

# Foreword

The authors of *The Electronic Privacy Papers* have written an important book at the right time on a subject that will only continue to grow in importance. It examines the important question of what the proper and constitutional role of government should be in the monitoring and surveillance of the enormous volume of traffic that will be flowing along the national information infrastructure or the information superhighway.

Should, through wiretapping and other sophisticated electronic means, government enlarge its capacity to listen in and look over the shoulder of the American people? On one side is arrayed such powerful agencies of government as the super-secret National Security Agency and such highly visible crime fighters as the current head of the FBI Louis Freeh. It is he who proclaims that electronic surveillance is one of the most important and effective, indeed sometimes the only way to deal with the nation's serious crime problem. In the ranks of the opposition are countless concerned Americans who foresee the very real possibility that their rights of personal privacy are threatened. If government is granted the ability that it seeks to expand its efforts in the name of everything from terrorism to international counterfeiting to drug running, what price will we pay? Wiretapping is supposed to be the weapon of last resort, not simply the weapon of choice. Will it, however, inevitably become an instrumentality that is used routinely and with far less discrimination once the already intrusive powers of government are amplified and greatly increased, as could result from some current proposals?

It is a strange anomaly that efforts to replace the Data Encryption Standard that ensued after 1989 have included such proposals as the hotly debatable and highly controversial Clipper Chip, which would be based on a classified algorithm. It would also be implemented only in newly designed hardware. It was in 1989 with

the fall of the infamous wall in Berlin that the cold war began to slide into history. In just two years the implosion of the USSR was the confirming fact. It seemed logical to assume that this dramatic series of events heralded the advent of an era when there would be far less need for heavy-handed government efforts to monitor the communications of its citizens in the name of protecting national security. The world looked forward to the free and untrammelled transmission of electronic and digitized information along a national information infrastructure still in the first stages of construction. All of this could be accomplished in an environment of greater freedom without any basic compromise of national security because an exciting new age had dawned.

Dramatic evidence that these sentiments were shared by Americans of all political persuasions and beliefs came in the manifestations of overwhelming opposition to the Clipper Chip: An electronic petition bearing almost 50,000 names and recognized national polls reflecting a huge preponderance of opinion in discourse on that fundamental human right. One of our most distinguished jurists, Justice Louis D. Brandeis, defined the right of privacy as simply the right of a citizen when arrayed against the awesome power of government to be let alone.

The authors of *The Electronic Privacy Papers* have made a powerful case for a need to critically examine not only Clipper Chip and the Digital Telephony Plan but other proposals that may be coming with onrushing speed that would dim the lamp of freedom. In the area of federal wiretapping, the growth of ever new and expanded communications networks has exposed a particular vulnerability. The ease of government snooping in areas where it has absolutely no business has increased exponentially. The real need of the moment is to set new legal standards that would place limits on the unwarranted curiosity of officials which leads to improper surveillance over individuals and subject matter. The information age must not become a precursor to an age of inquisition. We need not conclude a Faustian bargain in the name of dealing with problems of both domestic and international law enforcement that would leave us constitutionally compromised in the ever continuing struggle for human freedom.

*Hon. John Anderson*