COURSE OVERVIEW:

The 21st Century risk environment facing our nation is a complex mix of manmade and naturally occurring threats and hazards including: terrorism, hurricanes, earthquakes, floods, power outages, hazardous materials spills, industrial accidents, pandemic influenza, cyber intrusions, among various others. In addition, we are engaged in a series of critical policy discussions-some related to these threats and hazards and others to long-running debates regarding immigration, law enforcement and intelligence and information sharing. The terrorist attacks of September 11th, 2001 served as a catalyst for exploring new mechanisms of coordinated decision-making and response to these issues.

One such new mechanism was the establishment of the Department of Homeland Security (DHS) in 2002 as the first new Cabinet-level Department created in over 30 years. The broad policy, decision-making and execution authority of the DHS covers many areas of homeland and national security. Yet, even with the centralization of issues formerly controlled by multiple federal agencies, DHS must continue to work with a multitude of Federal, state, local, tribal and private sector organizations in constructing responses to the critical homeland security issues we face. Although surrounded by robust policy discussion, these responses are ultimately statutory and regulatory in nature and are based upon legal issues of both first impression and long-standing precedent.

This course provides an introduction to the policy, strategy and practical application of homeland security through an understanding of the authorizing laws, regulations, and polices that established DHS. This is a multi-faceted course that will expose students to complex intergovernmental and public-private sector policymaking, operational planning and crisis management. The course is designed to promote subject matter understanding, critical analysis of issues and insight into senior leader decision making. It also includes a practical examination of stakeholder interaction and key subject matter areas through an interactive tabletop exercise and a research paper assignment as well as other interactive opportunities throughout the course.
COURSE INFORMATION:

Credits: 2 Credits

Class Format: Class will consist of lecture and class discussion covering four topic modules: (1) Foundations of Homeland Security; (2) The Re-Evolution and Roles of DHS from 2003 to Present Day; (3) Intelligence and Infrastructure; and (4) Disasters and Emergency Response. In addition, students will be expected to participate in an incident management exercise and write a research paper. As law students, you are to learn, in an independent manner, a body of knowledge pertaining to federal agency decision-making and its application to the critical issues faced by the DHS and to communicate your understanding and assessment of that knowledge to fellow students and faculty via discussions and written papers.

Office Hours: Professors McCament and Wolff do not have set office hours on-campus. Appointments should therefore be requested and made in advance. Contact information for both professors is listed below.

Professor James McCament: james.mccament@dhs.gov; 202-272-1940 (Office)
Professor Evan Wolff: ewolff@hunton.com; (202) 955-1908

Tape Recording: Tape recording of any class session is strictly prohibited.

In-class Laptop Usage: Note-taking during class using personal laptops is permissible. Accessing and use of the GMU wireless area network during class, however, is not permitted while class is in session.

COURSE REQUIREMENTS:

Grading: Grades will be based upon class participation, class exercises and a written research paper on a topic selected by each student and approved by the professors. Grading will be determined as follows:

- Class Participation 15%
- Class Exercises 15%
- Research Paper 70%

Class Participation: Students are expected to come to class prepared to meaningfully participate during lecture discussions. This includes reading all assigned readings for that class. Some sections contain reference readings that, while not required, may be helpful in understanding that section’s topic.

Class Exercises:

1. DHS Stand-up Exercise: At the conclusion of Class One, you will be assigned to serve in a senior official position within the new Department of Homeland Security, a role which you will hold for the remainder of our semester together. That position is one specifically named in the Homeland Security Act and will help frame your participation and, we hope, your perspective on the issues discussed through the semester. In addition to your readiness to discuss the general concepts found in the assigned weekly
reading, you will also be asked to provide questions and input based upon your position within the Department of Homeland Security.

2. SAFETY Act Exercise: Based on an understanding of the SAFETY Act application process, students will be presented with some basic information on a hypothetical technology company ("Get Them Before They Get You") and will have to prepare and defend responses to these questions in front of officials from the SAFETY Act Office (Professor McCament) and meet the demands of your clients (Professor Wolff).

3. Incident Management Exercise: Students will participate in an interactive tabletop exercise simulating a complex, well-coordinated terrorist attack on critical infrastructures and population centers within the United States. Each student will be assigned a role as a key public or private sector official with attendant concerns and responsibilities. The exercise will include an emerging threat phase, operational response phase and post-incident recovery phase. Students are expected to play a dynamic and informed role playing during the class exercise.

Research Paper: Each student will write a 20-25 page research paper, not including citations, on a current homeland security issue of their choice (National, regional, state, local, sector or international focus). The paper should be completed using the following organizational format: problem statement, background (include key players, authorities, resources, etc.), discussion (presentation of alternatives with the identification of pros and cons for each alternative) and recommendations (including rationale behind their selection). Please keep in mind, while many of the topics may be policy oriented, we expect thorough legal research and analysis. Citations may be entered as footnotes or endnotes, but there must be a consistent format. The paper should focus on the benefits, drawbacks and obstacles, including practical, policy and legal, to the application of proposed policy alternatives. The recommendations section should clearly describe the rationale for the option of choice.

Prior approval of the topic for the research paper is required. Students should submit a one paragraph written description of their proposed topic in class or via email for approval by the beginning of the 7th class session.

COURSE OUTLINE:

MODULE ONE: FOUNDATIONS OF HOMELAND SECURITY

The U.S. Constitution is predicated on a division of responsibilities between the states and the federal government. Intra-border security has historically been a state and local responsibility, with the federal government focused on more existential transnational threats. The federal role in homeland security was generally limited to those exceptional circumstances where domestic instability could coalesce into national concerns, such as Native American relations and the Civil War. Absent such backing, though, domestic threats generally did not gain enough strength so as to require federal action. However, modern technology has flattened the earth, making distant threats more immediate, and drastically multiplying the force of individual actors. This was dramatically shown on September 11th, 2001 when a small group of terrorists with little official government backing, other than sanctuary from the defacto Taliban leadership of Afghanistan, were able to launch catastrophic attacks on key American targets. 9/11 conclusively displayed the need for a new federal role in combating powerful modern
domestic threats. However, the federal government is a broad sword: powerful in its capacity to strike, but unwieldy in its handling. How then, should the federal government respond to its new homeland security responsibilities?

This module will begin by examining the federal government’s response to 9/11, and how the resulting paradigm change in federal domestic security responsibilities has caused homeland security to be a study in advanced administrative law. The lecture will then focus on how Congress reorganized the executive branch so as to confront terrorist threats through the Homeland Security Act of 2002. Discussion will then shift to how Congress has adapted, or has failed to adapt, to federal homeland security responsibilities. Finally, this module will conclude by exploring how the judicial branch can implicate both congressional and executive action on homeland security.

CLASS ONE: JANUARY 7, 2014

INTRODUCTION TO HOMELAND SECURITY LAW:

(PART 1) THE FEDERAL RESPONSE TO 9/11

1. Memorandum from Kenneth Williams to the Federal Bureau of Investigation Counterterrorism Division, Zakaria Mustapha Soubra; IT-Other [Redacted], “The Phoenix Memo”, (July 18, 2001).

   http://govinfo.library.unt.edu/911/report/index.htm

(PART 2) HOMELAND SECURITY LAW: A MASTERY OF BUREAUCRACY


Reference:

   • http://www.dhs.gov/xlibrary/assets/nat_strat_hls.pdf

   • http://www.fas.org/irp/offdocs/nspd/hspd-2.htm

ASSIGNMENT FOR CLASS TWO: PREPARE FOR DHS STAND UP EXERCISE: BASED ON YOUR ASSIGNED ROLE, RESEARCH THE FOLLOWING ISSUES AND BE PREPARED TO GIVE A 5 MINUTE OVERVIEW DURING THE ‘FIRST DHS STAND-UP MEETING’

We will be recreating the first DHS senior leadership meeting with Secretary Ridge. At the end of today’s class, we will be assigning you to one of the following Department positions as outlined in the Homeland Security Act:
1. Secretary of Homeland Security;
2. Deputy Secretary of Homeland Security;
3. Under Secretary of Management;
4. Under Secretary of Border & Transportation Security;
5. Under Secretary of Intelligence Analysis & Infrastructure Protection;
6. Under Secretary for Emergency Preparedness & Response;
7. Under Secretary for Science & Technology;
8. Director, United States Secret Service;
9. Commandant, United States Coast Guard;
10. Director, Bureau of Citizenship & Immigration Services;
11. Assistant Secretary, Bureau of Border Security;
12. Commissioner, Bureau of Customs & Border Protection;
13. Assistant Secretary, Transportation Security Administration;
14. Assistant Secretary, Intelligence & Analysis;
15. Assistant Secretary, Private Sector.

**CLASS TWO: JANUARY 14, 2014**


   - [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr10oc01-144.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2001_register&docid=fr10oc01-144.pdf)

2. Homeland Security Act of 2002 §§ 1 (Table of Contents) and 101 (Executive Department; Missions).
   - [http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)


4. DHS Stand-up Exercise – Welcome to the Secretary’s first meeting of the DHS leadership. You should be prepared to discuss the Homeland Security Act and reorganization from the perspective of your particular appointed position. In particular, review the reference to your position and be prepared to discuss:
   a. If you are overseeing a transferred entity, what were the responsibilities in the previous Department or Agency for your position?
   b. Based on the HSA, what are your authorities, roles and responsibilities at the DHS?
   c. In your opinion, why are you coming to DHS and what is your nexus to the HSL mission?

**Reference:**

   http://www.dhs.gov/xlibrary/assets/nat_strat_hls.pdf


CLASS THREE: JANUARY 21, 2014

DHS IN THE PUBLIC EYE:

(PART 1) CONGRESSIONAL OVERSIGHT

   • http://www.publicintegrity.org/articles/entry/1549/

   • http://www.dhs.gov/xlibrary/assets/secltr-chertoff-king-congressionaloversight-20070904.pdf

   • http://www.gao.gov/assets/130/126877.pdf

(PART 2) JUDICIAL REVIEW


2. National Treasury Employees Union v. Chertoff (Chertoff II), 452 F.3d 839 (D.C. Cir. 2006) (Skim through 843-879, read rest of case).

Reference:

   • http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

   • http://maloney.house.gov/911caucus/CSIS.pdf


**MODULE TWO: THE RE-EVOLUTION AND ROLES OF DHS FROM 2003 TO PRESENT DAY**

When DHS was first formed, many experts contended that it would take at least ten years for the Department to become a cohesive organization. It should not be surprising then that since the Homeland Security Act of 2002, DHS’s structure has been continuously amended and alerted. In some cases, old agencies resisted being forced into the Department. These agencies sought to retain their independent status and gain enhanced positions within DHS operations, with varying success. On the other hand, America’s immigration and border agencies, reeling from failures associated with September 11th, were disintegrated and reformulated, at least ostensibly, to confront the modern threat of terrorism - only to be changed again. Nor were DHS’s own directorates spared from change, of the five directorates originally established, only two remain today. All the while, DHS has continued to be plagued by the same core mission questions that were first posed when White House staffers convened to create the Department shortly after 9/11. Does this history foretell any insight into the Department’s future; and how can a lawyer use this information to successfully navigate the DHS bureaucracy?

This module will focus on DHS’s roles and the Department’s continuing growing pains. The module begins by discussing the authority within the Homeland Security Act of 2002 for both the President and Secretary to reorganize DHS. This discussion leads to examining three previously-existing agencies (Secret Service, Coast Guard and TSA) and their role within the department. Next the lectures will cover the federal government’s current immigration apparatus, and how it has been recalibrated in the face of modern terrorism. The module will then examine the Department’s two longest-standing entities: the Directorate of Science and Technology and the Directorate of Management. The module concludes by looking at the changing role of FEMA within the Department to ask whether the DHS mission should remain terrorist-centric or adapt to include its sub-agencies legacy responsibilities.

**CLASS FOUR: JANUARY 28, 2014**

**DHS REORGANIZATION AND SUPPORT DIRECTORATES:**

**(PART 1) DHS REORGANIZATION AUTHORITY AND SECRETARY CHERTOFF’S SECOND STAGE REVIEW AND SECRETARY NAPOLITANO’S QUADRENNIAL HOMELAND SECURITY REVIEW**

1. Homeland Security Act of 2002 §§ 872 (Reorganization), 1502 (Reorganization Plan)
   - [http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)


(PART 2) DHS’S SUPPORT DIRECTORATES:

**RESEARCH AND DEVELOPMENT TO PROTECT THE HOMELAND: DIRECTORATE OF SCIENCE AND TECHNOLOGY**

   - [http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)


**DIRECTORATE OF MANAGEMENT**

   - [http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)


**Reference:**


**ASSIGNMENT FOR CLASS FIVE: PREPARE FOR THE SECOND EXERCISE TO PARTICIPATE IN PRESENTATION OF A SAFETY ACT APPLICATION.**
**CLASS FIVE: FEBRUARY 4, 2014**

**SAFETY ACT EXERCISE:** Based on an understanding of the SAFETY Act application process, you will be presented with some basic information on a hypothetical technology company (“Get Them Before They Get You”) and will have to prepare and defend responses to these questions in front of officials from the SAFETY Act Office (Professor McCament) and meet the demands of your clients (Professor Wolff).

**PROTECTING AGAINST CATASTROPHIC LIABILITY: THE SAFETY ACT**

   - [http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)


**CLASS SIX: FEBRUARY 11, 2014**

**MENDING BROKEN BORDERS TO MEET A NEW TERRORIST THREAT: CUSTOMS AND BORDER PATROL AND IMMIGRATION AND CUSTOMS ENFORCEMENT**

1. Homeland Security Act of 2002 Title IV, Subtitle A (Undersecretary for Border and Transportation Security), Subtitle D (Immigration Enforcement Functions), and § 471 (Abolishment of INS).
   - [http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf](http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)


Reference:


3. Arizona Senate Bill 1070
   - http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf

3. Ninth Circuit Court of Appeals Ruling on Arizona Senate Bill 1070

CLASS SEVEN: FEBRUARY 18, 2014

**RESEARCH PAPER TOPIC DESCRIPTIONS DUE**

MOVING TOWARDS FAIRER AND MORE SECURE IMMIGRATION LAW:

(PART 1) UNITED STATES IMMIGRATION AND CITIZENSHIP SERVICES

   - http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf


(PART 2) IMMIGRATION REFORM: PAST, PRESENT AND FUTURE

1. Senate 744 - Border Security, Economic Opportunity, and Immigration Modernization Act


Reference:

1. 2009: H.R. 4321 (CIR ASAP) Bill (Summary and Status)
   • http://www.gpo.gov/fdsys/pkg/BILLS-111hr4321ih/pdf/BILLS-111hr4321ih.pdf

2. 2010: S. 3932: Comprehensive Immigration Reform Act of 2010 (Summary and Status)
   • http://www.gpo.gov/fdsys/pkg/BILLS-111s3932is/pdf/BILLS-111s3932is.pdf

3. Chamber of Commerce of the United States et. al vs Whiting, et. al.

Class Eight: February 25, 2014

DHS and Its Distinct Entities: Secret Service, Coast Guard and Transportation Safety Administration

   • http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

   • http://www.fas.org/sgp/crs/homesec/RL34603.pdf

3. O’Rourke, Ronald, Coast Guard Deepwater Acquisition Programs: Background, Oversight Issues, and Options for Congress.
   • http://www.fas.org/sgp/crs/weapons/RL33753.pdf

   • http://www.fas.org/sgp/crs/homesec/RL33512.pdf

Reference:

• Kehaulani-Goo, Sara, Air Security Agency Faces Reduced Role, Washington Post, Apr. 8, 2005.


• GAO Report 03-1155. Progress Made in Implementing Maritime Transportation Security Act but Concerns Remain

MODULE THREE: INTELLIGENCE & INFRASTRUCTURE

From nuclear power plants, to water systems and transportation, DHS is the federal agency responsible for security of the nation’s infrastructure. Yet, the government only controls approximately 5% of this infrastructure. America’s growing dependence on this often aging infrastructure makes it an obvious target for terrorists. Similarly, the advent of the Internet has allowed Americans to contact the rest of the world. In turn, that has also allowed nefarious actors to reach back and render vital services vulnerable.

This module will begin by reviewing steps taken by DHS to collect and disseminate intelligence pertaining to homeland security. Discussion will next moved to how DHS works with the government and private sector to ensure that vital infrastructure is protected from terrorist attack. Finally, the module will examine the burgeoning field of cyber-security to identify new threats posed to homeland security, and the steps the government can take to remediate that vulnerability.

CLASS NINE: MARCH 4, 2014

HOMELAND SECURITY INTELLIGENCE ENTERPRISE AND COUNTERRORISM FUNCTIONS

   • http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

   • http://www.fas.org/sgp/crs/homesec/R40602.pdf

   • http://www.whitehouse.gov/sites/default/files/counterterrorism_strategy.pdf

• U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-12-144T, INFORMATION SHARING: PROGRESS MADE AND CHALLENGES REMAINING IN SHARING TERRORISM-RELATED INFORMATION (2011).

Reference:


CLASS TEN: MARCH 18, 2014

CRITICAL INFRASTRUCTURE AND KEY RESOURCES

   - http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf


6. GAO-10-296, Update to National Infrastructure Protection Plan Includes Increased Emphasis on Risk Management and Resilience

Reference:

• http://www.justice.gov/criminal/cybercrime/white_pr.htm

   • http://www.dhs.gov/xlibrary/assets/nat_strat_hls.pdf

3. Chemical Facility Anti-Terrorism Standards
   • http://www.dhs.gov/chemicalsecurity


**CLASS ELEVEN: MARCH 25, 2014**

**CYBER-SECURITY**

   §§ 223-225
   • http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

2. Letter to Congress from OMB regarding the Cybersecurity Legislative Proposal. May 12, 2011.
   • http://www.whitehouse.gov/omb/legislative_letters

3. White House Cybersecurity Regulatory Framework
   • Cybersecurity Regulatory Framework for Covered Critical Infrastructure
   • Section by Section Analysis

4. Letter to Congress from OMB regarding the Cybersecurity Legislative Proposal. May 12, 2011.


6. US-CERT. *Cyber Threat Source Descriptions*.
   • http://www.us-cert.gov/control_systems/cstthreats.html#gao


**Reference:**

1. Allor, Peter. *Understanding and Defending Against Foreign Cyber Threats.*
Even if terrorists were perfectly monitored and detained, science has yet to defeat natural disasters. Thus, despite efforts to increase prevention, emergencies will inevitably occur. But what elevates these emergencies to a national status? If an emergency is national in nature, when can the federal government use the most powerful tool at its disposal: the military? Indeed, has the government focused too much on prevention and not enough on resiliency?

This, the final module, will focus on how the government operates when all else fails and an emergency occurs. Discussion will first examine the role and limits of the Department of Defense when protecting the homeland from attack, and aiding civilian agencies in responding to emergencies. The lecture will then review the federal government’s evolving response, once a plan and now a framework, to emergencies. The module, and the course, will conclude by offering students an opportunity to act as stakeholders in a simulated emergency.

CLASS TWELVE: APRIL 1, 2014

THE FUTURE OF DHS: TERRORISTS OR HURRICANES?, THE FEDERAL EMERGENCY MANAGEMENT AGENCY’S CHANGING ROLE AT DHS.
   • http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf


   • http://georgewbush-whitehouse.archives.gov/reports/katrina-lessons-learned

   • http://www.restorethegulf.gov/


Reference:

2. Post Katrina Emergency Management Reform Act (PKEMRA)

   • http://www.gpoaccess.gov/serialset/creports/katrinanation.html
     (Full Report)

   • http://www.gao.gov/new.items/d06442t.pdf


6. GAO-09-59R *Actions to Implement the Post-Katrina Act* (Nov. 2008)
   http://www.hsgac.senate.gov/issues/hurricane-katrina

**CLASS THIRTEEN: APRIL 8, 2014**

(PART I) **DISASTER MANAGEMENT: THE NATIONAL RESPONSE FRAMEWORK**
   • http://www.fas.org/sgp/crs/homesec/RL34758.pdf

   • http://www.gao.gov/new.items/d10969t.pdf

(PART 2) HOMELAND DEFENSE:

POSSE COMITATUS

   • http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

THE MILITARY’S ROLE IN DOMESTIC SAFETY AND SECURITY


Reference:

   • http://www.dhs.gov/xlibrary/assets/nat_strat_hls.pdf

   • http://www.heritage.org/research/reports/2004/12/dhs-20-rethinking-the-department-of-homeland-security

   • http://www.fas.org/man/crs/RL31615.pdf

CLASS FOURTEEN: APRIL 15, 2014

TABLE-TOP EXERCISE
Reading assignment to be provided at the end of the previous class.