



FALL 2026 COURSE SYLLABUS

Course Number: Law 492

Course Title: Intelligence Law

Credit Hours: 2

Grading Mode: Letter-Graded

Meeting Day/Time: Thursday, 8:10 PM – 10:10 PM

Meeting Mode: In-person only

Exam Day(s)/Time(s): N/A

Final Exam Mode: N/A

Prerequisite(s): None

Corequisite(s): None

Instructors: Professors Jamil N. Jaffer & Jonathan Howard

Contact Information: jjaffer@gmu.edu / jhowar29@gmu.edu

Office Hours: Appointments can be made to meet in person, over Microsoft Teams, or by telephone. Please contact nsisched@gmu.edu for assistance in making an appointment.

Course Overview

This course provides an overview and survey of basic legal issues, structures, and authorities that apply to intelligence activities undertaken by key elements of the military and the United States Intelligence Community (IC). Understanding of the framework of intelligence law is essential for understanding the scope of Executive power in relation to military and IC activities and is particularly important for national security, military, and intelligence professionals, as well as those working in the private sector who interact with these groups.

Course Learning Outcomes

The class will examine the evolution of executive and legislative branch authorities, including issues related to the separation of powers, constitutional and civil liberties issues, and the application of legal principles to the resolution of pressing and novel national security problems. In particular:

- Students will learn about the tensions facing a democratic society engaged in national security activities, such as clandestine or covert executive branch activities and national security surveillance and will study the legal framework governing those activities.
- Students will learn about the sources of authority for executive branch intelligence activities; the role of the legislative branch in authorizing and overseeing intelligence activities; and the impact of legislative, judicial, and technological developments.
- At the end of this course, students will understand the historical development of legal authorities related to U.S. government intelligence activities; be able to analyze intelligence-related legal issues; and provide cogent authorities-based arguments when addressing those issues.

Reading(s) & Supplement(s): The course does not use a textbook; the syllabus includes readings from a variety of sources. Course materials are available on WESTLAW/LEXIS (if cases/statutes/etc.) or are linked below. Be sure to read all materials ahead of the relevant class.

Grading Policies: Grades will be based on a 20–25 page paper and class participation consistent with the law school grading policy. Class attendance will also factor into grading, consistent with law school policy.

Additional Information:

- Students are expected to complete the assigned readings before each week's class and to come prepared to discuss them.
- Socratic dialogues will be employed by the instructors to facilitate learning outcomes.
- If unforeseen circumstances prevent a student from preparing for class, the student is nonetheless encouraged to attend and should inform the instructors in advance if they are not prepared to be called upon.
- All students are expected to treat each other and the instructors with courtesy and respect.
- Ideas and theories are welcome and encouraged to be challenged, but such critiques should never take the form of personal attacks on another speaker within the classroom setting.
- The instructors seek a safe academic environment wherein ethical and philosophical issues can be intellectually explored.
- Students must use their GMU email account to receive important University information, including communications related to this class.

- The instructors will not respond to messages sent from or send messages to a non-GMU email address; it is always best to text instructors in addition to sending emails to ensure prompt responses.

Class Recordings Prohibited:

- Pursuant to Academic Regulation 4-2.2, no portion of a class session or an examination may be preserved by means of a recording device such as an audio recording device, camera, or computer.
- Any exceptions to this policy must be expressly authorized in writing by the instructors.

The instructors do not intend to record the weekly course meetings.

Classroom Policies

Attendance: Per AR 3-1.4, “maintenance of matriculation requires regular class preparation, participation and attendance, registration in the course of study required for the student’s program (full-time or part-time), successive registration for each fall and spring term of each academic year until study is completed, and compliance with all other relevant requirements.”

Absences: Per AR 4-1.1, “if a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session.”

Use of Technology & AI:

- Pursuant to AR 4-3(b), the instructors of this course expressly permit the use of generative artificial intelligence (GAI) (as defined in Academic Regulation 4-3(a)) as an appropriate resource for work in this course, including drafting and writing of papers submitted for a final grade, so long as students using GAI strictly comply with the requirements provided herein.
- Pursuant to AR 4-3(e), in order to permissibly use GAI in this course, including for the drafting and writing of papers submitted for a final grade, students using GAI must:

(1) disclose, in the first footnote of any written work submitted for the course, whether for a grade or not, whether they have used GAI in any manner in the course of drafting or writing of such written work and the specific GAI source(s) used in the paper and, if GAI has been used, certify that they have reviewed and are in strict compliance with the policies set forth in the Academic Regulations and herein. The footnote should appear as follows:

I, [insert student name], certify that I have reviewed Scalia Law Academic Regulation(s) related to the use of generative artificial intelligence (GAI) and the provisions and policies set forth in the syllabus for this course. Pursuant to those regulations, provisions,

and policies, I disclose that I have used GAI in the course of drafting or writing of this written work, and specifically that I have used the following GAI source(s): [insert GAI source name(s)]. I hereby certify that I am in strict compliance with the policies set forth in the Academic Regulations and the syllabus for this course.

- (2) obtain the sources underlying any GAI generated output and independently verify any claims made therein;
 - (3) not use any GAI generated output where the student cannot obtain the sources underlying the GAI generated output and independently verify any claims made therein;
 - (4) not use any GAI generated output verbatim unless properly quoted and cited;
 - (5) not use any GAI generated output in any form, whether quoted, paraphrased, or otherwise without properly quoting and/or citing such output, just as one would with any standard written text;
 - (6) properly cite any GAI generated output used in the drafting or writing of the paper, whether quoted, paraphrased, or otherwise utilized in any manner, include to generate independent work;
 - (7) provide citations to GAI generated output that cite both the GAI generating source(s) as well as the underlying source from where the material originated.
- Pursuant to Academic Regulation 4-3(f), students who use GAI in a manner inconsistent with the Academic Regulations and this syllabus and the policies provided therein, may be subject to the disciplinary sanctions set forth in Section 3.01 of the Honor Code, as the use of GAI not in compliance with such provisions and policies is considered academic dishonesty involving cheating in violation of Section 1.01.1 and/or 1.01.5 of the Honor Code.
 - Law School instructors and administrators, including those for this course, reserve the right to use AI detection software to find instances of GAI in student submissions.

Course Schedule & Assignments

Week 1: Introduction: The Intelligence Community (IC) & its Foundational Authorities

Date: 8/20/26

Topic: The Evolution of the IC, the National Security Act of 1947, and EO 12333

Assignments:

- Read (39 pages):
 - Constitutional Framework:
 - *Curtiss-Wright Export Corp. v. United States*, 299 U.S. 304, 315–22 (1936) (majority opinion) (President as the "sole organ" of the federal government in the field of international relations) (8 pages).
 - *Youngstown Sheet & Tube Co. et al. v. Sawyer*, 343 U.S. 579, 634–55 (1952) (Jackson, J., concurring) (tripartite framework for evaluating Executive power) (22 pages).
 - Statutory Framework:
 - [National Security Act of 1947, at §§ 2–3](#) (as amended) (statutory establishment of the modern U.S. Intelligence Community (IC) (2 pages).
 - Executive Authorities:
 - Exec. Order No. 12,333, [United States Intelligence Activities](#), 46 Fed. Reg. 59941, at §§ 1.1–1.4, 3.5(h) (1981) (as amended) (goals of the IC, the role of the DNI, and the distinct elements of the Intelligence Community) (7 pages).

Week 2: Oversight: Congress, the Executive, and the Courts

Date: 8/27/26

Topic: Separation of Powers, Historical Scandals, and Intelligence Oversight

Assignments:

- Read (46 pages):
 - Historical Scandals and Reforms:
 - [Select Comm. to Study Governmental Operations with Respect to Intel. Activities](#) (Church Committee Report), 94th Cong., Final Report, Book II, at vii–ix, 1–14 (1976) (historical abuses that led to the creation of the modern intelligence committees) (17 pages).
 - Nat'l Comm'n on Terrorist Attacks Upon the U.S., [9/11 Commission Report](#), at 1–3, 20–26 (2004) (10 pages).
 - Congressional Oversight:

- 50 U.S.C. §§ 3091–3092, 3094 (requirement to keep Congress "fully and currently informed" and the "Gang of Eight" provisions) (8 pages).
- Separation of Authority Discussions:
 - Neal Kumar Katyal, [Book Review: Stochastic Constraint](#), 126 Harv. L. Rev. 990, 990–91, 1010 (2013) (Introduction and Conclusion) (3 pages).
 - Jack L. Goldsmith, [A Reply to Prof. Katyal](#), 126 Harv. L. Rev. F. 188 (2013) (8 pages).

Week 3: Covert Action & Military Intelligence Operations

Date: 9/3/26

Topic: Title 10 vs. Title 50, Hughes-Ryan Amendment, and the Definition of Traditional Military Activities

Assignments:

- Read (43 pages):
 - Foundational Authorities:
 - Exec. Order No. 12,333, [United States Intelligence Activities](#), 46 Fed. Reg. 59941, at §§ 1.7(a)(4), 2.8, 3.5(b) (Dec. 4, 1981) (as amended) (focus on the CIA's role as the primary agency for covert action and the definition of the term) (1 page).
 - Covert Action Authorities
 - 50 U.S.C. §§ 3093 (Covert Action Statute) (4 pages).
 - Michael E. DeVine, CRS Report, [Covert Action and Clandestine Activities of the IC: Selected Definitions in Brief](#) (2022) (11 pages).
 - Eric Rosenbach & Aki Peritz, [Confrontation or Collaboration: Congress and the Intelligence Community](#), at 32–35 (2009) (3 pages).
 - Intelligence and Military Convergence:
 - CRS Defense Primer: [Intelligence Support to Military Operations](#) (2026) (2 pages).
 - Robert Chesney, [Military-Intelligence Convergence and the Law of the Title 10/Title 50 Debate](#), 5 J. Nat'l Sec. L. & Pol'y 539, 584–601 (2011) (22 pages).
- Watch (Optional):
 - *Zero Dark Thirty*.

Week 4: Human Intelligence (HUMINT)

Date: 9/10/26

Topic: Legal Frameworks for Recruitment, Handling, and Protecting Sources

Assignments:

- Read (46 pages):
 - Foundational Authorities:
 - Exec. Order No. 12,333, [United States Intelligence Activities, 46 Fed. Reg. 59941, at §§ 1.3\(b\)\(12\), 1.3\(b\)\(20\), 1.7\(a\), 1.10 \(1981\)](#) (as amended) (focus on the CIA Director's role as the National HUMINT Manager and the division of HUMINT collection between the CIA and DoD) (2 pages).
 - Legal Precedents and Source Protection:
 - *Totten v. United States*, 92 U.S. 105, 105–107 (1875) (3 pages).
 - *Snepp v. United States*, 444 U.S. 507, 507–16 (1980) (10 pages).
 - *Tenet v. Doe*, 544 U.S. 1, 1–12 (2005) (12 pages).
 - 50 U.S.C. §§ 3121–3126 (Intelligence Identities Protection Act) (6 pages).
 - Legal and Operational Frameworks:
 - Stephen Preston, [Remarks at Harvard Law School: CIA and the Rule of Law](#) (April 10, 2012) (13 pages).

Week 5: Counterintelligence & Foreign Espionage

Date: 9/17/26

Topic: Protecting National Secrets, Espionage Statutes, and Insider Threats

Assignments:

- Read (49 pages):
 - Foundational Authorities:
 - Exec. Order No. 12,333, [United States Intelligence Activities, 46 Fed. Reg. 59941, at §§ 2.3–2.5, 3.5\(a\) \(1981\)](#) (as amended) (definition of CI and authorized collection activities) (4 pages).
 - Statutes & Manuals:
 - 18 U.S.C. §§ 793–794, 798 (Espionage Act) (10 pages).
 - Case Law:
 - *United States v. Rosen*, 445 F. Supp. 2d 602, 607–23 (2006) (17 pages).

- Case Study:
 - Off. of the Inspector Gen., U.S. Dep't of Just., [*A Review of the FBI's Performance in Deterring, Detecting, and Investigating the Espionage Activities of Robert Phillip Hanssen*](#), at 1–18 (18 pages).

Week 6: Electronic Surveillance and the 4th Amendment

Date: 9/24/26

Topic: The Evolution of the 4th Amendment

Assignments:

- Read (48 pages):
 - Foundational Executive Authority:
 - Exec. Order No. 12,333, [*United States Intelligence Activities*](#), 46 Fed. Reg. 59941, at §§ 2.3–2.5 (1981) (review the requirement for "least intrusive means" and the specific procedures required to collect, retain, and disseminate information on U.S. persons) (3 pages).
 - Constitutional and Historical Foundations:
 - *Katz v. United States*, 389 U.S. 347, 360–62 (1967) (Harlan, J., concurring) (3 pages).
 - *United States v. U.S. District Court (Keith)*, 407 U.S. 297, 297–324 (1972) ("Foreign Intelligence Exception"—Court suggests the warrant requirement might be different for national security) (28 pages).
 - *Smith v. Maryland*, 442 U.S. 735, 735–46 (1979) (discussion of the "Third-Party Doctrine") (12 pages).
 - Amy Howe, [*Court Rules that Law Enforcement's Use of "Geofence Warrant" Was a "Search."*](#) SCOTUSblog (Jun. 29, 2026) (application of law in the digital age) (2 pages).

Week 7: The Traditional FISA Framework

Date: 10/1/26

Topic: Traditional FISA Warrants (Title I), the "Probable Cause" standard for foreign intelligence, and the mechanics of the Foreign Intelligence Surveillance Court (FISC)

Assignments:

- Read (40 pages):
 - Foundational Executive & Statutory Authority:
 - Exec. Order No. 12,333, [*United States Intelligence Activities*](#), 46 Fed. Reg. 59941, at § 2.5 (1981) (EO authorizes collection only if it is "not

otherwise contrary to law"—acknowledging FISA as the "exclusive means" for domestic electronic surveillance) (1 page).

- 50 U.S.C. §§ 1801, 1804–1805 (definitions of "Foreign Power," "Agent of a Foreign Power," and the requirements for a FISA application) (15 pages).
- The Framework and the Court:
 - Cong. Rsch. Serv., IF 11451, [Foreign Intelligence Surveillance Act \(FISA\): An Overview \(2020\)](#) (2 pages).
 - David Kris, [How the FISA Court Really Works](#), Lawfare (2018) (8 pages).
- Duty of Candor & Compliance (Case Study):
 - Office of the Inspector Gen., U.S. Dep't of Just., [Review of Four FISA Applications and Other Aspects of the FBI's Crossfire Hurricane Investigation](#), at i–v, 31–39 (2019) (14 pages)

Week 8: Modernization & FISA Section 702

Date: 10/15/26

Topic: The shift to programmatic surveillance, the mechanics of Section 702 (targeting, minimization), and the concern over "backdoor searches" of U.S. person data

Assignments:

- Read (50 pages):
 - Foundational Executive Authority & Statutory Framework:
 - Exec. Order No. 12,333, [United States Intelligence Activities](#), 46 Fed. Reg. 59941, at § 1.7(c) (1981) (as amended) (NSA's mandate to collect signals intelligence) (1 page).
 - 50 U.S.C. § 1881a (Section 702) (structural requirements: annual certifications, targeting procedures, and minimization procedures) (15 pages).
 - The Mechanics of Programmatic Surveillance:
 - Cong. Rsch. Serv., R. 48592, [FISA Section 702 and the 2024 Reforming Intelligence and Securing America Act](#), at 3–6 (2025) (FISA Background) (3 pages).
 - The "Backdoor Search" Controversy & Court Oversight:
 - Glenn Gerstell, [Making Sense of the Debates over FISA](#) (Parts One & Two) (2020) (11 pages).
 - Foreign Intelligence Surveillance Court (FISC), [Memorandum Opinion and Order](#), at 63–83 (Boasberg, J.) (Oct. 18, 2018) (focus on the Court's analysis of why the FBI's failure to adhere to query rules violates the 4th Amendment) (20 pages).

Week 9: Intelligence in Criminal Prosecutions

Date: 10/22/26

Topic: Using Classified Intel in Article III Courts, the "Graymail" problem and the Classified Information Procedures Act (CIPA)

Assignments:

- Read (35 pages):
 - Executive Authority:
 - Exec. Order No. 12,333, [*United States Intelligence Activities*, 46 Fed. Reg. 59941, at § 2.6 \(1981\)](#) (as amended) (specific parameters under which intelligence agencies are authorized to assist domestic law enforcement) (1 page).
 - Statutory Framework:
 - [*18 U.S.C. app. III §§ 3–6*](#) (Classified Information Procedures Act (CIPA)) (4 pages).
 - Overview and Analysis:
 - Cong. Rsch. Serv., R41742, [*Protecting Classified Information and the Rights of Criminal Defendants: The Classified Information Procedures Act \(2016\)*](#) (13 pages).
 - Statutory Framework & Case Law:
 - *United States v. Reynolds*, 345 U.S. 1, 6–12 (1953) (State Secrets Privilege) (6 pages).
 - *United States v. Lee*, 90 F. Supp. 2d 1324, 1326–29 (D.N.M. 2000) (demonstrating how courts allow the government to redact classified information during discovery) (4 pages).
 - *United States v. Moussaoui*, 382 F.3d 453, 476–482 (4th Cir. 2004) (highlights application when a defendant demands access to highly classified enemy combatant witnesses) (7 pages).

Week 10: Intelligence Support to Military Cyberspace Operations

Date: 10/29/26

Topic: The legal distinctions between Cyberspace ISR, Operational Preparation of the Environment (OPE), and Computer Network Exploitation (CNE)

Assignments:

- Read (38 pages):
 - Foundational Authorities (The "Cyber Seam"):

- Exec. Order No. 12,333, [United States Intelligence Activities 46 Fed. Reg. 59941, at §§ 1.7\(c\) \(1981\)](#) (as amended) (NSA's dual-hatted role supporting both national intelligence and military operations) (1 page).
- 50 U.S.C. § 3093(e)(2) (review the exception in the Covert Action Statute for "Traditional Military Activities" (TMA) and consider how it applies to cyber) (1 page).
- Doctrine & The Lexicon of Cyber Operations:
 - Congressional Research Service, [Defense Primer: Cyberspace Operations \(2022\)](#) (2 pages).
- The Government's Legal Framework:
 - Paul C. Ney Jr., Gen. Couns, Dep't of Def., [Remarks at U.S. Cyber Command Legal Conference \(2020\)](#) (15 pages).
- International Law & The "Grey Zone":
 - Michael N. Schmitt, [Grey Zones in the International Law of Cyberspace](#), 42 Yale J. of Int'l L. Online 1, 1–19 (2017) (sovereignty and the threshold for an "Armed Attack" under Article 51 of the UN Charter) (19 pages).

Week 11: Intelligence Support to Lethal Targeting

Date: 11/5/26

Topic: Legal frameworks governing intelligence sharing for lethal operations, state complicity, and individual criminal liability

Assignments:

- Read (38 pages):
 - Executive Authority (The Assassination Ban):
 - Exec. Order No. 12,333, [United States Intelligence Activities, 46 Fed. Reg. 59941, at §§ 2.11–2.12 \(1981\)](#) (strict prohibition against assassination and indirect participation in assassination) (1 page).
 - U.S. Policy & Lethal Action Frameworks:
 - Luke Hartig, [The Biden Drone Playbook: The Elusive Promise of Restrained Counterterrorism](#), Just Security (2023) (10 pages).
 - State Responsibility & International Law:
 - International Law Commission (ILC), [Draft Articles on Responsibility of States for Internationally Wrongful Acts \(ARSIWA\)](#), at 64–67 (2001) (3 pages).
 - Harriet Moynihan, [Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism](#), at 2–24 (2016) (23 pages).
 - Individual Criminal Liability:

- [Rome Statute of the International Criminal Court](#), art. 25(3)(c)–(d), July 17, 1998, 2187 U.N.T.S. 90 (consider how an individual intelligence analyst who provides targeting data could theoretically face liability for "aiding and abetting" a war crime) (1 page).

Week 12: Artificial Intelligence & the Future of Intelligence

Date: 11/12/26

Topic: Legal and ethical implications of using Artificial Intelligence in intelligence analysis and lethal targeting

Assignments:

- Read (35 pages):
 - The Strategic Mandate:
 - Nat'l Sec. Comm'n on A.I., [Final Report](#), at 19–28 (2021) (argument that AI adoption is a critical national security imperative) (10 pages).
 - Executive Constraints & Civil Liberties:
 - Exec. Order No. 14,110, [Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence](#), 88 Fed. Reg. 75,191, at §§ 2, 4.2 (2023) (4 pages) (guidelines for national security systems and the protection of civil rights).
 - Office of the Director of National Intelligence (ODNI), [Principles of Artificial Intelligence Ethics for the Intelligence Community](#) (2020) (1 page).
 - Legal & Constitutional Challenges:
 - Ashley Deeks, [The Judicial Demand for Explainable Artificial Intelligence](#), 119 Colum. L. Rev. 1829, 1829–38 (2019) (focus on the "Black Box" problem: How can a judge issue a warrant based on an algorithm's prediction if the algorithm cannot explain its reasoning?) (10 pages).
 - Brennan Center, [The Military's Use of AI, Explained](#) (March 2026). (Accuracy issues, the 4th Amendment implications of "big data" surveillance, and the risks of outsourcing AI to private "Black Box" companies like Palantir) (10 pages).

Week 13: The Ethics of National Security Lawyering / Class Review and Discussion

Date: 11/19/26

Topic: Ethical duties of national security lawyers, review of key themes, and final paper discussion

Assignments:

- Read (30 pages):

- The Ethics of National Security Lawyering:
 - Jeh Johnson, [*National Security Law, Lawyers and Lawyering in the Obama Administration*](#), 31 Yale L. & Pol'y Rev. 141, 141–50 (2012) (10 pages).
 - Jamil N. Jaffer, [*The Ethics of National Security Lawyering: A Response to Jeh Johnson*](#), 31 Yale L. & Pol'y Rev. 173, 173–91 (2012) (requires login through your GMU account; also avail on LEXIS/Westlaw) (18 pages).
- The Future Threat Landscape:
 - Office of the Director of National Intelligence, [*Annual Threat Assessment of the US Intelligence Community*](#), at 2, 4 (2026) (2 pages).

Student Resources

[Antonin Scalia Law School Academic Regulations](#)

[GMU Common Course Policies Addendum](#)

[Mason Square Services](#)

[Mason Square Police](#)

Van Metre Hall, Room 110

Emergency – Dial 911

Escort Services – 703-993-8070

Dispatch – 703-993-2810

[Student Support and Advocacy Center \(SSAC\)](#)

Mason Square Sexual Assault Services:

Van Metre Hall, Room 222D

703-993-8186

Notice of Mandatory Reporting of Sexual Assault, Sexual Harassment, Interpersonal Violence, and Stalking:

As a faculty member, I am designated as a “Non-Confidential Employee,” and must report all disclosures of sexual assault, sexual harassment, interpersonal violence, and stalking to Mason’s Title IX Coordinator per University Policy 1202. If a student wishes to speak with someone confidentially, please contact one of Mason’s confidential resources, such as Student Support and Advocacy Center (SSAC) at 703-380-1434 or Counseling and Psychological Services (CAPS) at 703-993-2380. Students may also seek assistance or support measures from Mason’s Title IX Coordinator by calling 703-993-8730 or emailing titleix@gmu.edu.

[Mason Square Clinic](#)

Van Metre Hall, Room B102

703-993-2831

[Counseling and Psychological Services](#)

[Student Health Services](#)

[Student Disability Services](#)

[University Life](#)