

December 26, 2005      Recent revelations that the National Security Agency has conducted broad surveillance of American citizens' emails and phone calls raise serious questions about the proper role of government in a free society. This is an important and healthy debate, one that too often goes ignored by Congress. Public concerns about the misnamed Patriot Act are having an impact, as the Senate last week refused to reauthorize the bill for several years. Instead Congress will be back in Washington next month to consider many of the Act's most harmful provisions. Of course most governments, including our own, cannot resist the temptation to spy on their citizens when it suits government purposes. But America is supposed to be different. We have a mechanism called the Constitution that is supposed to place limits on the power of the federal government. Why does the Constitution have an enumerated powers clause, if the government can do things wildly beyond those powers-- such as establish a domestic spying program? Why have a 4th Amendment, if it does not prohibit government from eavesdropping on phone calls without telling anyone? We're told that September 11 th changed everything, that new government powers like the Patriot Act are necessary to thwart terrorism. But these are not the most dangerous times in American history, despite the self-flattery of our politicians and media. This is a nation that expelled the British, saw the White House burned to the ground in 1814, fought two world wars, and faced down the Soviet Union. September 11th does not justify ignoring the Constitution by creating broad new federal police powers. The rule of law is worthless if we ignore it whenever crises occur. The administration assures us that domestic surveillance is done to protect us. But the crucial point is this: Government assurances are not good enough in a free society. The overwhelming burden must always be placed on government to justify any new encroachment on our liberty. Now that the emotions of September 11th have cooled, the American people are less willing to blindly accept terrorism as an excuse for expanding federal surveillance powers. Conservatives who support the Bush administration should remember that powers we give government today will not go away when future administrations take office. Some Senators last week complained that the Patriot Act is misunderstood. But it's not the American public's fault nobody knows exactly what the Patriot Act does. The Act contains over 500 pages of detailed legalese, the full text of which was neither read nor made available to Congress in a reasonable time before it was voted on- which by itself should have convinced members to vote against it. Many of the surveillance powers authorized in the Act are not clearly defined and have not yet been tested. When they are tested, court challenges are sure to follow. It is precisely because we cannot predict how the Patriot Act will be interpreted and used in future decades that we should question it today.