Intelligence Community Center for Academic Excellence
The University of Texas at El Paso

Colloquium Proceedings
May 21st – 23rd 2008
Intelligence, Law, and Law Enforcement
Sponsored by the Office of the Director of National Intelligence
Acknowledgments

This colloquium would not have been possible without the considerable efforts of countless individuals. Their efforts enabled the colloquium to proceed in a smooth and organized manner. Here I will thank some by name, and my apologies to anyone I fail to cite by name; my oversight does not reduce the importance of your efforts.

I would first like to thank Yolanda Davis and Deborah Ortega for their assistance with organization and logistics. Without their individual contributions and experience, it would have been impossible to meet the tight deadlines we faced. Also to each of the participants in the discussions who were the core of the conference. thank you for offering your expertise and knowledge in an open discussion on such important topics.

I must also extend my appreciation to Nicholas Komorowski for developing and editing this proceedings and for logistical support, Veronica Frescas for graphics and design, Daniel Miranda for photography, Angelica Barrera and Alejandro Palma for logistics support, and all of the attendees for whom this colloquium was developed, designed, and presented.

Finally thanks to:

Dr. Diana Natalicio—President of the University of Texas at El Paso
Dr. Richard S. Jarvis—Provost and Vice President of Academic Affairs
Dr. Dennis L. Soden—Dean of the University College

Mark Gorman
Colloquium Coordinator
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Introduction

Mark Gorman

The University of Texas at El Paso proudly hosted its first annual Intelligence Community Center of Academic Excellence (IC CAE) Colloquium from May 21-23, 2008. The theme underlying the colloquium was the relationship between intelligence, the law, and law enforcement. Scholars from the Law Library of Congress, the National Security Archives, and other institutions as well as active practitioners in the intelligence community were invited to discuss three issues central to the study of intelligence from the legal perspective: congressional oversight, domestic intelligence and law enforcement, and ethics and accountability. The panel of assembled experts enthusiastically debated the subject matter for nearly three days.

The Colloquium also served to bring together internationally respected professionals and University IC CAE students to build long-term knowledge and relationships. In addition, law enforcement and other interested individuals from throughout the region attended and engaged the panel.

The Colloquium included four panel discussions centered on legal issues along with a period during which graduate and undergraduate students presented research papers to both scholars and audience. The extensive experience of the assembled experts afforded the students the benefit of practical insights crucial to best prepare them for future service in support of our national security. The partnership achieved between the University and the Intelligence Community will no doubt lead to expanded and intensified relations in future years.
Established in 1914, as the Texas State School of Mines and Metallurgy, UTEP became the second academic institution in the University of Texas System. In just a few years when we celebrate our 100th birthday in 2014, we will be an institution that has transformed itself into what I consider to be one of the national leaders in serving the higher education needs of the fastest growing segment of the US population. There are a lot of people paying very close attention to what we are doing both within the academic community and beyond, because of the pioneering efforts that we’ve made to create programs that address the special needs of those who have historically been underrepresented in higher education in the United States. The university is serving a population that is drawn 82% from El Paso County and another 9% from Mexico; so 91% of our students come from this immediate region. That is as it should be — we are a public university and our mission is to serve the needs of the region, to prepare a workforce for the region, state, and nation, and to contribute to the region’s economic development and quality of life.

Today, 75% of our students are Mexican American, and that very much mirrors the demographics of the region from which we draw 82% of our students. We’ve worked very, very hard to ensure access to young people, no matter their socio-economic background or their ethnicity, race, or gender. We seek to cross all those boundaries because we believe we should look like El Paso if that’s where our students come from, so we are very pleased that...
now do. UTEP’s historic strengths are in science and engineering, and our student demographics give us a wonderful opportunity in today’s world, to change not only the profile of higher education, but also the profile of many professions.

And that is really where this IC CAE fits into the overall picture. Hispanics have much to contribute to the goals of these centers. And we are very pleased to find such a nice alignment between the center and our institutional goals. We firmly believe that there is within the boundaries of our society a wealth of talent and skills that have been underutilized and underappreciated historically. We haven’t fully tapped into the human resources that are ready, willing, and able to contribute to the future of this country. This program is one that has stepped up to that challenge. And I’ve been very pleased to see how it is evolving. I was, for example, pleased to see the new discussions about security clearances and the eligibility rules and regulations that govern them. One of the issues that we raised at the outset of this program was that we did not want to encourage students to participate in a program like this if at the point of applying for a security clearance they would be told that the rug was pulled out, that they couldn’t qualify because they have family members in Juárez or elsewhere around the world. And I’m very encouraged to know that we are working together to begin to conceptualize eligibility in new ways. I think it will enrich tremendously the skill base that is available not only in the Intelligence Community but in a broad-based set of activities; defense contractors who recruit our engineers for example, who need security clearances for many of their people. This change will have a very big impact and I am very pleased about that.

We hope that you’ll enjoy getting to know UTEP through this visit and that it will enrich your understanding of our mission and our exciting future as the only major research university in the U.S. with a 21st Century demographic. Thank you again for being with us. We greatly appreciate the expertise and insights that our guests bring with them when they come to our campus and we look forward to learning much from you too.
Opening Remarks

Dr. Dennis L. Soden
Dean, University College

Welcome to the University of Texas at El Paso, I am Dennis L. Soden, Dean of the University College within which the IC CAE program resides. Our program is really exciting. It’s a multi-tier program which I would like to tell you about.

First, we have a High School program which we started last year. Students come to us for a month in the summer and they do Arabic instruction for 4 hours a day in the morning. They have a working lunch every afternoon with guest speakers and presentations. They do classes in the afternoon: intercultural communication, geopolitics, and cyber security. It’s just a really remarkable program. This year we are doing the first year program and about 30 of the original 40 students are returning for a second year. This program is so exciting that two students are giving up high school football to attend this summer. During the second year program when they come back, they will do more Arabic, and they will be working with the local FBI office and with Law School Preparation Institute on a terrorist attack scenario. So we will have intelligence students and pre-law students talking about the same issues. Starting to get them to work together as professions should be quite interesting.

We have a college certificate program. We have about 30 IC Scholars but in total we reach out to about 85 students on campus with our courses. And you can be in any major at UTEP with this particular IC CAE program. We are starting a masters program in Intelligence and National Security Studies this fall. That’s a new program here at UTEP and we are very excited about it. And we will be putting this program into a doctorate proposal that we will be sending out this summer. It is a broad program with great community support with focus on two languages, Arabic and Portuguese.

This is our first colloquium. We have fortunately teamed up with Law School Preparation Institute to put it together. We have involved a number of students in the process. We do not do anything in our college that does not involve students.

Over the next few days, you will see more of our campus and meet more of the UTEP team. This is quite an unusual university, and has a unique place in the southwest on the border. We have been fortunate to have the same president for 20 years. President Natalicio brought the university to national prominence. She has been a tireless supporter of the IC CAE program. A Portuguese speaker, she really understands student opportunities, mixing students with community on a level unparalleled to what we have done before. Carrying forward with her support, we welcome you to this colloquium.
Agenda

May 21st, 2008

Welcoming address by Dr. Diana S. Natalico, President of the University of Texas at El Paso

Colloquium opening remarks by Dr. Dennis L. Soden, Dean of the University College

Panel 1:
   Elements of Congressional Oversight

Lunch Guest Speaker: Mr. Joseph Wippl, Government Executive in Residence, Boston University

Panel 2:
   Goals of Oversight and Suggestions for Reform

Dinner Guest Speaker: Raymond G. McGrath, U.S. Consul General

May 22nd, 2008

Panel 3:
   Overlap of Intelligence and Law Enforcement/Legal Dilemmas

Lunch Guest Speaker: Dr. Larry Valero, Associate Professor, UTEP

Student Presentations:
   Ms. Cristina Almodovar
   Ms. Elizabeth Gibson
   Ms. Danielle Escontrias
   Ms. Irene Mendoza & Mr. Isaac Vasquez
   Mr. Alejandro Palma & Mr. Nicholas Komorowski

Dinner Guest Speaker: Mr. Mark Lowenthal

May 23rd, 2008

Panel 4:
   Ethical Framework of Intelligence

Lunch Guest Speaker and Closing Remarks: Dr. William Weaver
Key Topics:

**Access to Information**

The Executive branch controls classified information and legislation seems to be required for Congress to gain access even when exercising oversight. There is a question on whether election to federal office, either executive or legislative, should automatically grant the elected official security clearance.

**The “Classic Struggle Between Executive Power and Congressional Oversight”**

Since the 1970's, increased Congressional oversight of the intelligence community has been held as inevitable. The history of interaction between the two branches has produced a common belief that the Executive proposes and Legislature disposes in terms of appropriations. The foreign intelligence budget is a separate and very complicated budget. The increasing differentiation in budgets is seen as a by-product of the battle between the Executive branch and oversight. Oversight and governance has grown more and more complex and this is beginning to be viewed less as a necessary evil and more as a required and correct function of government.

**State Secrets and Secrecy and the Increasing Complexity of Oversight**

Secrecy does not always lead to safety. Agencies across the country are unable to prepare or defend against threats of which they have no knowledge. Also, the foreign intelligence budget is a “secret” budget in which there is no specific timeline, and while overall cost is specified, line items are not.

**Recurring Problems within the Intelligence Community**

From its inception to present day a wide range of problems have troubled the operations of the Intelligence Community usually stemming from reactive oversight, most notably to mistakes, generally small, though some glaring.
Key Topics:

**Obstacles to Oversight**
Numerous obstacles were identified that must be addressed in order to reach the goal of effective oversight. These obstacles include, but certainly are not limited to: the current culture of reactive oversight, the lack of knowledge and expertise in Congress in relation to intelligence, the use of imperfect knowledge to understand the world, the dynamic between intelligence and the politics of policy makers, and the use of legal opinions issued by a Department of Justice which is appointed by the executive branch.

**Transition Periods and Continuity**
One of the issues identified as fundamentally important concerned transition periods during changes in administration and in the Select Intelligence Committees memberships in Congress. A key concern was to promote continuity and to develop a more effective transfer of knowledge and experience. Effective transition has been lacking in the past and will become more and more important moving into the future.

**Congressional Intelligence Committees**
Multiple goals were discussed in regard to these committees. It was agreed that these committees should be given increased powers and stature. The first change would be redefining them as standing committees rather than the select status they currently hold.
This would increase both their perceived importance and influence. Along with this change, it was suggested that the House and Senate committees be given significant powers in appropriations related to the foreign intelligence budget, and subcommittees with investigative and subpoena powers be established. In the growing culture of increased oversight, these specific tools would give the intelligence committees the powers they require to effectively oversee the intelligence community. Finally, within the committees themselves, changes were discussed regarding increasing the capacity to obtain and retain information and expertise in the intelligence arena, specifically increasing the number of legislators involved in the committee and doubling the committee staffs in an effort to affect that capacity.
Key Topics:

**Ambivalent Feelings towards Secrecy**
An assertion was made that the American public generally holds ambivalent feelings about secrecy and intelligence, that the public would rather not know about what is being done in the interest of their security but wants action nevertheless. The reason given for this is that the intelligence community is doing things that are illegal in the countries where they are doing those things. Also, if everything the intelligence community was doing was completely legal and moral, then those agencies would be a part of the U.S. Military or State Department and not “secret” organizations.

**Ethical Base for Intelligence**
Several panelists concurred the intelligence community wants rules and standards placed over what it does. Rules would limit the potential for overreaching and abuse of power or resources. There is, however, an argument about codifying ethics and morals because of the implications between inclusion and exclusion. If rules are set which does not permit certain practices, then does it imply that anything not included in those rules are then permitted?
Changing Morals and Ethics over Time

Morals and Ethics, the core of "what is right", have changed over time. One example of this evolution starts with the period in this country's past when owning another individual was perfectly legal and accepted. Another example includes the period when women could not vote in the United States. Following these examples, as the American society evolved, accepted norms and morality likewise have evolved and they will continue to change.

Security vs. Liberty

This discussion touched upon two conflicting ideas in regard to security and liberty. The first was that this is not a zero-sum game, meaning that a loss or gain in one direction is not necessarily reflected in off setting again or loss in the other. Coupled with this is the idea that there are no absolutes in this system. One can never be 100% safe, and neither can one have complete liberty. Contending with this was the idea that there is an absolute principle of protecting citizens' rights and that we cannot yield on these principles.
Fusion Centers

Fusion Centers remain a work in progress. They represent an approach that has never been attempted, and hence doctrine and operations are still being developed. Their development is made even more complex due to a significant lack in consistency of management on the national level with multiple changes in politically appointed intelligence directors at both the FBI and Department of Homeland Security. Furthermore, the dynamics between intelligence analysis and policy makers was commented on. It was made clear that the agencies present at fusion centers are civil servants and that no matter the quality of intelligence they provide, they have no control over how, or even if, that intelligence is used by policy makers.

Technology

Many points were identified with data-mining and the inability of legislation to keep up with technological advances. The issues with data-mining concerned commercial vs. governmental surveillance. An overwhelming majority of people willingly yield their privacy for minor economic gain or even no gain when using certain e-mail or search services on-line. But when there is any insinuation that the government may attempt or has practiced similar tactics, red flags go up and a public outcry is heard regarding an invasion of privacy. Yet another technological issue was that, despite multiple revisions, the Foreign Intelligence Surveillance Act (FISA) is still far behind current technologies.

Access to Intelligence

Access is one of the most widely discussed topics in relation to law enforcement and intelligence. Newly set precedents have given or required some access to both raw and finished intelligence in order to allow local law enforcement to protect their localities against specific threats. Additional issues include jurisdiction, redundancy and the issue of filters on types and quality of intelligence. With an unknown but quite large number of local law enforcement agencies, multiple agencies often have converging or overlapping jurisdictions and similarly overlapping and redundant requirements for intelligence. With a recent focus on these issues, it was apparent that these and other serious issues will have to be addressed in the future.
“The Glomar Response”
Ms. Cristina Almodovar  Senior in Political Science
The purpose of this paper is to examine the use of the Glomar response first invoked by the CIA in the 1970s. The Glomar response is used by federal agencies to ban the release of information via the Freedom of Information Act (FOIA). The paper examines the history of the Glomar Explorer and its use by the CIA, the expansion of the response to other federal agencies, and the potential for FOIA abuses associated with the Glomar response. Finally, the paper examines what can be done to make effective use of the response while protecting civil liberties.

“The Evolution of Extraordinary Rendition”
Ms. Danielle Escontrias  B.A. in Political Science
There currently exist three legal versions of rendition. “Extraordinary” is an adjective applied to specific acts of rendition performed purposefully outside of legality. This term developed as an extension of an acknowledged legal process, when in reality it is used to cloak actions outside the boundaries of law. The purpose of this paper explores the evolution of extraordinary rendition and to demonstrate that it is lacking a basis in law.
Judicial oversight is an important component of the system of checks and balances in government. It prevents excesses and creates accountability. However, there is a question over public vs. private interests in issues of national security. The paper discusses state secrets privilege in its current form, and addresses whether the privilege is a legitimate barrier to effective judicial oversight of the executive branch.

“The State Secrets Protection Act and Judicial Oversight”

Ms. Elizabeth Gibson  B.A. in Business Administration

Judicial oversight is an important component of the system of checks and balances in government. It prevents excesses and creates accountability. However, there is a question over public vs. private interests in issues of national security. The paper discusses state secrets privilege in its current form, and addresses whether the privilege is a legitimate barrier to effective judicial oversight of the executive branch.
“Extraordinary Rendition”
Irene Mendoza  B.A. in Political Science
I Isaac Vasquez  B.A. in Political Science

Extraordinary rendition is today highly controversial due to its extensive use by the Bush administration as a vehicle to fight the Global War on Terror. Several pieces of legislation were enacted that partially allowed the executive branch a high degree of freedom in running this war. Although Congress did not explicitly authorize a program of “extraordinary rendition”, they established the conditions allowing the program to operate without any oversight. Congress allowed the executive branch of the U.S. government to exercise judgment in executing all that is necessary for fighting the War on Terror, including the continuance of the “extraordinary rendition” program. The paper argues the necessity for the legislative branch of the U.S. government to take action, propose and pass a law which condemns and prohibits the program of “extraordinary rendition.”

“National Security Exceptions to the Fourth Amendment”
Alejandro Palma  B.A. in Political Science
Nicholas Komorowski  Senior in Political Science

This paper explores domestic surveillance as a primary weapon in uncovering and deterring potential terrorist attacks. There are extensive legal protections against such surveillance, however with the rapid expansion of technology, grey areas have emerged where surveillance may be both legal and responsible without infringing on the rights protected by the 4th amendment. The paper discusses how techniques such as data-mining and correlations may be used for surveillance legally. The intent is to reinforce and justify the need for domestic surveillance, but only within the legal framework of the 4th amendment.
LOUIS FISHER

Louis Fisher is a specialist in constitutional law with the Law Library of Congress, after working for the Congressional Research Service from 1970 to 2006. During his service with CRS he was research director of the House Iran-Contra Committee in 1987, writing major sections of the final report.

He received his doctorate in political science from the New School for Social Research (1967) and has taught at Queens College, Georgetown University, American University, Catholic University, Indiana University, Johns Hopkins University, the College of William and Mary law school, and the Catholic University law school. Dr. Fisher has been invited to testify before Congress on numerous issues.

He has been active with CEELI (Central and East European Law Initiative) of the American Bar Association, traveling to Bulgaria, Albania, and Hungary to assist constitution-writers. He also participated in CEELI projects for Armenia, Belarus, Bosnia-Herzegovina, the Kyrgyz Republic, Lithuania, Romania, and Russia.

Dr. Fisher’s specialties include constitutional law, war powers, budget policy, executive-legislative relations, and judicial-congressional relations. He is author of more than 350 articles in law reviews, political science journals, encyclopedias, books, magazines, and newspapers. He has been invited to speak throughout the world.

MARK LOWENTHAL

Mark Lowenthal has held a wide array of senior positions: Assistant Director of Central Intelligence for Analysis and Production; Vice Chairman for Evaluation of the National Intelligence Council for Evaluation; Staff Director of the House Permanent Select Committee on Intelligence; and Deputy Assistant Secretary of State for Intelligence. Dr. Lowenthal is president and CEO of the Intelligence & Security Academy, LLC, a national security education, training, and consulting firm. He is the author of the standard college and graduate school textbook on intelligence, Intelligence: From Secrets to Policy (CQ Press), now in its 3rd edition. Dr. Lowenthal is an adjunct faculty member of Columbia University. He was also the 1988 Grand Champion on Jeopardy!
Guest Speakers and Panelists:

**BRENT G. MCCUNE**

Brent G. McCune is an Assistant Director at The Institute for Policy and Economic Development (IPED). He conducts economic research, primarily focusing on economic impact analysis, and teaches in the Law School Preparation Institute and the Masters of Public Administration and Intelligence Community Center of Academic Excellence programs. Mr. McCune teaches Legal Issues in Intelligence & National Security as part of IPED’s Graduate Certificate in Intelligence and National Security. He is also the primary prelaw advisor at UTEP.

Mr. McCune earned a Bachelor of Science degree in economics from the University of Utah. He then obtained a Master of Science degree in economics from the University of Texas at El Paso. Mr. McCune was a James Foundation Scholar and received the 2004 Outstanding Thesis Award for his thesis entitled: Comparative Analysis of Regional Economic Modeling. He then received a law degree, graduating with honors from the S.J. Quinney College of Law at the University of Utah.

**RAYMOND G. MCGRATH**

Consul General Raymond G. McGrath arrived in Ciudad Juarez in August 2007, accompanied by his wife and children. Mr. McGrath is a member of the Senior Foreign Service of the U.S. Department of State. He joined the State Department in 1986, and early in his career served as a Consular Officer in Hermosillo, Mexico (1987–1989) and Consular/Economic Officer in Quito, Ecuador (1989–1991).


From 1995 to 1997, Mr. McGrath was Deputy Chief of the Immigrant Visa Unit in Manila, Philippines, and then Visa Chief in Lima, Peru until 2000. He served as Deputy Chief of the Consular Section in Havana, Cuba from 2000 until 2002 and from 2004 until 2007 as Consul General in Bogota, Colombia.

Consul General Raymond G. McGrath was born in Chicago. He received a Bachelor of Arts degree from the University of Notre Dame and a Master of Business Administration degree from the University of Arizona.
CARMEN A. MEDINA
Carmen Medina was appointed Director, Center for the Study of Intelligence (CSI) on January 16, 2007. In this position, she is responsible for creating a Lessons Learned Program for the CIA. Prior to her appointment in CSI, Ms. Medina served as the Deputy Director for Intelligence. She has been with the CIA since 1978. She has led analysts working in southern Africa and Central America, and helped develop innovative new production methods to support policymakers.

Ms. Medina has received more than a dozen exceptional performance awards over her career and has been recognized three times for her significant contributions to the literature of intelligence.

Ms. Medina was born in Caguas, Puerto Rico, on 8 October 1954. As an Army dependent, she also lived in Oklahoma, Georgia, Alaska, North Carolina, Germany, and Texas.

JOHN PRADOS
Dr. Prados directs the National Security Archive’s Vietnam Documentation Project and is a Research Fellow on national security affairs, including foreign affairs, intelligence, and military subjects. He holds a Ph.D. in International Relations from Columbia University and has authored many books and articles on the subjects of the National Security Council, the Central Intelligence Agency and the Vietnam War.

**Guest Speakers and Panelists:**

**LARRY VALERO**

Dr. Larry Valero is currently an Associate Professor of Security Studies at University College, the University of Texas at El Paso. His research and teaching interests focus upon U.S. intelligence and national security, contemporary U.S. foreign policy, strategy and modern warfare. He received his Ph.D. in International History from St. Catharine’s College, University of Cambridge, his M.A. in War Studies from King’s College, University of London, and his B.A. in Political Science from the University of California, Los Angeles.

Previously, Dr. Valero was an Assistant Professor at the Air Command and Staff College, Maxwell AFB, Alabama, a Visiting Researcher affiliated with the National Security Studies Program at Georgetown University and a Teaching Fellow in the Department of History at Indiana University, Bloomington. He also worked for Project Air Force’s Strategy and Doctrine Program at the RAND Corporation in Santa Monica California, and for Science Applications International Corporation (SAIC). Dr. Valero has taught at the University of Salford in Manchester, England. There he led Salford’s graduate program in Intelligence and Security Studies. In 2005-2006, Dr. Valero was on research leave and served as the National Security Agency’s Scholar in Residence. In this capacity he conducted research on a major cryptologic history project and provided lectures at the National Cryptologic School and the National Defense Intelligence College. His published articles have appeared in *Intelligence and National Security*, *the International Journal of Intelligence and Counterintelligence*, and *Studies in Intelligence*.

**WILLIAM G. WEAVER**

Bill Weaver served in U.S. Army Signals Intelligence for eight years in Berlin and Augsburg, Germany. He subsequently received his law degree and Ph.D. in politics from the University of Virginia, where he was on the editorial board of the *Virginia Law Review*. He is presently Academic Director of the University College at the University of Texas at El Paso and Director of the Law School Preparation Institute. Professor Weaver teaches the torts during Phase I of the Institute and the applications process during Phase II.

Professor Weaver’s research focuses on executive branch secrecy policy, governmental abuse, and law and bureaucracy. His articles have appeared in *American Political Science Review*, *Political Science Quarterly*, *Virginia Law Review*, *Presidential Studies Quarterly*, *Journal of Business Ethics*, *Organization* and other journals. He has co-authored several books on law and political theory, including *Presidential Secrecy and the Law* (with Robert Pallitto) (Johns Hopkins University Press., 2007).
Guest Speakers and Panelists:

JOSEPH WIPPL

Joseph Wippl is the Executive in Residence, in the Department of International Relations at Boston University, from the Central Intelligence Agency (CIA). He spent a 30 year career as an operations officer in the National Clandestine Service (NCS). Mr. Wippl served overseas as an operations officer and operations manager in Bonn, Germany; Guatemala City; Luxembourg; Madrid, Spain; Mexico City; Vienna, Austria; and Berlin, Germany. On assignments in CIA headquarters, he served as the Deputy Chief of Europe Division and as the CIA’s Director of Congressional Affairs. Mr. Wippl has coordinated extensively with other members of the U.S. intelligence community. Prior to his arrival at Boston University, he occupied the Richard Helms Chair for Intelligence Collection in the NCS training program.