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Opinion

War on the Constitution by a Nobel Prize winner

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By Nat Hentoff, columnist

While battling the FBI's expanded surveillance guidelines, Sen. Russ Feingold, D-Wis., also revealed (Daily Kos, Oct. 8) that in the Senate Judiciary Committee review of the Patriot Act (also Oct. 8), Republicans protecting the Act were joined, in a closed-door classified session, by Obama officials with amendments further preserving it. Then, in a public session, all but three Democrats voted for a watered-down "compromise" bill by Patrick Leahy and Diane Feinstein.

Feingold, Dick Durbin, D-Ill., and new Democrat Arlen Specter (Pa.) had the constitutional courage to oppose the Judiciary Committee bill eventually going to the floor that, with few exceptions, leaves the Patriot Act intact. I'll be reporting on the crucial fight to bring the Bill of Rights back into the Patriot Act as Senate and House versions merge into a law to be signed by Obama as he continues the Bush-Cheney legacy.

It was Feingold who, in October 2001, was the only member of the Senate to vote against the original Patriot Act as, on the floor, he accurately predicted our greatly weakened privacy, due process and other rights since then.

He is not giving up. "In the end," Feingold says. "Democrats have to decide if they are going to stand up for the rights of the American people" or (for recent example) "allow the FBI to write our laws."

As I have reported, the FBI is already writing our laws — without going to any judge. How much have you seen about the FBI's locking up of the Fourth Amendment on cable and broadcast television (from the right- or the left-leaning stations) in newspapers, on the Internet or, of course, from the Democratic Congressional leadership, Harry Reid and Nancy Pelosi, characteristically indifferent to the Bush-Cheney-Obama assaults on the Bill of Rights?

When were the first FBI guidelines on domestic surveillance and why? In the 1970s, Sen. Frank Church of Idaho, chairman of a Senate Committee on Intelligence Activities, exposed FBI Director J. Edgar Hoover's COINTELPRO (Counter-intelligence Program) as an omnivorous surveillance operation that aimed squarely at preventing Americans "exercise of First Amendment rights of speech and association."

If Big Brother is always watching you, you become careful of what you say and with whom you associate.

The Church committee's revelations resulted in the then-attorney general, Edward Levi (a former professor of constitutional law), and Congressman Don Edwards formulating the first FBI guidelines specifically faithful to the Constitution.

When I was reporting on Edwards' congressional service (1962 to 1995), I often described him as the "The Congressman from the Constitution." As chairman of the House Subcommittee on Civil and Constitutional Rights, Edwards, a former FBI agent, set standards for congressional oversight of the FBI. Under Presidents George W. Bush and Barack Obama, these standards have become obsolete.

"No federal agency," said Congressman Edwards, "the CIA, the IRS, or the FBI, can be at the same time policeman, prosecutor, judge and jury. That is what constitutionally guaranteed due process is all about. It may sometimes be disorderly and unsatisfactory to some, but it is the essence of freedom."

The Constitution, Edwards continued, does not permit "federal interference" with Americans' speech or associations, and other such citizen constitutional rights, "except through the criminal justice system, armed with its ancient safeguards." Like mandated judicial supervision — absent from current Obama administration FBI surveillance guidelines.

Edwards regarded as "subversive" the "notion that any public official — the president or a policeman — possesses a kind of inherent power to set aside the Constitution whenever he thinks the public interest, or 'national security' warrants it."

Don Edwards represented the Constitution we are losing.

Any of the Senate or House members representing you? Unhesitatingly, I nominate Sen. Russ Feingold of Wisconsin.

It was in 2002 that I asked Don Edwards what he thought of the then Bush-Cheney definition of the Bill of Rights. "Locking people up," he began, "citizens or noncitizens, without being charged and without access to a lawyer is wrong." But our Nobel Prize-winning President Obama is seriously considering "permanent detention" of terrorism suspects who cannot be tried in court because of the tortures they have undergone under American custody. This same president does not object to the current warrantless FBI surveillance of Americans without evidence, for reasons of "national security."

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