The hijacking and crash of three airplanes by extremist Muslims into the World Trade Center and Pentagon on 9/11/2001 was a pivotal event for American law, as well as our lives more generally. As a result of the attacks, the U.S. government declared its “war on terror.” Although not a war that was officially declared through the Congress, the war on terror has included a variety of American policies that many perceive to be outside of the normal bounds of our society’s general understanding of the rule of law. This is not without significant precedent in American history. The idea of a state of emergency has been used by American presidents and the military in the past to carry out acts or give powers to the Executive in the name of national security that would typically not be accepted by American citizens. The basic question for this class is to what extent can and should law constrain some of the general and specific acts of the Bush Administration which were undertaken in response to 9/11.

1. Which, if any, of the following are justifiable actions for the U.S. executive branch be able to do after 9/11/01? Why or why not?
   a. Read your emails and monitor your telephone conversations
   b. Invade other countries (Afghanistan, Iraq, Iran) because of the threat they post to Americans
   c. Kill known members of al-Qaeda and other Islamic extremist groups wherever they might reside
   d. Put on trial members of al-Qaeda and other Islamic extremist groups once they are captured, and use the death penalty if warranted
   e. Imprison without access to lawyers or other basic legal rights Americans and/or non-Americans who are deemed “enemy combatants”

2. The readings for today, “Above the Law,” and “A Prison Beyond the Law,” specifically look at the U.S. government’s post-9/11 policy of detaining foreigners in an American military facility at Guantanamo Bay, Cuba without providing them with basic legal rights. What do the articles suggest are the specific arguments that the Bush Administration used to justify this practice? Do you agree with these arguments? Why or why not? How did the U.S. Supreme Court respond to these arguments? Do you agree with what the Court did?

3. Whether or not you think that the Bush Administration was justified in American legal terms in its detention of foreigners, is it important one way or another that the American detentions were almost certainly violations of international law?
More generally, to what extent should international law constrain the actions of the US?

4. Justice Jackson argues in his famous dissent in the Korematsu case that courts are not effective at imposing limits on military actions during a perceived national emergency. To what extent do you agree with Jackson? To what extent do specific points in the Margulies article provide evidence for and against Justice Jackson’s view?