

Anti-Terrorism, Law, and the Role of Intelligence

Syllabus and Assignments

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Fall 2011
Wednesdays 4:00-6:00
SL 284

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. Next, 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 examine the Intelligence Reform and Terrorism Prevention Act of 2004. Finally, we shall consider the targeted killing of Osama bin Laden in May, 2011, practically on the 10th anniversary of 9/11, and seek to determine if that may bring about the end of Al Qaeda. Weekly assigned oral presentations and a long (5,000 words) research paper shall be required of seminar participants. Students wishing to satisfy the Writing Requirement should note such intention on their submitted papers.

All seminar papers are due no later than **Wednesday, December 21 at 5 p.m.**

Note: for live links view syllabus online at <http://www.virginia.edu/cnsl/bio/hitz.html>

August 31

Week One: What is Terrorism?

Required Reading:

*At the Center of the Storm: My Years at the CIA*** by George Tenet
(Harper Collins, NY: 2007), pp. ix-206

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, DC: 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).

September 7

Week Two: Terror in the Name of Religion

Required Reading:

*Against All Enemies*** by Richard A. Clarke (Free Press, NY: 2004)

Suggested Reading (on reserve):

The Age of Sacred Terror by Daniel Benjamin and Steven Simon (Random House, N.Y.: 2002)

September 14

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

Required Reading:

*Ghost Wars*** by Steve Coll (NY: Penguin Press, 2004)

Suggested Reading (on reserve):

Passion for Islam by Caryle Murphy, (Scribner, NY: 2002)

September 21

Week Four: America's Response—WAR on Terror

Required Reading:

*The Looming Tower*** by Lawrence Wright (Knopf, NY: 2006)

September 28

Week Five: America's Response- WAR on Terror

~~Note~~ half of class will read one of these books, the other half will read the other book

Required Reading:

First In: An Insider's Account of How the CIA Spearheaded the War on Terror in Afghanistan by G. Schroen (2005)

Jawbreaker: The Attack on Bin Laden and Al-Qaeda by G. Berntsen & R. Pezzullo (2005)

October 5

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

Required Reading:

*The Assassins' Gate: America in Iraq*** by George Packer (New York, Farrar, Straus and Giroux, 2005), pp. 3-218

Suggested Reading (on reserve):

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

October 12

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

Required Reading:

The Assassins' Gate: America in Iraq by George Packer, pp. 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)

******* October 17-19 Fall Break *******

October 26

Week Eight: Should It be War?

Required Reading:

1. *The Wrong War*** by Bing West (Random House, NY: 2011)

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

November 2

Week Nine: 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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November 9

Week Ten: Terror Investigations: Surveillance and Interrogation – Torture

Required Reading:

1. *At the Center of the Storm* by George Tenet (concluded pp. 207-end)
2. *The Dark Side*** by Jane Mayer

Reader:

1. Michael T. McCarthy, *Recent Developments: USA PATRIOT ACT* HARV. J. LEGIS. 435 (2002)
 2. *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)
<http://www4.law.cornell.edu/uscode/50/ch36.html>
and in reader
 3. Bruce Hoffman, *A Nasty Business*, THE ATLANTIC MONTHLY, January, 2002
 4. *Is Torture Ever Justified?, Ends, Means and Barbarity*, and *False Hopes*, THE ECONOMIST, June 24, 2003.
 5. Frederick P. Hitz, *Unleashing the Rogue Elephant: September 11 and Letting the CIA be the CIA*, 25 HARV. J. LAW AND PUBLIC POLICY 765 (2002)
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November 16

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

Required reading:

1. *The Terror Presidency*** by Jack Goldsmith (W,W, Norton, NY, 2007)
2. “*Angler: the Cheney Vice Presidency*” by Barton Gellman and Jo Becker, *The Washington Post*, June 24-28, 2007.
<http://blog.washingtonpost.com/chenev/>

Reader:

1. *Odah v. U.S.; Hamdi v. Rumsfeld; Padilla v. Rumsfeld* U.S. Supreme Court Decisions, June 2004
2. *Hamdan v. Rumsfeld* (decided June 29, 2006), syllabus and opinion

Suggested Reading:

In the Common Defense by James E. Baker (Cambridge Univ. Press, 2007)

Thanksgiving Recess November 23-25

November 30

Week Twelve: 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 2004.**(W.W. Norton, N.Y.: 2004) Also online at <http://www.9-11commission.gov/report/911Report.pdf>
2. *Why Spy? Espionage in an Age of Uncertainty***by Frederick P. Hitz (Thos Dunne Books- paperback, July 2009.)
3. *Top Secret America*** by Dana Priest and William M. Arkin, The Washington Post, 19-21 July 2010, <http://projects.washingtonpost.com/top-secret-america/>

Reader:

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

Suggested Reading:

5. *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
6. *Report of U.S. Senate Select Committee on Intelligence on the Intelligence Community's Prewar Intelligence Assessments on Iraq* (July 9, 2004) <http://intelligence.senate.gov/108301.pdf>

December 7

Week Thirteen: The Issue of Iraqi WMD and Intelligence Reform

Required Reading:

1. *Top Secret America* by Dana Priest and William M .Arkin, Washington Post , July 19-21, 2010, online, TopSecretAmerica.com
2. “**Reports, Politics, and Intelligence Failures: The Case of Iraq**” by Robert Jervis, *The Journal of Strategic Studies*, Vol.29, No.1, 3-52, February 2006 <http://www.informaworld.com/smpp/content~content=a743802283~db=all~order=page>

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*. https://www.cia.gov/library/reports/general-reports-1/iraq_wmd_2004/index.html
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.*