



Packet Related Material

Memo
Agenda
Calendar

Notices and Agendas:

None

Legislation for Discussion at the Committee of the Whole:

Ord 03-16 To Amend Title 15 of the Bloomington Municipal Code Entitled "Vehicles And Traffic" (Amending the University Proximate Residential Neighborhood Permit Parking Program by Establishing Zones 5, 6, and 7 in the Old Northeast Downtown Neighborhood)

(Please see the June 13th packet for the summary, legislation, and background materials)

Contact: James McNamara at 349-3406 or mcnamarj@city.bloomington.in.us

Legislation and Background Material for Final Action at the Special Session:

Res 03-10 Resolution Regarding Threats to Fundamental Rights and Liberties Emanating from the USA Patriot Act, Proposals to Extend Portions of the Act and Adopt the Domestic Security Enhancement Act (Patriot II), and Certain Executive Orders and Other Federal Actions

- Summary of the USA Patriot Act and the Proposed Domestic Security Enhancement Act ('Patriot II') Provided by Prof. Fred Cate; H-T Interview with Prof. Cate

Contact: Sponsors of the Resolution (in alphabetical order):

Chris Gaal at 349-3409 or gaalc@city.bloomington.in.us

Dave Rollo at 349-3409 or rollod@city.bloomington.in.us

Memo

Chair of Committee of the Whole Meeting: Ruff

Committee of the Whole Followed by Special Session on Wednesday, June 25th

There are two meetings next week. The first meeting is a Committee of the Whole to discuss an ordinance (**Ord 03-16**) to divide the zone 4 residential parking zone into four zones and increase the fees for annual permits from \$10 to \$15. (*The information for that item can be found in the June 13th packet.*) And, the second meeting is a Special Session to consider a resolution (**Res 03-10**) opposing the USA Patriot Act I, the proposed Domestic Security Enhancement Act (Patriot II), and executive orders and other federal actions that unnecessarily undermine fundamental rights and civil liberties. (*The information for that item can be found below and the materials that follow.*)

Resolution Regarding Threats to Fundamental Rights and Liberties Emanating from the USA Patriot Act, Proposals to Extend Portions of the Act and Adopt the Domestic Security Enhancement Act (Patriot II), and Certain Executive Orders and Other Federal Actions

Res 03-10 is sponsored by Councilmembers Gaal and Rollo and opposes some of the federal response to the terrorist attacks on September 11, 2001 that threaten fundamental rights and liberties. They are bringing this resolution forward, in part, because Bloomington is a community where citizens of many nations live and contribute to our well-being and prosperity.

This resolution elaborates upon how the USA Patriot Act, the proposals to extend portions of it and to adopt what is known as 'Patriot II,' and certain Executive Orders and other federal actions taken in the name of national security threaten fundamental rights and liberties guaranteed to all persons living in the United States. It then calls upon local officials and private individuals to respect these fundamental rights and liberties; calls upon the President and his Attorney General to disclose their activities exercised under these new powers and to provide due process for the detainees; urges our Congressional delegation to repeal existing authority and legislation and not adopt proposed legislation that limit fundamental rights and liberties; and, directs the City Clerk to mail the signed resolution to local, state, and federal officials.

Professor Cate of the IU School of Law helped the sponsors prepare this version of the resolution. As an overall theme, it rejects the notion that civil liberties must inevitably suffer in the pursuit of national security and asserts that we, as a nation, can and must both defend ourselves against acts of terrorism and protect fundamental rights and liberties. As Prof. Cate mentions in background material, the federal response to terrorism not only infringes upon the privacy of individuals, but also removes governmental actions from immediate oversight and shrouds them in secrecy. This response "contributes to reversing the longstanding constitutional presumption that the public should easily be able to monitor government activities, but the government should have to meet a high burden before monitoring individuals." The reversal of this constitutional presumption and the removal of the usual short and long-term checks and balances not only can lead to the abuse of power by those who exercise it, but also deprives the citizens of the power to make good decisions about the ultimate effectiveness of this response to terrorism.

Please refer to the resolution for an elaboration of the threats to our fundamental rights and liberties posed by these federal actions.

Happy Birthday Dr. Pizzo!

**NOTICE AND AGENDA
BLOOMINGTON COMMON COUNCIL
COMMITTEE OF THE WHOLE AND SPECIAL SESSION
7:30 P.M., WEDNESDAY, JUNE 25, 2003
COUNCIL CHAMBERS
SHOWERS CENTER, 401 N. MORTON**

COMMITTEE OF THE WHOLE

Chair: Andy Ruff

1. Ordinance 03-16 To Amend Title 15 of The Bloomington Municipal Code Entitled “Vehicles and Traffic” (Amending the University Proximate Residential Neighborhood Permit Parking Program by Establishing Zones 5, 6, and 7 in the Old Northeast Downtown Neighborhood and Adjusting Permit Fees)

Asked to Attend: James McNamara, Deputy Mayor

ADJOURN *(and immediately reconvene for the following meeting)*

SPECIAL SESSION

I. ROLL CALL

II. AGENDA SUMMATION

1. Resolution 03-10 Resolution Regarding Threats to Fundamental Rights and Liberties Emanating from the USA Patriot Act, Proposals to Extend Portions of the Act and Adopt the Domestic Security Enhancement Act (Patriot II), and Certain Executive Orders and Other Federal Actions

Sponsors: Council Members Chris Gaal and Dave Rollo

III. ADJOURN

City of
Bloomington
Indiana

City Hall
401 N. Morton St.
Post Office Box 100
Bloomington, Indiana 47402



Office of the Common Council
(812) 349-3409
Fax: (812) 349-3570
email: council@city.bloomington.in.us

To: Council Members
From: Council Office
Re: Calendar for the Week of
June 23, 2003 – June 28, 2003
Date: June 20, 2003

Monday, June 23, 2003

6:30 pm Master Gardeners of Bloomington/Monroe County, Kelly

Tuesday, June 24, 2003

11:00 am Broadview Neighborhood Plan, McCloskey
12:00 pm Council of Neighborhood Associations, Kelly
4:00 pm Board of Park Commissioners, Council Chambers
5:30 pm Public Transportation Corporation Board, Transit Center – 130 W. Grimes Ln.

Wednesday, June 25, 2003

12:00 pm Council of Neighborhood Associations, Kelly
5:30 pm Traffic Commission Meeting, Council Chambers
6:30 pm Metropolitan Planning Organization – Citizen Advisory Committee, McCloskey
7:00 pm Common Council Meeting – Committee of the Whole and Special Session, Chambers

Thursday, June 26, 2003

5:30 pm Board of Zoning Appeals, Council Chambers
5:45 pm Dr. Martin Luther King, Jr. Birthday Commission, Hooker Room
7:00 pm Environmental Commission, McCloskey

Friday, June 27, 2003

11:00 am Bloomington Industrial Development Advisory Commission, Hooker Room
11:00 am Council for Community Accessibility Committee, Kelly
12:00 pm Economic Development Commission, Hooker Room

Saturday, June 28, 2003

7:00 am Bloomington Community Farmers' Market, Showers Parking Lot

Happy Birthday, Dr. Tony Pizzo!

RESOLUTION 03-10

Resolution Regarding Threats to Fundamental Rights and Liberties Emanating from the USA Patriot Act, Proposals to Extend Portions of the Act and Adopt the Domestic Security Enhancement Act (Patriot II), and Certain Executive Orders and Other Federal Actions

- WHEREAS, the City of Bloomington is home to a diverse population, including both citizens and non-citizens;
- WHEREAS, the U.S. Constitution and the Bill of Rights guarantee to all persons living in the United States fundamental rights, including freedom of religion, expression, and assembly; protection from unreasonable searches and seizures; due process and equal protection under the law; the presumption of innocence; access to counsel in judicial proceedings; and a fair, speedy, and public trial;
- WHEREAS, these precious rights are threatened by the USA PATRIOT Act, the proposed Domestic Security Enhancement Act (PATRIOT II), and Executive Orders other actions affecting civil liberties;
- WHEREAS, those threats to constitutionally protected rights by the USA Patriot Act include:
- allowing federal investigators more readily to obtain court orders for “roving wiretaps” that allow the federal government to tap any phone a suspected terrorist might use;
 - permitting federal intelligence officers to share with criminal investigators grand jury, wiretap, and other information without judicial oversight;
 - broadening the scope of the government’s ability to search for and seize stored communications, such as voice mail and e-mail messages, under an ordinary warrant rather than a wiretap order;
 - enlarging the authority of law enforcement to install “pen register” and “trap and trace” devices without a warrant, and specifying that those devices can be used with Internet communications, all with limited judicial oversight;
 - expanding the list of crimes that may be used as predicates for wiretaps;
 - granting the FBI broad access to sensitive medical, mental health, financial and educational records about individuals without a court order (probable cause);
 - expanding the government’s ability to conduct secret searches;
 - permitting the U.S. Attorney General to indefinitely detain or deport non-citizens even if they have not committed a crime; and
 - giving the U.S. Attorney General and the Secretary of State the authority to designate domestic groups as “terrorist organizations” without the opportunity for judicial review;
- WHEREAS, examples of infringements by federal Executive Orders and other actions on these and other rights guaranteed by the Constitution are numerous and include:
- establishing secret military tribunals for terrorism suspects;
 - holding prisoners from the war in Afghanistan more than a year after the end of that military action without charging them or permitting them to consult counsel or diplomatic officials;
 - detaining non-citizens legally present in the United States in secret, without charging them or permitting them to consult counsel or diplomatic officials;
 - deporting legally resident non-citizens or denying them re-entry with no legal grounds or for trivial violations;
 - permitting wiretapping of conversations between federal prisoners and their lawyers;
 - weakening Justice Department regulations against covert, illegal counter-intelligence operations by the FBI that in the past targeted domestic groups and individuals;
 - limiting the disclosure of public documents under the Freedom of Information Act;
 - closing immigration proceedings to public scrutiny; and
 - refusing to report to Congress as required by law;

WHEREAS, constitutionally protected rights are further threatened by proposals to eliminate the sunset provisions included in the USA PATRIOT ACT and to adopt the draft Domestic Security Enhancement Act (PATRIOT II);

WHEREAS, the City of Bloomington believes that protecting liberty is essential to maintaining national security and that these infringements are not necessary to ensure the public's safety and weaken, rather than strengthen, this nation;

WHEREAS, the City of Bloomington has a tradition of inclusion and extending protections to all residents as embodied in its Human Rights Ordinance; and

WHEREAS, the City of Bloomington believes that it is fitting to honor the memory of all those who died or were injured as a result of the September 11, 2001 terrorist attacks, not only by protecting national security and defending against terrorist attacks, but also by defending the fundamental constitutional freedoms and protections guaranteed to all persons living in the United States;

NOW, THEREFORE, THE COMMON COUNCIL OF THE CITY OF BLOOMINGTON, MONROE COUNTY, INDIANA,

RESOLVES that we affirm the rights of all people within the City of Bloomington – including United States citizens and citizens of other nations – in accordance with the U.S. Constitution;

FURTHER RESOLVES that we call upon all city officials and employees to respect the civil rights and liberties of all members of this community, including those who are citizens of other nations;

FURTHER RESOLVES that we call upon all private citizens – including residents, employers, educators, and business owners – to demonstrate similar respect for civil rights and civil liberties, especially but not limited to conditions of employment and cooperation with investigations;

FURTHER RESOLVES that we call upon the President and the Attorney General to report to Congress and, whenever appropriate, to citizens the extent and manner in which they have acted under the USA PATRIOT ACT and counter-terrorism Executive Orders and disclose the names of all detainees, and expeditiously to release them, repatriate them, or bring them to trial before a court constituted under Article III of the U.S. Constitution;

FURTHER RESOLVES that we urge our congressional delegation to work to repeal those sections of the USA PATRIOT Act and to enact legislation overriding recent Executive Orders, that limit or violate fundamental rights and liberties protected by the Indiana and U.S. Constitutions; and

FURTHER RESOLVES that we urge our congressional delegation to oppose legislation such as the Domestic Enhancement Security Act (PATRIOT II) that would further erode fundamental constitutional rights and liberties; and

FURTHER RESOLVES that we direct the City Clerk to send a copy of this resolution, duly adopted, to all City departments, the Monroe County Commissioners, the Monroe County Sheriff's Department, the Monroe County Courts, the Monroe County Prosecutor, the Monroe County Public Library, the Governor of the State of Indiana, the Indiana Congressional delegation, the U.S. Attorney General, and the President of the United States.

PASSED AND ADOPTED by the Common Council of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

CHRIS GAAL, President
Bloomington Common Council

ATTEST:

REGINA MOORE, Clerk
City of Bloomington

PRESENTED by me to the Mayor of the City of Bloomington, Monroe County, Indiana, upon this _____ day of _____, 2003.

REGINA MOORE, Clerk
City of Bloomington

SIGNED and APPROVED by me upon this _____ day of _____, 2003.

JOHN FERNANDEZ, Mayor
City of Bloomington

SYNOPSIS

This resolution elaborates upon how the USA Patriot Act, the proposals to extend portions of it and to adopt what is known as 'Patriot II,' and certain Executive Orders and other federal actions taken in the name of national security threaten fundamental rights and liberties guaranteed to all persons living in the United States. It then calls upon local officials and private individuals to respect these fundamental rights and liberties; calls upon the President and his Attorney General to disclose their activities exercised under these new powers and to provide due process for the detainees; urges our Congressional delegation to repeal existing authority and legislation and not adopt proposed legislation that limit fundamental rights and liberties; and, directs the City Clerk to mail the signed resolution to local, state, and federal officials.

USA PATRIOT Act Summary

Fred H. Cate

The attorney general introduced the Anti-Terrorism Act of 2001 on September 19, just eight days after the terrorist attacks. The bill sought extensive expansions of law enforcement powers, including the authority to detain immigrants suspected of terrorism indefinitely, without charging them or making public their arrest. Attorney General Ashcroft called on Congress to enact his bill within the week.

Although Congress did not act with the haste sought by the attorney general, it did enact a comprehensive anti-terrorist bill—the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT Act)—with no consideration by the Senate Judiciary Committee, in place of a measure approved by the House Judiciary Committee, without a committee or conference report, and with only a few minutes of floor debate. The president signed the bill, which the *Boston Globe* called one of the “swiftest-moving bills in federal history” into law on October 26. The 342-page law is very complex and affects 15 existing statutes. Its major sections:

- 1 Greatly expand government surveillance authority, by
 - allowing investigators to more readily obtain court orders for “roving wiretaps” that allow the government to tap any phone a suspected terrorist might use;
 - permitting criminal investigators and intelligence officers to share grand jury, wiretap and other information without judicial oversight;
 - broadening the scope of the government’s ability to search for and seize stored communications, such as voice mail and e-mail messages, under an ordinary warrant rather than a wiretap order;
 - authorizing “national search warrants” so that courts with jurisdiction over an offense to issue search warrants for electronic communications in electronic storage anywhere in the country, without requiring the intervention of judges in districts where Internet service providers are located;
 - enlarging the ability of law enforcement to install “pen register” and “trap and trace” devices that capture information about a call rather than the contents of the call without a warrant, and specifying that those devices can be used with Internet communications (such as the FBI’s “Carnivore” system to intercept e-mail), all with very limited judicial oversight;
 - expanding the list of crimes that may be used as predicates for wiretaps; and
 - permitting computer service providers who are victims of attacks by computer trespassers to authorize law enforcement officials to monitor trespassers on their computers.

- 2 Create new impediments to money laundering including imposing new reporting responsibilities of banks and other financial institutions.
- 3 Authorize funds to triple the number of border patrol agents along the U.S.-Canadian border and to triple the number of Immigration and Naturalization Service inspectors at each port of entry along that border.
- 4 Increase scrutiny of immigrants and visitors to the United States, both upon entering the country and while in the country, by
 - permitting the attorney general to detain foreigners for as long as seven days with a crime before charging them or beginning deportation proceedings;
 - granting unreviewable authority to the Secretary of State to designate “terrorist” groups and to prohibit entry to the U.S. by anyone connected with or who supports such groups; and
 - granting the Department of State and the Immigration and Naturalization Service access to FBI Criminal History Records.
- 5 Expand the authority of the attorney general to pursue terrorists and perpetrators of other violent crimes and increase the penalties and statutes of limitations for those offenses.
- 6 Provide compensation for the victims of terrorism and their families.

Not all of these provisions affect civil liberties, but the very breadth of the Act, the extent to which it reduces judicial oversight of law enforcement activities, and the speed and lack of deliberation with which it was adopted have provoked well-founded concerns.

In terms of “information dissemination and privacy,” the effect of the USA PATRIOT Act has been quite significant. It has greatly expanded the power of the government to collect information about citizens and noncitizens, and reduced the ability of individuals, the press, civil liberties groups, and attorneys to obtain information from the government. The law thus contributes to reversing the longstanding constitutional presumption that the public should easily be able to monitor government activities, but the government should have to meet a high burden before monitoring individuals.

June 17, 2003

Domestic Security Enhancement Act Summary

Fred H. Cate

The Bush Administration has proposed a new law—the Domestic Security Enhancement Act of 2003—what some people are calling “PATRIOT ACT II.” The Administration first denied the existence of the bill, but after a copy of the text was leaked, has now said that the bill is only in its preliminary stages and is still likely to undergo revision. The current draft would expand law enforcement and intelligence gathering authority, reduce or eliminate judicial oversight over government surveillance, authorize secret arrests in some circumstances, authorize the creation of a DNA database, and permit the government to take away U.S. citizenship from persons who belong to or support disfavored political groups. Here are the key provisions:

1. **Secret Arrests.** The draft bill would mandate that all arrests in connection with international terrorism” investigations be secret until an indictment is filed. Georgetown law professor Bruce Cole writes that “never before in our history have we permitted secret arrests.”
2. **Ending Consent Decrees Against Illegal Police Spying.** The bill would terminate consent decrees restricting police spying that were entered before September 11, 2001.
3. **Unchecked Deportation Authority.** The bill would give the attorney general the authority to deport foreign nationals, including lawful permanent resident aliens, whenever he determines that their presence is inconsistent with our “national security,” “economic interests,” or “foreign policy.”
4. **Stripping Citizenship for Political Associations.** The bill would allow the government to strip citizens of their citizenship if they belong to or support groups that have been designated as “terrorist” by the Attorney General or that support other groups designated as “terrorist.”
5. **By-passing Judicial Oversight.** The law would authorize the Attorney General to by-pass the courts altogether for certain searches and wiretaps whenever Congress has authorized the use of force. It would also allow the government to by-pass courts or grand juries when seeking access to credit reports.
6. **DNA Database for “Suspected” Terrorists.** The draft bill would authorize creation of a DNA database on “suspected terrorists,” which is defined to include association with suspected terrorist groups.
7. **Reduce Privacy Protections for U.S. Citizens.** The bill would eliminate some current protections for U.S. citizens and lawful permanent residents. For example, it would allow the government to use pen registers (which collect information

about, but not the content of, telephone calls and e-mail) without judicial oversight to investigate U.S. persons.

8. **Secrecy.** The bill would impose gag orders on persons subjected to terrorism investigations, so they couldn't communicate with their families, the press, or perhaps even their own attorneys.
9. **New Death Penalties.** The law expands the offenses to which the death penalty applies.
10. **Expedited Removal for "Criminal Aliens."** The law would create an "expedited removal" process that limits judicial review for any foreign national convicted of a wide range of crimes, irrespective "of when the crime was committed. Similarly, the law would authorize extradition even where there is no extradition treaty.

June 17, 2003

Rights at risk

USA Patriot Act and Patriot Act II expand government's authority

By Laura Lane

On Oct. 26, 2001, Congress enacted a comprehensive anti-terrorism bill - called United and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism. The acronym: USA PATRIOT Act. The bill greatly expanded law enforcement powers and limited the rights of individuals.

A scared nation barely blinked.

Since, critics have argued that the law violates the civil rights of people merely suspected of wrongdoing.

Now, the Bush administration has proposed a new law - the Domestic Security Enhancement Act of 2003 - which some people call Patriot Act II. Its current draft greatly increases the scope of what's allowed in law enforcement and intelligence gathering.

Fred Cate, distinguished professor and Ira C. Batman Faculty Fellow at Indiana University School of Law-Bloomington, discussed these laws.

Q. How is the world of information dissemination and privacy different since the advent of the Patriot Act?

A. Congress enacted the USA PATRIOT Act with no consideration by the Senate Judiciary Committee, in place of a measure approved by the House Judiciary Committee, without a committee or conference report, and with only a few minutes of floor debate. The 342-page law is complex and affects 15 existing statutes. It greatly expands government surveillance authority.

The very breadth of the act, the extent to which it reduces judicial oversight of law enforcement activities and the speed and lack of deliberation with which it was adopted have provoked well-founded concerns.

In terms of "information dissemination and privacy," the effect of the USA PATRIOT Act has been quite significant. It has greatly expanded the power of the government to collect information about citizens and noncitizens, and reduced the ability of individuals, the press, civil liberties groups, and attorneys to obtain information from the government.

The law thus contributes to reversing the long-standing constitutional presumption that the public should easily be able to monitor government activities, but the government should have to meet a high burden before monitoring individuals.

Q. What about Patriot Act II? What, specifically, does it address?

A. The Bush administration first denied the existence of the bill, but after a copy of the text was leaked, has now said that the bill is only in its preliminary stages and is still likely to undergo revision.

The current draft would expand law enforcement and intelligence gathering authority, reduce or eliminate judicial oversight over government surveillance, authorize secret arrests in some circumstances, authorize the creation of a DNA database, and permit the government to take away U.S. citizenship from persons who belong to or support disfavored political groups.

In regard to secret arrests, the draft bill would mandate that all arrests in connection with international terrorism investigations be secret until an indictment is filed. Georgetown law professor Bruce Cole writes that "never before in our history have we permitted secret arrests."

Q. Has Patriot Act II come in under the radar, so to speak, while the nation focused its attention on the war in Iraq?

A. The USA PATRIOT Act passed the House 357-66 and the Senate 98-1, despite the fact that no member of Congress had been given the opportunity to even read, much less debate, the final text of the bill. I think that can be explained by the still-lingering shock of the 9/11 terrorist attacks and the widely shared desire to do something to help protect against further terrorist acts.

Patriot Act II does not benefit from such close proximity to such an extraordinary event. The U.S. military involvement in Afghanistan and Iraq, while certainly distracting to some degree, has not kept members of Congress and civil liberties groups from focusing on the draft bill. Moreover, members of Congress are more wary than they were two years ago. A number have been criticized for supporting the USA PATRIOT Act. Many cities have adopted resolutions calling for that law to be repealed.

So the strategy may have been to try and move Patriot Act II when the country wasn't looking, but so far at least that hasn't worked.

Q. Is the U.S. government taking advantage of post-911 fear in pushing the passage of restrictive provisions such as these? Or are they necessary for national security?

A. It is difficult to know for certain whether the changes in the USA PATRIOT Act and in the new draft bill are necessary for national security, but there are good reasons to think they are not.

As the speed with which such a complicated bill was introduced suggests, most of the changes in the USA PATRIOT Act had been sought by some law enforcement officials for years prior to the 9/11 attacks. Those attacks proved the excuse, but not the reason, for rushing them through Congress. In fact, some of the changes have little to do with terrorism at all. This appears even more true of Patriot Act II.

Also, I think there is now widespread agreement that the primary failure of government officials prior to 9/11 was not due to lack of information or lack of legal authority, but rather not using the information or exercising the legal authority they already possessed.

For example, the attorney general urged Congress to expand law enforcement's ability to engage in surveillance or searches without first seeking a warrant or court-order. He argued this was necessary to apprehend terrorists and prevent future attacks.

An observer would have thought that courts were routinely blocking legitimate warrant requests. In fact, the Justice Department's own figures paint quite a different picture. In 2001, 1,190 wiretap requests by the government were approved by courts; none were denied. During the last five years, 6,202 wiretaps were approved; three were denied. It seems that the need to get a warrant was not a major stumbling block to detecting and apprehending terrorists.

The government already had two of the 9/11 terrorists on a "watch list," but neglected to provide that information to the necessary authorities. All of the terrorists passed through a security checkpoint. To date, there is simply no credible claim that a greater intrusion into civil liberties was necessary to prevent the terrorist attacks of Sept. 11. Rather, it appears that law enforcement and intelligence personnel failed to exercise diligently the lawful powers they already had.

Q. What do U.S. citizens gain, and lose, under these policies?

A. If the USA PATRIOT Act and the proposed Patriot Act II are not necessary to prevent terrorist acts, then it is not clear that the public gains anything from them. It is certainly difficult to demonstrate clear gains while, regrettably, the losses are readily apparent.

One loss is reduced judicial and congressional oversight of both law enforcement and intelligence activities. Clearly, some government activities need to be conducted outside of the public eye, but one of the hallmarks of the U.S. legal system has been ensuring the existence of checks and balances. Recent and proposed changes to U.S. law greatly diminish that power.

Another loss is increased secrecy. Better than official judicial or legislative oversight in our constitutional democracy is public and press oversight. This is the lesson of Watergate and helps explain why we so treasure open government. Yet these new laws allow for increased secrecy; not just secret surveillance, but secret arrests, secret demands for records served on libraries and other organizations, secret law enforcement altogether.

Finally, there is the very real risk that these laws are being used to placate or distract lawmakers and the public, rather than actually remedy the problems that contributed to the horrendous events of 9/11. The tendency to look for placebos like new laws that come with a promise to cure what ails us is very real, but the danger of terrorism is too great to be the victim of such political posturing.

Protecting against terrorist threats requires tough decisions and actions that inevitably run the risk of treading on civil rights. If the government fails to take the steps that are necessary to protect the public, or squanders public confidence and goodwill on laws that are unnecessary or are designed to serve a purpose other than that stated, it puts all of us at risk.

Q. Should Americans be concerned with these further restrictions (from Patriot Act II) and what they may bring?

A. Yes. Rather than focus on Patriot Act II, which is still only a draft, it might be more useful to look backwards to other times when our nation's safety appeared gravely threatened and we offered to trade liberty to try to obtain security.

During World War II, following the Japanese attack on Pearl Harbor, President Roosevelt issued an executive order calling for the internment or displacement of over 100,000 Japanese-Americans, over two-thirds of whom were citizens of the United States. The Supreme Court upheld its legality. But 50 years later, the United States apologized to the victims of the order and paid \$20,000 to those still living who were detained or lost property. It is not a chapter of U.S. history of which many Americans are proud.

Similarly, during the Cold War, the federal government made it a crime to be a member of the Communist Party, and passed the Immigration and Naturalization Act, which authorized the government to keep out and expel noncitizens who advocated communism or other proscribed ideas, or who belonged to the Communist Party or other groups that advocated proscribed ideas. In the frenzy led by Sen. Joseph McCarthy these actions met with widespread public approval.

Justice Louis Brandeis, co-author of perhaps the most influential U.S. privacy article, wrote almost 75 years ago "that fear breeds repression; that repression breeds hate; and that hate menaces stable government." These words take on new meaning in a time of national exigency, and suggest that not only is the trade-off between liberty and security a pointless one, it is a counterproductive one as well: Protecting liberty is itself essential to maintaining security.

The trade-off is also undesirable. In his first public statement on Sept. 11, as Air Force One refueled at Barksdale Air Force Base, President Bush said, "Freedom itself was attacked this morning by a faceless coward. And freedom will be defended."

During his Sept. 19 address to a joint session of Congress, the president asked about the terrorists: "Why do they hate us?" And he answered: "They hate our freedoms, our freedom of religion, our freedom of speech, our freedom to vote and assemble and disagree with each other. These terrorists kill not merely to end lives but to disrupt and end a way of life."

As many commentators have observed, essential liberties are often hard to take away, but they are remarkably easy to give up. If, in response to the attacks of Sept. 11, the public voluntarily sacrifices its liberties in a Faustian bargain for greater security, the terrorists will have achieved their goal.