

Syllabus
Counterterrorism Law (202:388/488)
Fall 2012
Mon, Thurs, 12:00-1:20

Professor: Alec Walen, Ph.D., J.D.

Office: Seminary 3, Room 308, College Avenue Campus

Office Hours: After class (on the 3d floor of Lucy Stone Hall) or by appointment

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Primary Text: Jimmy Gurulé and Geoffrey Corn, *Principles of Counterterrorism Law* (West Pub, 2011) (“Principles”)

Course Description:

This course is designed to expose students to some of the rapidly evolving and highly contested legal and policy dimensions of confronting the threat of terrorism. We will start with a discussion of the definition of terrorism, and the legal frameworks that are brought to bear in confronting terrorism. We will then focus on the following broad themes: Detaining suspected terrorists; interrogating them to get information; and killing them in targeted strikes.

To put this description in context, I direct you to the Resources section of the course website, where you will find a statement of the official Learning Goals for Criminal Justice Majors with two additions by me.

This course will be offered, simultaneously, at two different levels. The 300-level course will have more of an emphasis on objectively knowledge and keeping up with the readings; the 400-level course will put more emphasis on writing a substantial research paper. But this is just a difference in degree of emphasis. The basic elements remain the same.

You must choose which version of the course you wish to take at the start of the course; you may not switch part way through.

Bases of Your Grade

388	488
<ul style="list-style-type: none">• Weekly quizzes: 25%• Midterm exam (short answer format): 25%• Presentation: 10%• Final paper: 20%• Commentary on other papers: 10%• Class participation: 10%	<ul style="list-style-type: none">• Weekly quizzes: 10%• Midterm exam (short answer format): 20%• Presentation: 10%• Final paper: 40%• Commentary on other papers: 10%• Class participation: 10%

Explanation of Components of Grade

The weekly quiz is designed to ensure that you’ve done the reading. It will be a small number of true/false or multiple-choice questions. If you’ve done the reading and paid attention, they should be fairly easy to do well on. You should bring paper and pen or pencil to class with you to write down your answers.

The midterm will also be in objective format, but it will be in short answer form. You will need to show that you can explain the law and ideas we've been studying in your own words.

As this is an upper level course, the goal is not only to introduce you to substantive information, but to develop your skills as a thinker, a writer and a presenter. Accordingly, you will not only take quizzes and a mid-term exam, you will also develop a policy-oriented thesis about some topic we cover. That is something you will present both in an oral presentation to the class, and in a paper to me.

The presentation will be done in the last few weeks of the semester. It will give you a chance to try out your ideas for your paper and get responses to them. The amount of time you will have to present will depend on how many people there are in the class. Powerpoint may be helpful, but is not required. More important is clarity of ideas, organization, and ability to answer questions from me and other class members.

Your paper will be a polished, substantiated (with footnotes) version of the thesis you presented to the class. For those in the 300 version of the course, it will represent 20% of your grade; for those in the 400 version, it will represent 40%. To reflect that difference, I will expect a different depth of analysis from students in the different levels of the course. If you are taking the 300 level, your paper should be between 2000 and 2500 words; if you are taking the 400 level, it should be between 4500 and 6000 words.

I will schedule a conference with each one of you, after the midterm, to review your paper writing, to make sure you're on the right track. To further help you write the best paper you can write, *and* to help you learn not only to write, but to give constructive criticism, you will edit each other's work in small groups of roughly five students. The groups will be divided so that the 300 level students are working together and the 400 level students are working together.

For this group editing to work, you must each turn in a rough draft to the other members of your group. Your drafts will be due two weeks before the end of the semester. Commenters will then have a week to read the drafts and offer editorial suggestions and constructive criticism. You will then have 11 days to revise your paper.

As a recipient of this criticism, you are to grade it as more or less helpful, on a 4 point scale. Your own grade as a critic/editor will be the average of your grades from your fellow students. I will post a sheet on giving comments on Sakai, and will review it in class.

Note, if you don't turn in a rough draft in a form sufficiently developed to receive useful criticism on time, you will lose 1/3 of a grade on your final paper. In addition, others in the group will have no obligation to comment on your paper. If anyone receives a paper in such rough shape that they think there is no point in commenting on it, I ask them to alert me; I will then judge whether the draft is comment worthy.

On the theme of deadlines, your final paper will be due 4 days after the last class. You will submit it on Sakai. Lateness penalty: it will lose 1/3 of a grade for each day late. Once you are a full week late, it will no longer be accepted.

Class participation will be judged by your engagement in general class discussion, and by your engaging the presenters in a respectful but critical manner.

This leads to one last issue: attendance. It is a prerequisite for doing well in the class. I will pass out a sign-up sheet each day at the start of class. If you are there on time, you should initial by your name. If you are late, it will be your responsibility to come up

to me after class and sign up—each lateness or early departure will count as a half a missed class. You are allowed 4 missed classes, no questions asked. But conserve them. Once you miss more than that, your final grade average will go down by 3 points (on a 100 point scale) for each miss after 4. If you miss 10 or more classes, you will automatically fail. And if you fail to attend on the day of your presentation, you will get a zero for it unless you have a legitimate excuse. Finally, if you expect to miss class, please use the University absence reporting website <https://sims.rutgers.edu/ssra> to indicate the date and reason for your absence. An email is automatically sent to me.

Tentative COURSE SCHEDULE (with readings to be done before each class):

Be aware that because this is a fast growing area of the law, the syllabus may change during the semester—changes will be posted on Sakai.

I have chosen not to put newspaper articles on the syllabus. But I have been collecting articles and will post them on Sakai as I think appropriate. In addition, anyone finding an article of interest should send a link to me and if I think it is clear and relevant, I will forward the link to the class.

All readings below that are not from *Principles* are posted on Sakai.

I: Background on Terrorism and Law

- 9/6: Defining Terrorism: Dycus et al, *National Security Law*, Chapter 17, pp. 465-473.
- 9/10: The Constitution and National Security, Shanor and Hogue, *National Security and Military Law in a Nutshell*, Chapter 1, pp. 1-34.
- 9/13: The Constitution and National Security, cont., plus customary international law and *jus cogens*, Dycus et al, *National Security Law*, Chapter 7, pp. 183-185; and Franck et al, *U.S. National Security Law*, Chapter 2, pp. 98-118.
- 9/17: Legal Basis for the Use of Force, *Principles*, Preface pp. iii-x, Chap. 1, pp. 3-15
- 9/20: Legal Basis for the Use of Force, cont. *Principles*, Chap. 1, pp. 15-25
- 9/24: Triggering the Law of Armed Conflict (LOAC), *Principles*, Chap. 2, pp. 27-44
- 9/27: Triggering the LOAC, cont. *Principles*, Chap. 2, pp. 45-64.

II: Detention

- 10/1: Detention of Suspected Terrorists, *Principles*, Chap. 4, pp. 95-107
- 10/4: Detention of Suspected Terrorists, cont., *Principles*, Chap. 4, pp. 107-114
- 10/8: Detention of Suspected Terrorists, procedural component, *Principles*, Chap. 4, pp. 114-123
- 10/11: Detention of Suspected Terrorists, procedural component, *Principles*, Chap. 4, pp. 123-136

III: Interrogation

- 10/15: Treatment of Detainees, *Principles*, Chap. 4, pp. 136-148
- 10/18: History of Interrogation and Legal Standards, Dycus et al, *National Security Law*, Chapter 27, pp. 759-774
- 10/22: Legal Standards, cont., International and Domestic Law, Dycus et al, *National Security Law*, Chapter 27, pp. 774-785
- 10/25: Interrogation Notes and Questions, Dycus et al, *National Security Law*, Chapter 27, pp. 785-792; Dycus et al, *National Security Law 2010-2011 Supplement*, pp. 280-291

10/29: Interrogation Notes and Questions, cont., Dycus et al, *National Security Law*, Chapter 27, pp. 792-804

11/1: **MIDTERM**

IV: Targeted Killing

11/5: LOAC and targeting terrorists, *Principles*, Chap. 3, pp. 65-81

11/8: LOAC and targeting terrorists, cont., *Principles*, Chap. 3, pp. 81-94

11/12: Jeff McMahan, "Targeted Killing: Murder, Combat or Law Enforcement," Chapter 5 in C. Finkelstein et al, eds. *Targeted Killings*.

11/15: Daniel Statman, "Can Just War Theory Justify Targeted Killing? Three Possible Models," Chapter 3 in *Targeted Killings*.

11/19: Amos Guiora, "The Importance of Criteria-Based Reasoning in Targeted Killing Decisions," in *Targeted Killings*.

11/20: No new reading—John Brennan speech in class.

V: Presentations

11/26: Draft papers due to your group

11/29:

12/3: Comments due to those who turned in draft papers

12/6:

12/10: Last class

12/14: Final paper due date