I. Course Description

The digital environment offers greatly expanded opportunities for foreign intelligence gathering. This seminar will explore some of the most difficult problems arising in managing the collection and use of intelligence for national security, including compliance with the law; avoidance of, and remedies for, over collection; and protection of privacy and other fundamental values.

We will discuss how an intelligence community's activities can be meaningfully communicated to the public while respecting its sources and methods; how agencies might internally reconcile their various missions to protect the public and protect public values; and what a set of authorities and limitations for intelligence collection might look like if a clean slate were available on which to develop them.

II. Class Meetings and Requirements

Below is the course outline with assigned readings. The class meets Wednesdays from 5:00pm-7:00pm in WCC 5048. Grading for the course will be based on in-class participation and a final 15-page paper (details below).

- **Introduction and Framework (February 5, 2014)**
  - Orin Kerr, *Net-Wide Search?* (Apr 27, 2001)

- **A Taxonomy of Surveillance (February 12, 2014)**
  - *H.R. 6304, the FISA Amendments Act of 2008*, Democratic Policy Committee (Jun 26, 2008)
  - Scope
    - Intelligence/Law Enforcement Separation
      - Spencer Kimball, *DEA Secretly Uses NSA to Prosecute Crime*, *Deutsche Welle*, (Apr 9, 2013)
      - Stewart Powell, *NSA Provides Details on Crimes Unrelated to Terror*, *SFGate*, (Aug 3, 2013)
  - Process
    - Offices of the Inspectors General, *Unclassified Report on the President’s Surveillance Program* (2009), Parts I, II, and III
    - Optional Resource
  - Public-Private Interface
    - Ryan Gallagher, *The Problem With the FBI's Plan To ‘Wiretap’ Online Communications*, Slate, (May 8, 2012)
    - Declan McCullough, *FBI pressures Internet providers to install surveillance software*, CNET, (Aug 2, 2013)
    - Dana Liebelson, *Google, Yahoo, Facebook, and Twitter Have a New Lobbying Target—the NSA*, Mother Jones (Nov 15, 2013)
  - Private Surveillance
    - Dhruti Shah, *CCTV site Internet Eyes hopes to help catch criminals*, BBC, (Oct 3, 2010)

- **A Case Study in App-Layer Surveillance (February 19, 2014)**
  - NSA slides explain the PRISM data-collection program, Washington Post (Jun 6, 2013)
  - Director of National Intelligence, *Facts on the Collection of Intelligence Pursuant to Section 702 of the Foreign Intelligence Surveillance Act* (Jun 8, 2013)
  - Josh Gerstein, *NSA: PRISM stopped NYSE attack*, Politico (Jun 18, 2013)
  - Letter from Companies and Non-Profits requesting more transparency (Sept 30, 2013)
• Envelopes and Contents: Is There a Difference? (February 26, 2014)
  o Smith v. Maryland, 442 U.S. 735 (1979), Syllabus
  o Glenn Greenwald, NSA collecting phone records of millions of Verizon customers daily, The Guardian (Jun 5, 2013)
  o The President’s Review Group on Intelligence and Communications Technologies, Liberty and Security in a Changing World (2013), Chapter III
  o David Gray and Danielle Citron, The Right to Quantitative Privacy, 98 Minn. L. Rev. 62 (Mar 6, 2013)

• Logical-Layer Surveillance (March 5, 2014) – Abstracts Due on Friday!
  o Nicole Perlroth, Jeff Larson, and Scott Shane, N.S.A. Able to Foil Basic Safeguards of Privacy on Web, New York Times (Sept 5, 2013)
  o Procedures used by NSA to minimize data collection from US persons: Exhibit B – full document, The Guardian (Jun 20, 2013)
  o Barton Gellman and Ashkan Soltani, NSA infiltrates links to Yahoo, Google data centers worldwide, Snowden documents say, Washington Post (Oct 30, 2013)
  o Bruce Schneier, The U.S. Government Has Betrayed the Internet. We Need to Take it Back., The Guardian, (Sept 5, 2013)

• Historical Contextualization (March 12, 2014)
  o Nixon Era
    ▪ Thomas R. Johnson, American Cryptology During the Cold War (1998), Chapter 16
    ▪ L. Britt Snider, Recollections from the Church Committee’s Investigation of NSA, CIA Library (Apr 14, 2007)
    ▪ Conor Friedersdorf, Lawbreaking at the NSA: Bring On a New Church Committee, The Atlantic (Aug 16, 2013)
    ▪ Bob Dreyfuss, Spying by the NSA: Calm Down, It’s Not Nixon’s Plumbers, The Nation (Jun 11, 2013)
  o 9/11 Commission
    ▪ National Commission on Terrorist Attacks Upon the United States, Final Report of the National Commission on Terrorist Attacks Upon the United States (2004), Chapter 3, “Counter Terrorism Evolves”
  o Terrorist Surveillance Program
- Offices of the Inspectors General, *Unclassified Report on the President’s Surveillance Program* (2009), Parts IV and V

- **Checks and Balances (March 26, 2014)**
  - Frequently Asked Questions on Oversight, *NSA.gov* (Last updated on Jan 13, 2011)
  - Jameel Jaffer and Ben Wizner, Checks, Balances, and the National Security Agency, *MSNBC.com* (Jun 9, 2013)
  - Ron Wyden Questioning NSA Officials (Mar 2013)
  - Spencer Ackerman, *Republicans demand consequences for 'willful lie' by intelligence chief, The Guardian* (Dec 19, 2013)

- **Leakers and Whistleblowers (April 2, 2014)**
  - Pew Research Center for the People & the Press, *Public Split over Impact of NSA Leak, But Most Want Snowden Prosecuted* (Jun 17, 2013)
  - Jeffrey Toobin, *Edward Snowden is no Hero, The New Yorker* (Jun 10, 2013)

- **What's a Little Spying Between Governments? (April 9, 2014)**
  - Tim Padgett, *Leaders of Mexico and Brazil Rebuke U.S. for NSA Snooping, Time*, (Sept 6, 2013)
  - Amar Toor, *Brazil admits to spying on US diplomats after blasting NSA surveillance, The Verge* (Nov 5, 2013)
  - Laura Smith Spark, *Germany's Angela Merkel: Relations with U.S. 'severely shaken' over spying claims, CNN* (Oct 24, 2013)
IV. Final paper

The main written assignment for the semester will be a 4000-word paper in which you will make a policy recommendation in one of the areas we discuss in class. Abstracts of 200-400 words will be due by March 7th, and each student will have a meeting to discuss her or his abstract with Professor Zittrain in the weeks that follow. Abstracts may be submitted by email to Shailin Thomas at sthomas@cyber.law.harvard.edu. The final paper will be due on the last day of exam period, and may also be submitted by email to sthomas@cyber.law.harvard.edu.
V. Learning Technology

- H2O - All course readings will be posted on the course playlist

VI. General Information

For all scheduling/office hours questions relating to Professor Zittrain, please contact:

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*Assistant to Professor Zittrain*  
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For course related questions (readings/paper), please contact:

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