

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.

Expectations & Evaluation

Exam: Your grade will be based on one final three-hour 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 5, 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, that you need a “pass,” 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. Each absence counts as one of your three permissible “passes.”

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, 6th ed. 2016). There is also a 2017 Supplement to the Dycus et al. casebook. 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.

University Resources

The Provost has requested that we ensure you are aware that Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS (www.uh.edu/caps) by calling 713-743-5454 during and after business hours for routine appointments or if you or someone you know is in crisis. No appointment is necessary for the “Let’s Talk” program, a drop-in consultation service at convenient locations and hours around campus. http://www.uh.edu/caps/outreach/lets_talk.html.

SYLLABUS

NSL: *National Security Law* (Dycus et al. eds, 6th ed. 2016)

- **Note:** In addition to the assigned readings, you may find helpful the “Summary of Basic Principles” that the casebook editors include at the end of each chapter.

“2017 Supp.”: *2017 Supplement, National Security Law* (Dycus et al. eds, 6th ed. 2016)

NATIONAL SECURITY: THE CONSTITUTIONAL FRAMEWORK		
#	Assignment	Reading
1.	August 22: Introduction to the Allocation of National Security Powers <ul style="list-style-type: none"> ✦ The Class Syllabus (yes, this document, especially page 1) ✦ Select Provisions of The U.S. Constitution ✦ <i>Youngstown Sheet & Tube Co. v. Sawyer</i> (The Steel Seizure Case) 	I will presume familiarity with p.1 of the syllabus. [NSL 7-10; 1419-25] [NSL 25-52]
2.	August 24: The President’s National Security Powers <ul style="list-style-type: none"> ✦ <i>The Prize Cases</i> ✦ <i>Little v. Barreme</i> ✦ The 2001 Authorization for the Use of Military Force – what did it authorize? 	[NSL 81-87] [NSL 89-95] [NSL 112 n.4; PODCAST: Radiolab, “60 Words,” http://www.radiolab.org/story/60-words/ Required: Introduction – 00:00-06:30 & Segment 2 – 23:40-40:25; the rest of the show is optional]
3.	August 29: Congress’s National Security Powers <ul style="list-style-type: none"> ✦ Declarations of War & Authorizations for the Use of Military Force ✦ The War Powers Resolution ✦ Harold Koh Testimony re: Libya Bombing Campaign 	[NSL 105-113] [NSL 349-62] Handout
4.	August 31: The Courts’ National Security Powers (or Lack Thereof) <ul style="list-style-type: none"> ✦ Justiciability ✦ <i>Bivins</i> Actions ✦ The State Secrets Privilege 	[NSL 135-44] [TBD] [NSL 161-74]

THE USE OF FORCE		
#	Assignment	Reading
5.	September 5: Use of force <ul style="list-style-type: none"> ✦ U.N. Charter, <i>only</i> Articles 2(4) & 51 ✦ Unilateral use of force ✦ ISIS in Iraq & Syria 	[NSL 255-56] [NSL 385-404] [NSL 404-09]
6.	September 7: Targeted Killing <ul style="list-style-type: none"> ✦ Introduction ✦ Targeting U.S. Citizens 	[NSL 418-20] [NSL 430-45]

INTELLIGENCE COLLECTION		
#	Assignment	Reading
7.	September 12: The Intelligence Community <ul style="list-style-type: none"> ✦ Introduction to Intelligence ✦ [Optional]: The “-INTs” & SIGINT processes ✦ Statutory authorities for intelligence activities ✦ Presidential authority for intelligence activities ✦ Post-9/11 Intelligence Reorganization 	[NSL 490-92] [NSL 492-99] [NSL 503-11] [NSL 517-29] [NSL 534-41]
**** NO CLASS on THURSDAY, SEPTEMBER 14		
8.	September 19: The Fourth Amendment’s National Security Exception? <ul style="list-style-type: none"> ✦ The <i>Keith</i> Case ✦ <i>In re Directives</i> 	[NSL 592-607] [NSL 607-14]
9.	September 21: The Fourth Amendment: Extraterritorial reach <ul style="list-style-type: none"> ✦ <i>Reid v. Covert</i> ✦ <i>United States v. Verdugo-Urquidez</i> ✦ <i>In re Terrorist Bombings</i> 	[NSL 221-24] [NSL 225-34] [NSL 621-32]
10.	MAKEUP CLASS – September 22: The Foreign Intelligence Surveillance Act (FISA) <ul style="list-style-type: none"> ✦ <i>United States v. Rosen</i> ✦ <i>In re Sealed Case</i> 	[NSL 633-53] [NSL 653-59]
11.	September 26: From the TSP to the FAA <ul style="list-style-type: none"> ✦ Terrorist Surveillance Program (TSP) ✦ The FISA Amendments Act (FAA) ✦ [Optional]: PBS Frontline, The United States of Secrets, Part One – The Program, ✦ [Optional]: <i>Citizenfour</i> (2015) (documentary about Snowden and the leaks) 	[NSL 667-69] [NSL 677-702 (thru n.4)] http://www.pbs.org/wgbh/pages/frontline/united-states-of-secrets/#part-one---the-progra
12.	September 28: Third Party Records <ul style="list-style-type: none"> ✦ The Third Party Doctrine ✦ <i>Jones v. United States</i> ✦ [Optional]: Kerr & Nojeim, <i>The Data Question</i> 	[NSL 707-20] [NSL 614-19; 720-21] Handout
13.	October 3: Bulk Collection <ul style="list-style-type: none"> ✦ *[Optional/Skim]: PPD-28 ✦ <i>ACLU v. Clapper</i> ✦ <i>In re Application of the FBI</i> ✦ USA Freedom Act ✦ [Optional] Waddell, <i>The NSA’s Bulk Collection is Over</i> 	[NSL 743-44; 495-98] [NSL 744-56] [NSL 756-64, 773-74] [NSL 765-68] Handout

DOMESTIC SECURITY		
#	Assignment	Reading
14.	October 5: Screening for Terrorists <ul style="list-style-type: none"> ✦ Border Searches ✦ Watch Lists 	[NSL 775-89 (thru n.4)] [NSL 792-806] (thru n.3)]
15.	October 10: Domestic Intelligence Collection & Profiling <ul style="list-style-type: none"> ✦ <i>Farag v. United States</i> ✦ Excerpt of the Church Committee Report ✦ Attorney General's Guidelines for the FBI ✦ *AP reporting about NYPD program [3 articles] ✦ *[Optional] This American Life, "The Convert" 	[NSL 808-21, 822 (nn.1 & 3)] [NSL 513-17] [NSL 532-33 nn.4-7] + Optional Handout Handouts http://www.thisamericanlife.org/radio-archives/episode/471/the-convert

DETENTION & INTERROGATION		
#	Assignment	Reading
16.	October 12: Detention of U.S. Persons <ul style="list-style-type: none"> ✦ <i>Ex parte Milligan</i> ✦ <i>Hamdi v. Rumsfeld</i> 	[NSL 831-34; 837-46] [NSL 898-915; 847-53]
17.	October 17: The Scope of the Suspension Clause <ul style="list-style-type: none"> ✦ <i>Boumediene v. Bush</i> 	[NSL 857-83]
18.	October 19: Detention of Non-U.S. Persons <ul style="list-style-type: none"> ✦ <i>Al-Bihani v. Obama</i> ✦ <i>Hedges v. Obama</i> ✦ GTMO Procedural Rules 	[NSL 923-32] [NSL 932-39] [NSL 940-46]
19.	October 24: Preventive Detention <ul style="list-style-type: none"> ✦ <i>Turkmen v. Hasty</i> ✦ <i>Ashcroft v. Al-Kidd</i> 	[NSL 961-79] [NSL 979-89]
20.	October 26: Interrogation <ul style="list-style-type: none"> ✦ Post 9/11 CIA Interrogation Methods ✦ Torture & International Law Standards ✦ Post-9/11 U.S. Interrogation Program ✦ *Mukasey, The Waterboarding Trail . . . ✦ *McCain, <i>Bin Laden's death</i> . . . ✦ [Optional] Bybee Memo, Abu Zubaydah Memo 	[NSL 993-1000] [NSL 1000-03; 1007-11] [NSL 1019-36; 1039-41; 1045-46] Handout Handout Handouts

PROSECUTING TERRORISM & WAR CRIMES		
#	Assignment	Reading
21.	October 31: Federal Crimes of Terrorism <ul style="list-style-type: none"> ✦ Treason & Sedition – <i>United States v. Rahman</i> ✦ Material Support for Terrorism – <i>Holder v. HLP</i> 	[NSL 1057-64] [NSL 1064-84, 1094]
**** NO CLASS on THURSDAY, NOVEMBER 2		
22.	November 7: Procedural Issues in Civilian Court <ul style="list-style-type: none"> ✦ <i>Miranda</i> Warnings ✦ Coerced Evidence ✦ The Classified Information Procedures Act 	[NSL 1095-1100] [NSL 1112-22] [NSL 1123-34]
23.	November 9: Military Commissions <ul style="list-style-type: none"> ✦ Review <i>Ex parte Milligan</i> ✦ <i>Ex parte Quirin</i> & <i>Hamdan v. Rumsfeld</i> ✦ <i>Al Bahlul v. United States</i> ✦ [Optional] Op-ed: Greenhouse, <i>Fish or Cut Bait</i> 	(NSL 837-46) [NSL 1161-68; 1175-76] [NSL 1176-93, 1194 <thru 3,="" n.="" n.6)]<br=""></thru> Handout

CLASSIFIED INFORMATION		
#	Assignment	Reading
24.	November 14: The Espionage Act & “Authorized” Leaks <ul style="list-style-type: none"> ✦ The Espionage Act, <i>United States v. Rosen</i> (redux) ✦ John Cassidy, <i>Demonizing Edward Snowden</i> ✦ Jeffrey Toobin, <i>Snowden is no Hero</i> 	[NSL 1363-82] Handout Handout
25.	November 16: Prior Restraints on Publishing Nat’l Security Information <ul style="list-style-type: none"> ✦ The “Pentagon Papers” Case 	[NSL 1383-1409]

26.	November 21: TBA/spillover/review	