LAW OF GOVERNMENT OVERSIGHT AND INTERNAL INVESTIGATIONS
(LAW 448-001)

Course Schedule and Location: Mondays 6:00PM – 7:50 PM in Founders Hall 477

Adjunct Professor: McKay Smith

Contact Information: smithmckaym@gmail.com or 703-581-8978

Number of credits: 2

Course Goal:

The central goal of this course is to train students for careers in government oversight and internal investigations. Students will leave the course with the knowledge and skills necessary to succeed at the various Offices of Inspector General and investigative agencies established throughout the federal government. Specifically, class sessions will focus heavily on national security issues and the departments and agencies charged with keeping America safe.

Professor Bio:

McKay Smith is an attorney with the U.S. Department of Justice, National Security Division. The Department of Justice bears the responsibility of overseeing the foreign intelligence, counterintelligence, and other national security activities of the United States Intelligence Community. The Oversight Section of the National Security Division’s Office of Intelligence identifies individual and systemic incidents of non-compliance, and then works with the responsible agencies to correct existing problems, as well as to limit the occurrence of future incidents. Prior to joining the Department of Justice, Mr. Smith was a Senior Inspector with the Department of Homeland Security, Office of Inspector General. He has worked in multiple capacities within this office including as an Attorney and as the Acting Intelligence Operations Specialist. As a Senior Inspector, he reviewed highly sensitive and controversial programs to ensure compliance with applicable legal and regulatory requirements. Mr. Smith earned his J.D. from William and Mary Law School and an LL.M., with distinction, from Georgetown University Law Center. The views expressed in this course syllabus are those of the author and do not necessarily represent the views of the Department of Justice, the Department of Homeland Security, or the United States.
General Description of Course:

Welcome to the exciting world of government oversight and internal investigations! This course will focus on the activities and authorities of the various Offices of Inspector General established throughout the federal government. In particular, it will examine the unique contributions made by the Department of Homeland Security (DHS), Office of Inspector General (OIG) to protecting national security while concurrently safeguarding the civil rights/civil liberties of U.S. persons. Class sessions will focus heavily on OIG legal authorities, the report writing process, effective interviewing techniques, and the importance of inter/intra-departmental collaboration. The main goal of this course will be to equip students with the knowledge and skills necessary to become effective practitioners in this dynamic career field.

The United States Congress enacted the Inspector General Act of 1978 to ensure integrity and efficiency in government. As a result of this legislation, each Inspector General is granted unique authority to conduct internal audits, inspections, and investigations of departmental programs and operations. Notably, the DHS OIG has conducted innovative reviews of highly sensitive and controversial topics such as aviation security, immigration, border enforcement, domestic intelligence activities, and disaster assistance/emergency management. This work requires oversight of multiple DHS components including the Transportation Security Administration, Immigration and Customs Enforcement, Customs and Border Protection, the U.S. Coast Guard, the Office of Intelligence and Analysis, and the Federal Emergency Management Agency.

OIG investigations and program reviews require unprecedented coordination across the government spectrum. Effective collaborative partnerships are imperative to conducting domestic intelligence activities and national security investigations. As a result, the legal authorities of the Department of Justice (DOJ), the Office of the Director of National Intelligence (ODNI), and the Department of Defense (DOD) will also be discussed at length. Class sessions will rely primarily on the case study method to illustrate relevant concepts related to internal investigations and program reviews. Public OIG reports and related legislation will serve as the core course material. In addition, class discussions will be augmented by subject matter experts and experienced practitioners from the government sector. This will allow for significant insight into government operations and also illustrate the OIG’s critical role in combating fraud, waste, abuse, and mismanagement.

At the conclusion of the course, students will be responsible for submitting a 20-25 page review of a government program or operation related to national security. This work product should focus primarily on legal and regulatory requirements as well as provide future recommendations and proposed corrective actions intended to improve government integrity and efficiency. The assignment process will be conducted in stages and will largely mirror the OIG review process. Students will be responsible for conducting preliminary research related to their review, participating in an entrance conference in which they provide their professor with a detailed outline or “workplan,” submitting an initial draft report for comment (optional), and presenting their completed work product for final evaluation.
**Scheduling:**

The course will meet on Monday evenings from 6:00PM – 7:50PM. This will ensure enrollment of part time and evening students as well as provide for the availability of guest speakers who work for various agencies dispersed throughout the federal government.

**Attendance:**

Absent extenuating circumstances, a student who misses more than three classes will be subject to a lower grade up to one full letter grade. Please email the professor in advance if you expect to miss a class.

**Reading:**

There is no casebook although students will be responsible for reading *Open Target: Where America is Vulnerable to Attack* by Clark Kent Ervin at some point in the semester. All class sessions will rely primarily on the case study method to illustrate relevant concepts related to internal investigations and program reviews. Public OIG reports and investigations will serve as the core course material. Electronic links to relevant documents are provided in the syllabus and additional reading materials/handouts may be provided during class sessions. Anticipated reading assignments may be subject to change as necessary to accommodate hot topics or evolving issues.

**Grading:**

Grading will be based on three components: 1) class participation (10%); 2) an end of semester presentation (10%); and 3) a final report (80%). In particular, all students are required to participate in class sessions marked as “Discussions.” These sessions are listed in the accompanying syllabus.

**Final Report:**

At the conclusion of the course, students will be responsible for submitting a seminar paper that analyzes a government program or operation related to national security. This “final report” will be similar to other seminar papers required in law school courses. The only requirement is that students incorporate a discussion of legal and regulatory requirements into their analysis as well as provide future recommendations and corrective actions intended to improve inefficiencies. Detractors of government efforts frequently have great success pointing out the inherent shortcomings of a particular program or operation. Nonetheless, few scholars have the ability to offer achievable and creative strategies for improving government operations. Students will be encouraged to tackle issues head-on and to construct novel and innovative solutions.
Students will be responsible for submitting a detailed report outline or “work plan,” a draft report (optional but highly encouraged), and a final report for evaluation. The report will be a minimum of 20 pages, including footnotes. Draft reports should be submitted a minimum of four weeks prior to the conclusion of the semester. A sample paper will be handed out during the first class. All submissions should be double spaced in 12 point, Times New Roman font. In addition, all margins should be set to one inch. Students will be responsible for submitting a one page “Executive Summary” or abstract along with their final report. This section will not count towards the 20 page requirement.

The requirement for an Executive Summary is in keeping with OIG style guidance and provides a useful summary of an article as a whole. In addition, most student-edited law journals require an abstract summarizing the themes and conclusions of a particular article. Thus, this section has the added benefit of fulfilling this submission requirement. All students are encouraged to seek publication for their original and creative ideas.

**Presentation:**

Students will also be responsible for preparing a 10 minute presentation that highlights their research and conclusions. These presentations will take place during the last two class sessions. Students are encouraged to ask thoughtful questions following each presentation. It is important to keep in mind, however, that one of the principal goals of this course is to encourage the original and creative thoughts of fellow classmates. Thus, questions and critiques must remain purely constructive in nature.

(Course Syllabus Continued on Next Page)
Course Syllabus: Law of Government Oversight and Internal Investigations

August 20th
Week 1: The Inspector General Act of 1978, as amended, and Related Discussion –
The Inspector General, Ramos, Compean, and Congress

Synopsis: The first class of the term will examine the Inspector General Act of 1978, as amended. Students should be familiar with the Act in its entirety although relevant sections will be analyzed and explained in more detail during our discussion. In particular, class discussion will focus on OIG organizational structure and the report writing process. We will also examine the role of auditors, inspectors, and criminal investigators in internal investigations and program reviews. The second half of the class will focus on a case study titled: the Inspector General, Ramos, Compean, and Congress. Assigned readings will demonstrate the unforeseen political complexities that are often faced by those in leadership positions within the various Offices of Inspector General. Specifically, we will examine a DHS OIG investigation of a highly publicized border shooting that occurred in El Paso, Texas in 2005. Students should recognize that the report has been heavily redacted because of FOIA exemptions and sensitivity concerns.

Required Reading:

In-Class Handout:
- DHS OIG Org Chart

August 27th
Week 2: Congressional Investigations and Creation of the Department of Homeland Security

Synopsis: This class session will analyze the role of Congress in reshaping the national security landscape. Discussion will focus primarily on congressional investigations that occurred in the wake of September 11, 2001. Students will analyze the specific events of that fateful day as presented through the investigative lens of the 9/11 Commission. In addition to the 9/11 Commission Report, students should familiarize themselves with relevant sections of a staff report titled 9/11 and Terrorist Travel. The class will also focus on congressional debate surrounding the creation of DHS. Senate Hearing 107-928 provides insight into the various viewpoints/opinions of America’s lawmakers in the period leading up to this unprecedented government reorganization.
Required Reading:
- **The 9/11 Commission Report** - Executive Summary, Chapter 13
- **9/11 and Terrorist Travel (Staff Report)** - Preface, Chapter 1, 6.4, and 6.5
  [www.9-11commission.gov/staff_statements/911_TerrTrav_Monograph.pdf]
- **S. HRG. 107-928 Protecting the Homeland: The President’s Proposal for Reorganizing Our Homeland Security Infrastructure** – Pages 1-35
  [http://www.gpo.gov/fdsys/search/pagedetails.action?browsePath=107%2FSENATE%2FCommittee+on+Judiciary&granuleId=CHRG-107shrg86893&packageId=CHRG-107shrg86893&fromBrowse=true]

Optional/Outside Reading for Interested Students:
- **Brief Documentary History of DHS**
- **Who Became Part of the Department?**
  [www.dhs.gov/xabout/history/editorial_0133.shtm]

In-Class Handouts:
- DHS Org Chart
- DHS Component Mission Statements

**September 10th**

**Week 3: Covert Testing and Oversight of Aviation Security Measures**

**Synopsis:** Following the attacks of September 11, 2001, U.S. citizens were immediately cognizant of the need to drastically overhaul the aviation security system. This class session will examine current challenges to aviation security that are highlighted in a variety of publicly available OIG reports. Topics will include: effective screening procedures, OIG covert testing, the watchlisting process, the role of the Intelligence Community, and the compromise of Sensitive Security Information. Students will also discuss the *Aviation Transportation Security Act* (Public Law 107-71) in historical perspective.

Required Reading:
- **Aviation and Transportation Security Act (Public Law 107-71)**
- **The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458)**
  §§ 4011, 4012, 4013, 4014
- **HSPD-6** [http://www.fas.org/irp/offdocs/nspd/hspd-6.html]
- **DHS’ Role in Nominating Individuals for the Government Watchlist and Its Efforts to Support Watchlist Maintenance (Redacted)**
  [http://www.oig.dhs.gov/assets/Mgmt/OIG_11-107_Sep11.pdf]
- **Audit of Airport Passenger and Checked Baggage Screening Performance (Summary)**
  [http://www.oig.dhs.gov/assets/Mgmt/OIG_08-25_Feb08.pdf]
- **Investigation Concerning TSA’s Compromise of Covert Testing Methods**
  [http://www.oig.dhs.gov/assets/Mgmt/OIG_09-43_Mar09.pdf]

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- Article: Massive TSA Security Breach as TSA Gives Away Its Secrets
[abcnews.go.com/Blotter/massive-tsa-security-breach-agency-secrets/story?id=9280503]
- TSA's Breach of Sensitive Security Information (Redacted)

Optional/Outside Reading for Interested Students:
- TSA’s Security Screening Procedures for Employees at Orlando International Airport
(Redacted) [http://www.oig.dhs.gov/assets/Mgmt/OIGr_09-05_Oct08.pdf]
- Effectiveness of TSA’s Surface Transportation Inspectors
[http://www.oig.dhs.gov/assets/Mgmt/OIGr_09-05_Oct08.pdf]
- Role of the No Fly and Selectee Lists in Securing Commercial Aviation
[http://www.oig.dhs.gov/assets/Mgmt/OIGr_09-64_Jul09.pdf]
- Implementation and Coordination of TSA’s Secure Flight Program

September 17th
Week 4: Overseeing Immigration Enforcement Efforts and Activities on America’s Borders

Synopsis: As highlighted in the staff report titled 9/11 and Terrorist Travel, perpetrators of the 9/11 attack “had 25 contacts with consular affairs and 43 contacts with immigration and customs authorities.” Thus, each time a prospective hijacker entered the U.S. prior to September 11, 2001, it represented a missed opportunity to not only disrupt the terrorist conspiracy, but more importantly, to avoid the resulting human suffering. The Immigration and Nationality Act has always allowed for the exclusion or deportation of aliens from the United States. Nonetheless, this class session will examine multiple tools used by immigration officials to combat the threat of terrorism. More importantly, specific OIG reports will highlight the continued challenges that arise during oversight of national security law and policy.

Required Reading:
- The Immigration and Nationality Act, as amended
8 U.S.C. §§ 1182, 1225, 1226a, 1227, 1357, 1451
- DHS Progress in Addressing Coordination Challenges Between CBP and ICE
[http://www.oig.dhs.gov/assets/Mgmt/OIG_07-38_Apr07.pdf]
- U.S. Immigration and Customs Enforcement Visa Security Program
[http://www.oig.dhs.gov/assets/Mgmt/OIG_08-79_Jul08.pdf]
- The Removal of a Canadian Citizen to Syria (Redacted)
[http://www.oig.dhs.gov/assets/Mgmt/OIGr_08-18_Jun08.pdf]
- The Performance of 287(g) Agreements

Optional/Outside Reading for Interested Students:
- CBP’s Handling of Unaccompanied Alien Children
[http://www.oig.dhs.gov/assets/Mgmt/OIG_10-117_Sep10.pdf]
- The Special Immigrant Nonminister Religious Worker Program
[http://www.oig.dhs.gov/assets/Mgmt/OIG_09-79_Jun09.pdf]
- Book - Patrolling Chaos: The U.S. Border Patrol in Deep South Texas, Robert Li Maril
September 24th

Week 5: Overseeing Domestic Intelligence and Information Sharing Efforts

Synopsis: Student discussion will begin with an analysis of Executive Order 12333, as amended, which is described by many practitioners as the “bible of the Intelligence Community.” Specifically, this class session will focus on the Executive Order as it relates to the DHS Intelligence Enterprise. The authority of DHS intelligence elements will be examined in the context of the broader Intelligence Community. In addition, class discussion will be supplemented by three OIG reports pertaining to the evolving role of state and local fusion centers and continued oversight of domestic information sharing efforts.

Required Reading:
- Executive Order 12333, as amended - Please review §§ 1.7(h), 1.7(i), 1.11, 3.5(h) [www.ise.gov/sites/default/files/eo12333.pdf]
- The Department of Homeland Security Intelligence Enterprise, CRS [assets.openers.com/rpts/R40602_20100319.pdf]
- DHS’ Role in State and Local Fusion Centers is Evolving [http://www.oig.dhs.gov/assets/Mgmt/OIG_09-12_Dec08.pdf]
- DHS’ Efforts to Coordinate and Enhance Its Support and Information Sharing with Fusion Centers [http://www.oig.dhs.gov/assets/Mgmt/OIG_12-10_Nov11.pdf]

October 1st

Week 6: Investigating Disaster Assistance and Recovery Efforts – Katrina and Beyond

Synopsis: Many practitioners in the field of domestic preparedness are weary of what they refer to as a “pendulum swing” in national security priorities. Following the attack of September 11, 2001, most national security efforts focused dramatically on counterterrorism and response to terrorist attack. Arguably, this overwhelming emphasis resulted in a situation in which America was ill-prepared for a catastrophic natural disaster of unprecedented proportions. This class session will examine government failings during Hurricane Katrina. Discussion will also focus on one important question: how do practitioners charged with oversight of national security law and policy avoid the troubling phenomenon whereby domestic preparedness efforts inextricably focus on past events rather than preparing for the full-spectrum of future threats?

Required Reading:
- Skim the National Response Framework [www.fema.gov/pdf/emergency/nrf/nrf-core.pdf]
- A Performance Review of FEMA’s Disaster Management Activities in Response to Hurricane Katrina [http://www.oig.dhs.gov/assets/Mgmt/OIG_06-32_Mar06.pdf]

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- Brown Asserts He Alerted White House Quickly on Katrina
- Information Sharing at the National Operations Center
- Article: The Biggest Threat to America Isn’t Terrorism – It’s the Wrath of Mother Nature

Optional/Outside Reading for Interested Students:
- Review of FEMA’s Use of Proceeds From the Sales of Emergency Housing Units
  [http://www.oig.dhs.gov/assets/Mgmt/OIG_08-23_Feb08.pdf]
- FEMA Response to Formaldehyde in Trailers (Redacted)
  [http://www.oig.dhs.gov/assets/Mgmt/OIGr_09-83_Jun09.pdf]
- Book - Disaster: Hurricane Katrina and the Failure of Homeland Security - Chris Cooper

October 9th

Week 7: Overseeing National Security Investigations – the U.S. Dept. of Justice and the FBI

Synopsis: The Federal Bureau of Investigation is undoubtedly an integral partner in defending America’s homeland. In fact, the FBI has unparalleled authority in the domestic arena. DHS’ relationship with the FBI is highly beneficial, as the FBI has the unique ability to address national security and criminal threats that are increasingly intertwined and to shift between the use of intelligence tools such as surveillance or recruiting sources and law enforcement tools of arrest and prosecution. Historically, domestic intelligence activities directed at U.S. persons have resulted in abuses. The Foreign Intelligence Surveillance Act, which was passed in 1978, was intended as a response to the intelligence excesses detailed in the Church Committee investigation. Nonetheless, a recent USDOJ OIG report has cast doubt on the authorization process as it relates to the FBI’s use of National Security Letters. This class session will examine this OIG report as well as an internal DOJ investigation of attorney misconduct related to the use of enhanced interrogation techniques.

Required Reading:
- Church Committee Report, Book III - COINTELPRO: The FBI’s Covert Action Program Against American Citizens – Pages 1-14
- Church Committee Report, Book III – Warrantless FBI Electronic Surveillance - Pages 273-276
- Unclassified Report on the President’s Surveillance Program, OIGs for DOD, DOJ, CIA, NSA, ODNI, July 2009
- A Review of Federal Bureau of Investigation’s Use of National Security Letters - Skim Executive Summary pp. viii-xl ix

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- Article: The FBI’s Secret Scrutiny
  [www.washingtonpost.com/wp-dyn/content/article/2005/11/05/AR2005110501366.html]
- Investigation in the Office of Legal Counsel’s Memoranda Concerning Issues Relating to the Central Intelligence Agency’s Use of “Enhanced Interrogation Techniques” on Suspected Terrorists - Pages 1-11
- Article: Report Faults 2 Authors of Bush Terror Memos

Optional/Outside Reading for Interested Students:
- Foreign Intelligence Surveillance Act of 1978, as amended
  50 U.S.C. § 1801. et seq.
- A Review of the Federal Bureau of Investigations Use of Section 215 Orders for Business Records in 2006

October 15th
Week 8: Overseeing the Intelligence Community - Office of the Director of National Intelligence

Synopsis: As a result of the Intelligence Reform and Terrorism Prevention Act, which amended the National Security Act of 1947, the Director of National Intelligence (DNI) has been afforded unprecedented authority over the Intelligence Community as a whole. This includes DHS intelligence elements such as the Office of Intelligence and Analysis and the U.S. Coast Guard. As expressed in Executive Order 12333, as amended, the Director of National Intelligence “shall serve as the principal adviser to the President, to the [National Security Council], and to the Homeland Security Council for intelligence matters related to national security, and shall oversee and direct the implementation of the National Intelligence Program and execution of the Intelligence Program budget.” Despite this seemingly ample authority, there has been recent controversy between the DNI and the Director of Central Intelligence. The class session will examine the authority of the DNI as well as discuss the role of the ODNI Inspector General in future Intelligence Community activities. In particular, students will be asked to discuss the ramifications of recent legislation on intelligence oversight efforts.

Required Reading:
- The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction – Chapter 6
- National Security Act of 1947, as amended
  50 U.S.C. §§ 403, 403-1, 403-4a, 403-5
- Executive Order 12333, as amended - Please review §§ 1.3 and 1.7(j)
  [www.ise.gov/sites/default/files/EO12333.pdf]
- Director of National Intelligence Statutory Authorities, CRS
  [assets.opencrs.com/rpts/RS22112_20050411.pdf]
- Article: Turf Battles on Intelligence Pose Test for Spy Chiefs

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October 22nd

**Week 9: The Department of Defense and Oversight of Domestic Military Operations**

**Synopsis:** The Department of Defense is an integral partner in protecting our country. As a result of the global threat of terrorism, United States civil and military agencies underwent a significant reorganization to enhance homeland security. New concepts were articulated which stressed the involvement of military assets in a domestic setting. These concepts were homeland defense and defense support of civil authorities. Nonetheless, the *Posse Comitatus Act*, which was passed by Congress in the wake of the American Civil War, effectively limits federal military personnel and units of the National Guard under federal authority from acting in a domestic law enforcement capacity. The provisions of this Act seemingly restrict the ability of military intelligence elements to support domestic law enforcement efforts. This class session will examine current homeland defense and civil support efforts in historical perspective. Discussion will also center around one important question: what authority does the Department of Defense have to support domestic law enforcement activities and are these efforts in need of additional oversight?

**Required Reading:**

- *Posse Comitatus Act, 18 U.S.C. § 1385*
- *Website - About U.S. NORTHCOM* [www.northcom.mil/About/index.html]
- *Article: Occupy Wall Street and the U.S. Army’s 82nd Airborne Division: A Hypothetical Examination of the Slippery Slope of Military Intervention During Civil Disturbance* [Forthcoming George Mason University Civil Rights Law Journal]

**Optional/Outside Reading for Interested Students:**

- *U.S. Department of Defense, Dir. 5240.01, DOD Intelligence Activities* (Skim)
October 29th (Note: detailed outlines/work plans due)

Week 10: Hot Topic Discussion – Counterintelligence Investigations and Protecting Against the Insider Threat

Synopsis: As part of a hot topic discussion, students will analyze the considerable danger foreign intelligence or insider threats pose to national security. Specifically, this class discussion will focus on the statutory authority of the National Counterintelligence Executive (NCIX) established within the ODNI. Students will also discuss relevant DOJ OIG reviews related to the Aldrich Ames and Robert Hanssen investigations. As noted in the National Counterintelligence Strategy of the United States, history has demonstrated the intent of foreign intelligence services and other entities to penetrate the U.S. Intelligence Community and extract information through the use of a trusted insider – recruited or volunteer. As the reading for this class discussion reveals, oversight and internal investigations are an invaluable means of safeguarding against this danger.

Required Reading:
- DHS’ Counterintelligence Activities (Summary) [www.dhs.gov/xoig/assets/mgmtrpts/OIG_10-97_Jul10.pdf]
- Article: The Fed Who Blew the Whistle - Is he a hero or a criminal? [www.thedailybeast.com/newsweek/2008/12/12/the-fed-who-blew-the-whistle.html]

Optional/Outside Reading for Interested Students:
- Book - Comrade J: The Untold Secrets of Russia’s Spy Master in America After the End of the Cold War, Pete Early
November 5th and 12th (Note: optional report drafts must be turned in by Nov. 12th at the latest)
Week 11 & 12: Final Discussion Days – The Role of Oversight and Internal Investigations in Shaping the Future of National Security

Synopsis: The final two class discussions will focus on many of the themes explored throughout the course. Specifically, students will be responsible for reading Clark Kent Ervin’s book *Open Target: Where America is Vulnerable to Attack*. Mr. Ervin served as the first Acting Inspector General to the Department of Homeland Security from January 2003 to December 2004. His book provides an interesting first person account of the many challenges facing the Department. His conclusions will be juxtaposed against GAO’s audit titled *Department of Homeland Security: Progress Made and Work Remaining in Implementing Homeland Security Missions 10 Years after 9/11*. Finally, students are encouraged to read Attorney General Michael Mukasey’s speech to Boston College Law School in 2008. His words highlight the many challenges faced by today’s national security professionals including legal practitioners responsible for oversight of national security law and policy.

Required Reading:
- Book - *Open Target: Where America is Vulnerable to Attack*, Clark Kent Ervin
- Speech by Attorney General Michael Mukasey, Boston College Law School 2008 [www.justice.gov/archive/ag/speeches/2008/ag-speech-0805236.html]

Optional/Outside Reading for Interested Students:

November 19th and 26th
Week 12 & 13: Student Presentations

Student presentations should be approximately 10 minutes in length and allow for questions from fellow classmates. In-class handouts of two to three pages are encouraged to facilitate discussion.