

THE REAL NATIONAL SECURITY  
AGENCY

*NSA, THE LAW AND  
THE MEDIA*



# The Real National Security Agency

## What we will do today:

Describe NSA's mission and the legal and administrative framework in which it operates to protect the rights of US citizens.

## What we will not do today:

Discuss NSA's classified foreign intelligence activities.

# THE NATIONAL SECURITY AGENCY

Established as a national foreign intelligence agency by President Harry Truman in a 1952 memorandum to the secretaries of state and defense.

Purpose – Unify under a single military director the activities of the three service signals intelligence elements.

# SIGNALS INTELLIGENCE

- Interception, processing, analysis, and reporting of foreign electronic transmissions of whatever type.
  - Voice , computer, email, fax, radar, telemetry, data.
- Plain text or encrypted

# NSA IS DIRECTED WHAT TO COLLECT

- The President & NSC Principals twice yearly provide DNI with statement of foreign intelligence topics and priorities.
- DNI formalizes those requirements and others from cabinet departments into a National Intelligence Priorities Framework for all intelligence agencies to follow.

# Laws And Directives Controlling Electronic Surveillance in U.S.

- Fourth Amendment (1791)
- Electronic Communications Privacy Act (1986)
- Executive Order 12333 (1981)
- Foreign Intelligence Surveillance Act (1978)
- Patriot Act (2001)
- FISA Amendments Act (2008)

# Collections of Laws on U.S. Intelligence

*The Intelligence Community Legal Reference Book* (941 pages) found at [www.dni.gov/files/documents/IC\\_Legal\\_ref2012.pdf](http://www.dni.gov/files/documents/IC_Legal_ref2012.pdf);

*U.S. Intelligence Community Law Sourcebook: A Compendium of National Security Related Laws and Policy Documents*, published by the Standing Committee on Law and National Security of the American Bar Association (2010);

CRS Report for Congress - *Privacy: An Overview of Federal Statutes Governing Wiretapping and Electronic Eavesdropping* (October 9, 2012).



# THE FOURTH AMENDMENT

- *The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.*

# Executive Order 12333 (1981)

- Sets forth duties, responsibilities, restrictions for all US intelligence agencies.
- Agencies to provide timely, accurate, insightful information on capabilities, plans, intentions of foreign powers, agents, terrorists.

# Executive Order 12333

NSA to collect (including clandestinely), process, analyze, report signals intelligence information on foreign powers & entities wholly outside US.

# Executive Order 12333

- No foreign intelligence may be undertaken for the purpose of acquiring information concerning domestic activities of US Persons unless they are:
  - Agents of a foreign power
  - Saboteurs
  - Terrorists.

# Who is a “U.S. Person”

- A citizen of the U.S.
- An alien lawfully admitted for permanent residence.
- An unincorporated association with a substantial number of members who are one of the above.
- A corporation that is incorporated in the U.S.

# Foreign Intelligence Surveillance Act (1978)

Designed to curb practice of executive branch conducting warrantless electronic surveillance on its own determination while permitting legitimate use of electronic surveillance to obtain foreign intelligence information.

# Patriot Act - Section 215 (2001)

- Amended FISA to permit FISC to issue orders, upon request, to US commercial communications companies to provide the government with “Business Records” containing technical data on calls, but not content.
- *This data can be used for counterterrorism purposes only.*

# NSA Use of Business Records

- To query the records (metadata) NSA must provide “reasonable articulable suspicion” that phone number used for the query is associated with a particular foreign terrorist organization certified to the FISC.



# Required Oversight Over Section 215

- Extensive regime of oversight and internal checks monitored by NSA Director of Compliance, General Counsel, IG, Dept. of Justice, Congressional Committees, DNI, and FISC.

# FISA Amendments Act – Section 702 (2008)

- Permits collection, including content, of exclusively foreign targets whose communications flow through US communications hubs.
- Targeting of communications must be for certified foreign intelligence purposes.

# FISA Amendments Act – Section 702

- NSA prohibited from targeting any person known to be in US and any US person inside or outside US.
- No foreign person may be targeted without a valid foreign intelligence purpose.

# FISA Amendments Act – Section 702 Packet Communications Issue

- Computer & Internet transactions are broken into pieces – “packets” for transmission.
- Packets can travel via same or very different routes to common destination.
- Interceptor might want only packets of a particular target but gets all packets in the stream and can't get rid of them in advance.

# Packet Illustration

Raw data stream

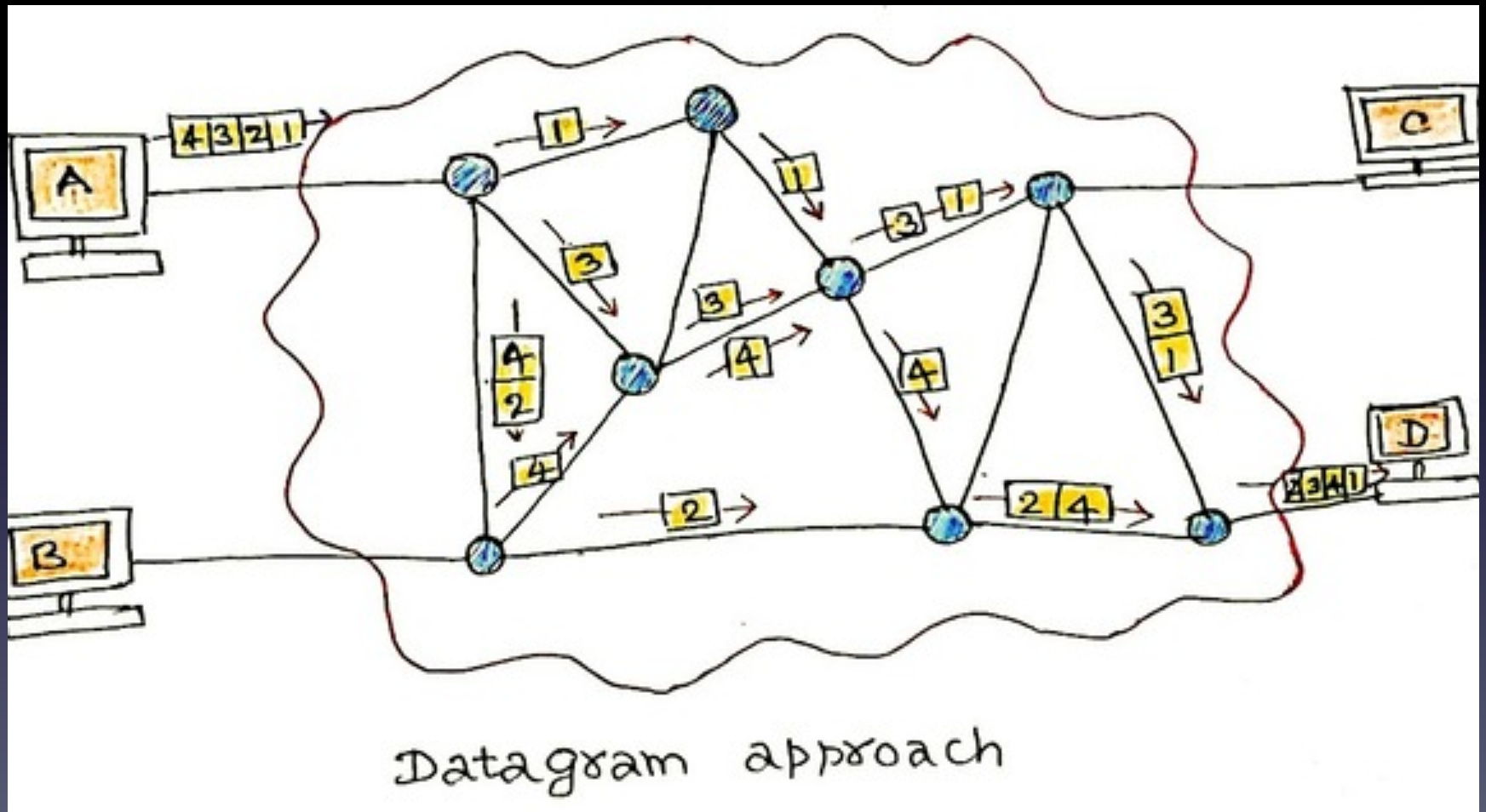


Interleaved data stream



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# Packet Illustration



# Accountability & Oversight Regime

- NSA DIRECTOR OF COMPLIANCE (STAFF OF 300)
- NSA GENERAL COUNSEL AND INSPECTOR GENERAL
- DNI GENERAL COUNSEL, INSPECTOR GENERAL, CIVIL LIBERTIES AND PRIVACY OFFICE
- DOJ NATIONAL SECURITY DIVISION
- ASD FOR INTELLIGENCE OVERSIGHT
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- PRIVACY & CIVIL LIBERTIES OVERSIGHT BOARD

# Intelligence Value of NSA Programs

- Provided tip that lead to detection of NYC subway plot.
- Insight into terrorist networks, plans, strategic planning.
- Detection of planned WMD technology transfers.
- Detection of cyber threats.
- Disruption of 13 terrorist events in US, 25 in Europe, 11 in Asia and 5 in Africa.



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# What the Media Is Not Telling You

- From the FISC , Judge Bates
- *"Therefore the Court has no reason to believe that NSA, by acquiring Internet transactions containing multiple communications, is targeting any one other than the user of the tasked selector"* (The tasked selector is the foreign target.)

# What The Media Is Not Telling You

- *"Given that NSA's upstream collection devices lack the capacity to detect wholly domestic communications at the time an Internet transaction is acquired, the Court is inexorably led to the conclusion that the targeting procedures are 'reasonable designed' to prevent the intentional acquisition of any communication as to which the sender and all intended recipients are known at the time of the acquisition to be located in the United States."*

# What the Media is Not Telling You

- A separate Senate Select Committee on Intelligence investigation of these matters conducted between 2008 and 2012 found:
- *“Through four years of oversight, the Committee has not identified a single case in which a government official engaged in willful effort to circumvent or violate the law.”*

# The Real National Security Agency

- *Numerous media reports to the contrary, NSA does not target, spy on, listen to or read your communications.*
- *NSA is controlled by and obeys U.S. laws.*
- *There is abundant oversight on NSA in the executive, legislative, and judicial branches.*

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# Recommended Internet Sites

Privacy and Civil Liberties Oversight Board

[www.pclob.gov](http://www.pclob.gov)

[www.c-spanvideo.org/program/BoardMor](http://www.c-spanvideo.org/program/BoardMor)

Office of the Director of National Intelligence

[www.dni.gov](http://www.dni.gov)

[icontherecord.tumblr.com](http://icontherecord.tumblr.com)

National Security Agency

[www.nsa.gov](http://www.nsa.gov)

# Recommended Internet Sites

- George Washington University National Security Archives

[www2.gwu.edu/~nsarchive/](http://www2.gwu.edu/~nsarchive/)

Federation of American Scientists

[www.fas.org](http://www.fas.org)