Syllabus: Surveillance Law

Syllabus – Law 641: Surveillance Law Seminar
George Mason University Law School – Fall 2012

Jamil N. Jaffer

Brief Course Description:

This seminar course will expose students to laws and policies relating to government surveillance, from traditional criminal wiretaps to high technology surveillance conducted as part of the global war on terrorism. The course will involve a survey of the Fourth Amendment’s search and seizure caselaw and the application of that body of law to government surveillance efforts. Issues discussed will include: wiretaps in drug and organized crime cases; warrantless surveillance programs in the 60s and 70s; legislative efforts to constrain surveillance; the expansion of government surveillance following the attacks of 9/11; and the implications of new surveillance technologies in an increasingly cyber- and technology-oriented world.

Class Format:

Seminar of 10-20 students; two credits; one two-hour class per week. Active participation in class discussions is required and students are expected to be fully prepared for each class session.

Grading:

Substantive grades will be based on class participation (15%) and student’s successful completion of a 15-30 page paper on surveillance law (85%); writing grades will be based on the paper alone.

Office Hours:

By appointment

Faculty Contact Information:

Email: jjaffer@gmu.edu Phone: 202-247-8390

Course Materials:

The bulk of the course materials are cases or articles available on Westlaw or Lexis-Nexis. The only book required for purchase is James Bamford’s The Puzzle Palace: Inside America’s Most Secret Intelligence Organization. Please purchase this book as soon as possible as it will be needed for Week 5. The other Bamford book, Body of Secrets: Anatomy of the Ultra-Secret National Security Agency is available electronically through the online library catalog. All other materials will be posted on TWEN as indicated below.
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Course Assignments:

Week One – Introduction to Government Surveillance Under the Fourth Amendment


Week Two – Introduction to Criminal Wiretaps and Bugs


Week Three – Criminal Wiretaps and Bugs Under Title III: “The Wire” in Practice – Part I


Week Four – Criminal Wiretaps and Bugs Under Title III: “The Wire” in Practice – Part II


Week Five – Non-Content Surveillance Under Title III: Pen Registers and Tracking Devices


Week Six – Introduction to Foreign Intelligence Surveillance

2. *United States v. Butenko*, 494 F.2d 593 (3d Cir. 1974) (en banc) *(only read thru 608)*
3. *United States v. Truong Dinh Hung*, 629 F.2d 908 (4th Cir. 1980) *(only read thru 917)*

Week Seven – The FBI and NSA in the 1960s and 1970s: COINTELPRO and SHAMROCK

2. Excerpts from James Bamford, THE PUZZLE PALACE, 302-90 *(Purchase)*
3. Excerpts from James E. Baker, IN THE COMMON DEFENSE, 71-78 (TWEN)
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Week Eight – Introduction to the Foreign Intelligence Surveillance Act of 1978

1. Excerpts from James E. Baker, IN THE COMMON DEFENSE, 78-86 (TWEN)
2. Excerpts from Dycus, et al., NATIONAL SECURITY LAW 4TH, 512-32 (TWEN)

Week Nine – Foreign Intelligence Surveillance After FISA – Part I

NOTE: PROPOSED PAPER TOPICS DUE THIS WEEK

1. Excerpts from James Bamford, THE PUZZLE PALACE, pp. 458-477 (Purchase)
2. Excerpts from James Bamford, BODY OF SECRETS, pp. 370-473 (focus on 428-473) (e-book through library catalog)

Week Ten – Foreign Intelligence Surveillance After FISA – Part II

1. United States v. Cavanaugh, 807 F.2d 787 (9th Cir. 1987) (Kennedy, J.)

Week Eleven – Surveillance in the Post-9/11 Era: The PATRIOT Act and NSLs

1. U.S. Department of Justice, Reports from the Field: The USA PATRIOT Act at Work, pp.1-2, 18-29 (July 2004) (TWEN)
2. Congressional Research Service, Libraries and the USA PATRIOT Act, pp. 1-6 (July 6, 2005) (TWEN)

Week Twelve – Post 9/11 Surveillance: Information Sharing, “The Wall,” and the FISA Court of Review

NOTE: FINAL PAPER TOPICS DUE THIS WEEK

5. Excerpts from James E. Baker, IN THE COMMON DEFENSE, 84-86 (TWEN)
6. Excerpts from the Report of the Commission on the Intelligence Capabilities of the

Week Thirteen – Post 9/11 Surveillance: The Terrorist Surveillance Program

1. U.S. Department of Justice, Legal Authorities Supporting the Activities of the National Security Agency Described by the President (Jan. 19, 2006) ("DOJ White Paper") (TWEN)
2. Office of the Director of National Intelligence, Remarks by General Michael Hayden at the National Press Club (Jan. 23, 2006) (TWEN)
4. Excerpts from James E. Baker, In the Common Defense, 87-98 (TWEN)

Week Fourteen – Post 9/11 Surveillance: FISA Modernization and the FISA Court of Review

1. Excerpts from U.S. Department of Justice, Assistant Attorney General Kenneth L. Wainstein - Testimony on the Foreign Intelligence Surveillance Act before the Senate Select Committee on Intelligence (May 1, 2007) (TWEN)
2. Excerpts from U.S. Department of Justice, Assistant Attorney General Kenneth L. Wainstein - Testimony before the House Permanent Select Committee on Intelligence concerning the Foreign Intelligence Surveillance Act (Sept. 20, 2007) (TWEN)