

Why A National ID is a Bad Idea: A Policy Analysis

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Executive Summary

Periodically, a national identity card has been proposed and dropped as a supposed answer for threats from wartime perils to ending illegal immigration. After September 11th, it reappeared in proposals for a ID card or national driver's license to solve terrorism. Oracle Corp.'s CEO and state motor vehicle administrators have proposed a "voluntary" or mandatory ID card. The American Civil Liberties Union, Eagle Forum and *Wall Street Journal* have criticized national ID plans. Even pressing national concerns do not diminish the principled and practical flaws of a national ID proposal.

A national identity card would require a universal identity number, interlinked national databanks, technical and legal structures, and a physical card, including biometric identifiers. It would likely become mandatory to carry and present. It would not be like limited purpose driver's licenses, social security numbers or credit cards, nor ID cards in other democratic countries. A U.S. card would become a key to a sophisticated system of government databanks and surveillance.

Four practical and principled reasons make a national ID an ineffective and detrimental proposal. First, a card system would distort the proper relationship of citizens to a democratic government. If constitutional, a national ID would undermine freedom from unreasonable searches and to travel without government documents. Second, it wouldn't work for its proposed purposes, but would produce negative consequences. It wouldn't solve illegal immigration or terrorism, and it could be counterfeited, damaged or misused. It wouldn't make air travel safer than physical protections. Fixing a credit report would be easy compared to correcting a national ID database.

Third, "mission creep" would expand the card's scope. It would be used and required for other surveillance purposes. Fourth, other undemocratic and democratic countries' experiences warn against the problems of national IDs here. France and Singapore require residents to carry IDs to help maintain public order in centralized states.

The U.S. government has moved toward a national ID in immigration requirements for IDs to work and travel requirements for government IDs to fly. A national driver's license is a backdoor approach to a national ID. Although the Homeland Security Act does not "authorize the development of a national identification system or card," similar laws move the U.S. toward a national card as a travel license. While terrorism creates conditions for proposing a national ID, the government decides to impose solutions that increase its power. Though the Bush administration has not pushed a national ID, it supports the national drivers license plan. The U.S. public has periodically strongly opposed and supported the National ID card. Public opposition in Australia and New Zealand prevented the implementation of national ID plans there.

In short, terrorism is only the most recent rationalization for a national identity card, which is foreign to the U.S. and won't solve problems better addressed in constitutionally- and fiscally-sound ways. The largest cost of a national ID is lost freedoms from intrusion. For principled and practical reasons, Americans should reject a national ID.

Why A National ID is a Bad Idea: A Policy Analysis

Introduction and Background¹

Periodically, the idea for a national identity card has been proposed and dropped as a supposed answer for everything from fascist infiltration during World War II and ferreting out communist agents during the Cold War to preventing fraud and ending illegal immigration. In the wake of the September 11th attacks, it has reappeared in proposals for a national ID or nationalized driver's license as a possible solution for preventing terrorism. Even concerns for pressing national and global problems and advocacy of the proposed benefits of high-tech cards cannot diminish national IDs' fundamental flaws and practical failings in a nation founded on liberty and common sense. As John Stuart Mill reminds us, "no society in which ...liberties are not, on the whole, respected, is free, whatever may be its form of government."² For many practical and principled reasons, a national identity card is an ineffective and detrimental idea for our democratic society.³

From Oracle Corporation's CEO Larry Ellison to Harvard Law professor Alan Dershowitz, from the Communitarian Institute to the Motor Vehicle administrators,⁴ various advocates have proposed a "voluntary" or mandatory card. From the American Civil Liberties Union and Electronic Privacy Information Center (EPIC) to the Eagle Forum,⁵ those across the political spectrum have opposed a national ID card. Beginning in 1980s, the *Progressive* editorialized against earlier immigration proposals for "Your Papers, Please."⁶ Then and now, conservative *New York Times* columnist William Safire and *Wall Street Journal* editorials have consistently criticized the national ID idea.⁷

Developing and implementing a national ID card and identification system would involve complicated political, bureaucratic and technical issues and procedures. Because of the integrated and technological features, a national ID would become a high-tech federal key to an integrated

system of data collection and personal observation and surveillance. It would not be similar to driver's licenses, social security numbers or credit cards that serve limited purposes. Nor would an American National ID likely be similar to the cards and systems in other democratic countries. If the United States moved to mandate a card, it would probably develop a much more sophisticated system of national identity cards as part of a federal identification network of official databanks and government surveillance.

A national ID card is a bad idea for the United States for four principled and practical reasons. First, such a card system would distort the proper relationship of citizens to democratic government. Second, it would not work for its supposed purposes, but it would produce unanticipated negative consequences. Third, "mission creep" would expand the card's scope as it took on other purposes. Fourth, experiences in other countries warn against the problems and consequences of national IDs here.

What Might a National ID be Like?

While proposals differ for what Amitai Etzioni calls a "domestic passportlike document that citizens of many countries...are required by law to have with them at all times,"⁸ developing such a card here would require several components ranging from databanks to physical cards.⁹ A national identity card would require at least the following: a universal identity number, an interlinked system of databanks, a technical and legal structure about inclusion, access, and activation procedures, and a physical card, including biometric identifiers.¹⁰ As *Privacy Journal* publisher, Robert Ellis Smith, summarizes:

"A true national identity document would be mandatory; everyone would have to carry it and present it upon demand. It would be issued to everyone, probably at birth. And the identity of the bearer of each card would be recorded in a national data bank, usually along with other personal

history. It would be universally accepted proof of identity everywhere in the society. Without the card, you would have no acceptable proof of your citizenship."¹¹

The first requirement for developing a national ID card would be assigning a unique ID number that could be an upgraded Social Security Number or a new universal identifier issued by the government at birth.¹² Second, there would have to be a single, extensive national identity databank, or a completely interlinked system of regional ones, that would contain the identifying information on all Americans linked to their ID number. This would likely include personal information about citizens ranging from government benefits to criminal records. Drawing on private databanks of financial, medical, and travel record too for government purposes, such data dossiers would provide very detailed composites or mosaics of each individual's habits and actions, even though such collections are never fully accurate or secure from unauthorized users.¹³

Third, if a national identification card system were constitutional, there would have to be a legal structure outlining the distribution and use of the cards. This would designate who could have and who would have to carry one. Infants would be registered; preteen would have to be fitted with their first card around age 12. All card carriers would have to reregister periodically, including when they moved their residences, to update photographs and biometrics.

Fourth, there would also have to be a physical card that everyone would have to possess and probably carry on them. Rather than a simple plastic card, it would more likely be a complex microprocessor on a chip or a "smart" card that stored and perhaps transmitted data about a person.¹⁴ The card would contain biometric identifiers, including a digitized photograph, signature, and fingerprint or retina scan.

Steps Toward a National ID

The U.S. government has already taken steps toward an ID card. This appears most clearly in the proliferating uses and narrowing of options in the requirement since 1986 to provide

government ID for permission to work under the Immigration Reform and Control Act of 1986. IRCA also requires filling out an I-9 form for government permission to work. The subsequent Illegal Immigration Reform and Immigrant Responsibility Act of 1996 authorizes a pilot databank of eligible employees by their social security numbers. Also, since 1995 airline passengers have been asked under Federal Aviation Administration procedures to provide government ID in order to fly and the idea of a "Safe Travelers" card is under consideration.

The related Computer Assisted Passenger Screening System (CAPS) profiles passengers based on information about their reservation and ticket purchase in order to determine who has to be selected to undergo heightened security procedures. In coordination with the Transportation Security Administration procedures for photoidentification to board a plane,¹⁵ the proposed Computer Assisted Passenger Prescreening System (CAPPS II) of profiling and datamining would develop passenger "risk profiles" from integrated models from public and private databases. The system would check passengers travel patterns, credit histories and criminal records without individual suspicion, due process or judicial oversight to attempt to predict if passengers were possible dangers.¹⁶

In addition to these growing ID and profiling requirements, the New Hires Databank that records information on all new employees,¹⁷ and the proposed Total Information Awareness System¹⁸ foreshadow the kinds of centralized databanks and surveillance system a National ID would involve.¹⁹ The military already uses a "smart" card as a universal ID for up to 4 million military and civilian personnel.²⁰ The unacted proposals for a "work and benefits IDs"²¹ or the Clintons' "health security card"²² and "unique health identifier"²³ are additional steps in the direction of a national ID system. Although laws like Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 and the Homeland Security Act of 2002 say, "nothing in this

act shall be construed to authorize the development of a national identification system or card," each is in fact a major impetus toward a national ID infrastructure and card.²⁴

The Federal Drivers License as National ID

The current version of a previously defeated proposal²⁵ for a national driver's license is, in fact, an indirect approach to a national ID without using the name. The proposal would standardize the driver's license as a national document tied to government databanks and information sharing among federal agencies, including the INS, Social Security Administration and possibly FBI.²⁶ The card would be enhanced with common format and security features, including social security numbers and biometric identifiers. The proposal would likely also require a national driver's license as the only identification for qualifying for federal benefits and eventually the only acceptable ID (or perhaps a passport) for certain government activities like voting.

As sponsor of the national driver's license proposal Senator Richard Durbin (D-IL) notes, the bill would "mak[e] the drivers license, which some consider as a de factor national ID card, more reliable and verifiable as a form of personal identification than it is today."²⁷ Though "the original purpose of drivers licenses was to certify the qualification of individuals to operate motor vehicles,"²⁸ this federalization would take the license beyond its current use as an ID for buying liquor or cashing checks to one for obtaining federal benefits, traveling, and exercising political rights.²⁹

Not only might it become the only ID for receiving federal benefits, a national driver's license might be required when people register at hotels, as occurs in many foreign countries, or as ID to make purchases with a credit card or enter a movie theater. A national ID card or number might be required simply to buy or sell. This is why Robert Ellis Smith calls a national ID "a license to live."³⁰

The federal government is already moving forward with a Transportation Security Administration plan to require everyone in the transportation industry to carry a “Transportation Worker Identity Card” (TWIG). It would be mandatory not only for commercial drivers but also for others in the industry.³¹ It would include personal information and at least one form of biometric, probably a fingerprint and digital photo. Receiving one would require a background check that might exclude people for relative minor infractions in their pasts. As with the requirement to have social security numbers on almost all licenses beginning with commercial drivers, this would soon spread to the rest of the population. Already states offer non-drivers licenses that would quickly spread as the required ID for all governmental benefits and services, hence becoming by stealth a full national ID.³²

A national ID or national driver’s license is not just an identity card but a key component of a centralized system of ongoing government data collection and surveillance of individuals and their activities. What ID numbers and cards do is centralize information, and “in a time when knowledge is power, then centralized information is centralized power...[P]eople have a gut sense that this is not a good idea.”³³ A national ID is a conduit for keeping track of people and eroding their privacy. As law professor Paul Schwarz notes, there is a connection between a government's capacity to collect information and the erosion of personal autonomy.³⁴ As Supreme Court Justice Robert Jackson noted about a national police force, while our country will not necessarily become authoritarian with a national ID, it could not become fully authoritarian without one.³⁵ Though Communitarian head Amitai Etzioni maintains that ID "cards do not transform democratic societies into totalitarian ones,"³⁶ they assist the process by having "enough on enough people" that a national ID system chills political opposition.

This chill would be cold comfort to those who recognized the loss to America's basic character and values. "It is possible," as a previous Cato report noted, "that Americans might find a good measure of safety by allowing the federal government to tightly control our society. But the price for that security would have to come at the expense of America's soul. Freedom could no longer be said to be the essence of America. America would instead be transformed into something resembling a benevolent, authoritarian democracy--a regime not unlike the one found in today's Singapore."³⁷

Why a National ID Card is a Bad Idea

A national ID card is a detrimental proposal for the U.S. because such a card system distorts the appropriate relationship between citizens and government, and reverses the presumptions of innocence and citizenship. It also will not work for its supposed purposes, yet it would produce many unanticipated negative results. Moreover, "mission creep" would consistently expand its scope, stringency, and purposes. Finally, the experiences in other apparently comparable countries, including democracies, warn against the problems with and consequences of national IDs here.

1. It Reverses the Relationship of Citizens and Democratic Government

The first and most fundamental reason why a national ID is a bad idea draws from the unique nature of our history and freedoms: they distinguish America as an exceptional democratic republic in ways the war on terrorism is supposed to defend. The implementation of a national identity card reverses the proper relationship of citizens to representative government in our distinctive constitutional democracy. Because it undermines the nation's foundation on liberty and the consent of the governed, a national ID is profoundly detrimental to our country. As high school students and new citizens learn, the United States government was founded on and continues to derive its just powers from the consent of its people.

In contrast, under a national ID system, the government creates--and may deny--identities. The government power to bestow--or deny or withhold--people's identities undermines the basis of our sovereignty. One would not exist in a legal sense without a place in the ID system and proper documentation. "Don't we realize the dangers of allowing Government to establish identity and legitimacy? Isn't it, in fact, the responsibility of the citizenship to establish the legitimacy of Government?"³⁸ A national ID system shifts the balance of power disproportionately in the direction of the government, officer holders and appointed officials, which undermines the rights and powers of citizenship.

Similarly, a national ID reverses proper surveillance relationships. In our country, the people are supposed to be vigilant against abuses of government power by being wary about what the government does and does not do. "The legitimate role of a government in a free society is properly limited to those functions necessary to protect rights. Government must be monitored by citizens rather than the other way around."³⁹ A national ID system forms a surveillance web by the government of its citizens and residents. It constitutes a "universal tracking system"⁴⁰ for locating dangerous citizens. It chills debate, dissent, and freedom of association.

Moreover, a national ID system would also reverse the presumptions that distinguish our legal system. Rather than being presumed to be innocent or who one says he or she is, someone without a national ID would become assumed to be guilty of impersonating someone or acting illegally unless otherwise proven. Under IRCA ID requirements, people are essentially presumed to be illegal aliens until proven otherwise. In short, the assumptions behind a national ID system reverse the presumptions of innocence, freedom and privacy that our nation celebrates.

A national ID system also reverses the meaning of security from the right of the people to be secure against government intrusions to one in which the government intrudes on these secured rights. Though the 4th amendment protects the "right of the people to be secure in their persons,

houses, papers and effects, against unreasonable search and seizures, shall not be violated," security as now defined become the invading of exactly these rights. The very fact that many people here are prepared to consider a national ID and to give up liberty for "security" suggests that there has been an erosion of sentiments that reinforce freedom toward a willingness to become dependents of the government. As an American statesman once said, "We must remember that the peoples do not belong to the government but the governments belong to the peoples."⁴¹ Moreover, like employee IDs that say they are property of the issuing company, a national ID would likely become government property.⁴²

Fundamentally, a national ID system conflicts with the purpose and presumptions for both today and the future in the Preamble to the U.S. Constitution to "secure the Blessing of Liberty to ourselves and our posterity." Rather than fostering a "new birth of freedom," a national ID would debilitate many of the liberties we are fighting to preserve against terrorism. A national ID system would remove the right to travel, wander, and simply move around without government documents. The requirement to have a national identity card would mean that somebody not carrying one would risk losing his or her legal identity or being arrested.

Moreover, the reversal of the proper relationship of citizen and government suggests many constitutional failings in national ID proposals. This is particularly so because the presumptions and consequences of a national ID undermine the full rights that derive from citizenship under the 14th Amendment. An earlier Cato report indicated "nowhere in the Constitution is the federal government conferred authority to establish a computer registry, to compel citizens to obtain a national I.D. card, or to involve itself this intimately in the everyday business decisions of employers."⁴³ A recent National Research Council study noted that "The constitutional limitations on an agent's ability to require presentation of IDs, along with limitations on the ability of Congress to enact a nationwide identity system, should be explored before any such enactment to avert the

costs of imposing the system and then having to revise or abandon it in the face of its unconstitutionality, to say nothing of its effects on civil liberties."⁴⁴ As the Electronic Privacy Information Center concludes, "the combination of technical concerns and prevalent American constitutional values protecting freedom of movement, privacy, and anonymity strongly suggest that any national identification schemas must be rejected."⁴⁵

2. It Won't Work but Will Produce Detrimental Consequences

A second reason against such a proposal is that a national identity card would not solve the problems like illegal immigration or terrorism it is supposed to fix, and yet it would have significant negative consequences. First-time or previously unknown international terrorists, who would not be eligible for American ID cards anyway, could travel on foreign passports that do not tie into domestic databanks. Even if some of the 911 hijackers got American ID, they could have traveled on foreign documents or had the financial and technical resources to obtain fake credentials. Since there is no single list of evildoers, and most will not travel under their own names, checking everyone's ID against a database cannot assure security. A national ID could be counterfeited, damaged or misused.⁴⁶ Some guards may improperly check IDs or be bribed not to check. Some employers may not check documents since it may be more profitable to hire illegal aliens who are more easily mistreated or underpaid because they are undocumented. Terrorist who might use anthrax or attack the Internet will not be locatable through IDs because there will be no way to check their cards in advance.⁴⁷ As Phyllis Schlafly of Eagle Forum and Nadine Strossen of the ACLU noted, "a national identity card would diminish privacy in America and do nothing to prevent further acts of terrorism on our soil."⁴⁸

Even increasingly stringent ID requirements since IRCA in 1986 have not stopped illegal immigration but have caused widespread discrimination against Hispanics and Asians. As the GAO

(1990) noted: "laws requiring individuals to show proof of legal status or citizenship result in increased discrimination based on national origin and/or appearance."⁴⁹ Because the ID requirements for keeping illegal immigrants out of jobs have not worked, they has been made stricter in IIRIRA, with fewer documents accepted and more procedures to be followed. But this has been unsuccessful and is unlikely to be more effective against undocumented immigration because of the high demand for low-wage labor. Requiring law-abiding people to carry IDs, because it isn't possible to require "illegals" or terrorists to carry them, is no guarantee of locating illegal actors. And to pursue very few terrorists or relatively few illegal aliens, 280,000,000 million American citizens should not have to carry national IDs like draft cards..

Similarly, the strict pass systems in apartheid South Africa or the Soviet Union did not prevent either illegal immigration or terrorism (and may have fostered either). In democratizing, both Russia and South Africa have modified or abandoned the types of pass systems the U.S. is heading for or contemplating.⁵⁰ Israel's ID system has not prevented terror there either. Though checking IDs may sometimes find a potential criminal or reduce fraud, they generally do not work to eliminate those problems and instead divert resources from more successful focused and cost-effective solutions. Law enforcement that concentrates resources on actual or planned behaviors by specific perpetrators works better to solve problems than diverting money to profiling or ID systems.⁵¹ Institutions like prisons where everyone is constantly identified are not free from crimes or violence.⁵² As Robert Smith notes, "one way to predict the effectiveness of a national ID is to look at environments where the true identity of all residents known: prisons, the military, many workplaces, many college campus" and "yet these places are far from crime free."⁵³ Moreover, no ID system is foolproof.

Nor do requirements for a national ID or scrutinizing people's documents make air travel safer than less intrusive, physical solutions that do not undermine travel rights.⁵⁴ "Surveillance of means" is typically more effective and less intrusive than surveillance of persons.⁵⁵ The x-ray screening of bags and matching of all checked baggage to all passengers, recently implemented after long advocacy by privacy and security experts,⁵⁶ are much better strategies for increasing air safety without undermining individual rights. Properly screening passenger carry-on luggage and x-raying and matching bags means that presenting IDs⁵⁷ does not add to real safety, as opposed to supposed security.⁵⁸ Instead, ID requirements and databanks create a false sense of security, turn a government ID or nationalized driver's license into licenses to travel, and transforms passports meant for international travel into internal movement documents restricting where people can go in their own country.⁵⁹ Air ID requirements and CAPs profiling undermine the freedom to travel—a right "as close to the heart of the individual as the choice of what he eats or wears or reads. Freedom of movement is basic in our scheme of values."⁶⁰

In addition, the larger and more integrated a national ID databank would become, the more the likely it would contain data filled with errors. The larger the errors the bigger proportion of the population detrimentally affected, with graver consequences.⁶¹ Moreover, the larger and more integrated the system, the more people who would be authorized to access and modify the information.⁶² This would increase the likelihood that some would access it inappropriately or change information in it. As the National Research Council study indicates, it may be impossible to integrate and keep any national databank accurate from detrimental errors.⁶³ "The difficulty in fixing a credit report [or motor vehicle records] might prove trivial in comparison to correcting one's records in the national [ID] database."

As EPIC noted, a national ID or nationalized drivers license would "not accomplish its stated aims of increased safety and security, but merely shifts the potential for fraud and identity theft to a higher plane, where the intrinsic privacy invasion is greater, and the means of remedying inevitable flaws is more complex and difficult."⁶⁴ The existence of national ID cards and databanks would create the crime of national ID fraud and the prospect of other fraudulent behavior from accessing and change the database. Moreover, the more complex and error prone the information in the databank, the more likely that its data will be the basis for falsely identify individuals as suspects, when that very labeling, accurate or not, will carry a significant social stigma.

Nor would a national ID solve identity theft, for instance, since illegally getting credit cards typically involves filling out and mailing in applications secretly with fraudulently obtained information often available by phone or on the Internet.⁶⁵ In short, though a national ID might reduce some fraud, it also creates and increases the likelihood of more significant, far-reaching and expensive forms.⁶⁶ "Because it will not work, pressures build to expand the card system--each failure spawns calls for expansion of the system."⁶⁷ Technological "fixes" like supposedly "tamper-proof" ID systems that do not solve problems only provide a false sense of security.

3. Mission Creep: Expanding Scope and Surveillance⁶⁸

Third, like the promises in the 1930s that the Social Security number would be known solely by the holder and used only as account designators for recording pension payments (the cards used to say "not for identification" and be shared by spouses), the purposes of a national ID would continue to expand. The numerous and increasing demands by other government agencies for access to the data would soon compromise any limited purposes and privacy of the component parts of national identity databanks and systems. These pressures would develop what Gary Marx calls "surveillance creep."⁶⁹

The idea that information would be kept limited or access restricted in a national identification system is undercut by the very aim that a national ID should be a security measure based on extensive national data about everyone. Similarly, promises that a national ID would, first, "only" be required to get a job,⁷⁰ and, later, "only" to get a job and to fly, would be broken as uses expanded to all encounters with the government from registering a car, to receiving benefits, to voting. Arbitrary actions, errors, physical or identity theft, and accidental ID loss could deny everything from jobs to freedom. If only because there are so few terrorists to locate and the goal of "efficiency" demands economies of scale, the card and databanks would be increasingly used for additional purposes. Once in place, such a system would invariably expand its purposes, foreclose opportunities for freedom, and become virtually impossible to dismantle.⁷¹ This would be so, even if terrorism, as will ultimately be the case, ended like the Cold War as a serious threat.

If everyone had a national ID, there would be an expansion of the occasions when public officials and private businesses would ask for it. The power of local officials and police would expand in their increased discretion about when to demand the card. A national ID "simply gives too much discretion to persons in positions of authority who stop and question innocent individuals pursuing innocent activities."⁷² The existence of a national ID would undermine the Fourth Amendment search and seizure protections that people be left alone unless there are particular reasons to search or detain someone. The existence of the card would itself generate increased police requests for ID in "suspicion- less searches"⁷³ without individual evidence of wrongdoing. The ease and frequency of such searches would diminish the protections and would undermine the reasonable expectations of privacy owed Americans for their personal security.

The requirements to carry and present such a card would mean that people will regularly be asked to produce it and otherwise be denied political rights like freedom from unreasonable search under the Fourth Amendment or the right of travel as liberty under the Fifth and Fourteenth

Amendments. No matter how stringent the legal standards for checking national IDs, their very existence would expand their uses by police, other government officials and private parties. Extending ID requirements from airports to train stations⁷⁴ to public building and school entrances would increase their likely uses for surveillance of people just walking or jogging in neighborhoods. Under current Supreme Court doctrine, not always observed, the police may only ask for identification when there is probable cause or reasonable suspicion of criminal activity.⁷⁵ But police knowledge that everyone were supposed to carry such a card, particularly during heightened terror alerts, would increase the frequency of official demands for ID. That would disproportionately affect the poor and minorities but would likely extend generally to the middle class and majority of citizens as well.

Requiring citizens to possess national identification would also erode the constitutional search standard, particularly for minorities, but over time to the rest of the country. This is because having an ID will become more and more expected and thus more "reasonable," consequently reducing citizens' "expectations of privacy." Though majorities in public opinion polls oppose random searches of citizens⁷⁶ and court decisions outlaw police demands for ID without reasonable suspicion,⁷⁷ these ID intrusions would proliferate because of the prevalence of the cards. In a more Orwellian scenario, if a national ID card included a radio transponder in a microchip⁷⁸ and everybody were required to carry the card, a national ID system could keep track of everyone's whereabouts at all times. This would remove the need for the police to ask for ID or employ facial recognition technologies.

Similarly, because of mission creep into a federalized and interconnected national ID system, a national Driver's License presents many more dangers than a series of state drivers license systems or private databanks. A federal driver's license would be a national ID because⁷⁹ it would

impose national standards, be funded nationally, and expand the capacity to keep track of individuals and store fingerprint, medical and credit card information.⁸⁰ A federal license would rely on national compulsion that would preclude states from using their police powers for setting their own driving tests and licensing standards. It would become a de facto "license to travel," and "a ticket to the loss of much of your personal freedom."⁸¹ Turning a state driver's license into internal travel licenses or passports into homeland movement documents very simply restricts where people may go. For some poor citizens, homeless or immigrants, and even some middle class families, not having a federal driver's license might mean not being fed.

Moreover, the advocacy of a national driver's license by a private associate of motor vehicle administrators does not obscure the national scope and purposes of the plan. Though a private trade association of U.S. and Canadian motor vehicle administrators and automobile firms, American Association of Motor Vehicle Administrators (AAMVH) wants the federal government to authorize the system, mandate the requirements on the states, and pay the costs. As Deirdre Mulligan of Samuelson Law Center noted, "any decision to adopt such a system should be made by elected officials, not motor vehicle bureaucrats of private companies...not something that should occur in the darkroom of some administrative process."⁸² As Jonathan Turley of George Washington University testified to Congress, "If there was ever an issue that was designed for the national legislature, it is this issue."⁸³

The relationship reversals and mission creeps would have real consequences for daily lives in what people could or could not do and get from living in the USA. As Phyllis Schlafly noted, "Putting all that information on a government database means the end of privacy as we know it. Daily actions we all take for granted will henceforth be recorded, monitored, tracked and contingent on showing The Card."⁸⁴ "An instant check system will give all government agencies the power to

deny basic services, including daycare, school, college, access to hospital emergency rooms, health insurance, a driver's license, etc...."⁸⁵ National IDs and surveillance systems give and magnify power to political office holders and government officials at the expense of ordinary citizens.⁸⁶ Government datamining conflicts generally with the "Fair Information Practice" that information collected for "one purpose from being used or available for other purposes without ... consent" of the individual.⁸⁷ In particular, the datamining of government and private databases for the CAPPs II program without due process or court orders constitutes what the head of the Electronic Privacy Information Center, Mark Rottenberg, calls "illegal surveillance."⁸⁸

A national ID would also creep beyond requiring a picture and basic information into incorporating technically sophisticated biometric elements like fingerprints or palmprints, retina scans or facial patterns that invade privacy by "capturing" a person's feature.⁸⁹ The typical suggestions, for instance, of requiring fingerprints, imply criminal behavior and of utilizing retina scans conjure up interrogations. As EPIC notes, "the very attraction of biometrics for identification purposes is intrinsically linked to the infringement of individual privacy."⁹⁰ Just as no national ID can be tamper-proof, biometrics can be counterfeited, kept permanently in a national databank, and inappropriately accessed, reproduced or modified.⁹¹

The proposition that it would be possible to reduce the violation of minority civil rights against discrimination by fingerprinting everybody for an ID card or requiring everyone to carry ID would degrade all American's civil liberties to be presumed innocent and free of search without probable cause.⁹² Those foreigners outside the network or others fraudulently inside the ID system could escape detection while millions of constitutional protected Americans would have to be entered, observed, carded, and kept under ongoing monitoring or surveillance. While it might make

sense to require illegal immigrants or terrorists to carry national IDs, that logic does not extend to legal residents and law-abiding citizens.

Because a “voluntary” ID would not work, its uses and requirements would quickly expand to become mandatory. "The predictable failure of a voluntary system will lead to compulsory ID."⁹³ Precisely because a national ID would not solve problems of illegal immigration or terrorism, there would be pressure to make the ID system increasingly widespread and intrusive. Constantly tightening ID requirements would not assure safety or control illegal activity. It would only increase surveillance.⁹⁴

The databank spawning the IDs and the microchip in the card would include more and more details than the few descriptive items that might appear on the card. Police databanks for convicted criminals would become Total Information Access systems about law-abiding citizens. Rather than being used only for restricted purposes, a national ID and databank would be used more often, and increasingly randomly and generally. The physical card would take on a life of its own and diminish the lives of those who had to carry it.

The idea that we already have a national ID in driver’s licenses, social security numbers, credit cards, or private databanks of personal information, mistakes single purpose cards and specific collections for an integrated system of data and surveillance. Similarly, the idea that Americans are already using IDs to cash checks or to drink or purchase alcoholic beverages legally resembles a national ID is only a small step away mistakes local uses for federal mandates. An interconnected and constricting system of national ID cards and requirements would operate and feel much differently from using a state drivers license, which demonstrates driving skill, to becoming evidence of being "authorized" and located in a databank. The interlinking of data sources around a national ID system would reinforce questionable datamining systems like the proposed Total Information Awareness program.

Currently if one credit card does not work on for some reason, a purchaser can try another. If a person did not have a national ID or federalized driver's license with you when stopped by the police, or someone did not show up in a card swipe checking a databank, he or she might be denied government services or end up in jail. Replacing a lost or stolen national ID would be a much more difficult, time-consuming and frustrating process than replacing a lost driver's license. The proliferating uses and narrowing of options in the requirement since 1986 to provide ID in order to work and since 1995 to provide government ID in order to fly have seriously reduced options for work and travel. As Senator Russ Feingold noted, "central to our sense of who we are is our firm belief that we are free to ... move about as we please, freed from the intrusion of the government in that movement."⁹⁵

4. Experiences of Other Countries Are Not Comparable and Cautionary

Fourth, nor does the existence of national ID systems in some other countries mostly outside of the British Commonwealth tradition argue for one in America. "In Germany, for instance, all citizens over age sixteen must carry a passport or an ID card bearing a photograph, date and place of birth, address and signature. France and Denmark use similar systems."⁹⁶ "In Spain, an ID card is mandatory for all citizens older than 14, and they are required for many government programs. Argentineans must get a card when they turn 8 and re-register at 17. Kenya requires its citizens to carry an ID at all times. Belgium first used ID cards during the German occupation in World War I. Today every citizen older than 15 has to carry one."⁹⁷

Perhaps more characteristically, the examples of using identity cards for social and population control in North Korea, Iran or Iraq, Miramar or China should raise serious questions here. The role of national ID in Nazi Germany, South Africa and Rwanda to round up, control or eliminate unpopular minority populations is additionally troubling. The use of cards in those

countries makes clear how they can be used initially for purposes of social control that can easily turn into abuse.⁹⁸

Moreover, even other democracies like France, Germany and Spain that have such cards are actually good examples of why our very different kind of democracy in the U.S. should not have one. Unlike the United States, which developed from the voluntary combination of sovereign states and peoples, European nations developed from autocratic, and at times authoritarian, governments that bestowed (or denied) identities and granted, and sometimes took away, rights of their subjects. In the U.S., citizens of states created our nation and the Constitution reserves rights to citizens and states. Here the Constitution enumerates and limits government powers; the burden of proof is on the government and people are sovereign and presumed to be innocent.

In France, for instance, all nationals, including citizens, carry "a Carte Nationale d'Identite" as an ID document as part of identity "control" to help maintain public order. French newborns are registered with the government at birth and receive cards as teenagers.⁹⁹ Police can ask for identification in public places, within 20 kilometers of the borders and during emergency periods as a general requirement for verification of identity. Residents over age 13 must carry some ID and those not "voluntarily" carrying a national or other ID can be detained, fined, and potentially arrested for not possessing an identity document. Without a national ID one may not vote or acquire a business or professional license.

Though a historical ally and democracy, France has a unitary national state and an inquisitorial system of justice quite different from the United States. In France, those arrested face a burden of proving they are not guilty rather than the American presumption of innocence. The philosophy of the French republic is that the state is right. "In its long history as a unified state, France has always maintained a strict separation between the state and the people. The traditional "raison d'etat" allowed the state to develop and pursue ...policies outside and independent of public opinion. Even today,

compared to other countries considered to be advanced democracies, France has a reputation of having a political elite...that is largely insulated from public pressures.”¹⁰⁰ As former French General and President Charles de Gaulle once proclaimed, “There could be no France without the state...Nothing is of capital importance save the legitimacy, the institutions and the functioning of the state.”¹⁰¹ The French approach of assuming that an individual may be someone else until an identity document indicates otherwise parallels the legal assumption of 'guilty until proven innocent'. It represents a social situation in which citizens are more subjects of the state and where the burden of proof is not on the government but on the individuals. Each of these runs counter to American principles.

In essence, the rights and opportunities of any individual may be subordinated to the State. As French sociologist Raymond Aron noted, "A greater concern for efficiency than for constitutional principles? This is the case in France, not in the United States." As the Wall Street Journal once opined: “The specter of a national ID card sends shivers down liberty-loving spines. It conjures up images ...of French bureaucrats imagining they’re some kind of Napoleon every time they ask to see our papers.”¹⁰² "Liberte, Equalite, et Fraternite" imply important yet notably different priorities from "Life, Liberty, and the Pursuit of Happiness.”¹⁰³

Singapore provides another cautionary example of a national ID system. Though Singapore’s government may be a model of efficiency, it is basically an authoritarian system that closely monitors its citizens and visitors. The use of IDs and a national database are essential parts of the Singapore’s system of social control.

A small island nation of about 5 million people, at the tip of the Malaysian peninsula, Singapore has taken a very different path from the U.S. A British colony after 1867, it gained independence from Britain in 1958 and from Malaysia in 1965.¹⁰⁴ Government policies "stressed

economic development, government management of economy and society, firm government with little tolerance for dissent."¹⁰⁵ "There is only a national government (no state or local level) and a single-chamber legislature. There is compulsory voting and no trial by jury. Though courts have been fairly independent, the government has "intimidated and imprisoned its political opponents, [but] always followed legal forms and procedures."¹⁰⁶ The power structure is "extremely centralized." Its political culture is "centralized authoritarian, and statist."¹⁰⁷

Despite democratic government and elections, there is not a "tradition of civil liberties or of limits on state power" or presumption of innocence. Besides capital punishment, there was "mandatory beating with a cane and imprisonment.... for most serious crimes." "Government operates radio and television and supervises newspapers." College educated women have been "especially encouraged by exhortations and incentives to marry and have children."¹⁰⁸ The police keep records of people registering for "Speakers corner"¹⁰⁹ and there is a national database of all medical records.¹¹⁰ Freedom House rates Singapore as "partly free."¹¹¹

Singaporeans must carry an identity card, containing a universal identity number, a picture, fingerprint, and date of birth. Citizens must get an identity card at 15 and reregister at 30 (and pay the cost of the card). Anyone changing residences must report the new address and phone numbers to the police.¹¹² Citizens can be fined for not carrying the card if stopped by the police. Under the National Registration Act, anyone who gives an ID to another person may be fined \$10,000 and imprisoned for 10 year.¹¹³ In Singapore, the police frequently ask people to produce their papers; it becomes so routine that people cease being bothered by it.

Singapore's Land Transport Authority uses location technology to regulate traffic and parking uses through a nationwide vehicle tracking system. The system works like the E-Z Pass toll-road technology, in which scanners at tollbooths read signals from transponders on the

windshields of passing vehicles to pay tolls automatically. Electronic can locate every vehicle or person equipped with mandatory transponders. (Singaporeans currently have to pay an extra \$90 fee for the service.)¹¹⁴

Interestingly, the major British Commonwealth countries like the United Kingdom, including Ireland, Canada,¹¹⁵ New Zealand and Australia do not have national IDs. The British government abandoned ration cards that extended as IDs after World War II into the 1950s. This was because police regularly demanded them for identification.¹¹⁶ Though the British government again discussed the idea of a national card after September 11th, it has recently backed away from recent proposals. Attempts to impose national IDs on New Zealand or Australia by the government have been vociferously opposed.¹¹⁷ In fact, numerous countries from Sweden to Norway to South Korea and India do not have national IDs.¹¹⁸

Interestingly, too, neither President Bush nor the Bush administration has pressed a national ID proposal. Many Republican and conservative supporters consider a national ID or number to be an anathema for political and religious reasons. President Bush has not advanced a proposal and his cybersecurity chief Richard Clarke did "not think a [national ID] is a very smart idea."¹¹⁹ Yet, more recently, despite the disavowal of a national ID in the enabling legislation, Homeland Security head Tom Ridge has been "working quietly with the state motor vehicle official and the staff of the [National Governors Association] to help standardize the process by which people provide their identifies in order to obtain licenses."¹²⁰ With a nationalized driver's license, the motor vehicles "registry" that used to be the source of relatively harmless frustration might take on a much more ominous meaning. The phrase, "Your papers, please," used to be evoked jokingly about old European practices that now take on an increasingly less humorous edge.

Temporary Support for Permanent Features?

The public and politicians have periodically strongly opposed and strongly supported the National ID card and system proposal. Politicians have questioned the bases of an ID system. At one point, presidential candidate George W. Bush proclaimed "I believe...every American should have absolute control over his or her personal information."¹²¹ As Attorney General-designate, John Ashcroft felt racial profiling was discriminatory: "I think racial profiling is wrong. I think it's unconstitutional. I think it violates the 14th Amendment...I will make racial profiling a priority of mine."¹²² In 1979, 84% of Congress and 45% of law enforcement officials felt the police "should not have the right to stop anyone on the street and demand" ID if the person is not doing anything illegal.¹²³

Similarly, public support or opposition to a national ID has periodically risen and fallen with the times. In 1979, 72% of Americans opposed the police having the power to stop people on the street and demand ID if they weren't doing anything illegal (24% supported).¹²⁴ Early last decade, public opposition to a National ID stood at 56%.¹²⁵ While immediately after the September 11th attacks support rose quickly to 70%,¹²⁶ it declined shortly afterwards to 50% (44% opposed).¹²⁷ A recent probing of opinion found that only 26% support (41% oppose) the idea when the implications are spelled out.¹²⁸ In short, majorities have differed on the wisdom of national ID proposals, and "temporary majorities"¹²⁹ should not be authorizing the removal of fundamental liberties.

In the early 1960s, Milton Friedman wrote against the social costs of ID requirements.¹³⁰ Controversy scuttled Johnson administration plans for a national birth certificate number and National Data Center in mid 1960s.¹³¹ Policy adviser Martin Anderson prevented the implementation of a national ID in 1985 when he suggested to President Ronald Reagan in a cabinet meeting that simpler than a card "all we have to do is tattoo an identification number on the inside

of everybody's arm."¹³² Supreme Court Justice Antonin Scalia said he'd "probably vote against" the proposal for a national ID if there were a referendum on the idea.¹³³

Over the last twenty years, *The Wall Street Journal* has run a series of editorials called "A National ID Card?" when the ID scheme periodically reappears.¹³⁴ *New York Times* columnist, William Safire has argued against the national ID and government surveillance systems since the 1980s.¹³⁵

In short, terrorism is only the most recent rationalization for a national identity card. A national ID system is essentially a way of keeping track of and controlling people that magnifies the power of government and bureaucracies. It does not necessarily solve problems; it only suggests that officials are "doing something" against a serious problem, while concentrating more power in the hands of those officials. The suggestions that an ID might be voluntary or that only "terrorists" fingerprints or facial scans would be kept in the databank would soon clash with two imperatives: mission creep demands that the card become mandatory and productivity demands that information already gathered be used most efficiently. There will be so few terrorists or major felons affected by the system to justify the expense a national identification system it would soon encompass increasingly petty criminals and infractions.

Were the country again to face unsettled times of distrust and widespread antiwar protests, similar to when government leaders previously permitted breaking into doctors' offices for information gathering, would we want a national ID system in permanent place that facilitated surveillance and general invasions of privacy through extensive databank searches? Though terrorists create the conditions for proposing national ID cards, government officials decide to impose such dubious solution that increases their power.¹³⁶ As in the case with the nationalized drivers license and Patriot Acts, officials may wait until troubled times to recycle periodically

previously rejected proposals for a national ID.¹³⁷ Do we really want to be detained in Detroit or denied travel from Texas because of an unpaid parking ticket in Peoria? Do we want a nationalized drivers license system to turn a de facto national ID into an official license to travel?¹³⁸

Any requirements for even local IDs should be kept tied to specific uses. Cost-effective and targeted law enforcement and physical security measures better protect privacy and security. They are also preserved best by “documents serving limited purpose and by relying on multiple and decentralized systems of identification in cases where there is a genuine need to establish identity.”¹³⁹ Any larger scale ID uses should be at most temporary,¹⁴⁰ with clear sunset criteria and dates. A democratic society should have separate identifiers for separate purposes.¹⁴¹ Surveillance of means and preventive architectures should minimize surveillance of persons, including ID checks.

Vigilance versus Good Intentions

During the colonial period prior to the American Revolution when foreign troops physically occupied the country, were quartered in people’s homes, and frequently terrorized the citizenry, patriot Benjamin Franklin reminded our forefathers “they that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.”¹⁴² As Supreme Court Justice Louis Brandeis warned about official surveillance, “experience should teach us to be most on guard to protect liberty when the government purposes are beneficent. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding.”¹⁴³ Chief Justice Rehnquist admonished in *All the Laws But One: Civil Liberties in Wartime*, that governments expand their powers more than needed during emergencies. “It is too easy to slide from a case of genuine military necessity to one where the threat is not critical and the power either dubious or nonexistent.”¹⁴⁴

Twice defense secretary Donald Rumsfeld reinforced in the wake of 9/11 that we should be careful not to "allow terrorism to alter our way of life."¹⁴⁵ President Bush reminds us that in the war on terrorism, "freedom is at stake...and I take that responsibility very seriously."¹⁴⁶ In the search for security, both safety and liberty may be lost. Representative Jan Schkowsky urged in Congress that those suggesting a national ID card "pay close attention to the effects your proposal will have on the fundamental freedoms on which this country was founded: freedom of speech and religion, freedom of assembly, freedom of the press, freedom from unreasonable search and seizure, and freedom from imprisonment without due process. Those freedoms cannot be ignored in the name of homeland security."¹⁴⁷

Freedom

What is at stake and why is freedom so fundamentally important here? "Freedom is the essence of America,"¹⁴⁸ a realization modern public opinion polls reflect¹⁴⁹ and a major reason why many of our families came to America from the old Europe and Asia where demands were common to have one's "papers" in order. What qualities make freedom so special?

Freedom, like love and health, is a precious and unique quality, rarely experienced, delicately nurtured, too often underappreciated, and readily lost. It is not easily attained nor retained as a way of living. It is all too likely to disappear by carelessness or imposition. The experience of freedom has only appeared in modern life as relatively brief moments since the first struggling Englishmen wrested their historic liberties from King John in the Magna Carta less than a millennium ago. The U.S. began its road to freedom in the impulse at Lexington Common to battle for liberty, and it reached its temporary destination during the American Revolution. The early American patriots articulated the aims of liberty in the Declaration of Independent and Preamble to the U.S. Constitution. They affirmed the foundations of those freedoms in the Constitution and in

the immediate contest to create the Bill of Rights, whose gradual realization of its promise has emerged over the more than two centuries of our national history until now.

Though the French, too, won freedom from their king in a revolution, they quickly and periodically have lost it in the Terror, their Empires, and the Vichy Regime. The modern French democratic state is much more intrusive in its centralization and surveillance, and it is much less fundamentally free than the United States. This is precisely because the U.S. has resisted giving up its freedom to a centralized identification and surveillance arrangements represented and embodied in a national ID system. The modern despotism of an efficient Singapore government is no less a mechanism for central control by the government that provides efficient benefits and services.

It is precisely because both our freedom is so unique and some democratic countries have intrusive national surveillance and identification systems that the U.S. should decide not to go down that dead end now or ever. This is more obviously so because of the excesses of the Nazi and Soviet regimes, but it is also apparent from the more sophisticated and centralized French State. If you think about what it is to be free of constant monitoring and political control by not having to carry and show papers, to be left alone in order to travel, to work and to worship by choice, it becomes clearer what freedom feels like and why here a national ID is a bad idea.

As Justice John Marshal Harlan reminds us not to "smother that spontaneity...that liberates daily life": freedom lies in the opportunity "to carry on ...private discourse, freely, openly, and spontaneously without measuring ...every word against the connotations it might carry when...heard by others unknown..."¹⁵⁰ Judge Braxton Craven notes that the foundation of personhood rests for most people in being uncontrolled by government in everyday activities: "what may be the greatest freedom of all ...to the average person, who may not wish to make a speech or print a newspaper," "The right to be left alone is the only non-political protection for a vast array of human activities, which when considered separately, may seem trivial but together make up what

most individuals think of as freedom. I am thinking of little things, most taken for granted, such as the right to attend a football game, to refrain from attending a political rally, to wear a hat, or to ride a bicycle through city traffic.”¹⁵¹

We should not brook the insults to our liberty that either terrorism or systematic government surveillance represents.¹⁵² Just as proposals for national IDs periodically recur, the impulse to liberty and its attendant risks in a free society must periodically be reasserted to continue and prevail. “Adoption of a national ID card would be the most disruptive and regressive innovation that our democracy could possibly accede to. It would permanently deprive us of the cherished privacy and autonomy that many patriots fought to create and preserve.”¹⁵³ Though there are severe threats in the world to those liberties and to our nation, destroying freedom in order to "save" it accepts and assists the demise of precisely what is most precious to fight to preserve. Giving up freedom will lose it, but that dreadful loss will not assure, but instead will ultimately undermine, safety at a fearful price. "The largest cost of a national ID would be the foregone freedoms that constant intrusions involve."¹⁵⁴

In Conclusion

When problems like terrorism arise in a free country, public officials have to address them effectively without destroying the distinguishing qualities and rights the nation is built upon. Surveillance of physical means and targeted law enforcement against specific behavior both conserve resource and respect the freedoms of the law abiding. A national ID is not a free pass for solving problems better addressed in cost-effective and rights-affirming manners. Freedom and justice aren't something we can replace: don't leave the homeland without them.

In sum, a national ID is alien to our nation and system of government, and it will not solve problems more effectively addressed in constitutionally and fiscally sound ways. It will instead

invert proper governing relations and presumptions, and it will create permanent bureaucratic and surveillance systems that pervade less free countries and that emerging democracies are now abandoning.

Quite simply, the U.S. would not be the same admired country or measurably safer if everyone here had to carry national IDs. The consequences of succumbing to periodic and transient impulses to establish a national identification card would systematically erode those very freedoms now under attack that we need to respect and sustain. The idea of a national identity card--whose time should never come to these United States--is one that, for reasons of principle and pragmatism, prudent citizens and leaders must simply reject.

¹ The author would like to thank Timothy Lynch of the Cato Institute for commissioning the draft of this policy analysis, Melissa Gallagher, Bruce Knobe, Annette Demers, Gerald Jenkins, Brooke Rudolf, Nolan Bowie, Tan Ee-Leen and David Abrams for information for or comments on drafts, and other colleagues, researchers and students for insights and assistance. © 2003/9 Richard Sobel

² John Stuart Mill, "Introduction," *On Liberty*, Cambridge University Press, 1989, p. 16.

³ For a discussion of the impact of national identification systems on political identity, see Richard Sobel, "The Demeaning of Identity and Personhood in National Identification Systems," *Harvard Journal of Law and Technology*, 15:2, Spring 2002. For a pre-911 version, see "The Degradation of Political Identity under a National Identification System," *Boston University Journal of Science and Technology Law*, 8:1, Winter 2002.

⁴ Larry Ellison, "Digital IDs Can Help Prevent Terrorism" *Wall Street Journal*, October 8, 2001, p. A26. Alan Dershowitz, "Why Fear National ID Cards?" *New York Times*, October 13, 2001; Amitai Etzioni, "Big Brother or Big Benefits? ID Cards and Biometric Identifiers," *The Limits of Privacy*, Basic, 1999; Shane Ham and Robert Atkinson, "Modernizing the State Identification System," Public Policy Institute, February 2002. See also Leonard Eaton, *Card Carrying Americans*, Rowman & Littlefield, 1976.

⁵ www.aclu.org/safeandfree/; Electronic Privacy Information Center, "Your Papers Please, From the State Drivers License to a National Identification System," Policy Report 1, February, 2002; www.eagleforum.org/topics/ID-card/index.shtml.

⁶ Erwin Kroll, "Your Papers, Please," *The Progressive*, May 1987.

⁷ William Safire, "The Computer Tattoo," *New York Times*, September 8, 1982, a27; "The Threat of a National ID," *New York Times*, December 24, 2001; *Wall Street Journal*, "A National Identity Card?" September 2, 1986; April 3, 1990.

⁸ Etzioni, *The Limits to Privacy*, p. 103

⁹ For the basic elements of a national ID system, see Etzioni, *The Limits of Privacy*, p. 113.

¹⁰ The National Research Council study, *IDs--Not That Easy*, 2002, (pp. 2-3) asks the following questions in evaluating national ID proposals: What is the purpose of the system, what is the scope of the population to be issued IDs, what is the scope of the data gathered about individuals, who would be users of the system, what type of uses would be allowed, would it be voluntary or mandatory, what legal structures would create the system?

¹¹ Robert Ellis Smith, "The True Terror is in the Card," *New York Times Magazine*, September 8, 1996. p. 59

¹² The current “Enumeration at Birth” program covers about 75% of current births (Social Security Administration, Audit of Enumeration at Birth Program, 2001. Though formally voluntary, a Social Security number is now needed to claim a tax deduction for children of any age (see Sobel, “Demeaning,” 2002, fn. 217, p. 352).

¹³ For comparisons to the scope of data collection by the East German Stasi (secret police), see Etzioni, *The Limits of Privacy*, 1999, p. 10; Anna Mulrine, “The Power of Secrets,” *U.S. News and World Report*, January 27, 2003, p. 48.

¹⁴ See Jay Stanley and Barry Steinhardt, *Bigger Monster, Weaker Chains, The Growth of an American Surveillance Society*, ACLU, Technology and Liberty Program, December 2002, p. 7 on RFID (Radio Frequency Identification Device) chips and Implantable GPS (Global Positioning Satellite) chips that can scan and broadcast information and locations connected to an ID card.

¹⁵ The TSA requires the airlines to request identification. “The actual presentation of identification by the passengers is not absolutely required, and there is currently no prohibition against allowing someone on an aircraft without such identification” though this might require additional security measures or the airline might refuse boarding (TSA-ConsumerResponse email, February 21, 2003). The decision is then up to the airlines, which have long wanted to apply ID requirements initially for revenue reasons of preventing the transfer of discount tickets (see Smith, *A National ID Card*, p. 38).

¹⁶ Byron Okada and Diane Smith, “Computer program to aid flight screening,” *Milwaukee Journal Sentinel*, January 8, 2003. A “mammoth computer network” algorithm “will be used to sort through [passengers’] “birth certificates, travel patterns, credit history, tax returns, driver’s licenses, child-support payments, bank accounts, criminal records, charitable donations—searching for threatening signs.” Related proposals, such as requiring an integrated travel record, called an “Aviation Security Screening Record,” for each airline passenger (68 Fed Register 2101-2103, 2002) and requiring ID for travel on any form of inter-city transportation would extend the internal passport requirements (“Notice inviting applications for Intercity Bus Security Grant Program,” 68 Federal Register, 2634). CAPPS II is supposed to begin implementation in 2003 (AP, February 28, 2003). A protest against the CAPPSII screening is beginning against the pilot program at Delta Airlines (www.boycottedelta.org). TIA and CAPPS essentially constitute general search warrants to surveil private travel, financial, and medical without procedural safeguards. The electronic and networked nature of computer records make them more easily searched without a court order than paper records. General warrants or writs of assistance were a major source of both the American Revolution against British rule and demands for a 4th amendment to the U.S. Constitution. See Daniel Solove, “Digital Dossiers and the Dissipation of Fourth Amendment Privacy,” *Southern California Law Review*, 75:5, July 2002.

¹⁷ See Sobel, “Demeaning,” 2002, p. 323-31 on this and other major databanks and ID requirements. See Charlotte, Twight, *Dependent on D.C.*, Palgrave, 2002, pp. 250-1 and Sobel, “Demeaning,” 2002, p. 327 for precursors to national databanks and federalized Drivers License proposals, including the now repealed section 656b of IIRIRA.

¹⁸ John Markoff, “Pentagon Plans a Computer System That Would Peek at Personal Data of Americans,” *New York Times*, November 9, 2002, p. 1

¹⁹ See Stanley and Steinhardt, *Bigger Monster, Weaker Chains* and Mathew Brzezinski, “Fortress America,” *New York Times Magazine*, February 23, 2003 for 1984-like examples of total surveillance.

²⁰ Robert O’Harrow and Jonathan Krim, “National ID Cards Gaining Support,” *Washington Post*, December 17, 2001, p. A1. “About 4 million [cards] are to be issued over the next two years.”

²¹ Sen. Diane Feinstein’s proposal described in Etzioni, *Limits of Privacy*, p. 124.

²² Robert Pear, “Clinton Medical Plan Calls for ‘Health Security’ Cards,” *New York Times*, April 12, 1993, p. 7. Also, Hillary Clinton’s call for a national ID against illegal immigration (“Hillary Clinton Suggests a national ID card for U.S. citizens,” Declan McCullough’s Politech, February 12, 2003).

²³ The requirement for a “unique health identifier” was created by the Health Improvement Portability and Accountability Act of 1996 (Kennedy-Kassebaum) that makes health insurance neither particularly portable nor accountable. See Robert Kuttner, “Why Not a National ID Card?” *Washington Post*, September 6, 1993, p. 23; Sheryl Stolberg, “Health Identifier For All Americans Runs into Hurdles,” *New York Times*, July 20, 1998, p. 1. Tiffany Danitz, “Deceit, Denial and the Fate of Privacy,” *Insight*, August 24, 1998.

²⁴ Twight, *Dependent on D.C.*, p. 392, note 28, and Homeland Security Act, p. 177, cited in Steven Brill, “The Biggest Hole in the Net,” *Newsweek*, December 30, 2002, p. 48.

- ²⁵ Twight, *Dependent on D.C.*, p. 251; Smith, *A National ID Card*, License to Live, 2002, p. 28-29.
- ²⁶ Christine Hall, "Government Trade Association Calls for North American ID Drivers License," CNSNews.com, January 15, 2002.
- ²⁷ Donna Leinwand, "National ID in Development, but Enthusiasm for the System Seems to be fading, Poll says," *USA Today*, January 22, 2002, p. A2.
- ²⁸ Sen. Richard Durbin (D-IL), personal correspondence, October 22, 2002.
- ²⁹ See "Threat to Privacy in a Driver's License," Letter to the Editor by Phyllis Schlafly, President of the Eagle Forum, and Nadine Strossen, President of the ACLU, *New York Times*, May 1, 2002.. p. 26.
- ³⁰ Robert Ellis Smith, *A National ID Card, A License to Live*, 2002, pp. 2,4, 44 fn. 1.
- ³¹ Viveca Novak, "Carding the Truckers," *Time*, March 3, 2003, p. 4?
- ³² In addition, the TSA began developing a 'trusted-travelers' card for air travelers passing a background check (Barbara De Lollis, "'Trusted-travelers' card could speed security check," *USA Today*, July 2, 2002) that has not gone forward. The Social Security administration is proposing a pilot program in five areas, including New York City, to take pictures of every benefit claimant except those with "sincere religious objections." (68 Federal Register 69161, November 15, 2002). A photo Social Security Cards would be an alternative route to the national driver's license approach to as a national ID.
- ³³ See Richard Sobel, "Not for Identification Purposes: National identity numbers don't belong in an open society," *Berkman Center Filter*, August 12, 1998, 1:2.; Sobel in Sheryl Stolberg, "Health Identifiers for All Americans Runs into Hurdles," *New York Times*, July 20, 1998, quoted in Twight, *Dependent on D.C.*, 2002, p. 259.
- ³⁴ Tim Lynch, "Breaking the Vicious Cycle, Preserving Our Liberties While Fighting Terrorism," *Cato Policy Analysis*, 443, June 26, 2002, p. 14.
- ³⁵ Lynch, "Breaking the Vicious Cycle," p. 14.
- ³⁶ Etzioni, *The Limits of Privacy*, p. 127
- ³⁷ Lynch, "Breaking the Vicious Cycle," p. 15
- ³⁸ Smith, "True Terror," *New York Times*, September 8, 1996, p. 59.
- ³⁹ Clyde Wayne Crews, "Human Bar Code, Monitoring Biometric Technologies in a Free Society," *Cato Policy Analysis* 452, September 17, 2002, p. 7.
- ⁴⁰ Rep. Ron Paul, Statement on the Child Support Distribution Act of 2000, Sept. 7, 2000. (p. 357).
- ⁴¹ Bernard M. Baruch, *My Story: The Public Years*, 1960, p. 369. See also how the privileges and immunities clauses of the U.S. constitutions protect rights that "belong...to the citizens of all free governments," in Kimberly Shankman and Roger Pilon, "Reviving the Privileges or Immunities Clause to Redress the Balance Among States, Individuals, and The Federal Government," *Cato Institute, Policy Analysis* 326, November 23, 1998, p. 8.
- ⁴² In some sense, the individual would become property of the state. At very least the card and associated records would be government property. "Forcing people into carrying a national ID card tells them effectively: 'You belong to the state. You only exist when the government says you do.' It is utterly antithetical to the founding principles of the American republic...." *Santa Ana Register* editorial, July 14, 1994.
- ⁴³ Stephen, Moore, "A National Identification System," Testimony to Congress, House Judiciary Committee, May 13, 1997.
- ⁴⁴ National Research Council, *IDs—Not That Easy*, 2002. p. 29.
- ⁴⁵ Electronic Privacy Information Center, "Your Papers Please, From the State Drivers License to a National Identification System," Policy Report 1, February, 2002, pp. 7, 16
- ⁴⁶ Charlotte Twight, "Why Not Implant a Microchip?" February 7, 2002 email.
- ⁴⁷ Robert Ellis Smith, *A National ID Card, A License to Live*, 2002, p. 5.
- ⁴⁸ Schlafly and Strossen, "Threat to Privacy in a Driver's License," May 1, 2002.. p. 26.

⁴⁹ National Research Council, *IDs—Not That Easy*, 2002. P 6; citing GAO, *Immigration Reform, Employer Sanctions and the Question of Discrimination*, March 1990. The finding of “widespread discrimination” was supposed to generate expedited repeal of employer sanction, which like other promises of procedural protections around ID documents, did not occur. See Sobel, “Immigration and Identification,” 2001, on the failure of expedited repeal. If ethnicity were included in a national ID system, it might abet discrimination by identifying people by race and ethnicity.

⁵⁰ See comment by Rep. Lucille Roybal-Allard (D-CA) that “it is ironic that South Africa has just abandoned its notorious passcard identification system that has been an essential element of apartheid,” in John Miller and Stephen Moore, “Big Brother’s Solution for Illegal Immigration, A National ID System,” *Cato Institute*, 237, September 7, 1995, fn. 10. See also Sobel, “Demeaning,” 2002, pp. 343-9, for a history of discrimination of badges of identity in Germany, South Africa, the USSR, and Rwanda.

⁵¹ See David A. Harris, *Profiles in Injustice*, New Books, 2002 for a critique of profiling that underscores the cost-effectiveness of pursuing suspects based on their behavior rather than on racial characteristics. Devoting resources to locating and appropriately incarcerating serious repeat offenders is also more cost-effective than wasting resources on across-the-board profiling or surveillance.

⁵² Robert Ellis Smith, in Robert O’Harrow and Jonathan Krim, “National ID Cards Gaining Support,” *Washington Post*, December 17, 2001, p. A1. Also see Smith, “A Nation ID Card,” 2002, p. 6.

⁵³ O’Harrow and Krim, “National ID Cards,” December 17, 2001.

⁵⁴ Smith, *A National ID Card*, 2002, p. 38-41.

⁵⁵ Ashton Carter, in Christopher Connell, “Homeland Defense and Democratic Liberties: An American Balance in Danger?” *Carnegie Corp*, 2002, pp. 3-5. “It’s much easier to do surveillance of means. And surveillance of means is something we have not really begun yet. I’m not prepared to surrender any of my liberties before we have done a whole host of other things that can contribute materially to solution of this problem.”

⁵⁶ Smith, *A National ID Card*, 2002, p. 2, 4, 38-39 suggests that physical solutions protect against hijackers without treating everyone as suspects and denying the right to travel to constitutionally protected citizens through ineffective ID checks.

⁵⁷ Most people able to develop destructive devices can obtain forged identity documents, or not to travel on an endangered plane. Physical protections and better airplane procedures can better prevent potential martyrs. These include bag matches to flying passengers, x-raying check bags and restricting carry-ons. Also hardened cockpit doors, air marshalls, better in-air crew procedures, and an aroused public are better protections and deterrents. Integrating “watch-lists” for law enforcement at boarder crossings would better keep people out of the country than waiting to the last minute to try to keep them off airplanes by fallible facial recognition or identification technologies or procedures (Smith, *A National ID Card*, 2002, pp. 38-9). While no individual country can solve international terrorism, better foreign policy, international coalitions, and undermining terrorism abroad remove the bases and perpetrators of terror.

⁵⁸ Would the non-ID procedures instituted since 9/11 have prevented those hijackings and are current non-ID procedures likely to prevent another? First, changes in restrictions on smaller weapons, and instituting hardened cockpit doors, air marshalls, and crew and passenger awareness would have prevented them. Changes in CAPS follow-up procedures, which flagged 9 of 19 hijackers, from x-raying bags to interviewing at last some “selectees” might have deterred the events. Since there were no U.S. hijackings for a decade years before 9/11 and there has been major publicity around the event, the likelihood of its recurrence now lower. If previously unknown potential hijackers tried again today, because they could not be on any list, their presentation of fake or real ID would not flag them for further scrutiny. But the changes in airport procedures might deter them, whether identified or not.

⁵⁹ “Perhaps it is an irony that physical search of one’s luggage can be more embarrassing and inconvenient than presenting personal ID but the ID requirement does more pervasive and long-lasting damage to a free society” (Smith, *A National ID Card*, 2002, p. 40). This is because institutionalizing ID requirements and keeping information in databanks ties into government profiling, approval and credentialing in order to travel or work. There is no domestic travel ID requirement in Israel or Canada (Smith, p. 40).

⁶⁰ *Kent v. Dulles* 35 US 116 (1958). The Supreme Court “long ago recognized that the nature of our Federal Union and our constitutional concept of person liberty unit to require that all citizens be free to travel throughout the length and breath of our land uninhibited by statutes, rules, or regulations which unreasonable burden or restrict this

movement” (Shapiro v. Thompson, 394 US 618 (1969)). See also the right to “free ingress and regress” in the Articles of Confederation, in Shankman and Pilon, “Reviving,” 1998, p. 7.

⁶¹ Miller and Moore, “Big Brother’s Solution for Illegal Immigration, A National ID System,” September 7, 1995 (pp. 8-9), cite error rates of 10-20% for IRS and INS databanks.

⁶² National Research Council, *IDs—Not That Easy*, p. 24.

⁶³ Public Interest Research Group found a 70% error rate, including 30% serious error rates in credit reports (EPIC, *Your Papers, Please*: 2002, p. 11). Reconciling other databases with the Social Security administration’s database is expected to have 20% errors (p. 11). Each 1% error in information about people in the labor force of 120 million workers affects about 1,200,000 people.

⁶⁴ *EPIC, Your Papers, Please*, 2002, p. 2.

⁶⁵ In fact, government permission to credit bureaus to sell “header” information in credit reports, including Social Security Numbers, is one of the major causes of the very ID theft some people propose to solve with an ID requirement. See Smith, *A National ID Card*, p. 16. “The FTC, which regulates credit bureaus, ruled in a nonpublic negotiation in 1993 that credit bureaus are free to rent “header” information.... That is when identity fraud became a nationwide epidemic.” (ibid.).

⁶⁶ A national identification system would also be very expensive to establish, update and extend. At only \$100 to \$200 per person for setting up the technical system and staff time for evaluating and processing each applicant, it could easily required \$25 to \$50 billion dollars to establish. It could cost \$3 to 6 billions more yearly to administer, and would never be cost effective (Miller and Moore, 1995, p. 1). The Social Security Administration estimated it would cost up to \$10 billion to issue new cards (Social Security Administration, *Report to Congress on Options for Enhancing the Social Security Card*, September 1997). (The bill for a nationalized driver’s license requests \$100 million, but estimates range beyond \$300 million. Considering that there are about 225 million licenses held by drivers and non-drivers (Epic, p. 1), the cost of replacing them would clearly run into the billions.) Understandably some of the strongest advocates are associated with technological companies and software providers that might benefit profitably from the establishment and extension of a system, workable or not, even if they donated part of the start up infrastructure, as offered by Oracle Corporation’s CEO Larry Ellison listed by *Fortune* as the 5th wealthiest American (February 2003). Rather than spending the equivalent of the cabinet department budget on an ID system destined to fail in its most serious purposes, law enforcement should target its resources to find the few serious perpetrators.

⁶⁷ Interview with Timothy Lynch, Cato Institute, March 7, 2003.

⁶⁸ See Jay Stanley and Barry Steinhardt, *Bigger Monster, Weaker Chains: The Growth of an American Surveillance Society*, ACLU, Technology and Liberty Program, December 2002.

⁶⁹ Smith, “Say No to A National ID Card,” Conference on Visions of Privacy for the 21st Century, May 9, 1996. in Smith 1991, p. 34).

⁷⁰ Richard Sobel, “Immigration and Identification, Interview with Alan Simpson,” *Migration World*, 29:3, 2001, p. 33. A similar promise that employer sanctions would be repealed if widespread discrimination were found from IRCA was ignored. Even though, as the Wall Street Journal noted, April 16, 1990, p. a12, in “Clocking Immigration Sanctions,” employer sanctions are the first sets of laws “since Jim Crow where the government is so closely aligned with the process that produces discrimination.”

⁷¹ Smith, “True Terror,” p. 59; “Is this a one-way street?” *Privacy Journal*, March 1997.

⁷² Smith, *A National ID Card*, 2002, p. 24.

⁷³ Etzioni, *The Limits of Privacy*, p. 132

⁷⁴ The bases of expanding federal surveillance, particularly by datamining of private databases lie in the CAPPs II, Patriot Acts I & II, and the Total Information Awareness System. For information on CAPPs II, see Byron Okada and Diane Smith, “Computer program to aid flight screening,” *Milwaukee Journal Sentinel* January 8, 2003, p. 3E; on “Patriot Act I,” (Domestic Security Enhancement Act of 2003) see Rajeev Goyle, “Patriot Act sequel worse than first,” *The Baltimore Sun*, February 21, 2003, p. 19A; *St. Petersburg Times*, “Liberty crisis; “Rights and the New Reality: An Overzealous Patriot Act,” February 18, 2003. p. 10a; *Los Angeles Times*, “Rights and the New Reality: An Overzealous Patriot Act,” February 14, 2003, p. 16, and the ACLU analysis <www.aclu.org/safeandfree>; for Aviation Security-Screening Records (ASSR) see “Aviation Security Screening Records,” 18 Fed. Register, 2002 tsa011503, and “US Seeks Data on Travelers,” *Wall Street Journal*, January 6, 2003, p. 14. See also “Intercity Bus

Security Grant Program,” 68 Federal Register 2634, tsa011703. For Total Information Awareness (TIA) see John Markoff, “Pentagon Plans a Computer System That Would Peek at Personal Data of Americans,” *New York Times*, November 9, 2002, p. 1.

⁷⁵ See *Kolender v. Lawson* (461 US 352, 1983) and *Carey v. Nevada* (279F.3rd, 2002) for standards for ID search only with probable cause of illegal activity.

⁷⁶ Gallup Polls, September 14-15, 2001 found that two thirds (65%) opposed “making it easier for legal authorities to read mail, e-mail or tap phone without a person’s knowledge,” two provisions of the Patriot I Act. Similarly two thirds opposed (69%) allowing the “police to stop people on the streets at random to search their possessions.”

⁷⁷ See *Kolender v. Lawson*, 1983; *Carey v. Nevada*, 2002.

⁷⁸ Stanley and Steinhardt, 2002, *Bigger Monsters, Weaker Chains*, p. 7 on RFID (Radio Frequency Identification Disks) and GPS (Global Positioning satellite) chips that transmit position to receivers and computer systems.

⁷⁹ HR 4633, “Driver’s License Modernization Act of 2002,” proposes a national driver’s license.

⁸⁰ Crews, “Human Bar Codes,” p. 6, citing Steven Levy, “Playing the ID Card,” *Newsweek*, 5/13/02, p. 44.

⁸¹ William Safire, “The Threat of the National ID,” *New York Times*, December 24, 2001, p. 15

⁸² O’Harrow and Krim, December 17, 2001.

⁸³ Jennifer S. Lee, “Upgraded Driver’s Licenses are Urged as National IDs,” *New York Times*, January 8, 2002, p. a13.

⁸⁴ Phyllis Schlafly, in Etzioni, p. 122, “Liberty v. Totalitarianism,” p.1.

⁸⁵ Schlafly in Etzioni, p. 122.

⁸⁶ See Akil Amar, *The Bill of Rights*, on the self-regarding and aggrandizing natures of government officials’ increasing their power, and Charlotte Twhight, *Dependent on DC*, 2002, on how the transactions costs for citizens trying to protect their rights actually assist politicians in making detrimental proposals that enhance their power with little public knowledge or opposition.

⁸⁷ Department of Health, Education and Welfare, Records, *Computers and the Rights of Citizens*, “Code of Fair Information Practices,” Washington, D.C.: Government Printing Office, 1973.

⁸⁸ Marty Pepper Aisenberg, “Big Brother May be Coming to Logan,” *Boston Herald*, March 6, 2003.

⁸⁹ “Because they are digital representation, biometrics can also be counterfeited more easily than the actual representation, e.g. of a fingerprint. Although each of us have irises, retinas and fingerprints all our own, that is not what scanning devices compare. All biometric devices scan one of our personal attributes and transform it into a computer file. The computer file is then saved so that it can be compared to a second computer file that is created when the same personal attribute is scanned for authentication purposes. If the original file is, however, “planted” into particular scanning device evidence will have been created “placing” a defendant at a particular location, when in fact the defendant may have been hundreds of miles away. In cases of planted biometric files, it will be difficult, if not impossible, for a defendant to prove that she was not in a specific location.” Gerald Jenkins, Head of the Information Technology Group at Goldberg, Kohn, and adjunct professor at John Marshall Law School, February 21, 03.

⁹⁰ Epic, “Your Papers, Please,” p. 12

⁹¹ Jenkins (fn. 84 here) notes that digitized biometrics are thus counterfeited easily.

⁹² Alan Dershowitz, “Why Fear National ID Cards,” *New York Times*, October 13, 2001.

⁹³ Robert Levy, “The ID Idea,” *National Review Online*, October 24, 2001 cited in Crews, “Human Bar Code,” p. 5.

⁹⁴ Crews, “Human Bar Code,” p. 5. See Sobel, “Immigration and Identification,” 2001.

⁹⁵ Congressional Record, S2270, March 14, 2001.

⁹⁶ Etzioni, *The Limits of Privacy*, p. 126.

⁹⁷ O’Harrow and Krim, December 17, 2001.

⁹⁸ See also Sobel, "Demeaning," 2002, pp. 343-9 on the historical abuses through identification systems and documents. These include the misuse of supposedly confidential census data in the U.S. to round up Japanese-Americans at the start of World War II.

⁹⁹ See "Controle et verification d'identite pour toute information." <vosdroits.service-public.fr/arbo/210109-nxpap110.html>.

¹⁰⁰ "Elections are held regularly, and government commissioned public opinion polls are taken frequently, but it is a common assumption that French public opinion has little effect on French foreign policy." Marc Marje Howard and Lise Morje Howard, "Raison d'etat or Raison populaire?" "The Influence of Public Opinion on France's Bosnia Policy," in Richard Sobel and Eric Shiraev, *International Public Opinion and the Bosnia Crisis*, Lexington, 2003, p. 107. This might be summarized as "Au dessus de tout il y a la raison de l'Etat": Above all, the State is right.'

¹⁰¹ Speech to the members of the Council of State, 28 January 1960, quoted by Bernard Tricot in *Les Sentiers de la paix* (The Paths of Peace), Plon, 1972. DeGaulle is also reputed to have said, "La France ne se trompe jamais. Ce sont les Francais qui se trompent": 'France is never mistaken. It is the French who are mistaken.'

¹⁰² Raymond Aron, *An Essay on Freedom*, New York: World, 1970, p. 133.

¹⁰³ Wall Street Journal, A National Identity Card? September 2, 1986, "The specter of a national ID card sends shivers down liberty-loving spines. It conjures up images ...of French bureaucrats imagining they're some kind of Napoleon every time they ask to see our papers."

¹⁰⁴ Malaysia, of which Singapore was part until the middle 1960s, when both became independent of Britain which imposed an earlier identification system, recently introduced the "Mykad," "which electronically wraps identity, digital thumbprints and personal details into a compulsory piece of plastic the size of a credit card...The card has been accepted in Malaysia but plans to impose something similar in Western countries could provoke an outcry over the erosion of civil liberties. Mykad is basically a microcomputer. The key features are an intelligent circuit chip, biometrics and encryption technology. It uses two biometrics measure individuals' physical characteristics to authenticate identity, the face and fingerprints. Apart from the name and address of the cardholder, all other data can only be accessed through a card reader available only to enforcement officers. Every Malaysian citizen over the age of 12 carried a paper identity card containing their thumbprints long before the smart card existed. Eileen Ng, "'Smart' identity cards could be new weapon in war on terrorism," Agence France Presse, Canberra Times, September 21, 2001.

¹⁰⁵ Federal Research Division of the Library of Congress, *Singapore: a Country Study*. Library of Congress, 1989, p. xvi.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid. pp. 177, 185, 197.

¹⁰⁸ Ibid. pp. 197, 262, xvi, xxiii.

¹⁰⁹ "Keeping records of speakers," *The Straits Times*, May 9, 2000,

¹¹⁰ "Patients' database planned," *The Straits Times*, August 17, 1999

¹¹¹ Freedom House website <www.freedomhouse.org/ratings/index.htm> 2002 rated Singapore at 5.5, at the dividing point between "partly free"and "not free."

¹¹² www.sir.gov.sg/citizen_sc/icregn-01.html.

¹¹³ Singaporeans also may carry an Immigration Automated Clearance System (IACS) Access Card for clearance at checkpoints by harnessing biometrics and smart card technologies. The Access Card is a smart card in which the holder's fingerprint data is stored. Presently, the IACS is available at the International Airport and the bus passenger halls Checkpoints. At the automated lanes, card holders inserts their Access Card into a card reader and place their right thumb on the fingerprint scanner for verification. The automated gate open for the holder to exit when the system authenticates the fingerprint.

¹¹⁴ Brzezinski, "Fortress America," February 23, 2003. A similar system could locate all Americans in a particular metropolitan area; it would charge a fee to individual drivers for the service.

¹¹⁵ For resistance to a national ID for Canada, see "Privacy rights 'under assault': Ombudsman says Canada bowing to U.S. pressure," *Calgary Herald*, January 30 2003.

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- 116 See Smith, *A National ID Card*, p. 6. on the British High Court decision against national IDs.
- 117 See Smith, *A National ID Card*, pp. 1, 2, 36.
- 118 Privacy International website www.pi.org, in Smith, *A National ID Card*, 2002, p. 41.
- 119 Robert O’Harrow and Jon Krim, “National ID Cards Gaining Support,” *Washington Post*, December 17, 2001, p. A1.
- 120 Steven Brill, “The Biggest Hole in the Net,” *Newsweek*, 12/30/02, p. 48.
- 121 Dana Hawkins, Medical Privacy Rules Give Patients and Marketers Access to Health Data, *US News & World Report*, January 29, 2002.
- 122 Sen. Russ Feingold, “Racial Profiling,” 147 Cong. Record, S2270, March 14, 2001.
- 123 Louis Harris and Alan Westin, *The Dimensions of Privacy*, 1981, p. 70.
- 124 Harris and Westin, 1981, p. 70.
- 125 Louis Harris and Associates, poll, January 11, 1990. Located through Roper Center Public Opinion Locator Library.
- 126 PEW Research Center, September 13, 2001.
- 127 CBS News Polls, February 24, 2002
- 128 Julia Scheeres, “Support for ID Cards Waning,” *Wired*, February 18, 2003 www.wired.com/news/business/0,1367,51000,00.html
- 129 Crews, “Biometrics,” p. 5.
- 130 Milton Friedman, *Capitalism and Freedom*, Chicago, 1962, p. 149, “Even registration has significant social costs. It is an important first step in the direction of a system in which each individual has to carry an identity card, every individual has to inform authorities what he plans to do before he does it.” Chicago, 1962.
- 131 Smith, *A National ID Card*, 2002, p. 13; Garfinkle, Database Nation, *The Death of Privacy in the 21st Century*, 2000.
- 132 Martin Anderson, *Revolution*, 1988, p. 276.
- 133 “Supreme Court Justice Antonin Scalia is No Fan of National ID Proposal,” November 15, 2001, AP, 118.
- 134 Wall Street Journal, “A National Identity Card?” September 2, 1986, April 3, 1990.
- 135 William Safire, “The Computer Tattoo,” *New York Times*, September 8, 1982, a27; “The Threat of a National ID,” *New York Times* December 24, 2001; “Privacy Invasion Curtailed,” *New York Times*, February 13, 2003, p. 41.
- 136 William H. White, “The True Terror is in the Card,” Letter to Editor, *New York Times Magazine*, September 29, 1996, p. 5? “While terrorism may hurt some of us, only Government has the resources to impose tyranny on U.S. all.”
- 137 A proposal in section 656b of the IIRIRA act to upgrade the driver’s license and birth certificates and require Social Security numbers and perhaps biometrics in or on all drivers’ licenses was repealed after protests from privacy groups. See Sobel, “Demeaning,” 2002, p. 327. The plan to introduce Patriot II Act, which limits judicial oversight and allows access to medical and other personal records without a court order, was evidently to wait to introduce it until a major crisis like an attack on Iraq or another terrorists attack (see Nat Hentoff, “Red Alert for Bill of Rights,” *Village Voice*, March 7, 2003).
- 138 See Stanley and Steinhardt, *Bigger Monsters, Weaker Chains* 2002, for the totality of current and projected ID and data requirements into a “monster” of a “surveillance society.” See also Mathew Brzezinski, “Fortress America,” *New York Times Magazine*, February 23, 2003 for a dystopian expression of what the U.S. would become if it abandoned freedom as a guiding force in the pursuit of security against terrorism.
- 139 EPIC, *Your Papers, Please*, p. 4.
- 140 EPIC, *Your Papers, Please*, p. 4
- 141 Smith, *A National ID Card*, 2002, p. 26

¹⁴² Benjamin Franklin, *Historical Review of Pennsylvania*, 1759, cited in Richard Sobel, "Anti-terror campaign has wide support, even at expense of cherished rights," *The Chicago Tribune*, November 4, 2001.

¹⁴³ Justice Louis Brandies (dissenting) in *Olmstead v. U.S.*, 277 U.S. 438, 1928.

¹⁴⁴ William Rehnquist, *All the Laws but One: Civil Liberties in Wartime*, 1998, p. 234.

¹⁴⁵ Lynch, "Breaking the Vicious Cycle," p. 17.

¹⁴⁶ President George W. Bush, Speech to the Nation, March 6, 2003.

¹⁴⁷ Does American Need a National Identifier? Hearings, House Government Reform subcommittee, 107th Congress, 2001, cited in Sobel, "Demeaning," 2002, fn. 349.

¹⁴⁸ Lynch, "Breaking the Vicious Cycle," p. 7.

¹⁴⁹ The General Social Survey asked a series of questions about the meaning of freedom to American. "Freedom is having a government that doesn't spy on me or interfere in my life" was very important (32%), extremely important (26%), or "one of the most important things" (30%) to 88% of the population (National Opinion Research Center, February 1-June 5, 2000; national sample, N=2,817).

¹⁵⁰ "Were third-party bugging a prevalent practice, it might well smother that spontaneity reflected in frivolous, impetuous, sacrilegious, and defiant discourse--that liberates daily life." (*US v. White*, 91 S.Ct. 1122, 1971, J. Harlan).

¹⁵¹ Smith, *A National ID Card*, 2002, p. 7

¹⁵² See Stanley and Steinhardt, *Bigger Monster, Weaker Chains*, 2002 on how the "synergies of surveillance" are turning the defense capabilities of the U.S. inward on the American people. "The pent up demand for surveillance" from video, data (genetic, medical, financial), and government surveillance under national databases, the "Patriot" Acts, and CAPPs programs and a possible national ID (or "retrofit" driver's license) are undermining freedom and privacy, despite defeat of the TIPS and TIA programs. "A network of automated RFID listening posts on the sidewalks and roads could even reveal the location of all citizens all the times" (p. 13). It proposes changing the debate toward freedom, comprehensive privacy laws, and reviving the Fourth Amendment to reverse the process.

¹⁵³ Smith, *A National ID Card*, 2002, p. 7 citing Judge J. Braxton Craven, on "Personhood," 1976: Mentioning "the right to attend a football game" is ironic in terms of the use of face recognition technology at the 2002 Superbowl in Tampa and proposed for the 2003 game in San Diego. Smith says "after each unthinkable crisis... Americans...or government agencies, insist on punishing ourselves" (p. 6) with reforms like a national ID that curtail our freedom. See also Sobel, "The Demeaning," 2002, for the impact of national identification systems on personhood. and Janna Malamud Smith, *Private Matters, In Defense of Personal Life*, 1997, pp. 28-9.

¹⁵⁴ Sobel, "The Demeaning," 2002, p. 366.