

Law 779

Prosecuting Terrorists in Article III Courts

Syracuse University College of Law
Assistant Professor William C. Snyder
Fall 2008

Course Description:

This three-credit course examines the use of civilian Article III courts to prosecute terrorists by following the logical course of a prosecution - legal basis, investigative techniques, litigation and sentencing issues. Major topics include: principles of counter-terrorist prosecutions, major legislative packages, definitions of terrorism, numerous selected criminal statutes, overview of the intelligence community, overview of federal law enforcement agencies, use and protection of national security information, Fourth Amendment framework, the Attorney General's Guidelines, U.S. agents acting abroad, electronic surveillance, interviews and interrogation, use of the grand jury, material witnesses, the Classified Information Procedures Act, physical security, witness protection, relevant United States Sentencing Commission Guidelines, litigation strategies and case studies. One of the goals of the course is to acquire experience working with statutes and regulations, in addition to the more traditional appellate court opinions used in most law school courses. This is primarily a lecture course and not a seminar.

Class Meeting Times:

Class meets on Mondays and Wednesdays from 2:30 to 3:45 p.m. in Room 175.

Required Reading:

The primary text is Abrams, *Anti-Terrorism and Criminal Enforcement* (3d ed., Thomson/West 2008). A packet of other materials will be available at the copy center. Still more materials will be provided in class. All materials other than the primary texts will be available on the course website at www.prosecutingterrorists.com. All required readings are essential. Supplemental readings will be available for anyone who wants to delve into a subject more deeply. Anything projected during class will be available on the course website.

The reading assignments appear to be long. This is a three-credit course which meets only twice per week. Thus, assignments are 50% longer than those for a three-credit course meeting three times per week. Many pages are from articles and can be read quickly, however. Students are cautioned to read original source materials – such as statutes and cases – very closely. Often, I will give guidance in class as to what can be skimmed and what needs to be read in detail. Avoid falling behind.

Grading:

This is an exam class. In-class participation will not be a specific percentage of the final grade. Classroom participation will be taken into account in determining a final course grade only under exceptional circumstances. Ordinarily, performance on the **anonymously-graded, closed-book, in-class final examination** will constitute 100% of the final course grade. Students are expected to act responsibly and professionally in preparing for and participating in class. In my experience, not including class participation in the grade actually promotes discussion in this type of course – perhaps because people are free from fear of sanction for expressing their views on controversial subjects or for displaying their ignorance. You will learn more if you participate, and that increased knowledge should shine through in your answers on the examination. I do call on students in class, but generally not for things that everyone should already know (such as the facts of a case or its procedural posture).

You may use computers or bluebooks to answer exam questions. The exam will include both essay and objective questions. The final examination will be on Tuesday, December 9, 2008 at 1:30 p.m.

Pursuant to Academic Rule J.12., five percent of the final grades in this course must be “A”, ten percent must be “A-“. If more than fifteen students are enrolled in the course (presently there are only thirteen), then the average of the grades must be in the “B” range (between a 2.900 and a 3.100), calculated without including grades of “C-“ or “D” or “F. This is the standard mandatory upper-class grading curve rule that applies throughout the College of Law.

Availability:

My office is Room 402E in the suite of offices occupied by the Institute for National Security and Counter-Terrorism. You are welcome to stop by anytime that my door is open. If you want to go over something in detail, however, please make an appointment. To schedule a meeting, please see me at class or contact me by email. In addition, you are encouraged to ask questions in class or by sending me an email. Also, we can arrange telephone conferences. My email is wcsnyder@syr.edu. My office telephone number is: (315) 443-6655 and my cellular telephone number is [REDACTED]. (Please use the cell phone sparingly.) I am very willing to work with you individually, either in person or electronically. I am willing to meet outside of the office, but generally the presence of a third party will be required. As a rule, I do not meet one-on-one with students outside of my office.

Attendance Policy:

Regular and punctual attendance is required. You might need to miss a class for reasons that are personal and none of my business. I will respect that. However, you are required to notify me (preferably by email) of an absence if at all possible, even if your notice is sent at the last moment before class. If you miss more than 3 class hours (each class meeting is scheduled for 1.5 hours), you will need to meet with me about whether there is a systemic problem interrupting your attendance. If you miss more than six class hours, I reserve the option to drop you from the course with the approval of Dean Tomas Gonzalez.

Do not avoid class because you are unprepared and fear being called upon to speak. The goal here is your education, and you will learn more by attending class unprepared than by avoiding class altogether. Just be sure that you catch up on the readings.

If you miss a class, I will assume that you make it up by listening to a recording of the lecture.

Syracuse University Policy on Religious Observances:

It is the policy of Syracuse University that no student should be refused admission or be expelled because he or she is unable to participate in any examination, study, or work requirement because of his or her religious holy day requirements. An opportunity will be provided to make up any examination, study, or work requirements that may have been missed because of an absence due to a religious observance providing that the instructor has been notified in writing one week before the absence. No fees will be charged to the student for the costs incurred by the University for such makeup work. In effecting this policy, the University agrees that no adverse or prejudicial effect should result to any student who avails herself or himself of its provisions.

Audio Recording:

All lectures will be digitally recorded. Audio files of all lectures will be posted on the course web site, barring technical glitches. In the past, I have provided CD's of the lectures to students upon request, and I expect to continue that practice. Typically, I use WMA format, but I can convert to MP3 or M4U or about anything you need. You are welcome to make your own recordings of class, if you prefer.

Use of Internet:

Live access to the Internet during classes is permitted and encouraged. Some documents and exhibits will be distributed only in electronic form, and accessing them during class will be helpful. A constantly updating syllabus, copies of all handouts, and many useful links will be available throughout the course at

www.prosecutingterrorists.com. Announcements and updates will be sent by email.

Feedback

Feedback and criticism by you to me is encouraged. It is too late for me to correct a problem if you wait until the course evaluation to tell me. A survey will be distributed during the first class and again at about the half-way point. The first will concern your background and goals for this course. The second will concern improvements or mid-course corrections. If you want to maintain anonymity, you can log into an email account I created at Yahoo and send a message to me at wcs@williamsnyder.com. I will have no way of knowing who logged into the account or from where. The username is "[REDACTED]" and the password is "[REDACTED]". You can sign in at <http://mail.yahoo.com/>. Of course, only one person can log in with that username at a time, so if you get an error message it may be that someone else is sending me feedback at the same time.

Note:

If you have a disability that may affect your performance in this class, please contact Assistant Dean Tomas Gonzalez in Suite 444 as soon as possible to discuss necessary accommodations.

Also, the Syracuse University Academic Integrity Policy holds students accountable for the integrity of the work they submit. Students should be familiar with the Policy and know that it is their responsibility to learn about instructor and general academic expectations with regard to proper citation of sources in written work. The policy also governs the integrity of work submitted in exams and assignments as well as the veracity of signatures on attendance sheets and other verifications of participation in class activities. Serious sanctions can result from academic dishonesty of any sort.

- William Snyder

Contact information:

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The syllabus will change. The matters we study are in flux. For example, the Attorney General has stated that new investigative guidelines are being prepared. If the guidelines are not publicly released in time, we will shorten the time we have allotted for them. There is no point in our learning the old guidelines in detail if we know that they are about to superseded.

Also, we have invited some guest speakers whose appearances are not yet confirmed. We are in discussions with a defense counsel, a prosecutor and a judge who have tried major terrorism cases. One has committed to attending but not yet chosen a date, one has indicated an intention to participate if possible, and one has not yet responded at all. These would be invaluable learning experiences for students, and we will adjust our syllabus to include these guests when and if they confirm a date.

I. Principles

Class 1 Principles of Counter-Terrorism Prosecutions

- Choice of forum
- Prosecute like old *La Cosa Nostra* – “spitting on sidewalk”
- Prevention v. past crimes
- Disruption through use of immigration, money laundering, and conspiracy law.

For class on 8/25/08, please read the handout that will be emailed to all registered course members, posted on the website, and available in Professor Snyder’s office.

II. The Law

Class 2 The Major Legislative Packages

- Omnibus Diplomatic Security & Antiterrorism Act
- Antiterrorism & Effective Death Penalty Act
- USA PATRIOT Act
- Homeland Security Act
- Intelligence Reform & Terrorism Prevention Act of 2004

For class 2 on 8/27/08, please read *Abrams* pp. 6-48.

Classes
3,4

Definitions of Terrorism

Selected Criminal Statutes

- 18 U.S.C. § 2332 Terrorism
- 18 U.S.C. § 2332a Weapons of Mass Destruction
- 18 U.S.C. § 2332b Acts of Terrorism Transcending National Boundaries
- 18 U.S.C. § 2332d Financial Transactions
- 18 U.S.C. § 2332f Bombing
- 18 U.S.C. § 2332g Missiles to Destroy Aircraft
- 18 U.S.C. § 2332h Radiological Dispersal Devices

For class 3 on 9/01/08, please read *Abrams* pp. 51-76.

For class 4 on 9/8/08, please read *Abrams* pp. 77-111.

Classes
5,6

Selected Criminal Statutes (cont.)

- 18 U.S.C. § 175c Variola Virus
- 18 U.S.C. § 2339 Harboring Terrorists
- 18 U.S.C. § 2339C Financing Terrorism
- 18 U.S.C. § 2339A Providing Material Support to Terrorists
- 18 U.S.C. § 2339B Providing Material Support to Designated Foreign Terrorist Foreign Organizations
 - *United States v. Sattar*
 - *Humanitarian Law Project v. U.S. Dep't of Justice*
 - *United States v. Hammoud*
 - *United States v. Al-Arian*
- 8 U.S.C. § 1189 Designation of Foreign Terrorist Organizations

For class 5 on 9/10/08, read *Abrams* pp. 112-152.

For class 6 on 9/15/08, read *Abrams* pp. 152-189.

Classes
7,8

Selected Criminal Statutes (cont.)

- Conspiracy law
- Aiding & Abetting, 18 U.S.C. § 2
- RICO
- Immigration law
- Money Laundering

For class 7 on 9/17/08, please read:

- Handout on conspiracy law.
- Handout on aiding & abetting.

- Note: these documents appear to be long, but much of them are string cites with which you need not be concerned. Just read the substantive law.
- Please read RICO statute.
- Please look over sample RICO terrorism indictment.

For class 8 on 9/22/08, please read:

- Handout on money laundering.
- Handout on immigration law.

III. Investigations

Classes 9,10 **Overview of Intelligence Community**

Overview of Federal Law Enforcement Agencies

National Security Information

- Sensitive Information and Sensitive Compartmented Information
- Security Clearances, Procedures & Penalties
- Intelligence v. Evidence

For class 9 on 09/24/08, please read:

- Handout on Intelligence Community.

Supplemental Material (not assigned):

- National Security Act of 1947 (created NSC, CIA, and DOD)
- Executive Order 12333--United States intelligence activities
- Intelligence Reform and Terrorism Prevention Act of 2004
- NSC 68

For class 10 on 9/29/08, please read:

- Handout on national security information.

Classes 11,12 **Tearing Down The Wall**

- *In re Sealed Case*
 - USA PATRIOT Act provisions on information sharing
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For class 11 on 10/01/08, please read:

- *In re Sealed Case*, 310 F.3d 717 (Foreign Int.Surv.Ct.Rev. 2002), available as a handout.

For class 12 on 10/06/08, please read:

- Banks, *And the Wall Came Tumbling Down: Secret Surveillance After the Terror*, 57 U. Miami L. Rev. 1147.

Classes 13,14 **Fourth Amendment Framework**

Attorney General's Guidelines

- Criminal Guidelines For Terrorism Organizations
- For National Security Investigations

U.S. Agents Acting Abroad

- *United States v. Verdugo-Urquidez*
- *United States v. Bin Laden*
- *United States v. Alvarez-Machain*
- *Sosa v. Alvarez-Machin*

For class 13 on 10/08/08, please read:

- The Attorney General's Guidelines On General Crimes, Racketeering Enterprise And Terrorism Enterprise Investigations.
- The Attorney General's Guidelines For FBI National Security Investigations And Foreign Intelligence Collection.
- *Abrams*, pp. 868-876.

For class 14 on 10/13/08, please read:

- *Abrams*, pp. 388-413 and 416-431.

Classes **Electronic Surveillance**
15,16,17

- Foreign Intelligence Surveillance Act (FISA)
 - Title III Wiretaps
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For class 15 on 10/15/08, please read:

- The actual Foreign Intelligence Surveillance Act as amended in 2008, available as a handout.

For class 16 on 10/20/08, please read:

- 2008 Amendments and *Abrams*, pp. 309-330.

For class 17 on 10/22/08, please read:

- Title III handout and *Abrams*, pp. 330-339.

Classes 18,19 **Interviews & Interrogation**

Use of Grand Jury

Material Witnesses

- 18 U.S.C. § 3144

For class 18 on 10/27/08, please read:

- Handout on interviews and interrogations and *Abrams* 459-476 and 482-505.

For class 19 on 10/29/08, please:

- Read *Abrams*, pp 512-545.
- Review information about grand juries from handout.

IV. Adjudication

Classes 20,21 **Classified Information Procedures Act**

- Title 18 U.S.C. Appendix 3
 - *United States v. Yunis*
 - *United States v. Rezaq*
 - *United States v. Fernandez*
 - *United States v. Jolliff*
 - *United States v. Bin Laden*
 - *United States v. Lee*
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For class 20 on 11/03/08, please read:

- *Abrams*, pp. 241- 263.

For class 21 on 11/05/08, please read:

- *Abrams*, pp 263-296.

Class 22

Physical Security

Witness Protection

United States Sentencing Commission Guidelines

Litigation Strategies

For class 22 on 11/10/08, please read:

- handout on witness security.
- United States Sentencing Commission Guidelines Manual 2005, Chapter One - Authority and General Application Principles (pp.1-8), and Section 2, Part M (pp. 255-268), and Sentencing Table (p. 377). The Manual is available online at <http://www.ussc.gov/2005guid/gl2005.pdf>.

V. Case Studies

Classes 23,24 **Case Study: *United States v. Moussaoui***

For class 23 on 11/12/08, please read:

- *Moussaoui* pleadings:
 - Indictment
 - protective order
 - memorandum of understanding
 - statement of facts
 - plea transcript
 - special verdict form part 1

For class 24 on 11/17/08, please read:

- U.S. Attorney's Manual sections on death penalty.

Class 25 **Case Study: *United States v. Hassoun [Padilla]***

For class 25 on 11/19/08, please read:

- Handout to be provided

Class 26 **Comparing Article III Courts with other options**

For class 26 on 11/26/08, please read:

- *Abrams*, pp. 738-743 and 788-814, and please skim 818-825 concerning military tribunals. Please note that we are not concerned with the legal authority for military tribunals -- that is a topic for National Security Law class. Rather, we are concerned with how they actually operate and how that operation differs from Article III courts.

Class 27 **Final thoughts and examination review.**

For class 27 on 12/01/08 will be a review for the examination.

December 9 **Examination**
