

Counterterrorism Law
Law 6930/Section 21423
UF Levin College of Law
Fall 2018
Prof. Dambly

Course Description

The purpose of this course is to familiarize you with major principles of U.S. Counterterrorism Law, which is a subset of the broader topic of “National Security Law.” This is a course that will focus on contemporary issues related to U.S. national security and counterterrorism law and policy. This is a survey course, as many of the topics covered in this class could be entire courses to themselves; still, this course will cover a broad stretch of topics, focusing on relevant and upcoming issues. While this course will be rooted in legal foundations, I expect many conversations to also include relevant policy considerations (regardless of political orientation), as the two are so often intertwined. These are the major objectives I hope you will reach by the end of the semester:

Learning Outcomes

At the end of this course, students should be able to:

- 1) analyze new events and develop effective counterterrorism policies based on legal norms, with a particular ability to articulate legal reasoning based on law and facts presented;
- 2) define and describe the general principles, structures, and actors within the realm of counterterrorism and national security law at the federal, state, and local levels;
- 3) assess the interplay between security interests and liberty interests (privacy, civil liberties, rule of law, etc.) in a given counterterrorism issue based upon the facts presented; and
- 4) assess whether you personally wish to learn more about national security law, counterterrorism law, or any of their components, including targeted actions, intelligence and surveillance law, detention law, criminal counterterrorism prosecutions, and military commissions.

Required Text & Assignments

The required casebook for this course is Counterterrorism Law (3rd Ed.) by Dycus, Banks, Raven-Hansen, and Vladeck. Certain sections of the course will also include required additional reading from the 2018-2019 casebook supplement.

While not required, there will also be recommended reading presented on a regular basis. Much of it will be posted on the course website after class discussions to highlight varying views and arguments related to different issues. I try to only post materials that I consider interesting or persuasive, since you have so much to read otherwise. I hope you enjoy those materials, too. I also recommend you keep an eye on the news. *Lawfare*, *Just Security*, and *War on the Rocks* are excellent blogs focusing on the U.S. policy perspective of national security law, international law and foreign affairs. There are also many excellent podcasts to which you can subscribe to stay on top of these issues. I will also provide a list of recommended books to read on the course website.

Class Format & How You Will Be Evaluated

Grading - your final grade will be a composite of two major factors:

1) **Participation** (30% of your grade)

- Mandatory attendance at weekly lecture (Mondays @ 6:00 – 8:00 pm). This course is on a compressed schedule, so each class runs longer than the standard period. **Each class will run for exactly two hours.**
- Students will be “on call” each week. This means that students will be responsible for being engaged in classroom discussions and responsible for the assigned readings each week. I prefer to call on volunteers first, but I will call on students at random, if necessary, to further discussions. Students should be prepared to discuss course readings and engage class discussions with legal analysis.
- Students should also stay aware of current events, as they are likely to find their way into the final exam. *Though I do not mandate participation online*, this class will have an online Slack channel to discuss regular counterterrorism law updates in the news. The Slack channel is also a good way to reach me with questions. The Slack channel invite is at the following link: <https://join.slack.com/t/ctl->

uflaw/shared_invite/enQtNDAiMTYzNzM5NzEoLTJjMDIwMzkyY2Y2YTIwNmRkNGRhMDgxODVhMjEoYjgxMmVINDRiZWZhNTFIMzljY2FiYTVhMmUzMmQyZjEoMWY.

- As noted in the grade breakdown, participation is an important part of this course. How students participate on a weekly basis will influence final grades.

2) Final Exam (70% of grade)

- 3-hour essay exam
- Students will be asked to provide legal counsel to the president on several issues after being provided a hypothetical on the state of national security within the United States in December 2018. Students will provide responses in three essays. Students may use class notes and the course materials as reference during the exam, but nothing else. Computer usage for writing the essays will be allowed in “closed mode,” so be sure to print out any notes on the computer to bring to the exam. Anything in the course readings, as well as our weekly discussions, will be potential subjects at issue in the hypothetical.

3) Extra Credit Opportunities

Students can also earn raw extra credit points toward their final exam through additional course readings. Three times during the semester, I will meet with students after class to discuss a “book of the month.” Students who wish to earn up to 2 raw points (per book) towards their final exam score will submit an essay (four pages long, 12-point font, single-spaced) on the night of the discussion. The assigned books and meeting dates are as follows:

- 1) *How Everything Became War and the Military Became Everything*, by Rosa Brooks
September 10th
- 2) *Playing to the Edge: American Intelligence in the Age of Terror*, by Michael Hayden
October 1st
- 3) *The Perfect Weapon: War, Sabotage, and Fear in the Cyber Age*, by David Sanger
November 5th

4) Grading Information

The Levin College of Law's mean and mandatory distributions are posted on the College's website and this class adheres to that posted grading policy. The following chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A (Excellent)	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C (Satisfactory)	2.0
C-	1.67
D+	1.33
D (Poor)	1.0
D-	0.67
E (Failure)	0.0

The law school grading policy is available at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#9>.

Student Expectations

a) Classroom decorum

Very simply, every student should be in class, be prepared, and be engaged on a weekly basis. If you are not engaged, even when you are not "on call," it will show in your participation grade. Your participation grade may well be the deciding factor if your overall grade is on the fence to the next highest-grade range (up or down).

Be sure to understand this next point: This course will frequently engage in discussions on subjects in law and policy that may be controversial. All viewpoints are to be respected in an academic discussion. In expressing viewpoints, please be

considerate and mindful of your classmates; please also have the same considerations when listening to the viewpoints of your fellow classmates, particularly if they are not consistent with your political leanings. I anticipate engaging, vigorous, and professional discussions.

b) Assigned seating

There are no assigned seating in this course. As is standard in most law school classrooms, students should be prepared for Socratic method questioning and should always consider themselves “on call” if others do not volunteer. I do ask that you keep the same seating for a few weeks, because that will make it easier for me to learn names (I’m not great with names, but I promise I try very hard).

c) Absences

Attendance is mandatory and you are expected to be on time. It is your responsibility to locate and initial the sign-in sheet for each class session. By signing your name you affirm that you are physically present in class during that class period. It will be considered a violation of the course rules and the Honor Code to falsely indicate that you were present in class, or to assist a classmate in such misrepresentation. Students deemed absent for more than 20% of scheduled classes may not sit for the final examination and cannot pass the course. I provide the Registrar with an attendance sheet for each class, and that is the exclusive measure of your attendance. If for any reason your attendance is not recorded there, you are considered absent. The law school’s policy on attendance can be found at: <http://www.law.ufl.edu/student-affairs/current-students/academic-policies#3>.

d) Academic Honesty

Course assignments are designed to have educational value; the process of preparing for and completing these exercises will help improve your skills and knowledge. Material presented to satisfy course requirements is therefore expected to be the result of your own original scholarly efforts.

Cheating, plagiarism, or any dishonesty in your work is not tolerated at this university. Please refer to your student handbook for more information about UF’s academic honor system. Come see me if any part of the code is unclear.

The Levin College of Law Honor Code

<https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/additional-information/honor-code-and-committee/honor-code> governs the academic conduct of students at the Levin College of Law. Students are bound by the Honor Code in all their academic work. The Honor Code outlines the College of Law's expectations for the integrity of students' academic work, the procedures for resolving alleged violations of those expectations, and the rights and responsibilities of students and faculty members throughout the process.

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I will also adhere to the highest standards of academic integrity, so please do not ask me to change (or expect me to change) your grade illegitimately or to bend or break rules for one person that will not apply to everyone.

e) Course Accommodations

Students seeking ADA accommodations should: (1) register with and provide documentation to the Disability Resource Center (<http://www.dso.ufl.edu/drc/>; 0001 Building 0020 (Reid Hall), 392-8586); Once registered, students will receive an accommodation letter which must be presented to the Assistant Dean for Student Affairs (Dean Mitchell) when requesting accommodation. Students with disabilities should follow this procedure as early as possible in the semester. This syllabus and other class materials are available in alternative format upon request.

f) Technology in the Classroom

The use of laptops/tablets in class is acceptable for educational purposes only. Please do not use cell phones, music players, cameras, microphones, or non-useful items in class. Please avoid the use of texting, chatting, using Skype, Facebook, Twitter, Instagram, Snapchat, or any other social media platform during class.

g) Out-of-Class Work Expectations

Law students are expected to spend no less than 2 hours a week of course-related work outside the classroom for each credit hour awarded for this course. For a 2-credit course, students should expect to spend no less than 4 hours and of course-related work outside the classroom.

Office Hours and Professor Contact

As an adjunct professor, I will not have office hours during the week. However, I will always make my best effort to be available for questions. You can email me at JeffDambly@fdle.state.fl.us, or call me at my office at 850-410-7683. I am almost always connected to email, so please don't hesitate to harass me if I do not respond quickly. Again, Slack will also be a viable means of communication.

Course Breakdown – Subjects and Reading Assignments

Module 1 (weeks 1–3, Aug. 13–27): Defensive War Powers, International Reach of the Constitution, and Targeted Killings

- Assignment 1 (Aug. 13): Chapter 3, Casebook, “Waging War on Terrorists,” 63–100
 - Highlights: *Case Concerning Military and Paramilitary Activities, The Prize Cases, Bas v. Tinig*, and the Authorization of the Use of Military Force of 2001
- Assignment 2 (Aug. 20): Chapter 4, Casebook, “International Humanitarian Law (jus in bello),” 101–120, 123–138, Supplement pgs. 20–59
 - Highlights: Geneva Conventions (skim for familiarity), *Public Committee Against Torture in Israel v. Israel, U.S. v. Hamidullin* (2018)
- Assignment 3 (Aug. 27): Chapter 2, Casebook, “The Extraterritorial Reach of U.S. Law, 31–49, Supplement pgs. 17–18; Chapter 5, “Targeting Terrorists,” 139–166, Supplement pgs. 59–70
 - Highlights: *Reid v. Covert, U.S. v. Verdugo-Urquidez, Hernandez v. U.S.*, Presidential Policy Guidance, DOJ White Paper: “Lawfulness of a Lethal Operation Directed Against a U.S. Citizen,” and OLC memo of lawfulness of targeting Anwar Al-Aulaqi

Module 2 (week 4, Sept. 10): The Fourth Amendment and National Security

- Voluntary but Useful Reading for the Unfamiliar: Casebook, Chapter 6, “Introducing Intelligence Operations,” 169–180
- Assignment: Chapter 6, Casebook, 180–218; Chapter 7, Casebook, 219–242, 249–260, Supplement pgs. 70–72
 - Highlights: federal statutory authorities for Intelligence Community agencies, *Hawkins v. Helms*, Executive Order 12333, *The Keith Case, in re Directives, U.S. v. Jones*

No Class on September 17 or 24

Module 3 (weeks 5–6, Oct. 1–8): Intelligence and Surveillance Law

- Assignment 1 (Oct. 1): Chapter 8, “Congressional Authority for Foreign Intelligence Surveillance,” 261–294, Supplement pgs. 72–75; Chapter 9, “Programmatic Electronic Foreign Intelligence Surveillance,” 295–334, Supplement pgs. 75–81
 - Highlights: the Foreign Intelligence Surveillance Act, *U.S. v. Rosen, in re Sealed Case*, *ACLU v. Clapper*, the Terrorist Surveillance Program, the FISA Amendments Act of 2008, *Case Title Redacted*
- Assignment 2 (Oct. 8): Chapter 10, “Third Party Records – Targeted Collection,” 335–248, Supplement pgs. 81–109; Chapter 11, “Bulk Collection and Data Mining,” 371–402, Supplement pgs. 110–112
 - Highlights: *Smith v. Maryland*, *Carpenter v. U.S.*, *ACLU v. Clapper, in re Application of the Federal Bureau of Investigation*

Module 4 (weeks 7–8, Oct. 15–22): Detention Authorities and Habeas Corpus

- Assignment 1 (Oct. 15): Chapter 13, “Habeas Corpus: The Structure of the Suspension Clause,” 459–484; Chapter 14, “Habeas Corpus: The Scope of the Suspension Clause,” 485–514
 - Highlights: *Ex parte Milligan*, *Hamdi v. Rumsfeld*, *Boumediene v. Bush*
- Assignment 2 (Oct. 22): Chapter 15, “Military Detention of U.S. Persons,” 515–550, Supplement pgs. 155–175; Chapter 16, “Military Detention of Non-U.S. Persons,” 551–574, Supplement pgs. 175–176; Chapter 17, “Preventive Detention,” 583–587
 - Highlights: *Korematsu v. U.S.*, *Hamdi v. Rumsfeld*, 2012 National Defense Authorization Act, *Doe v. Mattis*, *Al-Bihani v. Obama*, *Hedges v. Obama*, Non-Detention Act

Module 5 (week 9, Oct. 29): Military Commissions

- Assignment: Chapter 23, “Trial by Military Commission,” 789–826, Supplement pgs. 184–190
 - Highlights: *Ex parte Milligan*, *Ex parte Quirin*, November 2001 OLC Memo, *Al Bahlul v. U.S. (Al Bahlul II)*

Module 6 (week 10, Nov. 5): Legality of Enhanced Interrogations and Ramifications

- Assignment: Chapter 18, “Interrogating Terrorist Suspects,” 621–646; Chapter 19, “Case Study of Coercive Interrogation of Detainees in U.S. Custody After 9/11,” 647–682, Supplement pgs. 176–182

Module 7 (weeks 11-12, Nov. 19-26): Criminal Prosecutions

- Assignment: Chapter 20, “Criminalizing Terrorism and Material Support,” 685-722, Supplement pgs. 182-183; Chapter 21, “The Procedural Path to Terrorism Trials,” 723-750, Supplement pgs. 183-184; additional materials to be provided
 - Highlights: *U.S. v. Rahman*, *Holder v. Humanitarian Law Project*, *U.S. v. Bin Laden*, *U.S. v. Abdulmutallab*, *U.S. v. Ghailani*, *U.S. v. Paracha* (reading material for *Paracha* to be provided)

Module 8 (potential): Secret Law – National Security Letters, Classified Programs, Classified Legal Opinions and Rulings, and the Public’s Right to Access

- **Note: this assignment only applies if we have time to cover the materials.**
- Assignment: Chapter 10, “Third-Party Records – Targeted Collection,” 349-370; Chapter 22, “Secret Evidence in Criminal Trials,” 751-789; additional materials to be provided
 - Highlights: *Doe v. Ashcroft*, the Classified Information Procedures Act, *U.S. v. Lee*, *U.S. v. Abu Ali*, *U.S. v. Rosen*, *U.S. v. Mussaoui*, *in re Opinions & Orders of this Court Addressing Bulk Collection of Data under the Foreign Intelligence Surveillance Act* (reading material for *in re Opinions* to be provided)