Syllabus – Law 641: Surveillance Law Seminar
George Mason University Law School – Fall 2013

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.

In addition, the class will include an extensive discussion of the now-declassified bulk metadata and foreign content collections conducted by the National Security Agency, including a discussion of the legal analysis supporting these programs and the policy questions raised by them.

**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 or materials posted on TWEN. Materials posted on TWEN are indicated below.

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.
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Course Assignments:

Week One – Introduction to Government Surveillance Under the Fourth Amendment
5. Unclassified ODNI Fact Sheet on the Collection of Intelligence Pursuant to Section 702 of the Foreign Intelligence Surveillance Act, June 2013 (TWEN)

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

Week Five – Introduction to Foreign Intelligence Surveillance
2. *United States v. Butenko*, 494 F.2d 593 (3d Cir. 1974) (en banc) (*only read thru 608*)

Week Six – The FBI and NSA in the 1960s and 1970s: COINTELPRO and SHAMROCK
2. Excerpts from James Bamford, *The Puzzle Palace*, 302-90 (*Purchase*)
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Week Seven – 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)
3. Declassified TOP SECRET//SI//NF Primary Order from the FISA Court for the Telephony Metadata Collection, April 2013 (TWEN)
4. NSA Fact Sheets on the Telephony Metadata (Section 215) and PRISM (Section 702) Programs, June 2013 (TWEN).

Week Eight – Foreign Intelligence Surveillance After FISA

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


NOTE: PROPOSED PAPER TOPICS DUE THIS WEEK


5. Excerpts from James E. Baker, IN THE COMMON DEFENSE, 84-86 (TWEN)
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Week Eleven – Post 9/11 Surveillance: The Terrorist Surveillance Program

NOTE: FINAL PAPER TOPICS DUE THIS WEEK

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 Twelve – Post 9/11 Surveillance: FISA Modernization and the FISA Court of Review II

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)

Week Thirteen – The New National Security Agency – Classified Metadata and Foreign Content Collections Revealed

3. Letter from 26 Senators to Director of National Intelligence Gen. Clapper Regarding Surveillance Programs, June 2013 (TWEN)
4. Response from Director of National Intelligence Gen. Clapper to 26 Senators, July 2013 (TWEN)
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Week Fourteen – Critiquing and Defending the Law Behind the NSA Metadata and Foreign Content Programs

1. Prepared Testimony of ACLU Foundation Deputy Director Jameel Jaffer before the Senate Judiciary Committee, July 2013 (TWEN)
2. Prepared Testimony of Center for National Security Studies Director Kate Martin before the House Judiciary Committee, July 2013 (TWEN)
3. Prepared Testimony of former DOJ OLC Assistant Attorney General Steven Bradbury before the House Judiciary Committee, July 2013 (TWEN)
4. Prepared Testimony of former NSA General Counsel Stewart Baker before the Senate Judiciary Committee, July 2013 (TWEN)