

Reading(s): [REQUIRED]

1. *The Final Report on the National Commission on Terrorist Attacks Upon the United States* (the “9-11 Commission Report”). Hard copies are available, and a complete version is available online. Other materials are outlined below for each class. Most of this information is also available online.
2. *Power and Constraint: The Accountability Presidency After 9/11*. Jack Goldsmith
ISBN: 978-0-393-08133-6.
3. Selected Cases and other material identified below and available on Westlaw or updated to the class portal.

Communication(s): dennis.fitzpatrick07@gmail.com

Office Hours: I can be best reached via email at dennis.fitzpatrick07@gmail.com. Feel free to contact me with any questions or concerns, or to request a meeting, but please remember that I (like many of you) have a full-time job and therefore I may not always be able to get back to you immediately. I will not have office hours, but I am happy to meet with you after class.

Class Announcement(s): Tuesday evenings from 8:10 pm to 10:10 pm. Final papers are due on Monday, May 12, 2025.

COURSE DESCRIPTION & OBJECTIVES

This seminar focuses on the law and policies underlying the investigation and prosecution of national security cases. Each class is divided into two parts. This method allows us to approach the subject matter from the “top,” *i.e.*, policy and its implications, and the “bottom,” *i.e.*, the practical nuts and bolts of actually trying national security cases in the courtroom

In the first part of each class, we will study the single greatest terrorist attack in American history, as well as the implications of national security policy shifts post-9/11. Week by week, we will work our way through the 9-11 Commission Report and its analysis and discussion of the events that led to 9/11 and, more importantly, how the nation has changed (and continues to change) in its aftermath. During the middle seven classes of the semester, we will also read Jack Goldsmith’s *Power and Constraint: The Accountability Presidency after 9/11*. Goldsmith’s work is engaging helps us understand how our government has changed post 9/11.

In the second part of each class, we will consider specific issues associated with the investigation and prosecution of national security cases by the Department of Justice. Here we will rely on a variety of materials, including caselaw, legal briefs, and other material.

Topics in each section will focus on the eternal and enduring clash between liberty and security and include: the role of lawyers in the Intelligence Community; the role of the Department of Justice in national security; the role of the Constitution and the Bill of Rights, the Foreign Intelligence Surveillance Act; military and civilian prosecutions of terrorists; the challenges of classified information; and the separation of powers.

Students will come away with a better understanding of both the practice and the principles of national security law, and they will develop their own ideas in a 20-page paper at the end of course.

GRADING & PARTICIPATION

Classroom participation is part of the course requirements and will comprise approximately 25% of your final grade. As the seminar tries to address complicated and controversial legal issues associated with the investigation and prosecution of national security cases, a free-flowing discussion of divergent views necessarily enriches the learning experience. Class participation is beneficial to everyone and helps everyone to “think like a lawyer.”

Everyone should develop the habit of applying facts to the law and legal principles, arriving at plausible analyses, and discussing those ideas with others. For those inclined towards policy development, students should understand that every policy choice creates consequences. Understanding how to reconcile the policy choices with the consequences, and “thinking like a lawyer,” are skills you will develop in your career.

To help encourage class participation and to help you to develop your own skills as a lawyer, each class I will assign one or two students to help lead the discussion during that class regarding the relevant chapter from the 9-11 Commission Report. I encourage the assigned student or students to prepare written “talking points” to help to facilitate the discussion during the first 15 minutes of class. The assigned student or students should also be prepared to participate in the discussion of the other materials.

Class attendance is obviously important and will be monitored. If you fail to attend class without sufficient explanation, your final grade will be impacted.

Final Paper:

The remaining portion of your grade in this class will be based on a final paper of no less than 20 pages. We will discuss substantive paper requirements, including subject matter, in the first two weeks of class. Final papers are due on Monday, May 12, 2025.

Papers must be double-spaced, in 12-point Times New Roman font, with one-inch margins, and with page numbers. Citations should be in footnotes. Please provide both a PDF version and a Word processing version of your paper. The electronic copy makes it easier to check for plagiarism.

Do not plagiarize. Plagiarism is the appropriation of the words, ideas, or thoughts of another and representation of them as one’s own original work. You must cite your sources not just when you quote them directly, but also when you paraphrase them or use their ideas. In some sections of your paper, this may require a citation for each sentence. If you plagiarize, you will fail and be disciplined.

A good paper will do more than simply describe or summarize the cases and articles concerning a certain area of the law. It will not just explain the two sides of an issue and conclude that you agree with one side of the reasons it expressed in its arguments. A good paper will contribute something new: a unique, creative theme or idea that will drive your paper. A good paper will also reflect first-rate editing (i.e., style, structure, organization, grammar, spelling, etc.) and citation technique and format, such as you would use in submitting a document to a court or to your employer.

Internet, Phone and Recording Policies: Please only use the internet for class purposes during class and turn your phone to “silent.” Recording of the class in any way is prohibited.

Guest Lecturers: From time to time, I may invite colleagues from different parts of the National Security community to join us during the course. These guest lecturers will have “real world” experience related to the assigned topics and will help to provide additional perspectives on the investigation and prosecution of national security cases. In the past, guests have included current and former senior government officials.

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COURSE SCHEDULE & ASSIGNMENTS

1. 01/21/2025 Introduction: September 11, 2001

- 9-11 Report Preface and Chapter 1: We Have Some Planes
- *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010)(what is “material support” for terrorism crimes)
- Material Support Statutes: 18 U.S.C. §§ 2339A & 2339B

2. 01/28/2025 National Security and the Role of Lawyers and the Law

- 9-11 Report Chapter 2: The Foundation of the New Terrorism
- [David Kris, Law Enforcement as a Counterterrorism Tool, Brookings Institute, 2010](#)
- [It’s Time to Admit That the Military Commissions Have Failed, Steve Vladeck, Lawfare, April 16, 2019.](#)
- *Stings & Entrapment: United States v. Cromitie*, 727 F.3d 194 (2d Cir. 2013)
- *Documents Provide Rare Insight into FBI’s Terrorism Stings*, [Wash. Post, 4/13/12](#)

3. 02/04/2025 Clash of Absolutes: Safety & Security v. Privacy & Liberty

- 9-11 Report Chapter 3: Counter-Terrorism Evolves
- Goldsmith, Power & Constraint: Introduction & Ch. 1
- *Olmstead v. United States*, 277 U.S. 438 (1928) (Brandeis’s dissent)
- *In re Directives of the Foreign Intelligence Surveillance Act*, 551 F.3d 1004 (2008)
- *United States v. Carpenter*, 138 U.S. 2206 (2018)
- Matthew Tokson, *A First Circuit Decision and the Future of Telephone Pole Camera Surveillance*, Lawfare, June 24, 2022.

4. 02/11/2025 FISA, Section 702, and CIPA

- 9-11 Report Chapter 4: Responses to Al Qaeda’s Initial Assaults
- Goldsmith, Power & Constraint: Ch. 2.
- *United States v. Muhtorov*, (10th Cir. December 8, 2021)
- [Executive Summary of OIG Report on Carter Page FISA Application and Other Aspects of the FBI’s Crossfire Hurricane Investigation](#)

5. 02/18/2025

- 9-11 Report Chapter 5: Al Qaeda Aims at the Homeland
- Goldsmith, Power & Constraint: Ch. 3.
- *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004)
- *Jaber v. United States*, 861 F.3d 241 (DC Cir. 2017)

6. 02/25/2025

- 9-11 Report Chapter 6: From Threat to Threat
- Goldsmith, Power & Constraint: Ch. 4
- *United States v. Moussaoui*, 382 F.3d 453 (4th Cir. 2004).
- *United States v. Duka*, 671 F.3d 329 (3rd Cir. 2011).

7. 03/04/2025

- 9-11 Report Chapter 7: The Attack Looms
- Goldsmith, Power & Constraint: Ch. 5.
- *Legality of the Use of Military Commissions to Try Terrorists*, 25 Op. O.L.C. 238 (2001)

NO CLASS ON 03/11/2025

8. 03/18/2025

- 9-11 Report Chapter 8: The System Was Blinking Red
- Goldsmith, Power & Constraint: Ch. 6
- The Quick Guide to CIPA (Classified Information Procedures Act), Justsecurity.org, July 10, 2023, Brian Greer
- *U.S. v. Yunis*, 867 F.2d 617 (DC Cir. 1989).
- *U.S. v. Abu Ali*, 528 F.3d 210 (4th Cir. 2008)(**ONLY READ INTRO FACTS AND SECTION VI OF THE OPINION ADDRESSING CIPA.**)

9. 03/25/2025

- 9-11 Report Chapter 9: Heroism & Horror
- Goldsmith, Power & Constraint: Ch. 7
- *U.S. v. Abdulmuttalab*, 2011 WL 4345243 (E.D.Mich September 16, 2011)
- *U.S. v. Khweis*, 971 F.3d. 454 (4th Cir. 2020)

10. 04/01/2025

- 9-11 Report Chapter 10: Wartime
- Goldsmith, Power & Constraint: Afterword
- *In Re: Terrorist Bombings of U.S. Embassies in East Africa*, 552 F.3d 157 (2d Cir. 2008).

11. 04/08/2025

- 9-11 Report Chapter 11: Foresight – and Hindsight
- *U.S. v. Hamidullin*, 888 F.3d. 62 (4th Cir. 2018)

12. 4/15/2025

- 9-11 Report Chapter 12: What to Do? A Global Strategy
- *U.S. v. ElSheikh*, 103 F.4th 1006 (4th Cir. 2024)
 - 18 U.S.C. § 1203
 - “Disarming Victor Bout,” New Yorker, August 27, 2014
 - “Inside the Prisoner Swap that Freed Brittney Griner,” New York Times, December 9, 2022.

13. 04/22/2025

- 9-11 Report Chapter 13: How to Do It? A Different Way of Organizing Government
- TBD