

W-5.a.

# SUPPLEMENTAL MATERIAL

Page 1 of 3

**WILSON Teresa J**

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**From:** Hope Marston [hmarston@epud.net]  
**Sent:** Tuesday, July 01, 2003 8:27 AM  
**To:** Bill J. Dwyer; Bobby Green; Anna Morrison; Tom Lininger; Pete Sorenson; Teresa Wilson; Leslie Scott; Charlie Larson; Human Rights Commission; YERGAN Laura; Leslie Scott; rwallace@ci.springfield.or.us; Bhavani Manheim; lcarthrum@hystersales.com; shinesfo@aol.com; tleary@sps.lane.edu; godzillabuns@aol.com; Wfreemanjr@hotmail.com; BLACK Sarita R; juliarortiz@yahoo.com; tworottz@earthlink.net; Mark Lindberg; SLRmermaid@aol.com; CLARKE Serafina M; james mattiace; bcox@scslaw.org; Emlee.Lassiter@co.lane.or.us; Beebee.L.HEAD@co.lane.or.us; Greta.Utecht@co.lane.or.us; Loretta.Careccia@co.lane.or.us; Jay.Standard@co.lane.or.us; cgibons@ci.springfield.or.us; Charlene.A.Mauch@ci.eugene.or.us; klenoral1@yahoo.com; admiralnicky@yahoo.com; jjjscott@comcast.net; larsrios@continent.com; JamesDean JamesDean; francisca.e.johnson@ci.eugene.or.us; greg.s.rikhoff@ci.eugene.or.us

**Subject:** Resolution

Dear Board of Commissioners:

Attached, please find a modified resolution, based on the resolution given to you by County Counsel Teresa Wilson in your Commission packet for July 2.

Teresa and I have been in communication (email below and on the phone), discussing my few concerns about the resolution. She agrees that the language suggested is not contrary to county law. We agreed it would be easiest for you to see these changes in the same format she used to create the resolution in your packet -- so you'll notice the resolution looks nearly identical to hers. The Lane County Bill of Rights Defense Committee changed a few words and underlined the changes. According to Teresa, some of the changes suggested (such as in paragraph 7) are important clarifications, and others (such as the reporting requirements) are political decisions you will make as a Board.

I urge you to put the reporting requirements in place, as those are crucial in order to shine light on how our county is being affected by these federal laws over a period of time. To merely take a snapshot of activity to date will not provide the openness necessary for our democratic process. As Judge Damon Keith said in a recent decision regarding detainees, "Democracies die behind closed doors."

Below is my message to Teresa outlining the context of each of these changes. Also attached is a form Nancy Talanian from the Bill of Rights Defense Committee created to help counties with the reporting requirements so they are not an excessive burden on county staff. Please give feedback about whether this document is useful.

Thank you for your consideration of this resolution. Please do your utmost to pass it in its entirety.

Thank you.  
Hope Marston

*Hope Marston*  
*Lane County Bill of Rights Defense Committee*  
<http://www.lanerights.org>  
[hmarston@epud.net](mailto:hmarston@epud.net)  
541 683-5634

-----Original Message-----

**From:** Hope Marston [mailto:hmarston@epud.net]  
**Sent:** Monday, June 30, 2003 1:37 PM  
**To:** Teresa Wilson  
**Subject:** resolution

Teresa:

7/1/2003

I'm going to call you in a few minutes, but wanted you to have this in front of you as well. Some of these are small notations -- others are significant.

1. Does the Board meet in Executive Session on Wednesday, when it does its work session on the resolution? On the agenda, it says "Executive Session" and then the next item is the resolution.

2. It would be helpful if we substitute "130" for "100" in naming how many communities have adopted resolutions. Since we wrote the resolution, at least 30 more governments have signed on, and there are now 3 state resolutions. It would be helpful to acknowledge that in the resolution. The language could read:

"Whereas more than 130 other 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..."

3. When I spoke with Charlie Larson and Leslie Scott of the Lane County Human Rights Advisory Committee, they suggested the language that appeared in our original resolution just before all the "Now therefores." It follows the "Whereas more than 130 communities..." statement.

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

If this can be added easily to the resolution, that would be great, because we wanted the input from our endorsers (one of which was the LCHRAC) to be included in the resolution.

4. Dave Fidanque from the ACLU noticed some poor wording in our draft regarding the 181 laws. You can check for yourself and see that paragraph 7 on page 4 leads one to think that we're prohibiting county agencies from obeying the 181 laws -- which is far from our intention. Just our own poor wording.

Dave suggests the following language instead:

7. The County Administrator is directed to transmit a copy of this Order to Governor Kulongoski, 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.

5. We had a paragraph in the resolution Brian Michaels brought to you recently that took out all the language regarding the sheriff (as it is problematic), replacing it with the following paragraph:

"No contract or agreement for any service will be approved by the Board if the terms of the contract or agreement are for furtherance of any of the provisions of Federal law mentioned in the body of this Resolution." This paragraph could dovetail with the sentence already in existence in paragraph # 5 on page 4 as follows:

"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. Further, no contract or agreement for any service will be approved by the Board if the terms of the contract or agreement are for the furtherance of any of the provisions of Federal law mentioned in the body of this resolution."

6. Under # 3 on page 4, it says, "The County Administrator shall advise the Board of the results of his inquiries within two months of the date of this Order." We would prefer this be an ongoing report, so that the County Administrator advises the Board and the Lane County Human Rights Advisory Committee. When I spoke with Charlie Larson and Leslie Scott, they said it should happen every three months instead of every two months, in order to meet with typical county reporting requirements.

"The County Administrator shall advise the Board of the results of his inquiries within three months of the date of this Order, and continuing every three months for as long as federal laws specified in this resolution

remain in place."

I also gave Bobby Green a reporting document, which was created by Nancy Talanian at the national Bill of Rights Defense Committee office for ease of county reporting. I attach it here, in case it might either be modified, or used as-is by Lane County.

7. Related to the previous issue -- under # 1 and # 3, rather than a snapshot of how often the federal government is \*currently\* asking for assistance, we'd prefer an ongoing reporting so that the public can be aware of what is happening tomorrow, and in the future. We recognize that not many orders have probably occurred yet -- we want to ward against future occurrences.

1. "The County Administrator is directed to determine how the new federal powers are being used in Lane County and how they are affecting Lane County residents by making the following inquiries: The County Administrator shall determine every three months if any information listed below is held by County departments. The County Administrator shall also request every three months, the following information from the U.S. Attorney for the District of Oregon and the Special Agent in Charge of the Eugene field office:..."

2. The County Administrator shall also request a report from the Lane County Sheriff of any incidents within the past year, and request a similar report every three months, in which the Sheriff has been requested by federal authorities to perform or assist in the following:..."

I'm attaching our revised resolution with the contract language included and the repair of language in paragraph # 7, in case it helps to have it in front of you. If it would help, I could convert it to county language, as you did in the resolution you drafted.

Thanks so much for all your attention to this. Please thank others on the County Staff who have helped.

Thank you.  
Hope

*Hope Marston*  
*Lane County Bill of Rights Defense Committee*  
<http://www.lanerights.org>  
[hmarston@epud.net](mailto:hmarston@epud.net)  
541 683-5634

IN THE BOARD OF COUNTY COMMISSIONERS  
OF LANE COUNTY, OREGON

ORDER NO. 03-7-2

) 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 Edict for Increased Surveillance of Religious and Political Organizations),

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 to determine every three months how the new federal powers are being used in Lane County and how they are affecting Lane County residents by making the following inquiries: The County Administrator shall determine if any information listed below is held by County departments. The County Administrator shall also request, every three months, the following information from the U.S. Attorney for the District of Oregon and the Special Agent in Charge of the Eugene field office:

- 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 name of counsel, if any, representing each detainee,
- e. The number of search warrants that have been executed in Lane County without prompt notice to the subject of the warrant after completion of the search, pursuant to section 213 of UPA,
- f. The extent of electronic surveillance carried out in Lane County under powers granted in UPA,
- g. The number of times federal authorities have monitored political meetings, religious gatherings or other such activities within Lane County,
- h. The number of times education records have been obtained from public schools and institutions of higher learning in Lane County under section 507 of UPA,
- i. The number of times library records have been obtained from libraries in Lane County under section 215 of UPA,
- j. The number of times that records of the books purchased by store patrons have been obtained from bookstores in Lane County under section 215 of UPA, and
- k. The number and details of subpoenas issued to Lane County residents through the United States Attorney's Office without the approval or knowledge of the United States District Court for the State of Oregon.

2. The County Administrator shall also request a report from the Lane County Sheriff of any incidents within the past year in which he has been requested by federal authorities to perform or assist in the following, and request updated information every three months:

- a. wiretapping without a local judge's order,
- b. "sneak and peek" searches, that is searches without either advance warning or prompt notification following a search, of County residents,
- c. conducting covert counter-intelligence on County residents, without the approval of a local Court,
- d. assisting in any aspect of military tribunals for Lane County residents,
- e. obtaining library, educational, financial, medical or bookstore purchase records without judicial oversight and without evidence of a crime,
- f. performing duties of Immigration and Naturalization Services agents such as questioning residents about their immigration status, without evidence that a crime has been or may be committed, and
- g. conducting surveillance of religious services, Internet chat-rooms, political demonstrations, or other public meetings of any kind without sufficient evidence a crime has been or may be committed, and without a search warrant obtained from a local Court.

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 are for furtherance of any of the provisions of Federal law mentioned in the body of this Resolution.

6. The County Administrator is directed to transmit a copy of this Order to Senator Ron Wyden, Senator Gordon Smith, and Congressperson 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, 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 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 \_\_\_\_\_ day of July, 2003.

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Peter Sorenson, Chair  
Lane County Board of Commissioners