

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

Course Schedule and Location: Mondays 6:05 PM – 8:05 PM - Location TBD

Professor: McKay M. Smith

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

Number of credits: 2

Learning Outcomes:

The central goal of this course is to train future practitioners 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. In particular, class sessions will focus heavily on national security issues and the departments and agencies charged with keeping America safe. Students will acquire a firm understanding of relevant national security topics, inspector general legal authorities, effective interviewing and investigative techniques, the report writing process, and the importance of inter/intra-departmental collaboration.

Professor Bio:

McKay Smith is an Attorney with the U.S. Department of Justice, National Security Division. He is also an Adjunct Professor at the George Washington University Law School and the George Mason University School of Law, where he teaches courses on government oversight and internal investigations. Mr. Smith served as a Senate Fellow for John McCain on the Senate Armed Services Committee and conducted complex investigations related to Russian intelligence threats, cybersecurity, and counterterrorism. He has also worked as a Special Assistant U.S. Attorney in the U.S. Attorney's Office, Eastern District of Virginia. Prior to joining the Department of Justice, Mr. Smith was a Senior Inspector with the Department of Homeland Security, Office of Inspector General, where he supervised reviews of highly-sensitive national security programs and operations. He worked in multiple capacities within that office, including as an Attorney and as the Acting Intelligence Operations Specialist. Mr. Smith earned an LL.M., with distinction, from the Georgetown University Law Center, a J.D. from William and Mary Law School, and a B.A. from the College of William and Mary. 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 United States Senate, the Department of Homeland Security, or the United States Government.

General Description of Course:

Welcome to the exciting world of government oversight and internal investigations! This course will explore 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 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, maritime 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, U.S. Citizenship and Immigration Services, the U.S. Coast Guard, the Office of Intelligence and Analysis, the Office of Operations Coordination and Planning, and the Federal Emergency Management Agency.

OIG investigations and program reviews necessitate 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 research paper discussing 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 paper, participating in an entrance conference in which they provide their professor with a detailed outline or “work plan” (optional), submitting an initial draft for comment (optional), and presenting their completed work product for final evaluation.

Class Schedule:

The course will meet on Monday evenings from 6:05PM – 8:05PM. 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 and may be ineligible to receive academic credit pursuant to the law school’s academic regulations. Please email the professor in advance if you expect to miss a class.

Course Material:

There is no casebook although students will be responsible for reading Clark Kent Ervin’s book *Open Target: Where America is Vulnerable to Attack*. 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 material/handouts will be provided during class sessions. Anticipated reading assignments may be subject to change as necessary to accommodate hot topics or evolving issues.

Grading Methods:

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

Research Paper:

At the conclusion of the course, students will be responsible for submitting a research paper that analyzes a government program or operation related to national security. This final assignment will be similar to other seminar papers required in law school courses in that it should leverage the material we covered in class. The only requirement is that students incorporate a discussion of legal and regulatory topics as well as provide future recommendations and corrective actions intended to improve upon perceived inefficiencies. Detractors of government efforts frequently have great success pointing out the inherent shortcomings of a particular program or process. 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. They will be responsible for submitting a detailed topic outline or “work plan” (optional), a draft version of their piece (optional), and a final product for evaluation. The paper will be a minimum of 20 pages, including footnotes. Drafts should be submitted at least four weeks prior to the conclusion of the semester. 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 research paper. This section will not count towards the 20 page requirement.

The requirement for an Executive Summary is in keeping with OIG style guidance and also provides a useful summary of the paper as a whole. In addition, most student-edited law journals require an abstract summarizing a prospective article’s themes and conclusions. Thus, this section has the added benefit of fulfilling this submission requirement. All students will be encouraged to seek publication for their final work products. Research papers will be due no later than Sunday, December 12th. Please send an electronic version to Professor Smith at smithmckaym@gmail.com.

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 class session. 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 ideas of fellow classmates. Thus, questions and critiques must remain purely constructive in nature.

Course Syllabus: Law of Government Oversight and Internal Investigations

August 23rd

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 class. In particular, 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:

- **Skim the Inspector General Act of 1978, as amended** (5 U.S.C. App. 3)
[https://www.ignet.gov/sites/default/files/files/igactasof1010\(1\).pdf](https://www.ignet.gov/sites/default/files/files/igactasof1010(1).pdf)
- **Secretarial Memo on Cooperation with the Office of Inspector General**
http://www.oig.dhs.gov/assets/PDFs/OIG_Chertoff_Revised.pdf
- **Report of Investigation on Ignacio Ramos & Jose Compean, et al.**
http://www.oig.dhs.gov/assets/OIG_foia_RamosCompean.pdf
- **Statement of Richard L. Skinner, Inspector General Department of Homeland Security, Regarding the Investigation of Former Border Patrol Agents Ignacio Ramos and Jose Compean** http://www.oig.dhs.gov/assets/TM/OIGtm_RLS_020807b.pdf
- **News: Representative Poe Chides Homeland Official**
<http://www.washingtontimes.com/news/2007/mar/20/20070320-110847-4043r/>
- **News: Bush Commutes 2 Border Agents' Sentences**
www.nytimes.com/2009/01/20/washington/20sentence.html

In-Class Handout:

- **DHS OIG Org Chart**

August 30th

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 investigations that were initiated by congressional legislation in the wake of the September 11th attacks. 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
<http://www.washingtonpost.com/wp-srv/nation/911report/documents/911ReportExec.pdf>
- **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** – Skim Pages 1-24
<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:

- **The 9/11 Commission Report** - Chapter 13
http://www.washingtonpost.com/wp-srv/nation/911report/documents/911Report_Ch13.pdf
- **Brief Documentary History of DHS**
<https://www.hsdl.org/?view&did=37027>
- **Who joined DHS?**
<http://www.dhs.gov/who-joined-dhs>

In-Class Handouts:

- **DHS Org Chart**

September 13th

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 focus on the role of the Transportation Security Administration (TSA) in protecting national security. Specifically, we 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 in passenger screening, and the compromise of sensitive aviation 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)**
§§ 101, 104, 105, 106, 108, 109, 110, 111, 113, 115, 117
- **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 Inclusion on the Government Watchlist and Its Efforts to Support Watchlist Maintenance** – Read only Executive Summary & Background
http://www.oig.dhs.gov/assets/Mgmt/OIG_11-107_Sep11.pdf

(Week 3 Assignment Continued on Next Page)

- **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
- **News: Massive TSA Security Breach as TSA Gives Away Its Secrets**
<http://abcnews.go.com/Blotter/massive-tsa-security-breach-agency-secrets/story?id=9280503>

Optional/Outside Reading for Interested Students:

- **TSA's Breach of Sensitive Security Information (Redacted)**
http://www.oig.dhs.gov/assets/Mgmt/OIG_10-37_Jan10.pdf
- **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**
http://www.oig.dhs.gov/assets/Mgmt/2012/OIGr_12-94_Jul12.pdf

In-Class Handouts:

- **TSA Layered Security Diagram**

September 20th

Week 4: *Overseeing Immigration Enforcement Efforts and Activities on America's Borders*

Synopsis: DHS components such as Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and U.S. Citizenship and Immigration Services (USCIS) are integral to protecting national security. As highlighted in the staff report titled *9/11 and Terrorist Travel*, perpetrators of the September 11th 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 disrupt the terrorist conspiracy. 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 when overseeing immigration enforcement efforts and activities on America's borders.

Required Reading:

- **The Immigration and Nationality Act, as amended**
8 U.S.C. §§ 1182, 1225, 1226a, 1227, 1357, 1451
- **The Removal of a Canadian Citizen to Syria (Redacted)**
http://www.oig.dhs.gov/assets/Mgmt/OIGr_08-18_Jun08.pdf
- **Skim DHS Progress in Addressing Coordination Challenges Between CBP and ICE**
http://www.oig.dhs.gov/assets/Mgmt/OIG_07-38_Apr07.pdf
- **The Performance of 287(g) Agreements** – Read only Executive Summary and Background
http://www.oig.dhs.gov/assets/Mgmt/OIG_10-63_Mar10.pdf

(Week 4 Assignment Continued on Next Page)

Optional/Outside Reading for Interested Students:

- **U.S. Immigration and Customs Enforcement Visa Security Program**
http://www.oig.dhs.gov/assets/Mgmt/OIG_08-79_Jul08.pdf
- **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 27th

Week 5: Overseeing Domestic Intelligence and Information Sharing Efforts

Synopsis: This class session will focus on the role of DHS Intelligence Community elements in collecting and analyzing domestic intelligence. Specifically, the authority of the United States Coast Guard (USCG) and the Office of Intelligence and Analysis (I&A) will be discussed in great detail. Class will begin with an analysis of Executive Order 12333, as amended, which is described by many practitioners as the “bible of the Intelligence Community.” In addition, we will examine DHS’s relationship with other investigative agencies such as the Federal Bureau of Investigation. Class discussion will be supplemented by a congressional investigation detailing the role of state and local fusion centers in protecting national security. More importantly, students are asked to consider the importance of intelligence oversight in protecting the civil rights/civil liberties of U.S. persons.

Required Reading:

- **The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction – Chapter 10**
<http://www.gpo.gov/fdsys/pkg/GPO-WMD/pdf/GPO-WMD-1-16.pdf>
- **Executive Order 12333, as amended** - Please review §§ 1.7(h), 1.7(i), 1.11, 3.5(h)
<https://fas.org/irp/offdocs/eo/eo-12333-2008.pdf>
- **Skim the Department of Homeland Security Intelligence Enterprise, CRS**
<https://www.fas.org/sgp/crs/homesec/R40602.pdf>
- **Federal Support For and Involvement in State and Local Fusion Centers**
Click hyperlink marked “Report” on left side of website and read pages 1-25
<http://www.hsgac.senate.gov/subcommittees/investigations/media/investigative-report-criticizes-counterterrorism-reporting-waste-at-state-and-local-intelligence-fusion-centers>
- **News: A Report Card for Homeland Security, The Atlantic**
www.theatlantic.com/national/archive/2011/09/a-report-card-for-homeland-security/245057/

Optional/Outside Reading for Interested Students:

- **The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction – Chapter 9**
<http://www.gpo.gov/fdsys/pkg/GPO-WMD/pdf/GPO-WMD-1-15.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

(Week 5 Assignment Continued on Next Page)

In-Class Handouts:

- **Intelligence Community Org Chart**

October 4th

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 September 11th attack, most government agencies focused exclusively on counterterrorism. 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 a DHS OIG investigation of government failings during Hurricane Katrina. Discussion will focus on the role of the Federal Emergency Management Agency (FEMA) in disaster assistance and recovery efforts. Students should also consider one important question - as a practitioner of government oversight, how do you avoid the troubling phenomenon whereby government officials invariably focus on past events rather than preparing for the full-spectrum of future threats?

Required Reading

- **Homeland Security Act, as amended (6 U.S.C. §§ 311-321j)**
- **A Performance Review of FEMA’s Disaster Management Activities in Response to Hurricane Katrina** – Page 1-34
http://www.oig.dhs.gov/assets/Mgmt/OIG_06-32_Mar06.pdf
- **News: Brown Asserts He Alerted White House Quickly on Katrina**
<http://www.nytimes.com/2006/02/10/national/nationalspecial/10cnd-katrina.html?scp=16&sq=michael%20brown&st=Search>
- **News: Time to Brace for the Next 9/11**
<http://www.newsweek.com/time-brace-next-911-67389>

Optional/Outside Reading for Interested Students:

- **National Response Framework** https://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf
- **Information Sharing at the National Operations Center**
http://www.oig.dhs.gov/assets/Mgmt/OIGr_10-15_Nov09.pdf
- **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 12th

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

Synopsis: DHS’ relationship with the Federal Bureau of Investigation (FBI) is highly beneficial, as the FBI has unparalleled authority in the domestic arena. Moreover, America’s premier law enforcement organization has the unique ability to address national security and criminal threats that are increasingly intertwined. Historically, domestic intelligence activities directed at U.S. persons have resulted in abuses. The Foreign

Intelligence Surveillance Act of 1978 (FISA) was intended as a response to the intelligence excesses detailed in the Church Committee investigation. Nonetheless, recent OIG reports have raised questions related to the oversight of FBI national security investigations. This class session will examine these OIG reports and attempt to answer one important question – are we in danger of repeating the past?

Required Reading:

- **News: Burglars Who Took on FBI Abandon Shadows (Watch Video) –**
http://www.nytimes.com/2014/01/07/us/burglars-who-took-on-fbi-abandon-shadows.html?_r=0
- **Church Committee Report, Book III - COINTELPRO: The FBI's Covert Action Program Against American Citizens – Pages 1-15**
http://www.aarclibrary.org/publib/church/reports/book3/html/ChurchB3_0004a.htm
- **Church Committee Report, Book III – Warrantless FBI Electronic Surveillance -**
Pages 273-276
http://www.aarclibrary.org/publib/church/reports/book3/html/ChurchB3_0140a.htm
- **Unclassified Report on the President's Surveillance Program, OIGs for DOD, DOJ, CIA, NSA, ODNI, July 2009** <https://fas.org/irp/eprint/psp.pdf>
- **News: The FBI's Secret Scrutiny**
www.washingtonpost.com/wp-dyn/content/article/2005/11/05/AR2005110501366.html

Optional/Outside Reading for Interested Students:

- **Foreign Intelligence Surveillance Act of 1978, as amended**
50 U.S.C. § 1801. et seq.
- **The Rise and Fall of the FISA Wall, David Kris, 17 Stan. L. & Pol'y Rev. 487 (2006)**
- **A Review of the Federal Bureau of Investigations Use of Section 215 Orders for Business Records in 2006** {<http://www.justice.gov/oig/special/s0803a/final.pdf>}
- **A Review of Federal Bureau of Investigation's Use of National Security Letters**
Skim Executive Summary pp. viii-xlix <https://oig.justice.gov/reports/2016/o1601b.pdf>

October 18th

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. This includes DHS intelligence elements such as the Office of Intelligence and Analysis and the U.S. Coast Guard. In particular, the DNI “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 expansive authority, there has been controversy between the DNI and the Director of Central Intelligence. This class session will examine the authority of the DNI as well as discuss the role of the Office of Inspector General in overseeing Intelligence Community activities.

(Week 8 Assignment Continued on Next Page)

Required Reading:

- **The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction – Chapter 6**
<http://www.gpo.gov/fdsys/pkg/GPO-WMD/pdf/GPO-WMD-1-12.pdf>
- **National Security Act of 1947, as amended**
50 U.S.C. §§ 3023, 3024, 3036, 3038
- **Executive Order 12333, as amended** - Please review §§ 1.3 and 1.7(j)
<https://fas.org/irp/offdocs/eo/eo-12333-2008.pdf>
- **Director of National Intelligence Statutory Authorities, CRS**
<https://www.fas.org/sgp/crs/intel/RS22112.pdf>
- **News: Turf Battles on Intelligence Pose Test for Spy Chiefs**
www.nytimes.com/2009/06/09/us/politics/09intel.html
- **News: White House Confirms Primacy of CIA Station Chiefs, Ending Turf War**
www.washingtonpost.com/wp-dyn/content/article/2009/11/12/AR2009111210693.html
- **News: Blair Exit Revives Concerns About DNI**
<http://www.politico.com/news/stories/0510/37587.html>
- **Intelligence Authorization Act for Fiscal Year 2010, § 405**
50 U.S.C. 3033
- **News: Intelligence Chief Announces New Rules to Curb Leaks**
http://www.nytimes.com/2012/06/26/us/politics/new-rules-to-curb-leaks-and-catch-leakers.html?_r=2&ref=us

Optional/Outside Reading for Interested Students:

- **Book - Intelligence: From Secrets to Policy (8th Edition)**, Mark Lowenthal

October 25th

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

(Note: optional detailed outlines/work plans due by week 9 at the latest)

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 civil support. 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. This class session will examine current homeland defense and civil support efforts in historical perspective. Discussion will also center around one important question – are domestic military operations in need of additional oversight?

Required Reading:

- **Posse Comitatus Act, 18 U.S.C. § 1385**

(Week 9 Assignment Continued on Next Page)

- **Skim National Strategy for Homeland Defense and Civil Support (Note: Reissued in 2013)**
<http://www.wslfweb.org/docs/usg/homeland.pdf>
- **Church Committee Report, Book III, Improper Surveillance of Private Citizens by the Military** - Pages 787-804, 814-821, and most importantly 833-834
http://www.aarclibrary.org/publib/church/reports/book3/html/ChurchB3_0397a.htm
- **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**
22 Geo. Mason U. C.R. L.J. 295 <http://ssrn.com/abstract=2122857>

Optional/Outside Reading for Interested Students:

- **Website - About U.S. NORTHCOM** {<http://www.northcom.mil/About-USNORTHCOM/>}
- **Center for Law and Military Operations, U.S. Army, Domestic Operational Law Handbook for Judge Advocates** – Chapter 9
http://www.loc.gov/rr/frd/Military_Law/pdf/domestic-law-handbook-2013.pdf
- **U.S. Department of Defense, Dir. 5240.01, DOD Intelligence Activities**
<http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/524001p.pdf>
- **U.S. Department of Defense, Reg. 5240.1-R, Procedures Governing The Activities of DOD Intelligence Components That Affect U.S. Persons**
<http://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/524001r.pdf>
- **U.S. Department of Defense, DOD Manual 5240.01, Procedures Governing The Conduct of DOD Intelligence Activities**
<https://www.hsdl.org/?view&did=794860>

November 1st

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

Synopsis: As part of a hot topic discussion, students will analyze the danger foreign intelligence and insider threats pose to national security. Specifically, this class session will focus on the statutory authority of the National Counterintelligence Executive (NCIX). 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 to extract information through the use of a trusted insider. As the reading for this class discussion reveals, government oversight and internal investigations are an invaluable means of safeguarding against this significant danger.

Required Reading:

- **The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction** – Skim Chapter 11
<http://www.gpo.gov/fdsys/pkg/GPO-WMD/pdf/GPO-WMD-1-17.pdf>
- **The Counterintelligence Enhancement Act of 2002, as amended**
50 U.S.C. §§ 402b, 402c
- **A Review of the FBI's Performance in Uncovering the Espionage Activities of Aldrich Hazen Ames (Unclassified Executive Summary)**
<https://fas.org/irp/agency/doj/oig/amesxsm1.htm>

(Week 10 Assignment Continued on Next Page)

- **A Review of the FBI's Performance in Deterring, Detecting, and Investigating the Espionage Activities of Robert Philip Hanssen (Unclassified Executive Summary)**
<https://oig.justice.gov/sites/default/files/legacy/special/0308/final.pdf>
- **DHS' Counterintelligence Activities (Summary)**
http://www.oig.dhs.gov/assets/Mgmt/OIG_10-97_Jul10.pdf
- **News: The Fed Who Blew the Whistle - Is he a hero or a criminal?**
<https://www.newsweek.com/whistleblower-who-exposed-warrantless-wiretaps-82805>

Optional/Outside Reading for Interested Students:

- **Presidential Policy Directive 19 - Protecting Whistleblowers with Access to Classified Information**
<http://www.washingtonpost.com/r/2010-2019/WashingtonPost/2012/10/11/National-Politics/Graphics/whistleblowerIC.pdf>
- **The National Counterintelligence Strategy of the United States**
https://www.dni.gov/files/NCSC/documents/Regulations/National_CI_Strategy_2016.pdf
- **Book - Comrade J: The Untold Secrets of Russia's Spy Master in America After the End of the Cold War, Pete Early**

November 8th

Week 11: Final Discussion – The Role of Oversight and Internal Investigations in Shaping the Future of National Security (Note: optional report drafts due by week 11 at the latest)

Synopsis: The final class discussion 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. In addition, students should read Attorney General Michael Mukasey's speech to Boston College Law School in 2008. His remarks are a reminder of the solemn obligations bestowed upon all national security practitioners.

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**
<https://www.justice.gov/archive/ag/speeches/2008/ag-speech-0805236.html>

Optional/Outside Reading for Interested Students:

- **Book - Homeland Security: Assessing the First Five Years, Michael Chertoff**
- **Department of Homeland Security: Progress Made and Work Remaining in Implementing Homeland Security Missions 10 Years after 9/11, GAO - Pages 1-39**
<http://www.gao.gov/products/GAO-11-919T>

(Week 11 Assignment Continued on Next Page)

November 15th & November 22nd

Week 12 & Week 13: Student Presentations

Student presentations should be approximately 10 minutes in length and allow for questions from fellow classmates. In-class handouts of one to two pages are encouraged to facilitate discussion. Final research papers will be due by Sunday, December 12th at 11:59PM. Please send an electronic version to Professor Smith at smithmckaym@gmail.com.