

WWS 516B

Topics in Law & Public Policy: Anti-Terrorism, Intelligence & the Law

Syllabus and Assignments

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Spring 2006
Wednesday 1-4

This seminar will consider the phenomenon of terrorism as practiced by the perpetrators of the suicide attacks on the World Trade Center and Pentagon on September 11, 2001 (9/11). It will explore the various motivations for the attacks- religious, political and societal- and the position of the attackers as non-state actors. It will look at the posture of the U.S. Intelligence Community before the attacks and after, and examine the inadequacies, mistakes, lack of coordination and preparedness that beset the CIA and FBI especially, as they confront a potential age of relentless suicidal terror. We shall focus on the particular challenge posed by suicidal terror to democratic societies based on the rule of law. Finally, we shall look at the reviews of 9/11 and Iraqi WMD compiled by two Congressional bodies, two outside blue ribbon commissions, and a Special Advisor to the DCI, and their recommendations to improve America's intelligence and law enforcement defenses to the threat of ongoing non-state suicidal terror. We shall finally examine the Intelligence Reform and Terrorism Prevention Act of 2004. Weekly assigned oral presentations and a long (5,000 words) research paper shall be required of seminar participants.

February 8

Week One: What is Terrorism?

Required Reading:

Reader:

1. **"Inside Terrorism"** by Bruce Hoffman (Columbia Univ. Press, N.Y.: 1998) Chapter one, Defining Terrorism pp. 13-44.
2. **"Terrorism and America"** by Philip B. Heymann, (MIT Press, Cambridge, 2001) Chapters one through five, pp. 1-64.
3. **"Terrorism and U.S. Foreign Policy"** by Paul R. Pillar (Brookings Institution Press, Washington, D.C.: 2001) Chapter two, pp.12-40.

Suggested Reading (on reserve):

"Terrorism in Context" edited by Martha Crenshaw (Penn.State Press, Univ. Park, PA.:1995) (historical background).

February 15

Week Two: Terror in the Name of Religion

Required Reading:

“Against All Enemies”** by Richard A. Clarke (Free Press, N.Y.: 2004)

Suggested Reading

The Age of Sacred Terror by Simon and Benjamin

February 22

Week Three: Terror in the Name of Religion (Cont.)

Required Reading:

“Ghost Wars”** by Steve Coll (The Penguin Press, N.Y.: 2004)
Prologue and Part One, pp. 1-186.

Suggested Reading (on reserve):

“Passion for Islam” by Caryle Murphy, (Scribner, N.Y.: 2002)

March 1

Week Four: America’s Response- WAR on Terror

Required Reading:

“Ghost Wars”** by Steve Coll (The Penguin Press, N.Y.: 2004)
Prologue and Part One, pp. 187-end.

March 8

Week Five: The Role of Intelligence in the War on Terror

Required Reading:

The Assassins' Gate : America in Iraq by George Packer Pages 3-218

Suggested Reading (on reserve):

“Charlie Wilson’s War by George Crile (Atlantic Monthly Press,
N.Y.: 2003)

March 15

Week Six: The Role of Intelligence in the War on Terror (Cont.)

Required Reading:

The Assassins' Gate : America in Iraq George Packer
(Farrar, Straus and Giroux, 2005, New York). Pages 218-End

Suggested Reading (on reserve):

“The Main Enemy” by James Risen and Milton Bearden (Random House, N.Y.: 2003)

“Terror in the Name of God” by Jessica Stern (HarperCollins, N.Y.: 2003)

***** **March 18-26 SpringBreak** *****

March 29

Week Seven: Should It be War?

Required Reading:

“Terrorism, Freedom and Security” by Phillip B. Heymann (MIT Press, Cambridge: 2003)

April 5

Week Eight: Impact on U.S. Citizenship and Immigration Policy

Required Reading:

1. **“All the Laws but One”** by William H. Rehnquist, (Vintage Paperbacks, N.Y.: 2000)

Reader:

2. David Cole, **“Enemy Aliens”**, 54 Stanford L. Rev. 953 (2002)
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April 12

Week Nine: Terror Investigations: Surveillance and Interrogation – Torture

Required Reading:

Reader:

1. William Stuntz, **Local Policing After the Terror**, 111 Yale L. J. 2137 (2002).
2. **“A Year of Loss”**, re-examining Civil Liberties since February 11, Lawyers Committee for Human Rights, 2002.
3. Michael T. McCarthy, **Recent Developments: USA PATRIOT ACT**, Harv. J. Legis. 435, (2002)

4. Akhil and Vikram Amar, **The New Regulation Allowing Federal Agents to Monitor Attorney-Client Conversations: Why It Threatens Fourth Amendment Values**, 34 Conn. L. Rev. 1163(2002)
 5. Sara Sun Beale and James E. Felman, **The Consequences of Enlisting Federal Grand Juries in the War on Terrorism: Assessing the USA Patriot Act's Changes to Grand Jury Secrecy**, 25 Harv. J. Law and Pub. Pol. 699 (2002)
 6. Amitai Etzioni, **Implications of Select New Technologies for Individual Rights and Public Safety**, 15 Harv. J. Law and Technology 257 (2002)
 7. **FISA and the Opinions of the Foreign Intelligence Surveillance Court and the FISA Court of Review On Changes to the Act Made by the Patriot Act. (2002)** www4.law.cornell.edu/uscode/50/ch36.html and in reader
 8. Bruce Hoffman, **"A Nasty Business"**, *The Atlantic Monthly*, January, 2002
 9. **"Is Torture Ever Justified?," "Ends, Means and Barbarity," and "False Hopes,"** *The Economist*, June 24, 2003.
 10. Frederick P. Hitz, **"Unleashing the Rogue Elephant: February 11 and Letting the CIA be the CIA"**, 25 Harv. J. Law and Public Policy 765 (2002)
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April 19

Week Ten: Detention – The Right to a Hearing; Military Tribunals, U.S. Citizenship, POW Status and Material Witnesses

Required reading:

Reader:

1. *Odah v. U.S.; Hamdi v. Rumsfeld; Padilla v. Rumsfeld* U.S. Supreme Court Decisions, June 2004
 2. Neak K. Katyal and Laurence H. Tribe, **Waging War, Deciding Guilt: Trying the Military Tribunals**, 111 Yale L. J. 1259 (2002)
 3. Curtis A. Bradley and Jack L. Goldsmith, **The Constitutional Validity of Military Commissions**, 5 Green Bag 2d 249 (2002)
 4. George Rutherglen, **Structural Uncertainty over Habeas Corpus and the Jurisdiction of Military Tribunals**, 5 Green Bag 2d 397 (2002)
 5. Laurie L. Levenson, **Detention, Material Witnesses and the War on Terrorism**, 35 Loy. L. Rev. 1217 (2002)
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April 26

Week Eleven: What is to be Done? – How to Improve U.S. Government Knowledge of and Pre-emptive Reaction to Terrorist Acts – The Intelligence Reform and Terrorism Prevention Act of 2004

Required Reading:

1. **The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States**, filed July 26, 2004. ** (W.W. Norton, N.Y.: 2004)

Reader:

2. **[Selections] The Intelligence Reform and Terrorism Prevention Act of 2004 (December 7, 2004) - Joint Explanatory Statement; Title I, Subtitle A; Title VII.**

Suggested Reading:

3. **The Intelligence Reform and Terrorism Prevention Act of 2004**
http://a255.g.akamaitech.net/7/255/2422/13dec20041150/www.gpoaccess.gov/serialset/creports/pdf/108-796/108-796_intel_reform.pdf
4. **Report of U.S. Senate Select Committee on Intelligence on the Intelligence Community's Prewar Intelligence Assessments on Iraq (July 7, 2004)** <http://intelligence.senate.gov/iraqreport2.pdf>

Reader

5. **Final Report, Joint Congressional Inquiry on 9/11, Findings and Conclusions**, December 10, 2002.

May 3

Week Twelve: The Issue of Iraqi WMD and Intelligence Reform

Required Reading:

Reader

1. **[Selections] Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD**, 30 Sept 2004 – Transmittal Message, pp. 1-12.
2. **[Selections] Report of the Commission on the Intelligence Capabilities of the U.S. Regarding Weapons of Mass Destruction**, March 31, 2005 - Transmittal Letter and Overview; Chapter four, Terrorism: Managing Today's Threats.

Book

3. **"Preventing Surprise Attacks – Intelligence Reform in the Wake of 9/11"**** by Richard A Posner (Rowman and Littlefield, Lanham, MD, 2005).

Suggested Reading:

4. **Comprehensive Report of the Special Advisor to the DCI on Iraq's WMD.** http://cia.gov/cia/reports/iraq_wmd_2004
5. **Report of the Commission on the Intelligence Capabilities of the U.S. Regarding Weapons of Mass Destruction.** <http://www.wmd.gov/report>

** = *Books to be purchased.*