

# US National Security Policymaking & Intelligence Strategy

US Nat'l Security Policy

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# Outline of Lecture

- Point #1: Explain the role of intelligence in the development of national security & national military policies.
- Point #2: Describe the structure of the national Intelligence Community (IC) & how it has changed.
- Point #3: Discuss the implications of improved information technology on U.S. domestic & foreign intelligence capabilities.

# Intelligence Support to National Security & National Military Policies

- There is a need for a balance between intelligence to:
  - Support to Military Operations (SMO);
  - Support Other Military Operations (OMO); &
  - Support other elements of National Power (economic, diplomatic, informational).
  
- Sometimes this balance & these needs conflict

# Intelligence Support to National Security & National Military Policies, cont'd

- SMO vs. Support to the Policymaker
  - Questions:
    - What are the key differences?
    - What actions are needed for effective intelligence support in the 21<sup>st</sup> century?
    - What actions have been taken to meet 21<sup>st</sup> century intelligence requirements?

# Prioritization of Intel Support

- During the 1990s, what were the priorities for intelligence support?
- How did this prioritization affect U.S. policy for foreign relations and military preparedness?
- How did this change after 9/11?

# Intelligence Support to Defense, Service, & Operational Policymakers

- Purpose:
  - Advise defense policymakers;
  - Provide threat projections; &
  - Support the employment of the armed forces across a broad continuum of operations
- Note the merging of intel support policies with military operations & the spectrum of military missions

# The New IC – The “Sweet Sixteen”



# Importance of E.O. 12333

- Executive Order 12333 reads:

*"The United States intelligence effort shall provide the President and the National Security Council with the necessary information on which to base decisions concerning the conduct and development of foreign, defense and economic policy, and the protection of United States national interests from foreign security threats. All departments and agencies shall cooperate fully to fulfill this goal."*

- The departments and agencies cooperating to fulfill the goals of EO 12333 constitute the US Intelligence Community (The IC).



# E.O. 12333: Who is the IC Today?

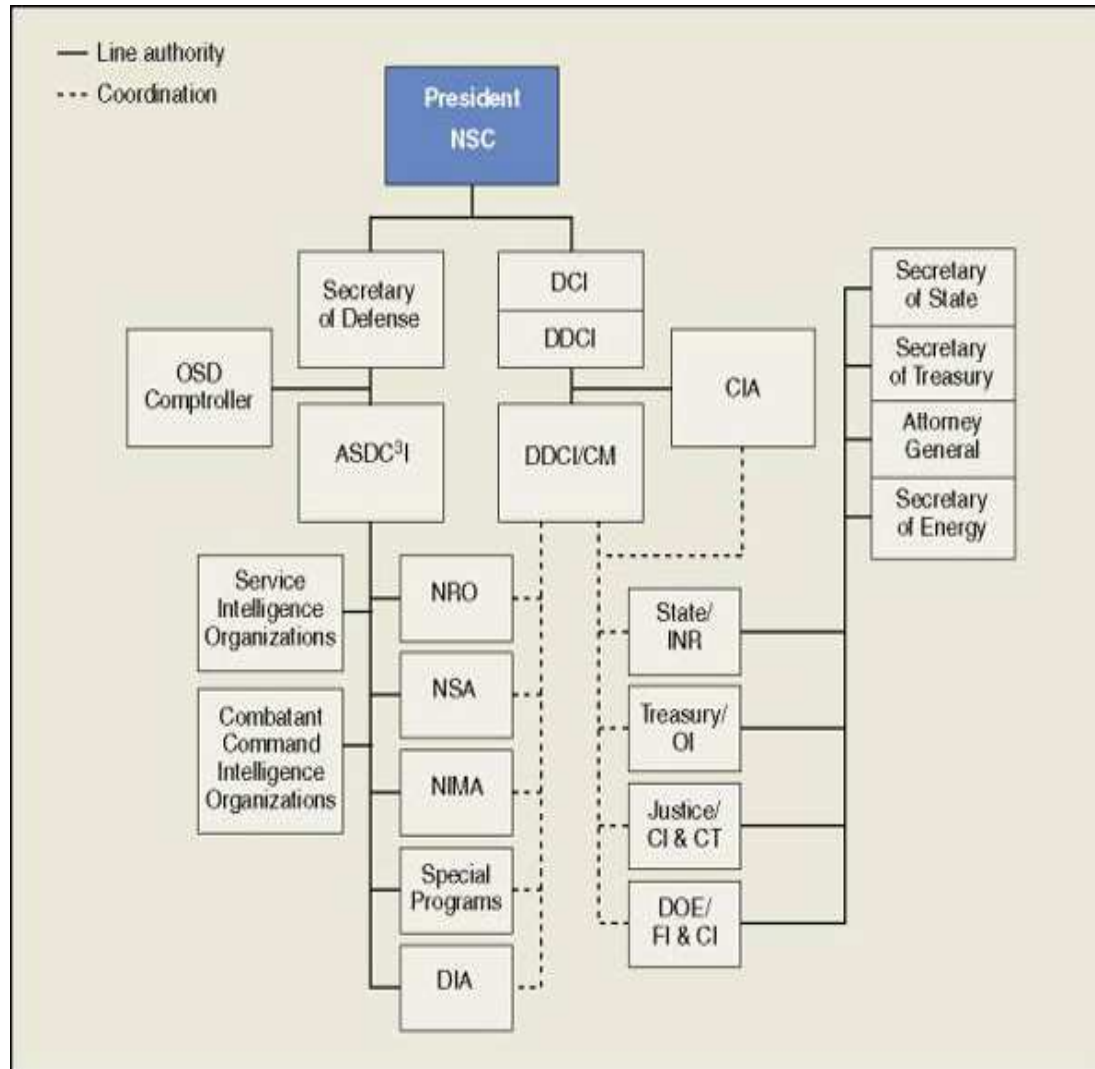
Officially, post-EO 12333, the IC is:

- “The IC is a federation of executive branch agencies and organizations that work separately and together to conduct intelligence activities necessary for the conduct of foreign relations and the protection of the national security of the United States. These activities include:
- Collection of information needed by the President, the National Security Council, the Secretaries of State and Defense, and other Executive Branch officials for the performance of their duties and responsibilities;
  - Production and dissemination of intelligence;
  - Collection of information concerning, and the conduct of activities to protect against, intelligence activities directed against the US, international terrorist and international narcotics activities, and other hostile activities directed against the US by foreign powers, organizations, persons, and their agents;
  - Special activities;
  - Administrative and support activities within the US and abroad necessary for the performance of authorized activities; and
  - Such other intelligence activities as the President may direct from time to time.

# The Old Structure of the Intelligence Community (IC)



# Old NSC, DCI Structure



# Today's Members of the Intelligence Community (IC)

- DIA
- NSA
- NRO
- NGA
- Army
- Air Force
- Navy
- Marine Corps
- CIA
- DHS & USCG
- DOS
- Treasury
- DOE
- FBI
- DEA
- DNI

Additionally, the DCI, DDCI and NIC are key members of the IC, fulfilling leadership & coordination responsibilities.

# Additional Advisory Members of the Intelligence Community (IC)

- PFIAB
- IOB
- OMB
- SSCI
- HPSCI
- Additional advisory bodies that provide overlap (“concurrency”) with other members of the IC/NIC such as the Armed Services Committees & the Judiciary Committees of the Congress

# IC Activities

- Collection of information needed by
  - The President,
  - The National Security Council,
  - The Secretaries of State and Defense, and
  - Other Executive Branch officials for the performance of their duties and responsibilities;
- Production and dissemination of intelligence;
- Special activities

# IC Activities (cont'd.)

- Counterintelligence activities —
  - Collection of information concerning, &
  - The conduct of activities to protect against
    - Intelligence activities directed against the U.S.,
    - International terrorist & international narcotics activities, &
    - Other hostile activities directed against the U.S. by foreign powers, organizations, persons, and their agents;
- Administrative and support activities within the U.S. & abroad necessary for the performance of authorized activities; &
- Such other intelligence activities as the President may direct from time to time

# The National Intelligence Council (NIC)

- Role as the IC's Center for mid-term & long-term strategic thinking
  - Support the DNI's in his role as head of the IC.
  - Provide a focal point for policymakers to task the IC to answer their questions.
  - Reaches out to nongovernmental experts in academia and the private sector to broaden the IC's perspective.
  - Contribute to the IC's effort to allocate its resources in response to policymakers' changing needs.
  - Lead the IC's effort to produce National Intelligence Estimates (NIEs) & other NIC products.



# The IC in the Post-9/11, 21<sup>st</sup> Century Digital Age: Implications of Technology for Intelligence Capabilities

- Information Technology (IT)

- Serves as an important enabler for intelligence gathering & dissemination.
- Key IT initiatives that affect U.S. intelligence capabilities are:
  - ARPANET
  - Intelink
  - In-Q-Tel
  - JWICS/JDISS
  - NIST

## IT Implications for Intel, cont'd

- ARPANET: The vulnerability of the nation's strategic communications infrastructure.
- Intelink: Applies advanced network technology to the collection, analysis, production, and dissemination of classified and unclassified multimedia data across the Intelligence Community.

## IT Implications for Intel, cont'd

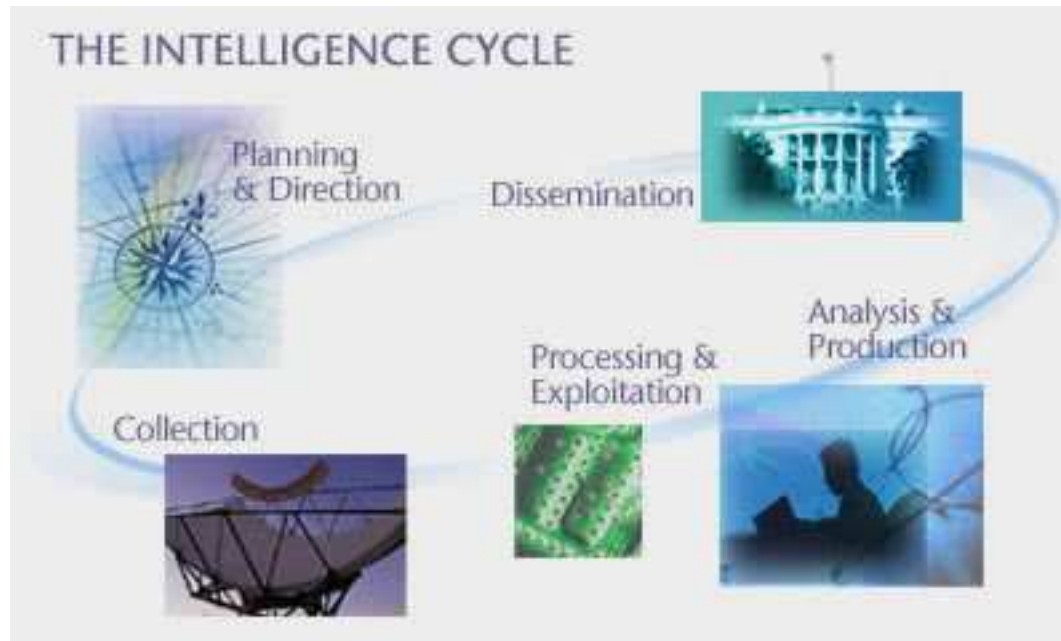
- In-Q-Tel
  - Data warehousing and mining, the profiling of search agents, statistical data analysis tools, imagery analysis and pattern recognition, language translation, strong encryption, data integrity, and authentication and access control.
- JWICS/JDISS
  - This system allows video teleconferencing, imagery transfer, electronic data transfer, publishing, and video broadcasting

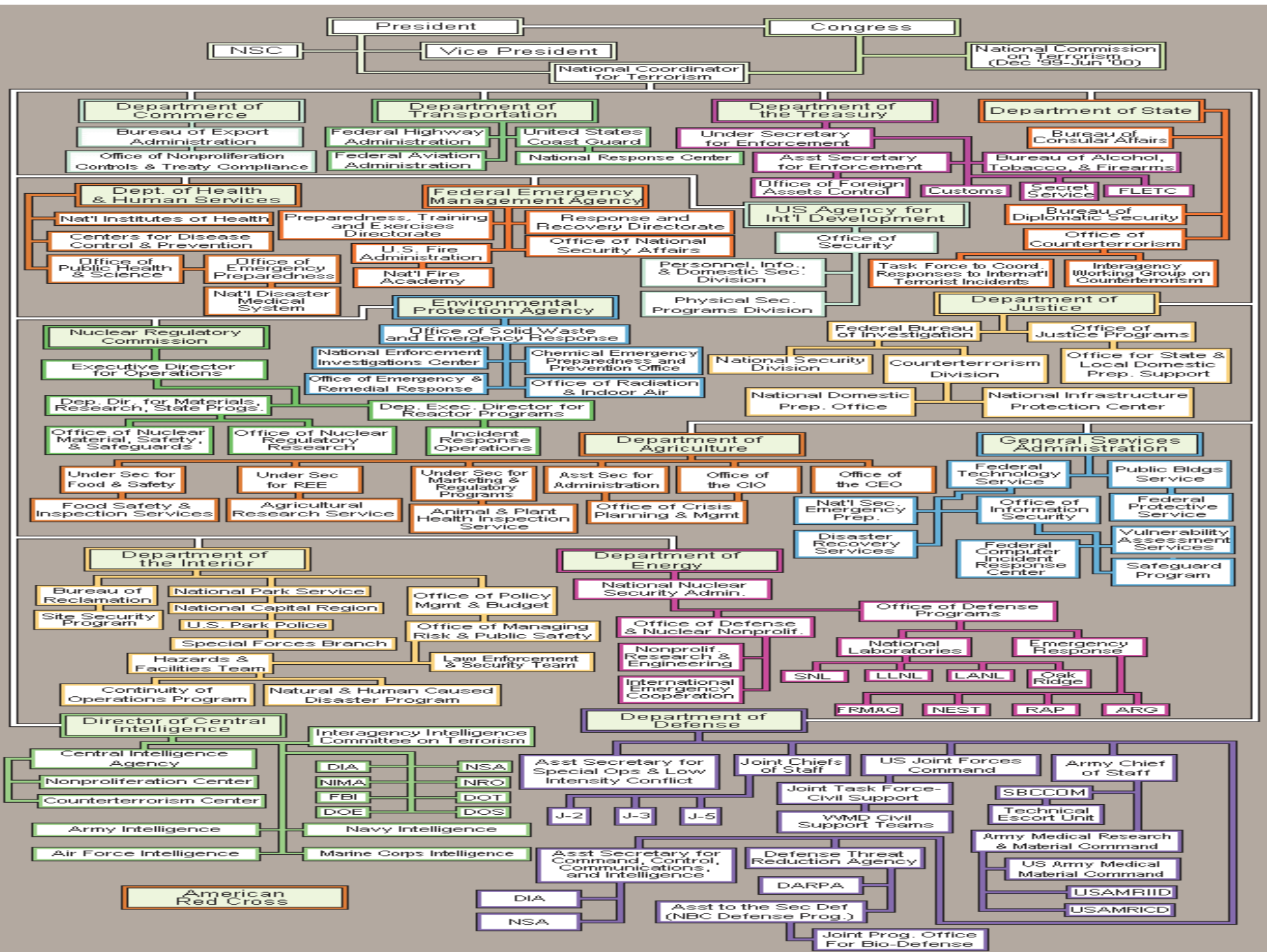
## IT Implications for Intel, cont'd

- NIST (The National Institute of Standards & Technology )
  - Rapidly deployable intelligence cells
  - To provide a Joint Task Force Commander with the ability to reach back
  - To the national-level agencies for answers to questions unanswerable in the field, and
  - To receive warnings of threats that otherwise could not be received.

# How is Intel Used to Make National Strategic Decisions?

## The “Official” Textbook Cycle Today





# Thus, How Is the “Product” from Intel Collection Put Into Policy Practice?

- Let’s look at two policy instances in practice developed in response to / modified after the events of 9/11:
  - The USA PATRIOT Act I; and
  - The FISA practice

# The Statutory Framework Leading to Today's Terror Surveillance Activities

- The “Wiretap Act” - 1968
- Electronic Communications Privacy Act - 1986
- Digital Telephone Act - 1994
- Foreign Intelligence Surveillance Act - 1978
- USA PATRIOT Act – 2001
- USA PATRIOT Act II - 2006



# How the USA PATRIOT Act Changed Surveillance Practices

- Allowed for conditional changes in past practices governing Fourth Amendment law (sneak and peak warrants)
- FRCP (national search warrants)
- FCC (harboring, material assistance)
- FISA (info sharing, significant purpose)
- Wiretap Act (new predicate offenses, undelivered voicemail, nationwide warrants, expanded ISP info, e-mail info, sharing)
- The problem of “creep” based on past practice

# The Impact of Wire Tapping Under USA PATRIOT Act

- Citizen privacy expectations after 9/11:
  - President Bush passes the Patriot Act for Providing Appropriate Tools Required to Intercept and Obstruct Terrorism
    - Title II Section 213: Authority for delaying notice of the execution of a warrant
    - Title II Section 209: Seizure of voice-mail messages pursuant to warrants. (see, [www.epic.org](http://www.epic.org))
    - Title II Section 219: Single jurisdiction search warrant for terrorism.

# What does the USA PATRIOT Act Stand For, You Might Ask?

Uniting and Strengthening America by  
Providing Appropriate Tools Required  
to Intercept and Obstruct Terrorism Act  
of 2001

# Foreign Intelligence Surveillance Act (FISA)

- Prohibits from Engaging in Electronic Surveillance Under Color of Law Except as Authorized by Statute
- Prohibits Disclosing Information Obtained Under Color of Law by Electronic Surveillance if not Authorized by Statute.

# Foreign Intelligence Surveillance Act (FISA), cont'd

- Allows Electronic Surveillance to Gather Foreign Intelligence
- Foreign Power or Agent of Such Power
- FISA Court Must Approve
- FBI and NSA are Key Players
- Prohibitions Against Conducting Electronic Surveillance of U.S. Citizens Unless Exceptions Apply
- Exceptions Used Extensively, Post-9/11

# Wire Taps & Electronic Surveillance Under FISA

- Foreign Intelligence Surveillance Act of 1978:
  - Illegal to Wiretap Without the Requisite Warrant or Court Order
  - Emergency Situations: 72 hrs to obtain a warrant
  - Wartime: 15 days of wire tapping
  
  - Post 9-11, changes with USA PATRIOT Act & FISA have led to many concerns about who will be wiretapped or will undergo surveillance.
  - List of terrorist groups is consulted at:  
(<http://library.nps.navy.mil/home/tgp/tgpndx.htm>)

# What FISA Allows

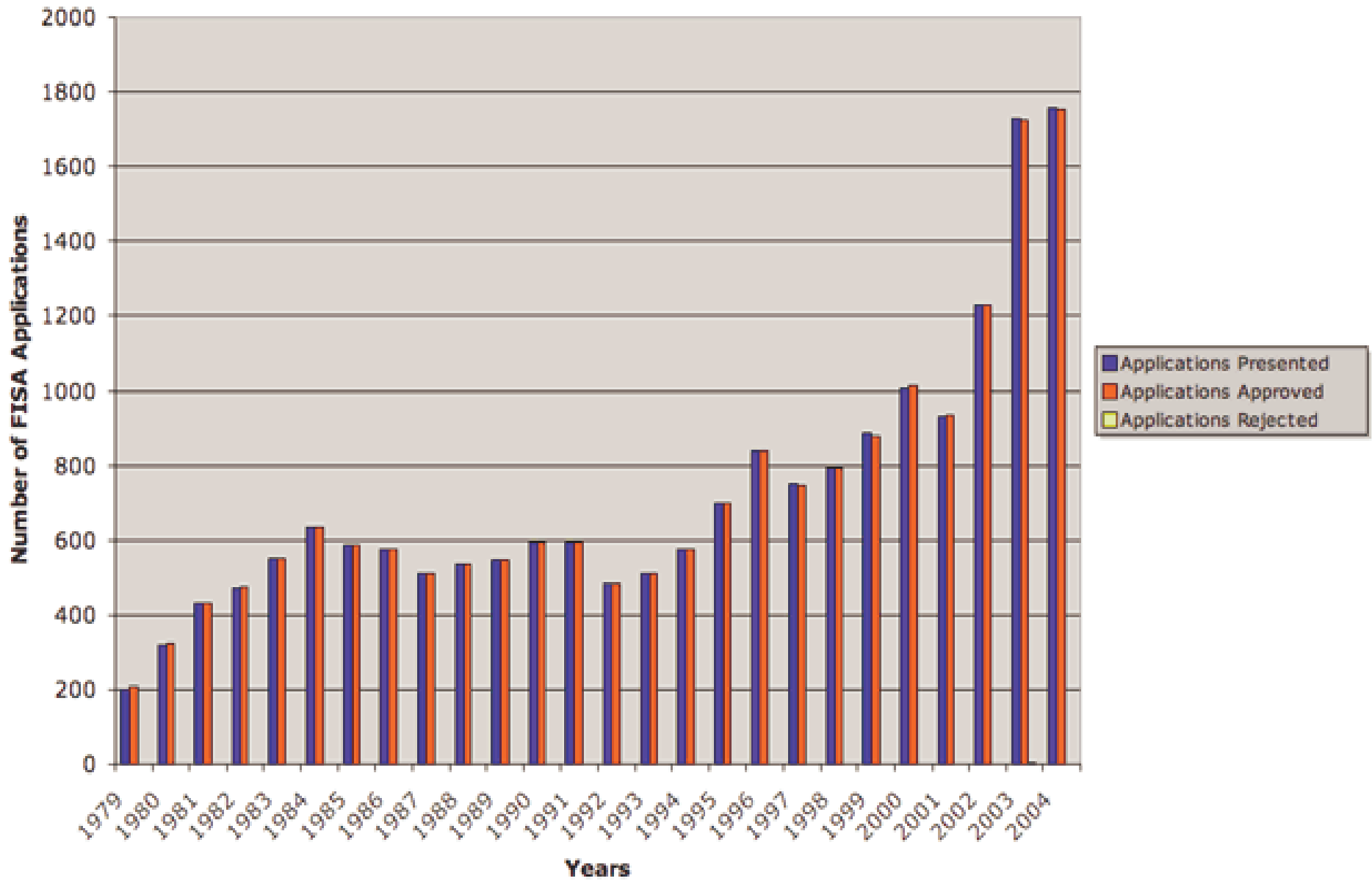
- One issue that has arisen is whether we should maintain wire tapping of U.S. citizens always with a warrant, in order to safeguard national security against terrorists (with the full provisions provided for in FISA). Why?:
  - FISA requires 72 hrs of unauthorized wire tapping before court approval is needed
    - If there's a 'staffing problem', staffing (more judges) can be legislated to accommodate the need for immediacy.
    - However, do we change the US Constitution to accommodate an administrative difficulty? The Bush Administration has argued in the affirmative on this?
    - If more time is needed to investigate or deliberate, the US Congress can declare war (say, against Iraq or Afghanistan) which would automatically allow 15 days to wire tap before a court warrant needs to be issued.

# FISA Courts & Surveillance

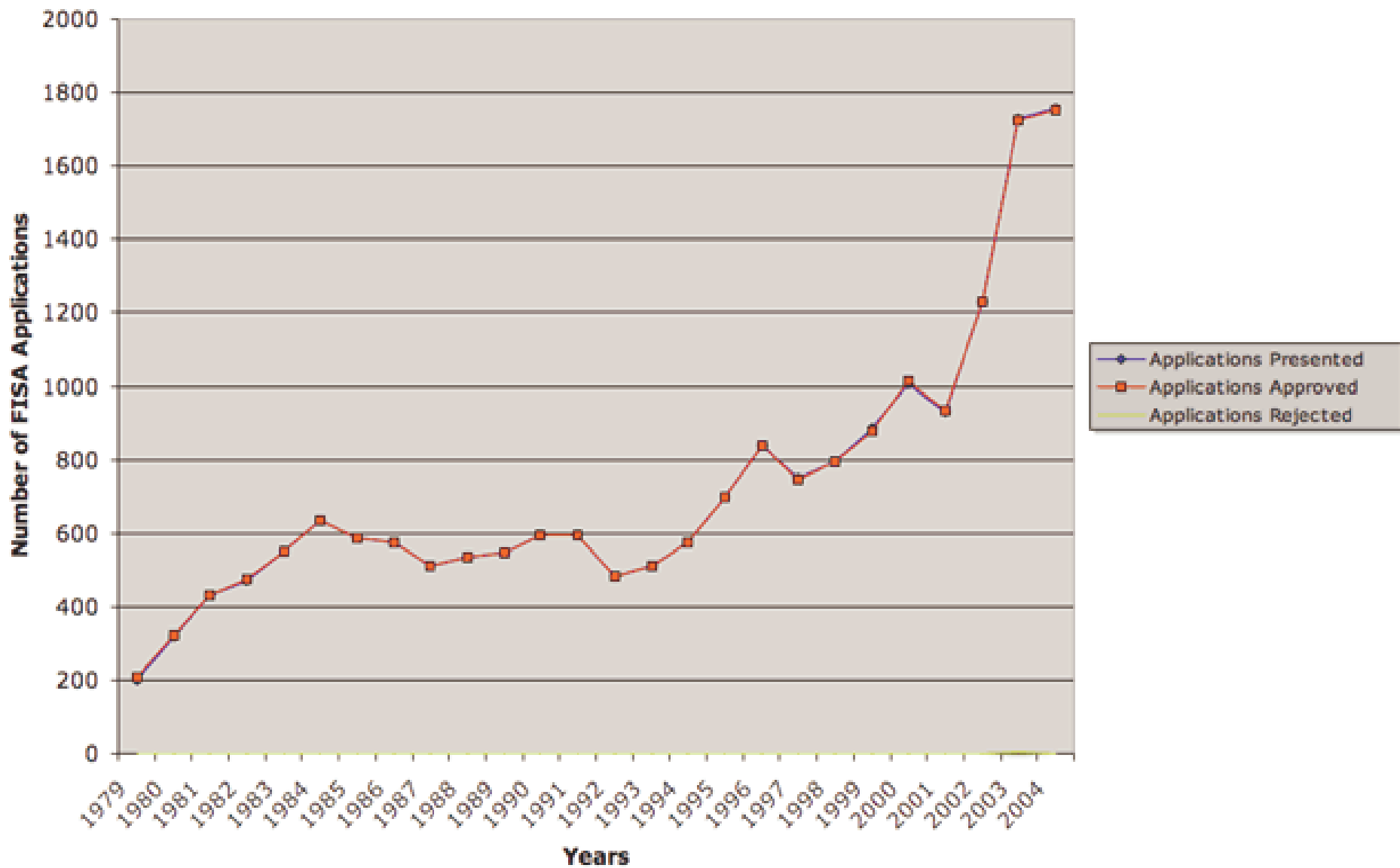
- FISA Court judges modified only **two search warrant orders** out of the **13,102 applications** that were approved **over the first 22 years** of the court's operation.
- In 20 of the first 21 annual reports on the court's activities up to **1999**, the Justice Department told Congress that "no orders were entered (by the FISA court) which modified or denied the requested authority" submitted by the government.
- **Since 2001**, the judges have modified **179** of the **5,645** requests for court-ordered surveillance by the **Bush administration**. A total of **173** of those court-ordered "substantive modifications" took place in **2003 and 2004** the most recent years for which public records are available.
- The judges also **rejected or deferred at least six requests** for warrants **during those two years** - the first outright rejection in the court's history.



### FISA Act Orders 1979-2004



### FISA Act Orders 1979-2004



# Foreign Intelligence Surveillance Act Orders 1979-2005

<u>Year</u>	<u>Number of FISA Applications Presented</u>	<u>Number of FISA Applications Approved</u>	<u>Number of FISA Applications Rejected</u>	<u>Year</u>	<u>Number of FISA Applications Presented</u>	<u>Number of FISA Applications Approved</u>	<u>Number of FISA Applications Rejected</u>
1979 <sup>1</sup>	199	207	0	1993	509	509	0
1980 <sup>2</sup>	319	322	0	1994	576	576	0
1981	431	433	0	1995	697	697	0
1982	473	475	0	1996	839	839	0
1983	549	549	0	1997 <sup>3</sup>	749	748	0
1984	635	635	0	1998	796	796	0
1985	587	587	0	1999 <sup>4</sup>	886	880	0
1986	573	573	0	2000 <sup>5</sup>	1005	1012	0
1987	512	512	0	2001 <sup>6</sup>	932	934	0
1988	534	534	0	2002 <sup>7</sup>	1228	1228	0
1989	546	546	0	2003 <sup>8</sup>	1727	1724	4
1990	595	595	0	2004 <sup>9</sup>	1758	1754	0
1991	593	593	0	2005 <sup>10</sup>	2074	2072	0
1992	484	484	0				

Acknowledgment: The Federation of American Scientists compiled the list of FISA annual reports, from which these statistics were extracted.

# Executive Branch Arguments

## Exempt From Needing A Warrant To Wire Tap

- **Unitary executive power** – The U.S. Supreme Court, the case Morrison v. Olson 7-1 decision authored by Chief Justice Rehnquist, the Court upheld the independent counsel statute and, in so doing, unequivocally and explicitly rejected the theory of the unitary executive
- **Expansive Article II authority** – must be taken in context of Article I
- **Special war time powers** - war has not been declared and Congress has not issued any additional ‘special’ powers beyond what Congress or the Constitution have specifically dictated to him

# Presidential Branch Arguments Exempt From Needing A Warrant To Wire Tap

- Presidential signing statements – has circumvented and nullified legislation by not applying laws to the Presidential branch
- Fully Informed Congress – Congress has been rendered powerless to legislate against the President regarding illegal wire tap
  - A gag order implemented by the President on the ‘Gang of 8’ Senators that were informed regarding wire tapping without a warrant
  - Concerns from some of them were not responded to by presidential branch

# Another Way to Combat Terror by the USG: The Citizen Corps

- <http://www.citizencorps.gov/>
- *The mission of Citizen Corps is to harness the power of every individual through education, training, and volunteer service to make communities safer, stronger, and better prepared to respond to the threats of terrorism, crime, public health issues, and disasters of all kinds.*
- “We all have a role in hometown security”

# Regarding Government Access to Private Information: Is “Big Brother” Watching You?

- “If you are not doing anything wrong, you have nothing to worry about the government having access to your information”
- For a humorous illustration of what it could be like if corporations know too much about you, see:
- <http://www.aclu.org/pizza>

# How Do We Evaluate This Situation?

- Is there a too powerful Executive Branch that has over-extended its authorized power and violated the separation of powers?
- The President has essentially nullified any real legislating power to challenge the presidential branch
  - Use of signing statements circumvents the law with the direct intent to violate congress's power
  - Gag orders on "Gang of 8"



# Further Evaluation

- Confidence and trust in the Executive Branch has eroded because of mistruths and questionable practices; citizens are becoming rightfully afraid of their own government just as patients in our analogy became afraid of their hospital.
  - Regarding wire tap, within the last three years the President has, during at least three public statements or addresses, one as recent as April 20, 2004, outright lied to the American public:

# President Bush in a Public Speech

Buffalo, N.Y. on April 20, 2004

- "Now, by the way, any time you hear the United States government talking about wiretap, it requires - a wiretap requires a court order, "... "Nothing has changed," ... "When we're talking about chasing down terrorists, we're talking about getting a court order before we do so. It's important for our fellow citizens to understand, when you think Patriot Act, constitutional guarantees are in place when it comes to doing what is necessary to protect our homeland, because we value the Constitution."