

COVERT ACTION AND SPECIAL OPERATIONS LAW

COURSE NUMBER: 148-001

SEMESTER: SPRING 2025 (2 credits)

Faculty Contact Information:

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Learning Outcomes:

This course will explore the laws and policies around U.S. government covert action and special operation efforts broadly and will survey the wide range of legal issues implicated by such efforts at home and overseas. The course will bring the legal and ethical considerations into focus by delving into case studies in the covert action and special operations law spaces. Issues to be addressed will include but not be limited to the applicable international and domestic law, the authorities for the use of force, offensive operations overseas, domestic counterterrorism efforts, surveillance of terrorists, detention and interrogation of terrorism suspects, and other legal issues related to covert actions and special operations. A portion of this course will be dedicated to learning how laws pertaining to covert action and special operations fit into the greater national security law apparatus and plays out in the American legal system with its separation of powers—specifically how to think like a national security lawyer.

Throughout this course, students will not only expand their knowledge of the laws and policies that govern the related areas but also conduct basic academic research. Through class discussions and a final written assignment, students will focus on presenting and defending a clear thesis, researching in law and other disciplines, and writing a well-organized and thoughtful position paper. At the end of this course students will not only have a better understanding of substantive areas of law, but also increase their academic research, writing, and speaking skills.

CLASS FORMAT:

Class of up to 25 students; 2 credits; one class per week. The instructors will utilize the Socratic method for class discussions and invite occasional guest speakers with professional expertise on selected course topics when available. **Active participation in class discussions is required** and students are expected to be **fully prepared** for each class session. Pending and subject to any further administrative decisions by the Law School, this class will be held in-person. In cases of emergency and/or inclement weather, this class may be held online.

GRADING:

- Class discussions showing thoughtful review and critical analysis of the assigned materials will be an integral part of the learning process. As such, 20% of your final grade will be based on overall class participation.
 - On class participation, if we call on you and you participate in a meaningful way, you get your participation point. If you volunteer in a discussion in a meaningful way, you get a participation point. If we call on you in class and you are absent and you are not excused from class, you miss your point. If you are not prepared in class, you will miss your point. If you are not prepared and you waste time by intentionally trying to obfuscate your lack of preparation you not only will miss your point, but we will also take a point away (just say you are not prepared so we can move on). **To be clear, incorrect answers and genuine questions are never a problem for this course. There will never be sanctions for trying in this course, only for not trying or misrepresenting.**
 - Regarding attendance. . . adult rules apply. We will be taking class attendance, consistent with the law school policy. If you foresee an issue with attendance, please notify the professors. We are all adults and understand that “life” happens.
 - If this class is virtual, we have an on-camera policy. If you can’t keep your camera on for some reason, just let us know ahead of time.
- The remaining 80% of your grade will be made up by a final written assignment. More details will be provided during the first and second class.

CLASS DETAILS:

Wednesdays: 8:10 – 10:10 PM

OFFICE HOURS:

By appointment. Considering both professors are members of the adjunct faculty, office space on campus is limited. Please email both professors to set up a virtual or in-person session. We will make time for you!

SYLLABUS AND TENTATIVE READING ASSIGNMENTS:

Please note that the assigned readings may be revised during the semester based on, among other things, policies issued by the new Presidential Administration, current events, time, or availability of guest lectures.

PROFESSOR BIOS:

Major Salahudin Ali, USMC, is a commissioned Marine Corps Officer and Judge Advocate specializing in the intersection of law & technology. He currently serves as an Associate General Counsel at the Defense Intelligence Agency (DIA), having previously been assigned as the Staff Judge Advocate for the Naval Amphibious Force, Task Force 51/5th Marine Expeditionary Brigade and U.S. Central Command, Joint Task Force-Crisis Response.

Prior to his DIA assignment, Major Ali was the Marine Corps' first National Fellow (law) for the Intelligence Community at the National Geospatial-Intelligence Agency, where he served as an Assistant General Counsel. His previous assignments include time as a Forward-deployed Staff Judge Advocate for the U.S. Joint Special Operations Command and Headquarters Marine Corps as a Judge Advocate assigned to the Office of the Staff Judge Advocate and the Office of Counsel for the Commandant of the Marine Corps.

Major Ali's career has also included time as a Regimental Command Judge Advocate and the Law Center-National Capital (Senior Legal Assistance Attorney, Civil Law Officer, and military prosecutor. Major Ali's civilian practice experience includes time as an Assistant District Attorney in Washington County, Oregon, and a judicial clerk for the Hon. Richard C. Baldwin (Ret).

Major Ali holds a J.D. from Lewis & Clark Law School (2011) and an LL.M. (2018) in Intellectual Property Law & Technology from George Mason's Scalia School of Law, focusing on Cybersecurity & Intelligence Law. He is currently pursuing a graduate degree in Intelligence Analysis at Johns Hopkins University.

Major Ali regularly publishes articles on law & technology, with notable publications appearing in the National Security Law Journal, The George Mason Civil Rights Law Journal, Santa Clara Journal of International Law, the Southern Methodist University Science and Technology Law Review, and the Catholic University of America's Journal of Law & Technology. He also contributes to the NSI's *SCIF blog*.

Major Salahudin Ali is currently an Adjunct Professor of Law at George Mason's Scalia School of Law.

Major Mika'il A. Ali, USMC, is a Commissioned Marine Corps Officer and Judge Advocate specializing in National Security, Cyber, and Intelligence law. He currently serves as an Assistant General Counsel for the National Geospatial-Intelligence Agency as part of the Commandant of the Marine Corps National Fellow Program where he provides legal advice on all matters pertaining to NGA's national security and national intelligence mission.

Prior to the National Geospatial-Intelligence Agency, Major Ali served as the Deputy Staff Judge Advocate at the Marine Corps Training and Education Command where he advised on all matters pertaining to the Marine Corps training and education enterprise.

Major Ali also served as legal counsel at United States Cyber Command, where he advised on all matters pertaining to the commands mission, to include cyber operations, network security, international & domestic relations, and emerging technology.

Major Ali also has previous assignments as legal counsel to Joint Task Force – Guantanamo Bay, Marine Corps Air Ground Combat Center 29 Palms, a military and civilian prosecutor, and Director of a legal aid clinic.

Major Ali holds a J.D. from Lewis & Clark Law School (2011) and an LL.M. (2017) in Intellectual Property Law & Technology from George Mason’s Scalia School of Law, focusing on Cybersecurity & Intelligence Law. Major Ali is a member of the adjunct faculty and is a faculty advisor to the National Security Institute.

Week 1:

Required Readings:

- Introductions, review of the syllabus, and topics of interest. No reading assigned.

Week 2:

Required Readings:

- United States Constitution: Article I, Sections 8-10; Article II; Sections 2-3; Article III, Section 2; Article IV, Section 4; Article 6; Amendments 1, 4 ,5 ,6, 8, and 14 (Section 1).
- United Nations Charter: Chapter I (Articles 1-2); Chapter VI (Articles 33-38); Chapter VII (Articles 39-42, 48-51); Chapter XIV (Articles 92-96).
- Universal Declaration of Human Rights: Articles 1-3, 5-15, 17-20, 28-30.
- United States v. Curtiss-Wright Export Corp., 299 U.S. 304 (1936)
- Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)
- Dames & Moore v. Regan, 453 U.S. 654 (1981)

Week 3:

Required Readings:

- Executive Order 12333, as amended (skim). Pay close attention to section 1.7, especially 1.7 (a) (4).
- 50 U.S.C., Subsec. 3091-3093

- 50 U.S.C., Subsec. 3003-3004; 3021-3062 (SKIM only!)
- 10 U.S.C., Subsec. 161-167b
- S.2834-Intelligence Authorization Act for Fiscal Year 1991 (skim for “covert action” and “Traditional Military Activities” definitions)
- The War Powers Resolution of 1973 (P.L. 93-148)
- Joint Publication 3-05, “Special Operations,” dated 16 July 2014 (Skim)
- Goldwater-Nichols at 30: Defense Reform and Issues for Congress, CRS Report No. R44474, Updated 2 June 2016 (Skim)

Extra reading (may bump to week 4):

- DOD DIRECTIVE 5240.01, “DOD INTELLIGENCE AND INTELLIGENCE-RELATED ACTIVITIES AND DEFENSE INTELLIGENCE COMPONENT ASSISTANCE TO LAW ENFORCEMENT AGENCIES AND OTHER CIVIL AUTHORITIES,” dated 24 September 2024
- DoDM 5240.01, “Procedures Governing the Conduct of DoD Intelligence Activities,” dated 8 August 2016
- (U) DoD IG Report, Evaluation of Defense Sensitive Support Activities, dated 5 January 2015

Week 4:

Required Readings:

- OLC opinions
 - Libya (2011)
 - Iraq (2014)
 - Syria (2018)
- Nicaragua v. United States (summary on Wikipedia, only).
- Major Pete C. Combe II, *The Covert Action Statute: The CIA’s Blank Check?* 9 J. Nat’l Sec. L. & Pol’y 29 (2017-2018). Link: [The Covert Action Statute: The CIA’s Blank Check?](#)
- Berger, Joseph B. Covert Action: Title 10, Title 50, and the Chain of Command. JFQ-67, 32-39 (2012), Link: ndupress.ndu.edu/Portals/68/Documents/jfq/jfq-67/JFQ-67_32-39_Berger.pdf
- Devine, Michael E., Covert Action and Clandestine Activities of the Intelligence Community: Selected Congressional Notification Requirements. CRS R45191 (Updated July 10, 2023).

Week 5:

Required Readings: None

- Watch “The Good Shepherd” and “Clear and Present Danger.” Be ready to discuss issues you see in the films vis-a-vis covert action and special operations.

Week 6:

Cyber Operations

Required Readings:

- Department of Defense, Summary - Cyber Strategy 2023 (23 pp.)
- 10 USC 167b “Unified Combatant Command for Cyber Operations.”
- CRS Report # IF0537 “*Defense Primer: Cyberspace Operations.*” (3 pp.)
- CRS Report # IF1995 “*Use of Force in Cyberspace.*” (3 pp.)
- Kurt Sanger, Peter Pascucci, *Revisiting the Framework for Military Takedowns Against Cyber Criminals*, Lawfare (2021) (4 pp.)
- Salahudin Ali, “The Bloody Nose: 10 U.S.C. § 395,” 6 Nat’l Sec. L.J. 127 (2019) – pp. 127-144 (18 pp.)
- Robert Chesney, “*The Domestic Legal Framework for US Cyber Operations.*” A Hoover Institution Essay, Aegis Series Paper No. 2003. (16 pp.)
- Corey Pray, “*It’s The Principle: Defining Sovereignty in The Context of Cyber Operations*,” 7 Nat’l Sec. L.J. 272 (2021) – pp 272-286 (14 pp.)
- Hans-Georg Dederer and Tassilo Singer, *Adverse Cyber Operations: Casualty, Attribution, Evidence, and Due Diligence*, 95 Int’l L. Stud. 430, 430-66 (2019) (36 pp.)

Week 7:

Required Readings:

- TBD/Make-up week

Week 8:

Required Readings:

- TBD/Paper Topics Due/Possible Classroom exercise

Week 9:

Required Readings:

- TBD/Possible Guest Speaker

Week 10:

Required Readings:

- TBD/Possible Guest Speaker

Week 11:

Required Readings:

- TBD/Possible Guest Speaker

Week 12: Writing Week/Open Class and assistance from Professors

Week 13: Writing Week/open class and assistance from Professors