HOMELAND SECURITY LAW SEMINAR
George Mason University School of Law
Professors James McCament and Evan Wolff
Fall 2015

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.w.mccament@uscis.dhs.gov; 202-341-9757
Professor Evan Wolff: ewolff@crowell.com; (202) 624-2615

**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

Class One: August 26, 2015

See TWEN. Chapter 1: An Introduction to Homeland Security Law

This chapter provides a framework for this course by examining the September 11, 2001 terrorist attacks on the World Trade Center and Pentagon. Additionally, the later portion of this chapter introduces the “intelligible principle,” an administrative law doctrine that governs all federal departments and agencies. These readings will acquaint you with the unfolding events on and before 9/11, while introducing you to a fundamental administrative law concept that affects ongoing homeland security operations.

Assignment Next Week:

Research your assigned position within DHS and be prepared to present a brief overview to the class, including: (1) where the duties and functions of your position existed before DHS; (2) where this position existed within the DHS framework circa 2003; (3) how your position has evolved in the years following the initial creation of DHS; and (4) potential challenges or benefits resulting from your position’s inclusion in DHS.
You will be assigned one of the following 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: September 2, 2015

See TWEN. Chapter 2: Reorganizing the Federal Government for a Post-9/11 World

This chapter will outline the federal response to 9/11 by examining (1) deficiencies in the pre-9/11 counterterrorism structure; (2) President Bush's Executive Order 13228 (EO 13228) in the days immediately following 9/11; and, (3) the Homeland Security Act of 2002 (HSA2002). Compare the different organizational structures, authorities, and responsibilities proposed by EO 13228 and the HSA2002. Consider each scheme's advantages and disadvantages with respect to congressional oversight, efficient administration, and integration with other federal departments.

Class Three: September 9, 2015

DHS in the Public Eye

Readings:

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


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

Class Four: September 16, 2015

See TWEN. Chapter 3: Section 872 Authority and Second Stage Review

This chapter will (1) introduce the Secretary’s authority to reorganize DHS under §872 of the HSA2002; (2) outline the several modifications made using §872 authority, focusing on second stage review; and (3) discuss the future application of this power. Throughout this chapter, compare reorganization using §872 authority to HSA2002 and EO13228. Why might §872 reorganization better align DHS components to the U.S.’s homeland security interests? Meanwhile, what concerns does this authority create for Congress?

Class Five: September 23, 2015

See TWEN. Chapter 4: DHS Support Directorates

This chapter examines the two support directorates within DHS: (1) the Science and Technology Directorate and (2) the Management Directorate. Each section will detail the functions each directorate performs, why Congress included these roles as directorate-level operations, and current programs advanced by the directorates.

Assignment Next Week:

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).

Class Six: September 30, 2015

Protecting Against Catastrophic Liability: The SAFETY ACT
Readings:

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


*NOTE: RESEARCH PAPER TOPIC DESCRIPTION IS DUE NEXT WEEK*

Class Seven: October 7, 2015

See TWEN. Chapter 6: Mending Broken Borders to Meet a New Terrorist Threat

This chapter will discuss post-9/11 reforms to U.S. border security by examining (1) the HSA2002 border security regime and the 2SR modifications, (2) customs and supply chain security, (3) measures to combat illegal immigration, and (4) efforts within the U.S. border that support the border security mission.

*NOTE: No class on October 14.

Class Eight: October 21, 2015

Moving Toward Fairer and More Secure Immigration Law

Readings:


Class Nine: October 28, 2015

Homeland Security Intelligence Enterprise and Counterterrorism Functions

Readings:

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


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


Class Ten: November 4, 2015

Critical Infrastructure and Key Resources
   http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf

   http://www.dhs.gov/xabout/laws/gc_1214597989952.shtm


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

Class Eleven: November 11, 2015

Cybersecurity

Readings:

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

2. White House Cybersecurity Regulatory Framework  

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


5. US-CERT. Cyber Threat Source Descriptions.  
   http://www.us-cert.gov/control_systems/cstrends.html#gao

Class Twelve: November 18, 2015


This chapter will discuss DHS’s disaster relief and emergency preparedness mission by (1) introducing the history of U.S. disaster response; (2) reviewing FEMA’s transition to DHS and obligations under the Stafford Act; (3) evaluating post-9/11 FEMA programs using Hurricane Katrina as a case study; and (4) considering the future of U.S. disaster relief programs.


Class Thirteen: Post-November 18, 2015/Pre-November 25, 2015 or TBD

Readings:


Homeland Defense

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


Class Fourteen: November 25, 2015:
Reading assignment to be provided at the end of Class Thirteen.

Table-Top Exercise