

Intelligence Law Reform

Syllabus and Assignments

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Spring 2009
Wednesdays, 4:00 – 6:00 pm
Room TBA

This seminar will trace the development of intelligence law from the creation of CIA in 1947, through the Cold War, to the current War on Terrorism. It will look at the USA PATRIOT ACT of 2001 and the more recent effort to strengthen intelligence collection, analysis and dissemination in the wake of the 9/11 attacks and the inaccurate intelligence on Iraqi WMD, both administratively and with passage of the Intelligence Reform and Terrorism Prevention Act of 2004. We shall look at the role of the National Security lawyer. We shall also seek to decide whether the threat of international and domestic terrorism is primarily an intelligence problem or a law enforcement/military one informed by good intelligence. We shall finally arrive at a view of the propriety and legality of coercive interrogations, pre-emptive incarcerations, and intrusive surveillance in a constitutional democracy.

Course Requirement: A Substantial Research Paper

Week One: The Origins of CIA and the Early Cold War

Required Reading:

“For The President’s Eyes Only” by Christopher Andrew, Chapters 3-7. pp.75-306.

Week Two: The End of the Cold War

Required Reading:

“For The President’s Eyes Only”, Chapters 8-Conclusion, pp. 307-541.

Week Three: Surrogate Wars: Afghanistan

Required Reading: **“The Main Enemy”** by James Risen and Milton Bearden

Week Four: The Challenge of Post-Cold War Operations

Required Reading: **“See No Evil”** by Robert Baer

Week Five: 9/11 and the Start of the War on Terror

Required Reading: **“Against All Enemies”** by Richard A. Clarke

Week Six: The USA PATRIOT ACT and Changes to FISA

Required Reading: Michael T. McCarthy, **Recent Developments, USA PATRIOT ACT**, 39 Harvard Journal on Legislation 435 (2002); www4.law.cornell.edu/uscode/50/ch36.html.

Week Seven: Al Qaeda and Osama bin Laden

Required Reading: **“The Looming Tower”** by Lawrence Wright

Week Eight: Role of Law and the National Security Lawyer

Required Reading: **“In the Common Defense”** by James E. Baker

Week Nine: The Bush Response to Terrorism

Required Reading: **“The Terror Presidency”** by Jack Goldsmith

Week Ten: Post-9/11 Intelligence Reform

Required Reading: **“The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States”**

Week Eleven: Legislative Reform

Required Reading: **The Intelligence Reform and Terrorism Protection Act of 2004 (December 7, 2004)**

http://a255.g.akamaittech.net/7/255/2422/13dec20041150/www.gpoaccess.gov/serialset/creports/pdf/108-796/108-796_inte_reform.pdf

Week Twelve: Reform Inside the Analytical Arm of the U.S. Intelligence Community

Required Reading: **Report of the Commission on the Intelligence Capabilities of the U. S. Regarding Weapons of Mass Destruction (Silberman-Robb Commission)**,
<http://www.wmd.gov/report>

Week Thirteen: Does the Intelligence Reform Bill Solve the Problem? Required Reading: **Preventing Surprise Attacks: Intelligence Reform in the Wake of 9/11** by Richard A. Posner **and Why Spy? Espionage in an Age of Uncertainty** by Frederick P. Hitz