was to have risen to 21.

Zanni doesn't allow his deputies to hire out to private companies such as stores and movie theaters. However, he does have contracts with local tribes in his county who pay his department to handle calls.

"Does that mean we'd be on the Indians' side," he said, "the Native Americans?"

But Bill Quigley, a Loyola University New Orleans law professor who is representing Spoon and other arrested protesters pro bono, said the conflict of interest is obvious when officers are being paid by private companies.

"If you've hired the deputy," Quigley said, "he's more likely to do what you want."

Buying authority?

Many complaints about policing pipelines have been aimed at one company in particular — Energy Transfer.

The Dallas-based company is one of the biggest pipeline operators in the country and one of the most aggressive project developers during the nation's oil and gas boom. It was co-founded by Dallas billionaire Kelcy Warren, a major donor to President Trump's reelection campaign. In addition to the Dakota Access pipeline, the company built the Bayou Bridge pipeline, Trans-Pecos pipeline and more. It is still building the Mariner East system in Pennsylvania.

The company has also been aggressive in dealing with protesters, going back to the bitter protests about Dakota Access in 2016 ([Energywire](#), Aug. 21, 2020). Images of protesters being attacked by security dogs infuriated some, while scenes of chaos and trash outraged pipeline supporters.

Criticism and controversy followed the company to Pennsylvania, where Energy Transfer has been accused of intimidating, harassing and violating the rights of landowners and opponents of its Mariner East project. The criticism turned more serious in late 2019 when prosecutors filed criminal charges, alleging the company's hiring of law enforcement officers added up to bribery ([Energywire](#), Oct. 19, 2020).

Through contractors, Energy Transfer hired state constables — elected law enforcement officials with ambiguous jurisdiction — to provide armed security at a pipeline site. The local district attorney said the company's goal was not to protect construction, but instead to intimidate homeowners who were angry that construction opened sinkholes in their yards.

"They believed they could buy law enforcement and buy the authority of people with badges to get what they wanted," Bernard Martin, investigator with the Chester County District Attorney's Office, said at a June preliminary hearing.

But at that hearing, a judge dismissed charges against an Energy Transfer security manager, Frank Recknagel, citing insufficient evidence that a crime had been committed ([Energywire](#), June 29, 2020). Felony charges remain against six men accused in the case: two Pennsylvania constables and four of the company's security contractors.

Energy Transfer spokeswoman Lisa Coleman said the need for stepped-up security is an "unfortunate" reality.

"We have had people follow and threaten our construction workers, threaten people at public meetings, destroy public and private property where meetings are being held, and lock themselves to heavy machinery putting themselves and our workers in danger, to name just a few of the antics used by protesters that cause security risks," Coleman said.

A slew of arrests

The main policy response to the protests — such as those that trailed the Dakota Access project — has been state legislators increasing the legal jeopardy for protesters and organizations that promote the demonstrations ([Energywire](#), Feb. 24, 2020). According to the [U.S. Protest Law Tracker](#), 12 states have enacted such laws.

Louisiana was one of them. Its law, making it a felony to interfere with pipeline construction, took effect eight days before Spoon paddled through a bayou toward a pipeline work site in St. Martin Parish, about 100 miles west of New Orleans.

This was not a leisurely canoe ride through the picturesque Atchafalaya Basin. An activist from Denton, Texas, Spoon was part of a group doing "direct action" that summer to stop, or at least hinder, construction of the oil pipeline.

But protest supporters say that shouldn't matter. The law Spoon was accused of breaking had a specific exemption for "boating." A pipeline through southern Louisiana is going to cross some swamps and bayous, so lawmakers said penalties would not apply to those undertaking "recreational activities" in "open or unconfined areas" around a pipeline, such as boating and fishing.

That's just what Spoon and her colleagues say they were doing. If they were going to block a barge needed to continue construction of the pipeline across the bayou, they never got the chance.

"You need to arrest those three," said a man, possibly named Larry, identified in Spoon's lawsuit as an employee of Energy Transfer or its security contractor. "They're in the right of way. I'm filing charges."

Officers emerged in air boats and used the giant fans to corral the protesters' kayak and canoe, according to news accounts and the protesters' lawsuit. They plucked the three people out of their boats and up a steep embankment.

"I was performing a recreational activity in a navigable waterway," Spoon **declared** to a freelance reporter filming as officers held her hands behind her back.

That didn't appear to matter to the probation officers being filmed. According to the lawsuit and people at the scene, the officers didn't wear identification and declined to give their names.

They summoned local sheriff's deputies, at least some of whom also worked paid details for Energy Transfer or its contractor. The deputies put the protesters on boats and took them to jail, where they were charged with felonies and released on \$10,000 bail.

Attorneys for the probation officers, who worked through a contractor, have said in court documents that Spoon was arrested because she was trespassing and interfering with construction, not for protesting. The local district attorney has never pursued the cases but also hasn't dismissed the charges.

It was Energy Transfer, though, that was found by a court to have been trespassing. Near where Spoon was arrested, the company laid its pipeline through a 38-acre parcel whose ownership is divided among more than 400 co-owners. It's near a town abandoned decades ago because of flooding.

The company had not gone through the legal steps to get the right to build there. A local judge found that the company's construction was trespassing after a lawsuit was filed by three co-owners who also oppose the pipeline.

Nevertheless, 14 protesters were arrested on the property, even though they did have written permission from one of the co-owners. A freelance reporter covering the protest was also arrested. The arrests, about a week after Spoon's arrest, were made by St. Martin Parish sheriff's deputies, some of whom worked details for Energy Transfer's contractor. State officials said in court filings the pipeline company had permission from another property owner to ask police to remove trespassers. Energy Transfer has said it does not comment on litigation.

The judge who later found Energy Transfer to be trespassing deemed the transgression inconsequential and ordered the company to pay the landowners a nominal \$450.

But a state appeals court took a different view last summer, upping the penalty to \$30,000. In a 4-1 opinion, the judges said the company "trampled" the owners' property rights and "eviscerated the constitutional protections" involved ([Energywire](#), July 17, 2020).

The company did get the legal right to build on the land, but not until several months after the arrests and after it finished construction in the area.

A person who knowingly causes someone else to be arrested on false pretenses could generally face civil or even criminal liability, said Quigley, the Loyola University New Orleans law professor.

"They knew they didn't have authority," Quigley said. "It was cheaper to break the law than to follow it."

The St. Martin Parish Sheriff's Office declined to comment, citing litigation. The office of the local district attorney, Bo Duhé, didn't respond to a request for comment, nor did Spoon.

The legal cases against police agencies and pipeline companies are trudging through the courts. In September, a judge denied Energy Transfer's motion to dismiss the lawsuit brought by Spoon and her fellow protesters, Sophia Cook-Phillips and Eric Moll. Borke recently filed a lawsuit against Energy Transfer in Michigan, where it built the Rover pipeline.

Most of the big pipeline projects from the nation's drilling boom are in the ground or nearly complete. But developers of the high-profile Keystone XL oil pipeline are still pressing to get approval to build. If they get it, protests could be back in the headlines at a time when police conduct is under even more scrutiny.