

Transcript: When protest is a crime, part 1: the Standing Rock effect

Note: Episodes of Outside/In are made as pieces of audio, and some context and nuance may be lost on the page. Transcripts are generated using a combination of speech recognition software and human transcribers, and may contain errors.

Nate Hegyi: There are certain moments that become part of our collective story. Flash points. When our past and our future feel like they're talking to each other. Standing Rock was a moment like that.

Chase Iron Eyes: The smell of fire, of campfire, permeated the entire Oceti Sakowin camp.

MUSIC IN

Nate Hegyi: That's Chase Iron Eyes. He's an attorney, and a member of the Oglala Sioux and Standing Rock Nations, though he says these are colonial names.

Chase Iron Eyes: Yeah, I would say Oceti Sakowin or Sioux Nation.

Nate Hegyi: The protesters, including Chase, first gathered in 2016. They were there to stop DAPL, the Dakota Access Pipeline. Because pipelines spill. Because millions of people depend on the integrity of the Missouri River. Because even when a pipeline works as intended, the result... is more greenhouse gas emissions. But the main reason why Chase and members of the Sioux Nation were camping at Standing Rock was: they were defending their sovereignty.

MUSIC FADE

Chase Iron Eyes: We had been disallowed from expressing our sovereign identity in that territory since 1889. That's when the state of North Dakota and South Dakota were admitted to statehood.

Nate Hegyi: It was the largest gathering of Indigenous people in recent history. People came from all over.

Chase Iron Eyes: Tens of thousands of people cycled through that camp. This is why one elder called it an ongoing international spiritual monument.

MUSIC IN: [\[singing from Standing Rock\]](#)

Chase Iron Eyes: Singing.

You could hear songs not just from our people...

You could hear Coast Salish, Pacific Northwest, people that that come from the ocean, that have that are in relation to that ecosystem... You could hear people from the Southwest, who are in relation to, to corn ... You could hear people from the Three Fires Confederacy... and the Six Nations Confederacy.

... and American people were there!

SWELL AND FADE

MUSIC IN: *Blue Dot Sessions creepy bed*

Nate Hegyi: People lived at the camp for ten months.

They stood in the way of construction. They broke blockades and security barriers. They chained themselves to construction equipment.

DAPL [security](#)¹ responded with [guard dogs](#), who bit protestors.

¹ High Country News [reported](#) these dogs were deployed by another security group called Silverton, and these dogs were not properly licensed for security work.

Chase Iron Eyes: All of the times that everyone was maced with who knows what chemicals.

Nate Hegyi: Police, with [tear-gas](#) and [fire hoses](#).

Chase Iron Eyes: Spraying hundreds of people in sub-freezing temperatures.

Nate Hegyi: Helicopters in the night, aiming floodlights on the camp.

Chase Iron Eyes: Shining on you, telling you: you are being surveilled.

Nate Hegyi: All of this may sound pretty familiar. Even in the midst of a wild presidential election, the Dakota Access Pipeline protests made international headlines. But there is a story here that a lot of people don't know about what made the Standing Rock protests so influential. And about how some legislators and fossil fuel companies are trying to make sure it never happens again.

PROTEST AMBI

MUSIC FADE

Nate Hegyi: After the protest ended, internal documents from a private security company named TigerSwan were leaked to the press.

The pipeline company hired them to infiltrate the camp and gather intelligence on protesters.

[Chase Iron Eyes](#) – [and his wife](#) and [daughter](#) – are mentioned in those documents.

And TigerSwan characterized the movement in a very particular way.

Chase: Called us, American Indians – we, American Indians – religiously driven environmentalist [jihadists](#).

Nate Hegyi: As Jihadists. [Insurgents](#). Essentially: as terrorists.

THEME/MUX

Nate Hegyi: This is *Outside/In*. I'm Nate Hegyi.

The events at and around Standing Rock were a turning point for environmental protest.

In the years since, a wave of anti-protest legislation has swept across the country. Criminalizing protest, especially near pipelines.

So what's happening?

When is environmental protest considered acceptable... and when is it seen as a threat?

AMY GOODMAN: There are many who would say that destroying private property like this is violence. Your response to this?

JESSICA REZNICEK: I completely disagree!

This is the first of two episodes on the changing stakes of environmental protest.

How we define protest and how we define terrorism.

Chase Iron Eyes: Who is considered a terrorist and who is considered a patriot, is relative. It's a matter of who can tell their story and who can portray the other as criminal.

Producer Justine Paradis takes it from here.

THEME MUX FADE

Lesley Wood: Most protests are extremely straightforward, and sometimes even boring.

Justine Paradis: This is Lesley Wood. She researches the dynamics between policing and social movements.

Lesley Wood: Um. But some protests are not.

MUSIC IN

The activists at Standing Rock described the protest as a nonviolent, direct action.

And, historically, “direct action” can mean a lot of things.

Lesley Wood: it can be something like if we want better health care, we have to set up clinics...

It's saying we're not going to ask for the government to solve the problems... We're going to do it ourselves.

Justine Paradis: Direct action as a strategy often comes *after* trying to participate in the democratic process – and finding it unresponsive. And it might involve acts of civil disobedience: deliberately breaking a law, like stopping traffic, or maybe because the law itself is unjust, like sitting at a segregated lunch counter. Speaking generally, that’s [very different](#) from a permitted, police-protected protest, the kind Lesley calls “marching in a circle.”

Lesley Wood: There's no political threat posed by them... the idea that you have a right to protest, but only in certain ways and in certain places doesn't really understand what protest is trying to do, which is on the fundamental say the system isn't working. And to show that it's not working. To impose some sort of potential cost to the system.

Justine Paradis: Which brings us back to North Dakota.

MUX OUT

Tokata Iron Eyes: It was just a completely sort of bubble shattering experience...

Justine Paradis: That’s Tokata Iron Eyes. Earlier we heard from her dad, Chase.

Tokata Iron Eyes: ...because I had, I'd firstly never been exposed to that many people from different places all at once. And also just like the number of different Native peoples ... who ... gathered in protest and in resistance is something that like hadn't been seen in hundreds of years.

Justine Paradis: Tokata is Hunkpapa and Oglala Lakota, and she's originally from the Standing Rock Reservation. She was 12, 13 years old during the Standing Rock gathering.

Justine Paradis: Did you watch your mom get arrested?

Tokata Iron Eyes: Yes, I did. I held her purse.... She stood in front of one of these giant equipment trucks on the road and was just like, 'I'm not moving and you're not getting any closer to where you're trying to go.'

MUSIC IN: Chams Pacer, Blue Dot Sessions

Tokata Iron Eyes: And she was arrested and that sparked this sort of moment of other native women also then like climbing over the fences and going to the construction sites and standing in front of the other tractors there.

When my mom was arrested and taken away, I, I just remember feeling like, oh, this is an incredibly different ball game than what I was imagining. This is real. And these people, like, it is their job to make sure that we do not get what we want.

MUSIC SWELL AND FADE

Justine Paradis: The Dakota Access Pipeline protests didn't have a clear leader. The movement was decentralized. A broad coalition of tribes, [thousands of U.S. military veterans](#), hundreds of [clergy](#), and people from all over the world.

And in those first months, they came there on the invitation of the Oceti Sakowin. The rules of the camp were no drugs, no alcohol, no guns. They even confiscated weapons at the camp.²

Chase Iron Eyes: I remember that first meeting. And I remember human beings, concerned people, gathering to decide: how, how do we engage in a David versus Goliath battle?

Justine Paradis: When Chase Iron Eyes and others on the Standing Rock Reservation – like LaDonna Brave Bull Allard, Joy Braun, and more – when they first heard about Energy Transfer Partners and the plan to run the pipeline just two miles from the reservation – they got together to figure out what to do.

And tensions were already high.

Chase Iron Eyes: When you're Native, when you're Indigenous, you're born into a war.

MUSIC IN: Tarnish by Podington Bear

Chase Iron Eyes: The Indian Wars have never ended. Take a look around us. There's, half of our lands are still owned by settlers that are trying to diminish tribal sovereign capacity.

Justine Paradis: From one point of view, we might view the events that took place in North Dakota as a protest. But from another, the encampment at Standing Rock was just the latest action in centuries of continuous Indigenous resistance. The latest in a conflict, marked by broken treaties and all-out war. The effects of which are ongoing.

Chase Iron Eyes: Most American people don't know that they're participating in the other side of that dynamic.

Justine Paradis: A conflict that includes Native children, taken from their communities and forced into residential schools. Which includes thousands of missing and murdered Indigenous women. From that

² Interview with Phyllis Young: “we confiscated the weapons and we sent them home.”

perspective, peaceful protest of the Dakota Access Pipeline was not a given.

Chase Iron Eyes: Because, you know, we've, we've always defended ourselves by any and all means necessary... These same forces came to our homelands in the mid-1800s to do the same thing. To build what is now called critical national infrastructure: the railroads, which were trespassing in our lands. This is why we defeated the United States military multiple times in our country. This is why, you know, Lieutenant Colonel George Armstrong Custer was killed in battle, at the Battle of Little Bighorn. And why Red Cloud and Crazy Horse and Sitting Bull, Rain in the Face, and several others, chose to defend our nation against an ongoing present day criminal and illegal occupation. That's how we see the state of South Dakota.

MUSIC SWELL AND FADE

Justine Paradis: At those early gatherings, when they were deciding what to do about DAPL in this David versus Goliath fight, they didn't know what approach they'd take.

And when Chase told me about this strategy session, he brought up another moment of resistance. A moment that happened at Wounded Knee, South Dakota.

Chase Iron Eyes: That's a long story.

Justine Paradis: That long story – it's the story of [the American Indian Movement, or AIM](#).

This was a Native movement in the late '60s and early '70s. And this one was armed.

Frustrated over high unemployment, the violation of treaty rights, and life more generally as dictated by the Bureau of Indian Affairs, a group of Indigenous activists took action.

MUSIC IN

Justine Paradis: In 1969, they took a chartered boat to the island of Alcatraz, and [occupied](#) the empty prison there for nineteen months. ([proclamation](#)) ([archive](#)) At one point, there were more than 400 people there. They made decisions by [unanimous consent](#). [There was a daycare. A school.](#) Radio Free Alcatraz.

Richard Oakes: We, the Native Americans, reclaim this land known as Alcatraz Island, in the name of all of American Indians by right of discovery. We wish to be fair and honorable in our dealings with the Caucasian inhabitants of this land, and hereby offer the following treaty...

Justine Paradis: Later, a caravan of AIM activists traveled to Washington, D.C – a journey they called the Trail of Broken Treaties. And then they occupied Bureau of Indian Affairs offices for weeks.

ARCHIVAL AUDIO of the [occupation of Bureau of Indian Affairs](#) via SOUNDINGS MINDFUL MEDIA:

- Anybody here from A.I.M?
- Yeah! [cheers]

Justine Paradis: They were demanding millions of acres of land back and the protection of religious freedom, [among other things](#).

- Is everybody happy?
- Yeah! [cheers]

Justine Paradis: When AIM members seized control of Wounded Knee, South Dakota, in 1973, it turned into a 71-day FBI siege that [ended in a shoot-out](#) at the Pine Ridge Reservation. The same reservation where Chase and Tokata live today.

MUSIC FADE

Justine Paradis: People died on both sides of this conflict: two [FBI agents](#) and [three Native people](#).³ Another, Leonard Peltier, is still in prison for those actions today.

But when Tokata talks about this time, she mentions those consequences, but she also points out that AIM's actions resulted in long overdue changes.

MUSIC IN: Perihelion

Tokata Iron Eyes: The progress that AIM was able to make in its time was huge and was monumental, right? When AIM came to power, our religion as Native Americans was still outlawed. And so the Religious Freedom Act was signed, only [when] natives took up armed resistance to the American government. And the Indian Child Welfare Act was also passed as a result of that sort of work.

Justine Paradis: So, again, peaceful protest at Standing Rock was not a given. They could have modeled the movement after the occupation of Wounded Knee.

Tokata Iron Eyes: Standing Rock was a nonviolent direct action and there was a pipeline approved. The American Indian Movement was an armed opposition and got several different laws passed by Congress.

Justine Paradis: But ultimately, they chose to go down a different path.

Chase Iron Eyes: We conducted a ceremony⁴ to seek guidance. And the instructions were given inside those ceremonies to not be violent against other human beings.

... and that, that was very, it was really smart because it allowed... a shift in consciousness... we were able to form these alliances that prior to that would not have been able to be formed.

³ Lawrence Lamont, Frank Clearwater, and Little Joe Killright Stuntz.

⁴ [Page 76](#)

Justine Paradis: But there's a distinction here. They'd committed to peaceful, prayerful protest, meaning no violence against people.

Chase Iron Eyes: Violence against property is not is not violence to us.

Tokata Iron Eyes: You can't be violent towards a piece of plastic. You can't be violent towards a piece of equipment. You can be violent towards human beings.

Justine Paradis: To be clear, neither Chase⁵ nor Tokata said they went any further than what the state of North Dakota would consider "trespass." The main point and power here was the occupation of the land.

But others *did* take things further.

MUSIC IN: Packin' Heat

On the evening of Donald Trump's election, two people – Ruby Montoya and Jessica Reznicek – snuck onto a DAPL construction site.

As they explained months later to Amy Goodman in [an interview for Democracy Now](#), they filled coffee canisters with rags, soaked with motor oil and gasoline, and put them inside heavy machinery at a DAPL site. This is Ruby Montoya speaking.

Ruby Montoya on Democracy Now: We placed those coffee canisters on the inside of the cabs of these heavy machinery... And we pierced those coffee canisters so that the flammable liquids would spread. We then lit matches – and, uh — in efforts to make those machines obsolete.

Justine Paradis: Jessica Reznicek had been an activist in places like Occupy Wall Street and [in Israel, protecting the Palestinian olive harvest](#). Ruby Montoya is a former preschool teacher.

⁵ Justine: You were not out there sabotaging stuff? Chase: No! absolutely not.

Over the next few months, they learned to use welding torches.

Using kits they'd purchased at Home Depot, they visited sites along the DAPL's route, and burned through empty steel pipeline valves.

Each action took them about 7 minutes.⁶

Sometimes they worked in broad daylight. They did this until they ran out of supplies. And then they returned to arson, damaging more valves, plus electrical units and heavy equipment.

According to [their statement](#), they believe they delayed construction of the pipeline for weeks.

MUX SWELL AND FADE

Their last act of sabotage was in May 2017, when burning through a pipeline valve they'd thought was empty, they discovered that oil was actually already flowing through it.

They publicly confessed to these actions in July 2017, reading a joint statement out loud at a press conference. They explained how and why they did this, and how others could do the same.

*Jessica Reznicek, reading statement: We are speaking publicly to empower others to act boldly, with purity of heart, to dismantle the infrastructures which deny us our rights to water, land, and liberty.
[fade]*

Justine Paradis: Here's another clip from their interview on *Democracy Now*.

Ruby Montoya on [Democracy Now](#): We acted after having exhausted all other avenues of political process and resistance to this petroleum pipeline... [fade out]

MUX SWELL AND OUT

⁶ Statement: "We bought kits at Home Depot and the tanks at welding supply stores... We were able to get the job down to 7 minutes."

Justine Paradis: The actions of Ruby Montoya and Jessie Reznicek are one example discussed in a book you might have heard of — *How to Blow Up a Pipeline*, by the Swedish scholar Andreas Malm.

There's also a movie based on the book, just released earlier this spring.

The core argument of *How to Blow Up a Pipeline* is: is it time for the climate movement to move beyond “peaceful” protest?

Because the climate movement has tried to make change for decades. It's tried sit-ins, school strikes, march, blockades, boycotts, campaigns for divestment and legislation and treaties.

But emissions, relentlessly, continue to grow.

MUX IN: Kirkus Blue Dot Sessions

Andreas Malm argues that escalating to strategic property sabotage is a natural next step – a tried-and-true technique that lots of other successful movements have used after failing to get results from other methods.

Movements which sought to change things on a massive, structural level: like apartheid in South Africa,⁷ Jim Crow,⁸ and the suffragette movement.⁹

Malm argues that some element of “property destruction has always been essential” to “bringing down the seemingly invincible.”¹⁰

MUX FADE

But property destruction also comes with substantial risks.

⁷ Malm, pages 51-52.

⁸ Malm, page 49, referring to the Civil Rights Act of 1968.

⁹ Malm, pages 40-42.

¹⁰ Malm, page 113.

A PR risk for the movement, for one. Just like police brutality during the Civil Rights era helped build outrage on the part of the general public, property destruction can turn people against a cause they might otherwise support.

Another risk: for activists - it could dramatically up the chances you'll wind up in prison.

In the United States, there's a significant recent example which might come to mind. The Earth Liberation Front, or the ELF. In the '90s and 2000's, the ELF, used property destruction as their main technique. They set ski lodges on fire in Colorado because the resort was expanding into endangered lynx habitat. They blew up logging and construction equipment, car dealerships, farms, laboratories, and even homes...

By design, the ELF [never killed anyone](#), but they were labeled as "eco-terrorists" regardless, and today, a lot of environmentalists are quick to distance themselves from those methods.

So is property destruction, or sabotage, a form of violence? Or a form of civil disobedience? Is it the work of terrorists or a tool for activists? A lot hinges on those questions.

On *Democracy Now*, Amy Goodman asked this question directly of the two activists who sabotaged DAPL sites.

AMY GOODMAN: Now, Jessica Reznicek, there are many who would say that destroying private property like this is violence. Your response to this?

JESSICA REZNICEK: I completely disagree. I think that the oil being taken out of the ground and the machinery that does it and the infrastructure which supports it, that this is violent. This is — these tools and these mechanisms that industry and corporate — corporate power and government power have all colluded together to create, uh, this is destructive, this is violent, and it needs to be stopped. And um,

and we never at all threatened human life. We never at all — and, actually, we, we're acting in an effort to save human life, to save our planet, to save our resources. Um. And nothing at any point was ever done by Ruby nor I in anything outside of peaceful, deliberate, and steady loving hands.

MUSIC IN: Chams Pacer, Blue Dot Sessions

Justine Paradis: In *How to Blow Up a Pipeline*, Andreas Malm argues property sabotage, even if it's viewed by some as extreme, can have another indirect effect. The actions of a “radical flank” can sometimes change how other parts of the movement are seen.

“Without Malcolm X, there might not have been a Martin Luther King, and vice versa,” he writes.

Critics of the book have called his argument [frustrating](#), and [reckless](#), saying that Malm rehashes the ideas of others, employs selective examples, and, especially, that he downplays possible repercussions of property sabotage.

That activists can get sued or imprisoned. Movements can get delayed, or squashed. And the further a person is willing to go, the harder law enforcement may crack down.

As for Ruby Montoya and Jessica Reznicek, in the eyes of the state, they aren't activists. They're terrorists.

In addition to paying \$3 million in damages to Energy Transfer Partners, they were both convicted of “Conspiracy to damage an energy facility.”

Both sentences included a [terrorism enhancement](#), essentially [doubling their time in prison](#).¹¹

¹¹ Reznicek appeal: “The district court imposed a 96-month sentence, a downward variance from the enhanced guideline range of 210–240 months but still substantially above what the guideline range would have been had the enhancement not applied (37–46 months).”

8 years for Jessica Reznicek; 6 for Ruby Montoya.

That's the same thing that happened to many members of the ELF, years earlier.¹²

MUSIC FADE

Beyond Ruby and Jessica, at Standing Rock – over the course of the protest, hundreds of people were also arrested for lesser charges.

Chase Iron Eyes, the Oceti Sakowin - Sioux Nation lawyer, was arrested and charged with “felony to incite a riot” in 2017. And the night he was arrested, [as he remembers it](#), the security forces said to him,

“Chase, we know you are responsible for this. We want you to call all of them off of that hill.”

And he replied, “You guys have been looking for one chief for 500 years. There is no one chief.”

MUSIC IN

You could argue the Standing Rock protest didn't work. A victory for the anti-pipeline activists in the final days of the Obama administration was immediately overturned by executive order once Trump took office.

So, the Oceti Sakowin camp didn't stop the pipeline from being built, or oil from flowing inside it.

But that's not the whole picture.

Standing Rock got global attention. It made notions of Indigenous sovereignty very visible. Ideas like protecting sacred sites and the Land Back movement have become much more mainstream. Tokata Iron Eyes again.

¹² Though [not Joseph Dabee in 2022](#).

Tokata Iron Eyes: Those became like national conversations rather than just Indigenous conversations. And that's huge. And I think that those are all, sort of, consequences and attributes of what Standing Rock has done, at a global level.

Justine Paradis: That's [not just the takeaway](#) from activists. Other pipeline protests have since taken cues from the encampment. TigerSwan, the private security group hired to infiltrate the protest camps – they called it [“The Standing Rock Effect.”](#)

Protests involving or led by Indigenous groups have helped delay or even cancel fossil fuel [projects](#) across the US and Canada.

The [Atlantic Coast Pipeline](#). [The Teck Frontier Tar Sands Oil Mine](#). [Line 3](#). [Keystone XL](#).

According to [one analysis](#), the resistance to DAPL cost the pipeline company billions of dollars in losses.

Connor Gibson: That unprecedented level of national resistance, coordination, the coalitions that were formed to resist the Dakota Access pipeline scared the hell out of the oil companies.

Justine Paradis: And those companies – did not sit idly by. That's after the break.

MUSIC FADE

BREAK

[Youtube](#): *Standing Rock protestors leaving the encampment on February 22, 2017*

Justine Paradis: On February 22, 2017, on state and federal orders, [most of the last protestors left the gathering at Standing Rock, their procession accompanied by drums and songs and prayer.](#)

MUSIC IN: Brevyn, Dusk in Oceania

Earlier that same day, 900 miles and three states away, state officials had gathered to debate a bill in the Oklahoma State House.

[Feb 22 2017](#) House Judiciary Committee, Oklahoma

Rep. Rande Worthen, presumed: Mr. Chairman, you're recognized to present your bill.

Rep. Scott Biggs: Thank you, Representative [fade].

Justine Paradis: That's Oklahoma House Rep. Scott Biggs. Here, he's presenting a draft version of a [bill](#) he's sponsoring. A bill which would enact stiffer penalties – hefty fines and felony charges – for vandalizing or trespassing with intent to tamper with “critical infrastructure.”

Rep. Scott Biggs: This issue has definitely risen to the level of concern here in Oklahoma, given our state's status as an oil producer, an energy producer, and what's going on in other states.

Justine Paradis: In defining “critical infrastructure,” the bill included a long list of examples that could qualify, including a petroleum refinery, a railroad, a telephone pole.

And there's nothing secret about what's motivated him to draw up this bill.

Rep. Cory Williams: Is it just the, the pipeline incident? I don't think they did damage to property, but obviously, they're tresp-

Rep. Scott Biggs: I'm pretty sure they did a whole lot of damage in North Dakota.

Justine Paradis: It's because of Standing Rock.

MUSIC FADE

Rep. Cory Williams: Is that what we're talking about?

Rep. Scott Biggs: Yes, so please join, if you want to learn more, we are actually having a meeting here at four o'clock today with some individuals from North Dakota that are here to talk to us, talk to the industry about what they're having to deal with, the aftermath... But yes. That is the main reason behind this.

Justine Paradis: This was one of two such bills passed in Oklahoma in 2017. And they're important because together, they became the model for a lot of the legislation that's followed.

Much of it pushed by one group in particular.

Connor Gibson: I came at this issue because of one organization. And that's the American Legislative Exchange Council, or ALEC.

Justine Paradis: This is Connor Gibson. He's an opposition researcher, which means, in his case, that he studies the influence of money, especially fossil fuel money, on politics.

Connor Gibson: Which, you know, according to my own ideology, is pretty much the root of our problems.

MUSIC IN

Justine Paradis: So, ALEC. ALEC is a right-wing organization, a coalition of state legislators and corporate lobbyists.

One of the main things it does is draft model laws for legislators.

For instance, [Stand Your Ground laws – you know, George Zimmerman's defense for killing Trayvon Martin – ALEC helped spread them.](#)

[ALEC has a model bill that allows companies to withhold what chemicals are in fracking liquid.](#)

Connor Gibson: ALEC is also behind a number of state-level laws such as so-called Voter ID laws, various schemes to disenfranchise voters.

Justine Paradis: And again, ALEC’s members include both elected state officials and companies like Koch Industries, Marathon Petroleum, and until recently, ExxonMobil. Connor actually used to crash their annual meetings, when he worked for Greenpeace.

Connor Gibson: It is exactly what you would picture. It's a bunch of legislators, white old men chomping on cigars with a bunch of lobbyists.

Justine Paradis: By the way, we reached out to ALEC multiple times for this story. They did respond, but didn’t answer all of my questions. More on that later.

So, after the two Oklahoma bills passed in 2017, ALEC drafted their [own model legislation](#), called the Critical Infrastructure Protection Act, based on those two bills.

And along with the bill, they sent a letter for legislators, which [the Huffington Post later obtained and published](#).

The letter urged state lawmakers to support the model bill, citing examples of deliberate attacks to infrastructure, including recent “coordinated physical attacks” to DAPL, using blow torches.

The letter was signed by Marathon Petroleum Corporation and four industry groups, including the American Fuel & Petrochemical Manufacturers and the American Gas Association.

So, the Critical Infrastructure Protection Act became the official ALEC model policy. [And it spread](#).

To Iowa. Louisiana. Montana. North and South Dakota. Wisconsin. Texas. Ohio. And so on.

Elly Page: So, we've seen successive waves of these bills often in direct response to protest movements.

Justine Paradis: This is Elly Page – she’s a senior legal advisor for the ICNL, the International Center for Non-Profit Law.

Elly Page: Following Standing Rock, we've seen states introduce these laws specifically targeting environmental protesters who are looking to demonstrate against gas and oil pipelines...

Connor Gibson: This is the bread-and-putter ALEC model template.

Justine Paradis: Connor also [keeps tabs](#) on who shows up to lobby for these bills as they move through state legislatures. And, no surprise, it’s often companies like Koch Industries, Exxon Mobil, and the company behind DAPL, Energy Transfer Partners.

All this to say, the fossil fuel industry has demonstrated its support for this legislation.

In the past six years, some version of it has passed in 18 states.

Elly Page: We started monitoring this trend. And it has proven to be a very durable, um, a durable trend, unfortunately.

MUSIC IN

Justine Paradis: To be clear, drafting model bills for lawmakers – that is a tool used across the political spectrum. Democrats also sponsor bills created this way.

But anyway, when it comes to this particular pattern, Connor and Elly both say that these bills – the ones focused on infrastructure, and other more general ones – they’re designed to chill protest.

They do that by increasing penalties for things like blocking traffic. Maybe they redefine misdemeanors, like trespassing, to more serious felonies. They might increase minimum sentences or ratchet up fines.

Connor Gibson: They're trying to give police more excuses to arrest people and deter people from protesting in the first place by making sure people are aware that the penalties keep going up and up and

up for things that previously were not that legally risky, but kind of basic First Amendment freedom of expression protest.

Justine Paradis: The laws are also typically broad and vague. Which not only gives police and prosecutors a lot of discretion in terms of enforcing the law –

Elly Page: It allows them to apply the law selectively against individuals based on, for instance, whether they agree with the political message that the protesters are, are sending or based on some other bias.

Justine Paradis: But Elly argues that these laws don't even have to be enforced to keep people away from protests.

Elly Page: If folks are not sure what the law means or how it's going to be applied, they are going to think twice about maybe participating in a protest where they might get caught up under such a law.

Justine Paradis: These laws can also operate through civil penalties. Not just prison sentences for those directly involved, but financial liability for those associated.

Maybe you're familiar with RICO laws: laws passed in the 1970s, which instituted fines and penalties for people working in conspiracy with organized crime. Racketeering.

Connor Gibson: This is the perversion of laws that were intended to go after the Mafia, but being used to go after environmentalist groups, and that's a really widespread trend that we've seen.

Justine Paradis: A bill [proposed in Idaho](#) earlier this year took this approach.

Connor Gibson: Let's say the Nature Conservancy is affiliated with somebody who decided to go protest an oil pipeline, and they were arrested in Idaho. Under the auspices of this bill language, um, The Nature Conservancy could be charged \$100,000, and, just for being

affiliated with that person. And the definitions of what constitutes such affiliation is fairly broad and the language in the [Idaho] bill says aids, abets, solicits, compensates, hires, conspires with, commands, or procures someone. You know, there's, there's a lot of ways that can be interpreted.

Justine Paradis: This could create a situation where an environmental organization might tell their staff and their volunteers, ‘hey, don’t go to that protest because we could be fined.’ \$100,000, if that bill had passed in Idaho, or \$1 million, [if you’re in Oklahoma](#).

Connor Gibson: That said, I don't think that's happened yet. Um, and I hope it wouldn't. I, I think there is some indication that prosecutors have seen that these laws are on very shaky ground, constitutionally speaking.

Justine Paradis: This wave of critical infrastructure bills, they’re just one part of a larger pattern of anti-protest laws, beyond pipelines. There are new laws that increase penalties for [wearing masks during protests](#), that grant [certain immunities to drivers](#) who hit protestors with their cars.

Connor Gibson: That also includes this wave of backlash against Black Lives Matter, and the police and prosecutors groups who are lobbying to make it much easier to be arrested for so-called “rioting,” where the definition of “riot” keeps getting easier and easier and easier to trigger.

Justine Paradis: Even with all this context, there are folks that might say, like, yeah: it *should* be illegal to vandalize someone’s property. It *should* be illegal to trespass.

But those things are already illegal.

Connor Gibson: There is no state that forgot to make it illegal to hurt another person. There is no state that forgot to make it illegal to destroy people's property. There's no state that forgot to make it

illegal to trespass... so, the legislation is really just upping the ante on peaceful protest activity. That is the main thing they're trying to restrict.

Justine Paradis: Again, we reached out to ALEC, and asked them how they'd respond to this assertion that these bills are designed to chill and criminalize protest. They said: "The ALEC model was finalized in 2018 and designed to address criminal activities: trespassing and property damage." They didn't respond to any of my other specific questions.

Although, they also sent us links to blog posts, which argue, quote:

"This legislation was created to protect our citizens and the infrastructure they depend on every day."

...Some high profile media outlets such as the Los Angeles Times have recently leveled false claims against ALEC, accusing our organization of engaging in a nefarious plan to infringe upon the right to free speech through the promotion of critical infrastructure protection legislation. This could not be further from the truth."

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Justine Paradis: We can't know if the Oklahoma bills, and the ALEC bills that came after, would have been created even without direct attacks on the Dakota Access Pipeline. But ALEC and others have pointed towards the property destruction, including the blowtorches, as rhetoric to help make their case.

And now, formerly mundane forms of civil disobedience could be met with stiffer penalties and harsher prison sentences.

Maybe this is exactly the kind of backlash critics of "How to Blow Up a Pipeline" have talked about.

Or, it could be exactly where things were headed anyway. Police militarization is on the rise. And it was never just the “radical fringe” that risked being labeled as “an enemy of the state.”

Chase Iron Eyes: Who is considered a terrorist and who is considered a patriot, is relative. It's a matter of who can tell their story and who can portray the other as criminal.

Justine Paradis: But the charge of terrorism – that does take it to a whole other level.

One [bill proposed in West Virginia this year](#) would have created a new offense. A “terrorist violent mass action,” meaning “violent protests and “riots” which “appear intended” to coerce or intimidate groups, governments, societies.

Under this bill, potentially, a nonprofit group involved in organizing or supporting such a protest could have been deemed a “terrorist organization.”

That bill didn’t pass this year. But: these new laws that criminalize acts of protest, and anti-terrorism laws that are already on the books – it’s all starting to dovetail.

And there’s one place where all this is coming together. You could call it a perfect storm.

Will Potter: When I saw the domestic terrorism charges in Cop City, I immediately felt this wave of kind of a flashback...

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like it was a dangerous escalation.

Aurielle Marie: There’s these blacked-out officers coming from the woods, you know, with a rifle in your face, and there’s no training for that. It’s terrifying.

Micah Herskind: It's hard to express how dangerous, you know, this time is ... especially once the domestic terrorism charges, you know, came into the picture.

Aurielle Marie: I remember watching a, I believe, a state trooper, with an automatic weapon and he was walking slowly toward the bouncehouse.

Justine Paradis: That's next time, on Outside/In.

MUSIC SWELL

Nate Hegyi: If you want to check out what the landscape is like for protest in your state, go to the US Protest Law Tracker on the ICNL website. You can look up your state or type of bill, and see what laws have been proposed, failed, or enacted.

If you're interested in learning more about the Earth Liberation Front, we recommend the podcast *Burn Wild*. The reporter, Leah Sottile, has covered extremism for years. In this series, she talks to former ELF members and the FBI agents who investigated them – and she really gets into this question of “how far is too far to save the planet?”

We'll link to both the ICNL tracker and *Burn Wild* in the show notes, along with other resources + reading for this episode.

We'll be back next week with the second part of this series on environmental protest and terrorism.

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Special thanks to Phyllis Young and to everyone at the Lakota People's Law Project, especially Jesse Phelps and Daniel Nelson.

Thanks also to the folks at Soundings Mindful Media for their archival tape of the American Indian Movement.

This episode of *Outside/In* was reported and produced by Justine Paradis. It was also mixed by Justine Paradis and Taylor Quimby.

Taylor also edited this episode, with help from Felix Poon, Jessica Hunt, and me, Nate Hegyi.

Our executive producer is Rebecca Lavoie.

Music in this episode came from Podington Bear, Skylines, Cory Gray, Cooper Cannell, and Blue Dot Sessions.

***Outside/In* is a production of New Hampshire Public Radio.**