Course Description

This course surveys the framework of domestic laws—constitutional, statutory, and regulatory—that variously authorizes and constrains the U.S. government’s pursuit of national security policies, with an emphasis on developments in this area since 9/11. The course breaks this law into five sections: (i) the foundations of national security powers, (ii) intelligence collection, (iii) use of the criminal justice system—both civilian and military—as a national security tool, (iv) non-criminal interventions to prevent terrorism (including the interrogation or detention of captured persons, rendition, targeted killing, and financial regulations), and (v) miscellaneous issues – information security & obstacles to seeking remedies in national security cases.

Expectations & Evaluation

Exam: Your grade will be based on one final in-class exam, which will consist of both multiple choice and essay questions, and will be limited open book—you may refer to your class notes, any assigned reading material, and any study guides or outlines that you participated in generating.

The exam is scheduled for December 8, 2-5pm.

Participation: I may “adjust” your final grade up or down one “iteration” (e.g., B+ to A- or to B) based upon your class participation. In class, I will use a combination of cold calling and volunteers. I expect you to be prepared for every class. If you are unable to attend or to prepare for a particular class, let me know before class, preferably via e-mail, and I will refrain from calling on you that day. My presumption is that no student will need to avail him- or herself of this option more than 3 times during the semester.

Attendance: You are expected to attend all class sessions. If you fail to attend at least 80% of class meetings you will be in violation of both ABA and Law Center policy and may be dropped from the course. I will keep track of attendance by passing around a sign-in sheet at each class meeting. It is an honor code violation to sign in for another student. Late arrivals may be treated as absences.

Computer Policy: Use of laptops or other electronic devices is permitted for class-related purposes only. Violations of this policy will be treated as unpreparedness. Repeat offenders will be barred from bringing laptops to class.

Assignments & Syllabus

The casebook is National Security Law (Dycus et al. eds, 5th ed. 2011), along with the 2015-16 Supplement. Additional supplementary materials will be posted online or emailed to the class. I aim to cover each numbered topic on the syllabus in one class session. I reserve the right, however, to modify the syllabus. Students will be alerted to any syllabus changes via email and class announcement. The updated syllabus will also be posted online.
SYLLABUS

THE FOUNDATIONS OF U.S. NATIONAL SECURITY POWERS

1. Sources of & Limits on U.S. National Security Power
   [Tuesday, August 25, 2015]
   - The Class Syllabus (this document)
   - The U.S. Constitution [NSL 1313-19]
   - The Steel Seizure Case [NSL 24-51]

2. Sources of & Limits on U.S. National Security Power II
   [Thursday, August 27, 2015]
   - Dames & Moore v. Reagan [NSL 60-67, stop after note 4]
   - READING #1: The Authorization for the Use of Military Force
   - PODCAST: Radiolab, “60 Words,” Required: Introduction – 00:00-06:30 & Segment 2 – 23:40-40:25; the rest of the show is optional
     http://www.radiolab.org/story/60-words/
   - READING #2: Bob Corker, Congress Should Update the 9-11 Law on the Use of Military Force

********Note that the class scheduled for Tuesday, September 1 is cancelled. We will make it up on Friday, September 11.********

COLLECTING INTELLIGENCE

3. The Structure of the U.S. Intelligence Community
   [Thursday, September 3, 2015]
   - Executive Order 12,333 [NSL 451-61 (especially §§ 1.6, 1.7, 2.3, 2.4 & 2.9)]
   - READING #4: Executive Order 12,333 Problems
   - The “-INTS” [NSL 525–32]
   - READING #5: Dana Priest & William Arkin, Top Secret America

   [Tuesday, September 8, 2015]
   - United State v. U.S. District Court (Keith) [NSL 554-68]
   - In re Directives [Redacted] Pursuant to Section 105B of FISA [2015-16 Supp. 118-27]
   [Thursday, September 10, 2015]
   - **READING #6:** [Optional] The Foreign Intelligence Surveillance Act (FISA)  
   - United States v. Rosen [NSL 580-99]

   *******Note that Class 6 will meet on Friday, September 11 (time and location TBD):*******

   [Friday, September 11, 2015]
   - In re Sealed Case [NSL 599-607; 2015-16 Supp. 127]
   - **READING #7:** The 9/11 Commission Report [pp.71-80]
   - **READING #8:** A Review of the FBI’s Handling of Intelligence Information Related to the September 11 Attacks [Optional: pp.1-4] [Required: pp. 101-04; 181-192]

7. **Electronic Surveillance: The Terrorist Surveillance Program & the FISA Amendments Act**  
   [Tuesday, September 15, 2015]
   - The Terrorist Surveillance Program (TSP) [NSL 608-13]
   - [Optional]: Citizenfour (2015) (documentary about Snowden and the leaks)

8. **Third Party Records**  
   [Thursday, September 17, 2015]

   **Note:** There have been sweeping and fast-moving changes to the law in this area over the past several years. As a result, the reading assignment will often bounce back and forth between the casebook and the supplement. Let me know if you have questions about what is included in this reading assignment.

   - Smith v. Maryland [NSL 633-40]
   - Note 3 [NSL 667]; Note 4 [Starts 2015-16 Supp. 170, continues NSL 667-68]; Note 5 [NSL 668] & Addition to Note 5 [2015-16 Supp. 171]
9. **The Extraterritorial Fourth Amendment**
   [Tuesday, September 22, 2015]
   - Reid v. Covert [NSL 709–12]
   - United States v. Verdugo-Urquidez [NSL 712–20]
   - In re Terrorist Bombings of the U.S. Embassies in East Africa [NSL 720–30]

10. **Domestic (Non-electronic) Intelligence Collection**
    [Thursday, September 24, 2015]
    - FBI Intelligence-Collection [NSL 540–46]
    - READING #12: Fazaga Complaint [pp.1-2; 15-42]
    - READING #13-15: AP reporting about NYPD program [3 articles]
    - READING #16: [Optional] Attorney General Guidelines for Domestic FBI Operations

11. **“Screening” Terrorism**
    [Tuesday, September 29, 2015]
    - Watchlisting [NSL 686-88]
    - Ibrahim v. Department of Homeland Security [2015-16 Supp. 233-36 (Factual Background only); 242-62]

12. **Interrogation**
    [Thursday, October 1, 2015]
    - Legal limits on detainee treatment [NSL 907-09 (only “A. International & National Prohibitions on Torture”)]
    - READING #17: Bybee Memo 8-1-2002 [Intro; Part I; Part V]
    - READING #20: McCain, Bin Laden’s death . . .
    - READING #21: [Optional] Foreign Policy, The Torture Timeline
13. Civilian Prosecution
   [Tuesday, October 6, 2015]
   
   - First Amendment concerns: *Holder v. Humanitarian Law Project* [NSL 988-1006]
   - Classified evidence: *United States v. Lee* [NSL 1018-26]
   - Coerced evidence: *United States v. Ghailani* [NSL 1055-59]

14. Military Commissions & the Writ of Habeas Corpus I
   [Thursday, October 8, 2015]
   
   - *Ex Parte Milligan* [NSL 764-75]
   - *Ex Parte Quirin* [NSL 823-29]

15. Military Commissions & the Writ of Habeas Corpus II
   [Tuesday, October 13, 2015]
   
   - *Hamdan v. Rumsfeld* [NSL 1075-96]

16. Military Commissions & the Writ of Habeas Corpus III
   [Thursday, October 15, 2015]
   
   - **READING #23:** [Optional] Al-Iraqi charging document [pp.1-7, 12]
   - **READING #24:** [Optional] Op-ed: Greenhouse, *Fish or Cut Bait*

### The Use of Force Abroad

17. Presidential Authority to Use Military Force
   [Tuesday, October 20, 2015]
   
   - **READING #25:** “Harold Koh, Testimony – Libya and War Powers June 28, 2011”

18. Preventive Detention: U.S. Persons Within the Territorial United States I
   [Thursday, October 22, 2015]
   
   - Review AUMF
   - Review *Ex Parte Milligan*
   - *Hamdi v. Rumsfeld* [NSL 831-55]
19. Preventive Detention: U.S. Persons Within the Territorial United States II
[Tuesday, October 27, 2015]


20. Preventive Detention: Non-Citizens Outside the Territorial United States
[Thursday, October 29, 2015]

- Johnson v. Eisentrager [NSL 775-81]
- Boumediene v. Bush [NSL787-806]

21. The Scope of Detention Power
[Tuesday, November 3, 2015]

-READING #26: Al Maqaleh v. Gates
- Al Bihani v. Obama [NSL 876-87]
-READING #27: Al-Warafi v. Obama, Motion to Grant Petition for Writ of Habeas Corpus

22. Targeted Killing
[Thursday, November 5, 2015]

- Introduction [NSL 376-78]
- Targeted Killing [2015-16 Supp. 91-116]
-READING #28: NY Times Room for Debate – Targeted Killing

23. Information Security
[Tuesday, November 10, 2015]

- The Espionage Act [NSL 1262-78; 2015-16 Supp. 460 (note 3a)]
-READING #29: John Cassidy, Demonizing Edward Snowden
-READING #30: Jeffrey Toobin, Snowden is no Hero

24. Obstacles to Remedies for Injury Caused by U.S. Counterterrorism Policies I
[Thursday, November 12, 2015]

- Pleading Standards: Ashcroft v. Iqbal [NSL 742–53]
- The State Secrets Privilege: Mohammed v. Jeppeson Dataplan [NSL 142-55]
25. **Obstacles to Remedies for Injury Caused by U.S. Counterterrorism Policies II**
   [Tuesday, November 17, 2015]
   
   ➢ **Rejecting Bivens Claims: Arar v. Ashcroft** [NSL 953-71]
   ➢ **READING #31: Limits on Judicial Remedies: Kiyemba v. Obama (Kiyemba I)** [1-13]

26. **Spillover/Review**
   [Thursday, November 19, 2015]