

# We'll always have Paris

By Ronald L. Goldfarb and Jon L. Mills

As Rick remarked to Ilsa in Casablanca, "We'll always have Paris." That dramatic line applies to current debates about terrorism and the reactions to it by democratic societies. There will be more Parises abroad and at home, by foreign terrorists and home grown violent suicidal maniacs. The San Bernardino killers demonstrated that suicidal or fanatical violence can't be stopped; it can and should be deterred and seriously punished, but it cannot be completely ended. Going forward requires striking an exquisite balance between national security and constitutional liberty.

No reasonable observer does not care deeply about our national security agencies being aggressive and smart. The Constitution isn't a suicide pact, as the late Supreme Court Justice Robert Jackson stated. As a nation, we are entitled and obligated to protect the safety of our citizens. We have spied, wiretapped, and broken codes on foreign enemies; and been proud we did. But as we have seen in the aftermath of past wars, we also can be embarrassed by abusive overreactions even when they were motivated by national security interests – internment of Japanese-Americans during World War II, torture or "extreme rendition" after 9/11, for examples.

As the president stated in his recent remarks in the Oval Office, it is possible and important to have both prudent national security and wise protection of constitutional liberties, to resist trampling civil liberties while denying terrorists safe haven in cyberspace, his press officer followed in his White House briefing.

The recent Showtime documentary *Spymasters* interviewed recent CIA officials who stated that they knew about the possibility of 9/11 before the fact. "They are coming here", one official told his White House superiors who didn't follow up on the advice based on leads he discovered. Top CIA officials interviewed wisely warned that overreacting feeds jihadist recruitment, and as a result can be extremely costly in the long term. If we give up our unique constitutional rights and personal freedoms we will, in a very real sense, have let terrorists win.

The president and these national security experts were right. We do not need political posturing and harangues at this poignant time. Campaign season always fosters dramatic overstatements at the cost of reason. As a country founded on immigration, do we really want to close our borders? As a country based on religious freedom, do we really want to suggest registering all members of a particular religion? Should we ban Muslims, but not our own weapons of mass destruction?

Our book *After Snowden: Privacy, Secrecy and Security in the Information Age* examines pertinent questions about how best to balance these competing needs in this dangerous digital era. We recognize the need for security, and have asked our security agencies to protect us. Former NSA Director General Keith B. Alexander suggested that if we are to find every dangerous needle, we need to look at the whole haystack. The expanded, post 9/11 haystack includes each of us. The question is what must we give up in the process of finding the needles?

There is no question that the NSA, CIA and FBI are in the tricky, important business of predicting human conduct. We want them to stop the next Paris or church and school shooting. Predicting human conduct is not limited to crime and terror prevention, it's elemental to modern marketing. Amazon predicts our interests in new books and we like it. Predicting conduct is not inherently bad. While we want the NSA to find all the needles in the haystack, ironically too vast a haystack has been seen to hide, rather than disclose, dangerous needles.

As a society, we have been willing to give up a great deal of information about ourselves to make friends on Facebook, to get discounts at Macy's and to make convenient purchases on line. In many ways we are

already part of an intrusive culture. What difference does it make that we give up a little more to be safe? Should we always choose security over personal privacy? How do we balance security with personal freedom and individual dignity that are also part of our culture and also is protected by the constitution?

In seeking balance we need to ask questions about what works to prevent these awful attacks. What surveillance should have been done that was not done? After past horrific attacks, there were the post mortem disclosures that security agencies had information about 9/11 and the Boston Marathon tragedy.

What are the elements of a balanced approach? President Obama has called for the destruction of ISIL. To bring that about our national security forces need the resources and public support their serious work warrants. But at the same time he has also reminded us that we should not abandon our values in the heat of this awful moment.

As we ask our security agencies to stop the next Paris or Bernardino, how can they enlist support with the American public about their methods? Transparency does not include revealing secret surveillance of targeted suspects. But aggressive law enforcement need not lead to a surveillance state.

For our democratic checks and balances to work harmoniously, Congress must perform its oversight functions better on behalf of the public, as the 9/11 Commission and other experts recommended. The federal courts must not abdicate their independent roles reviewing questioned practices when constitutional challenges are made, as they have. And when the crucial separation of powers is not performed, the press must be our watchdog, and its whistleblowers who make that happen must be protected.

We are all in this new war together.

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