

W. S. B.

AGENDA MEMORANDUM

Date: November 12, 2003

WP ca/vv/03023/T

TO: Lane County Board of County Commissioners

DEPARTMENT: Lane County Administration

PRESENTED BY: William VanVactor, Lane County Administrator

AGENDA ITEM TITLE: REPORT/County Administrator's Quarterly Report Regarding the USA Patriot Act

I. MOTION

REPORT/County Administrator's Quarterly Report Regarding the USA Patriot Act.

II. ISSUE OR PROBLEM

On July 2, 2003, the Board of County Commissioners directed that the Lane County Administrator prepare a quarterly report on Lane County department's reporting obligations established in Board Order 03-7-21-1.

III. DISCUSSION

A. Background

See attached Order No. 03-7-21-1.

B. Analysis

With the help of Malinda Dodson, County Administration has prepared a chart showing the reporting obligations of each department and their response. As you can see, the departments have completed their reports and so far have had no reportable events under the terms of your Board Order. The one exception is with regard to the Sheriff's Office. The Sheriff has indicated in a memo to you dated October 16, 2003 that he will report to the Board any instance of inappropriate abridgement of civil liberties and protections of Lane County citizens, residents or visitors. He indicated that he would work on further refinement of a communication medium and parameters if the Board was in agreement with that concept. The memorandum of the Sheriff is attached for your review.

C. Alternatives/Options

No alternatives are presented as the Board of County Commissioners directed this activity and this report reflects the Board direction. The Board of County Commissioners may want to consider corresponding with the Lane County libraries. Your July order directs Lane County departments to report on this, but they do not have any firsthand knowledge of what contacts the libraries may have received. Direct communication with libraries may be the most effective way to get that information.

D. Recommendations

No recommendation as this agenda item is fulfilling Board direction.

E. Timing

The initial reporting period was for May 1, 2003 to July 31, 2003. It took a while to prepare the initial report. With the Board's concurrence, we will combine the reporting period August 1 through December 31, 2003 into a single report for January 2004.

IV. IMPLEMENTATION

The County Administration office will continue to fulfill the direction of the Board as specified in the Board Order.

V. ATTACHMENTS

- A. Board Order 03-7-21-1.
- B. Department Report Form.
- C. Memorandum from the Sheriff dated October 16, 2003.
- D. Correspondence from Gordon Smith, United States Senator, dated October 3, 2003.
- E. Correspondence from Hardy Myers, Oregon Attorney General, dated August 4, 2003.

PASSED

IN THE BOARD OF COUNTY COMMISSIONERS
OF LANE COUNTY, OREGON

ORDER NO. 03-7-2-1

) IN THE MATTER OF LANE COUNTY, OREGON
) DEFENDING THE BILL OF RIGHTS AND CIVIL
) LIBERTIES WITH RESPECT TO THE USA PATRIOT ACT

WHEREAS, Lane County has a long and distinguished tradition of protecting the civil rights and liberties for all its residents as expressed in the United States and the Oregon Constitution; and

~~WHEREAS, Lane County has a diverse population, including immigrants, students and working people, whose contributions to the community are vital to its character and function; and~~

WHEREAS, Lane County reaffirms its support of the U.S. Constitution and the Oregon Constitution; and

WHEREAS, Lane County's Diversity Statement contained in LM 2.390 states the County policy of respecting and valuing differences, such as those based on ethnicity, language, and race, as well as respecting each individual's right to privacy in areas such as religious faith, political beliefs, and association; and

WHEREAS, in our opinion, several new federal laws, regulations and executive orders issued since September 11, 2001, including the adoption of certain provisions of the U.S.A. P.A.T.R.I.O.T. Act (Public Law 107-56, hereafter UPA) and the Homeland Security Act (Public Law 107-296) now threaten this local policy, as well as our constitutional rights and liberties, including:

- a. Freedom of speech, association, and religion,
- b. Right to privacy,
- c. Right to counsel and due process in judicial proceedings,
- d. Right to equal protection before the law,
- e. Protection from unreasonable searches and seizures; and

WHEREAS, federal, state and local governments need to protect the public from terrorist attacks such as those that occurred on September 11, 2001. Governments have an obligation to do so in a rational and deliberative fashion to ensure any new security measures enhance public safety without impairing Constitutional guarantees, or infringing on civil liberties; and

WHEREAS, in our opinion, federal policies adopted since September 11, 2001, including provisions in the UPA and related executive orders, regulations and actions threaten fundamental rights and liberties by:

- a. authorizing the indefinite incarceration of non-citizens based on mere suspicion (UPA, sections 411 and 412), and the indefinite incarceration of citizens designated by the President as "enemy combatants" without access to counsel or meaningful recourse to the federal courts (White House Order June 9, 2002; Department of Defense Report October 2, 2002),
- b. establishing secret military tribunals for terrorism suspects, without judicial oversight or Constitutional safeguards (Military Order, November 13, 2001),
- c. permitting wiretapping of conversations between federal prisoners and their attorneys (28 CFR 501.3),
- d. limiting disclosure of public documents and records under the Freedom of Information Act ("Memorandum for Heads of all Federal Departments and Agencies," Attorney General John Ashcroft, October 12, 2001),
- e. permitting the use the secret Foreign Intelligence Courts to oversee law enforcement use of electronic surveillance in anti-terrorism investigations and in ordinary criminal investigations (UPA, section 216),

f. expanding the authority of federal agents under the secrecy of Foreign Intelligence Courts to conduct so-called "sneak and peek" or "black bag" searches, in which the subject of the search warrant is unaware that his property has been searched for citizens and non-citizens alike. (UPA, section 213),

g. granting law enforcement and intelligence agencies broad access to personal medical, financial, library and education records with little if any judicial oversight (UPA, sections 215, 218, 358 and 508),

h. chilling constitutionally protected speech through overbroad definitions of "terrorism", which include protests and other political demonstrations (UPA, section 411),

~~i. driving a wedge between immigrant communities and the police that protect them~~
by encouraging involvement of state and local police in enforcement of federal immigration law (Public Law 107-296, Title VIII, Subtitle I: Homeland Security Information Sharing Act; Department of Justice Legal Opinion April 10, 2002),

j. permitting the FBI to conduct surveillance of religious services, Internet chatrooms, political demonstrations, and other public meetings of any kind without having any evidence that a crime has been or may be committed (UPA, sections 203 and 901 and Attorney General's Investigative Guidelines promulgated in May, 2002),

k. eliminating many safeguards designed to prevent the potential for broad dissemination of unsubstantiated, incorrect or inappropriate information via law enforcement (Public Law 107-296, section 202; Department of Justice Rule amending 28 CFR Part 16 Privacy Act of 1974, March 24, 2003),

l. allowing the Attorney General to override court decisions granting bond to immigrants seeking asylum, by requiring most immigrants to be jailed indefinitely without bond when "national security" risks exist (Interim Decision #3488, from John Ashcroft April 17, 2003),

m. failing to ensure the accuracy of National Crime Information Center (NCIC) records (Department of Justice Order issued March 24, 2003, amending 28 CFR part 16, Privacy Act of 1974),

n. granting the Attorney General broad discretion to determine which political and religious organizations are "terrorist organizations", with no judicial or congressional oversight; (Executive Order 13224); and

WHEREAS, we believe that new legislation has been drafted by the Administration currently entitled the Domestic Security Enhancement Act (DSEA) (also known as PATRIOT II) which contains a multitude of new and sweeping law enforcement and intelligence gathering powers, many of which are not related to terrorism, that would severely dilute, if not undermine, many basic constitutional rights, as well as disturb our unique system of checks and balances by:

a. diminishing personal privacy by removing important checks on government surveillance authority,

b. reducing the accountability of government to the public by increasing government secrecy,

c. expanding the definition of "terrorism" in a manner that threatens the constitutionally protected rights of Americans,

d. seriously eroding the right of all persons to due process of law; and

WHEREAS, we believe that these new powers pose a particular threat to the civil rights and liberties of the residents of our county who are Arab, Muslim, or of South Asian descent; and

WHEREAS, more than 130 communities throughout the country, and three states have enacted resolutions reaffirming support for civil rights and civil liberties in the face of government policies that threaten these values, and demanding accountability from law enforcement agencies regarding their use of these new powers; and

WHEREAS, the citizens of Lane County want their commissioners and government to take a stand affirming the civil liberties and human rights of its residents,

NOW, THEREFORE IT IS HEREBY ORDERED AS FOLLOWS:

1. The County Administrator is directed every three months to compile from each County Department a list of all contacts, requests for assistance, requests for information, and any other communication from any federal agency, or on behalf of any federal agency, under the auspices of enforcing any of the provisions mentioned in the body of this Order. The information shall be disclosed to the fullest extent permissible by law. The information to be compiled includes but is not limited to:

- a. The number of any detainees connected with "terrorism" investigations;
- b. The names of any detainees connected with "terrorism" investigations;
- c. The charges, if any, lodged against each above mentioned detainee;
- d. The number of times federal authorities contacted any department in furtherance of monitoring political meetings, religious gatherings or other similar activities;
- e. The number of times education records have been requested or obtained from public schools and institutions of higher learning in Lane County under section 507 of the UPA, and
- f. The number of times library records have been requested or obtained from libraries in Lane County under section 215 of UPA
- g. The number of times records of books purchased by store patrons have been requested or obtained from bookstores in Lane County under section 215 of UPA.

2. The County Administrator shall request a report from the Lane County Sheriff disclosing, to the extent permitted by law, any incidents within the past year in which he has been requested by federal authorities to take part in enforcement or furtherance of the above-listed statutes, regulations, and orders. The County Administrator shall request updated information every three months. The information requested by the County Administrator will include, but will not be limited to, the following:

- a. information regarding "sneak and peak" searches, that is, searches without either advance warning or prompt notification following a search, pursuant to Section 213 of the UPA,
- b. information regarding military tribunals involving Lane County residents;
- c. information regarding requests to obtain library, educational, and bookstore purchase records in connection with an investigation of suspected terrorist activity;
- d. information regarding the involvement of Sheriff's deputies in the investigation of immigration offenses;
- e. information regarding surveillance of religious services, internet chat-rooms, political demonstrations, or other public meetings in connection with an investigation of suspected terrorist activity.

3. The County Administrator shall advise the Board and the Lane County Human Rights Advisory Committee of the results of his inquiries within three months of the date of this Order, and every three months for as long as federal laws and orders specified in this resolution remain in place.

4. The Sheriff is further requested to advise the Board of how his Department complies with ORS 181.850 and 181.575, including providing copies of any applicable written procedures.

5. All county agencies are directed not to use county funds in any manner which would violate the civil liberties of Lane County residents, as outlined in this resolution. No contract or agreement for any service will be approved by the Board if the terms of the contract or agreement

is for the purpose of conducting any activities under the provisions of Federal law mentioned in the body of this Order in a manner that would violate the civil liberties of Lane County residents.

6. The County Administrator is directed to transmit a copy of this Order to Senator Ron Wyden, Senator Gordon Smith, and Representative Peter DeFazio, accompanied by letters, urging them to:

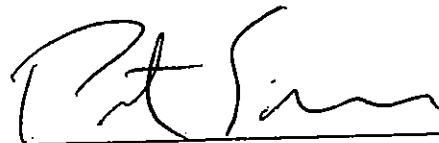
- a. monitor federal anti-terrorism tactics,
- b. work to repeal the UPA, Homeland Security and other laws and regulations that infringe on civil rights and liberties,
- c. ensure that provisions of the UPA "sunset" in accordance with the provisions of the Act, and
- d. take a lead in Congressional action to prohibit passage of the Domestic Security Enhancement Act, known as "Patriot II" and/or any other new legislation that performs similar assaults on privacy, due process, increased government secrecy, and the checks and balances in government.

7. The County Administrator is directed to transmit a copy of this Order to Governor Kulongoski, Oregon Attorney General Hardy Meyers and appropriate members of the State Legislature, accompanied by letters urging them to ensure the state does not weaken in any way ORS 181.850 or ORS 181.575, urging them to ensure that any policies implemented by the Legislature do not infringe on civil liberties as described in this Order, and urging them to take a public stand supporting a statewide resolution prohibiting the expenditure of state funds in support of the federal laws, regulations and policies described in this Order.

8. The County Administrator is directed to transmit a copy of this Order to President George W. Bush and U.S. Attorney General John D. Ashcroft.

9. The provisions of this Order shall be severable, and if any phrase, clause, sentence or provision of this Order is declared by a court of competent jurisdiction to be contrary to the Constitution of the United States or of the State of Oregon or the applicability thereof to any agency, person, or circumstances is held invalid, the validity of the remainder of this Order and the applicability thereof to any other agency, person or circumstances shall not be affected thereby.

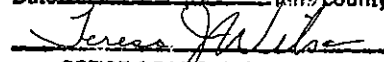
DATED this 2nd day of July, 2003.



Peter Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 7/2/03 Lane County


OFFICE OF LEGAL COUNSEL



DEPARTMENT OF JUSTICE

1162 Court Street NE
Justice Building
Salem, Oregon 97301-4096
Telephone: (503) 378-4400
TTY: (503) 378-5938

August 4, 2003

Honorable Peter Sorenson
Chair, Lane County Board of Commissioners
Public Service Building
125 E. Eighth Avenue
Eugene, OR 97401

RE: Lane County Order No. 03-7-2-1

Dear Chair Sorenson:

County Administrator William Van Vactor recently forwarded a copy of Order No. 03-7-2-1, which addresses the County's position on civil liberties with respect to the USA Patriot Act. Mr. Van Vactor's correspondence further urges me to ensure no weakening of ORS 181.850 and ORS 181.575. Finally, the letter requests that I support a statewide resolution prohibiting expenditure of state funds in support of the actions detailed in the Lane County Order.

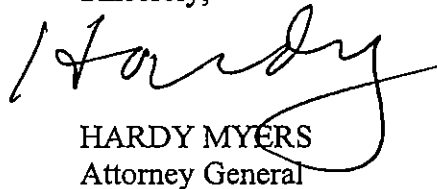
During the course of the 2003 Legislative session I have worked closely with members of the Assembly and the Governor to help preserve the protections afforded by ORS 181.850 and ORS 181.575. I opposed any change to ORS 181.575. The Legislature passed House Bill 2089, amending ORS 181.850. During the development of this concept, Deputy Attorney General Pete Shepherd took the lead role in negotiations between the law enforcement agencies, the ACLU and other advocate groups, and Governor Kulongoski. The resulting bill is one that all groups agreed did not weaken the protection of ORS 181.850.

I assure you that the resources of the Oregon Department of Justice will not be used in a manner inconsistent with Oregon law or the state Constitution. Further, the Department of Justice will advise all agencies who consult us to adhere to Oregon statutes and the Oregon Constitution.

Commissioner Peter Sorenson
August 4, 2003
Page 2

Thank you for alerting me to the action of the Lane County Board of Commissioners. Please let me know if the Board takes any further action.

Sincerely,

A handwritten signature in black ink that reads "Hardy". The signature is written in a cursive style with a large, sweeping flourish at the end.

HARDY MYERS
Attorney General

Enclosure

cc. Commissioner Tom Lininger
Commissioner Anna Morrison
Commissioner Bobby Green
Commissioner Bill Dwyer
William Van Vactor, County Administrator

AGS12748.DOC

GORDON H. SMITH
OREGON

COMMITTEES:
FINANCE

29 2003
United States Senate

WASHINGTON, DC 20510-3704

October 3, 2003

COMMERCE, SCIENCE, AND TRANSPORTATION
ENERGY AND NATURAL RESOURCES
RULES AND ADMINISTRATION
INDIAN AFFAIRS
SPECIAL COMMITTEE ON AGING

Mr. William Van Vactor
Lane County Public Service Building
125 E 8th Ave.
Eugene, OR-97401

Dear Friend:

Thank you for contacting my office regarding the Patriot Act. I appreciate your concerns and welcome the opportunity to respond.

As you know, the Congress voted overwhelmingly to pass the Patriot Act in response to the terrorist attacks of September 11, 2001. The bill was signed into law by President Bush in October of 2001. The legislation contained provisions to help the government protect the American people and prevent terrorists from unleashing more death and destruction on our soil. We have used this law to save innocent American lives.

Among other things, the Patriot Act provides financial assistance to victims of terrorist attacks, increased benefits for public safety workers, increased staffing and overtime pay for border enforcement employees, funding for training, and resources to study critical infrastructure. Armed with these tools provided by the Patriot Act, the men and women of law enforcement have dedicated themselves to protecting American citizens and the memory of those who lost their lives on September 11th.

I understand your concerns that any proposed anti-terrorism legislation protect our civil liberties and the Constitution. You can rest assured that I will fight against any legislation that would unnecessarily encroach on our freedoms.

Warm regards,



Gordon H. Smith
United States Senate

GHS:JN

REPORTING PER PATRIOT "ACT" RESOLUTION

Having said that, I have in excess of 30 years experience working with a multitude of law enforcement and justice agencies in Lane County, including the Federal Bureau of Investigation and the United States Attorney's Office. We in Lane County have had excellent working relationships, information sharing, mutual appreciation for each others working constraints and parameters and, finally, support. I believe our relationships and professionalism are unexcelled by any other region of the United States. That speaks well for the public safety interests of Lane County citizens.

I will be pleased to respond to any inquires, individually or corporately.

MEMORANDUM
LANE COUNTY SHERIFF'S OFFICE
Office of the Sheriff



TO: Board of County Commissioners
FROM: Sheriff Clements
DATE: October 16, 2003
SUBJECT: REPORTING PER THE "PATRIOT ACT" RESOLUTION –
ORDER NO. 03-7-2-1

As you have been informed, the issue of the reporting directive per the Board's Resolution is somewhat problematic. I am hopeful that with a discussion of the issue and an alternative suggestion, your need for accountability and the equally important concerns of public safety may be fully addressed.

After September 11, 2001, one of many findings was the fact that federal agencies had suffered from inadequate sharing of information among themselves and that there was no mechanism for sharing the same information with local agencies. One of the provisions of the Patriot Act is to compel the sharing of information generally and specifically provides for a nationwide framework facilitating the transmittal of information to local law enforcement agencies.

The Sheriff's Office presently has two members who have gained a "Secret Level" clearance, which provides for the aforementioned cooperation. In some cases, compliance with the reporting "directive" and/or "request" could be illegal. In other cases, it could jeopardize the relationship with federal agencies and thus the information flow. The consequences to the public safety interests of Lane County citizens might be profound.

I am sworn to uphold the United States and Oregon constitutions. As such, I take very seriously the civil liberties and protections afforded our citizens by those documents. At the same time I am elected for the express purpose of administering an office whose sworn duty it is to enforce the laws. The practical consequence is a tightrope walk requiring knowledge, wisdom and good judgment. The proper arbiters of said decision-making are the courts.

To address your concerns, I can fully support reporting to you (by exception) any instance of the inappropriate abridgement of civil liberties and protections of Lane County citizens, residents or visitors. I will work on a further refinement of our communication medium and parameters if you are in agreement with the concept.

Lane County Order 03-7-2-1

Summary of Lane County's Position on Civil Liberties with Respect to the USA Patriot Act

Reporting Period: May 1, 2003 - July 31, 2003	Number of Detainees connected with "terrorism" investigations	Names of any detainees connected with "terrorism" investigations	Charges, if any, lodged against each detainee	Number of times federal authorities contacted any department (up furtherance of monitoring political institutions of similar activities	Number of times education records have been requested or obtained from public schools or institutions of higher learning under the County under section 507.010 UPA	Number of times library records have been requested or obtained from libraries under County under section 215.010 UPA	Number of times records of books purchased by state patrons have been requested or obtained from book stores in Lane County under section 215.010 UPA
Assessment & Taxation Contact: Jim Gangle	0	0	0	0	0	0	0
BCC Contact: Bill VanVactor	0	0	0	0	0	0	0
Children & Families Contact: Alicia Hays	0	0	0	0	0	0	0
County Administration Contact: John Arnold	0	0	0	0	0	0	0
County Counsel Contact: Teresa Wilson	0	0	0	0	0	0	0
District Attorneys Contact: Doug Harclerod	0	0	0	0	0	0	0
Health & Human Services Contact: Rob Rockstroh	0	0	0	0	0	0	0
Information Services Contact: Tony Black	0	0	0	0	0	0	0
Management Services Contact: David Suchart	0	0	0	0	0	0	0
Public Works Contact: Ollie Snowden	0	0	0	0	0	0	0
RIS Contact: Paul White	0	0	0	0	0	0	0
Youth Services Contact: Lisa Smith	0	0	0	0	0	0	0
Workforce Partnership Contact: Chuck Forster	0	0	0	0	0	0	0