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# Tough Times for Civil Liberties

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In 1987 Justice William Brennan spoke at the Hebrew University Law School in Jerusalem. The sounds of the intifada nearby were an apt obligato because his subject was: "The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crises."

Brennan focused mainly on the American experience. He gave us poor marks. "After each perceived security crisis ended," he said, the "United States has remorsefully realized that the abrogation of civil liberties was unnecessary. But it has proven unable to prevent itself from repeating the error when the next crisis came along."

Whether we repeat the error after the horrors in Oklahoma City depends, of course, on those who make the recommendations and the decisions. According to Harold Ickes, the deputy chief of staff at the White House, we need have no worries about the president's devotion to the Bill of Rights.

"This president," said Ickes, "is well familiar with the Constitution. He has taught constitutional law, and he is very concerned that whatever is submitted conform to the Constitution."

This president has brought to Congress his Omnibus Counterterrorism Act of 1995. It allows aliens accused of supporting terrorist organiza-

tions to be deported on the basis of evidence they and their lawyers cannot see. Nor, in those cases, are they entitled to know the identities of their accusers.

While teaching the Constitution at the University of Arkansas, professor Clinton presumably devoted a lecture or two to due process. Yet, as a scholar of the Constitution, he seems not to have learned that in a series of decisions the Supreme Court has consistently ruled—as in *Kwong Hai Chew v. Colding*—that "once an alien lawfully enters and resides in this country, he becomes invested with the rights guaranteed by the Constitution to all people within our borders."

For instance, freedom of association and due process—both of which are ignored in the president's anti-terrorism bill.

But, according to Sen. Robert Dole (R-Kan.), we can take heart because there are protectors of civil liberties right in Congress. After a bipartisan meeting with the president, Dole said cheerfully, "We've got some constitutional experts here—Joe Biden and Orrin Hatch."

## SWEET LAND OF LIBERTY

Well, the expert Sen. Biden (D-Del.) is cosponsor in the Senate of the Omnibus Counterterrorism Act. As for the contribution of Sen. Hatch (R-Utah) to a jurisprudence of civil liberties, he has proposed a deal. As reported in The Post, "Republicans would not act on plans to seek repeal of the new ban on assault weapons in exchange for approval of curbs on appeals by condemned prisoners."

To try to prevent a recurrence of the killings in Oklahoma City, Sen. Hatch proposes that we speed the killings of people on death row—and of habeas corpus. I assume the logic of this proposition is that future terrorists will scrap their plans for fear of being executed swiftly if they are caught. This also assumes—contrary to history—that these ideological murderers are as rationally self-protective as the rest of us.

Hatch, moreover, is chairman of the Senate Judiciary Committee, where he has declared total war on the exclusionary rule, without which the Fourth Amendment dissolves.

Among other proposals to keep us safe, there is the White House's desire to make it easier for

law enforcement agents to eavesdrop on our phone conversations and other communications.

These plans include an advance in scattershot invasions of privacy. As USA Today put it in an indignant editorial, the White House desires "widespread tapping of any phone a suspect might conceivably use"—when it is impossible to specify a particular phone number. And this "could open the door to massive abuses of people's rights."

These roving wiretaps could well encompass pay phones and even private phones used by people who are not suspects. If, moreover, improper warrants were obtained for the wiretapping, the evidence would still be used in court so long as the agents did not act in "bad faith."

I expect that J. Edgar Hoover may yet be redeemed, for he always believed what Rep. Charles Schumer (D-N.Y.) declared after what happened in Oklahoma City: "In wartime, it's different than peacetime. In terrorism time, it's different from peacetime."

This is the congressman who introduced the president's Omnibus Counterterrorism Act in the House. The auguries are that once more, we will put civil liberties aside in terrorism time—and repent at some future date.