

Spy Suit Against Army Workers Is Cleared

By [Colin Moynihan](#) Dec. 18, 2012

Several activists from Washington State can continue with a lawsuit accusing two civilian employees of the United States Army of spying on organizers of protests against the wars in Iraq and Afghanistan, a federal appeals court ruled on Monday.

The [ruling](#), from the United States Court of Appeals for the Ninth Circuit, in San Francisco, appears to clear the way for a trial involving assertions that the Army was involved in the surveillance of civilian groups, which several statutes forbid.

The activists filed the lawsuit in 2010 saying that John J. Towery, who worked as a criminal intelligence analyst for the force protection division at Joint Base Lewis-McChord, near Tacoma, Wash., infiltrated protest groups using the alias John Jacob. Mr. Towery then provided information on the groups to the Army, law enforcement agencies and private security firms in an effort to thwart protests and target the protesters, the lawsuit said.

“John Towery had an intimate knowledge of our personal lives, our relationships, our political beliefs, even actions we were planning,” said Brendan Maslauskas Dunn, one of the activists who filed the lawsuit. “People were followed. They were routinely harassed, detained and arrested.”

The lawsuit said that Mr. Towery began spying in 2007 on a group called Port Militarization Resistance, which was formed to disrupt military shipments from ports in Olympia, Tacoma and other cities in Washington. Protesters figured out Mr. Towery’s real identity in 2009 after filing a series of public information requests.

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Defendants in the lawsuit also include another civilian employee of the Army, Thomas Rudd, and police officers in Olympia and Tacoma.

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Judge Ronald B. Leighton, of Federal District Court in Tacoma, dismissed parts of the suit in 2011 but said claims that Mr. Towery had coordinated actions to silence the protesters and taken steps that led to some being wrongly arrested could continue.

Mr. Towery and Mr. Rudd asked the appeals panel to dismiss the lawsuit, saying that it was not supported by facts and that they were entitled to qualified immunity as government employees.

But the judges on the panel rejected those arguments, writing, “The district court correctly determined that these allegations are plausibly supported by sufficient factual detail,” including “specific times and places that Towery spied.”

Lawyers for Mr. Towery and Mr. Rudd did not respond to requests for comment.

Lawrence A. Hildes, the lawyer for the other plaintiffs, said the decision on Monday was the first time an appeals panel had ruled that citizens could sue military employees over spying.

“The military decided that these people were the enemy because they were opposed to what the military was doing, so they launched a military intelligence operation to stop them,” Mr. Hildes said. “Wherever you draw the line, this should be across it.”

In 1972, the United States Supreme Court, [in a 5-to-4 decision](#), dismissed a case challenging the Army’s right to conduct surveillance of domestic political groups, saying that citizens who had been spied upon but not harmed lacked the standing to stop the surveillance.

Those suing Mr. Towery and the others contended, however, that the spying had deterred their free speech and led to their arrest, violating First and Fourth Amendment rights.

The lawsuit said that Mr. Towery had attended meetings of Port Militarization Resistance and Students for a Democratic Society, then had given information about members of the groups to the Army and police agencies. As a result, the suit said, law enforcement officials compiled lists of license plates belonging to protesters and placed a surveillance camera on a pole outside a house where activists lived.

Documents show that Mr. Rudd composed detailed memorandums containing information about activist groups that were circulated to people with military e-mail addresses, police officials and people identified as contractors.

In November 2007, several memos by Mr. Rudd described plans by protesters to block trucks that were planning to leave the port of Olympia while transporting military equipment. The memos also included descriptions of events that appeared to be lawful, including a vigil to “raise awareness of the redeployment” and a “die-in” planned for the campus of The Evergreen State College in Olympia.

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