

# **National Security Law (Law 384)**

**Fall 2022**

**Professors Michael Geffroy and Dennis M. Fitzpatrick**

## **Syllabus**

### **Class Schedule:**

Class meets Tuesdays and Thursdays from 6:05 to 7:30 p.m.

### **Contact Information and Availability:**

We will provide contact information on the first day of class. Do not hesitate to contact us with any class-related questions, concerns or with requests to schedule a meeting. While we will not have set office hours, we can meet by appointment, or before and after class. Please be mindful that our work schedules are frequently chaotic. It may take several hours or even overnight to return a call or email, but calls or emails are always returned.

### **Required Course Materials and Assignments:**

*National Security Law* (7<sup>th</sup> Ed.), Dycus, Banks, Raven-Hansen, Vladeck. Aspen Casebook Series. ISBN 9781543806793.

We may supplement the casebook with outside materials on occasion. The assignments may be adjusted from time to time given the pace of the course, and in consideration of certain subjects or topics that require more attention or less attention, as the case may be. Further information about the expectations for reading assignments will be provided during the first class.

### **Expectations, Classroom Participation and Attendance:**

This lecture course will survey the distribution of national security powers among the three coordinate branches of government. The subject matter covered in this course is by definition very broad so the goal is to provide the proper legal foundation for the numerous issues that arise within the national subject matter. We will be applying the law to facts and policy determinations that arise in the national security context. In other words, the goal is to develop the foundational skills to think and work like a national security lawyer. Throughout this course, students will demonstrate not only their knowledge of the laws and policies that govern the legality of war, protection of national security information, foreign intelligence surveillance, covert action, prosecution of terrorism suspects, and cybersecurity, among other

topics, but also how to apply those laws to given fact patterns – to think and work as a national security lawyer. The class will also include discussion of foreign intelligence collection and offensive counterterrorism operations, and will examine the legal analysis supporting these specific efforts and the policy questions raised by them. The class will also address the constant tension between national security and civil liberty and explore questions such as “Should national security trump civil liberties, or vice versa?”; “Does history inform our answers to these questions?”; and “What are the constitutional roles of the executive, legislative and judicial branches in the national security arena?” At the end of this course students will be able to apply the course information and skills to real world situations as well as learn the skills for taking and passing the state bar exam.

Classroom participation is part of the course requirements. Class participation is also the best way to improve or refine your skills to think like a lawyer. Everyone should get in the habit of reciting facts, applying the facts to the law, and arriving at a plausible analysis. This is a skill you will continue to develop for the remainder of your career.

Class attendance is obviously important and will be monitored. If you fail to attend class with some frequency without sufficient explanation, you may be precluded from taking the final exam.

### **Internet, Phone and Recording Policies:**

Use of the internet during class is only permitted for class related searches or access to class related material. Also, please “silent” or turn off your phones during class – “texting” or any other phone use is prohibited during class. Recording of the class in any way is prohibited.

### **Final Exam:**

The exam will take place during the exam period designated for this semester. We will provide further details as the semester draws to a close.

## CLASS ASSIGNMENTS

*(All References to Chapters (Ch.) and Pages (pps.) refer to the Class Textbook: Dycus, et al.)*

1.     08/23/2022           **Introduction to National Security Law**
  - Chs. 1-2, pps 1-22
  - Annual Threat Assessment of the U.S. Intelligence Community, Office of the Director of National Intelligence, March 8, 2022. (TWEN) or <https://www.dni.gov/index.php/newsroom/reports-publications/reports-publications-2022/item/2279-2022-annual-threat-assessment-of-the-u-s-intelligence-community>
  
2.     08/25/2022           **Separation of Powers: The President’s National Security Powers**
  - Ch. 3, pps. 25-43, 45-53 (Zivotkofsky II), 79-80 (summary)
  - *Youngstown* “Steel Seizure Cases”, 343 U.S. 579 (1952)
    - Majority Opinion: 582-589
    - Jackson Concurrence: 634-660 (Focus here – heart of the opinion)
    - Dissent: 667-710 (skim)
  
3.     08/30/2022           **Separation of Powers: Congress**
  - Ch. 4, pps. 81-100, 106-120, 126-127 (summary)
  
4.     09/01/2022           **Separation of Powers: The Courts**
  - Ch. 5, pps. 129-165
  
5.     09/06/2022           **International Law and Treaties**
  - Ch. 6, pps 169-200 (through Al-Shimari)

6. 09/08/2022 **Extraterritorial Reach of U.S. Law**
  - Ch. 7 pps. 201-235
  - Ch. 34 pps. 1070-1076
7. 09/13/2022 **The Right to Wage War: INTL Humanitarian Law**
  - Chs. 8-9 pps 241-257; 265-272; 286-291
8. 09/15/2022 **Using Force Abroad**
  - Ch. 11 pps 333-343; Ch 12 pps 347-371
9. 09/20/2022 **Targeting Terrorists**
  - Ch. 13 pps. 375-407
10. 09/22/2022 **Cyber Operations**
  - Ch. 14 pps. 413-433
11. 09/27/2022 **Terrorism Trials: Procedure and Evidence**
  - Ch. 35 pps. 1083-1118
12. 09/29/2022 **Intelligence Operations and Collection**
  - Ch. 17 pps. 487-502; pps. 505-513
13. 10/04/2022 **Intelligence Community**
  - Ch. 18 pps. 514-540
14. 10/06/2022 **Fourth Amendment and National Security**
  - Ch. 20 pps. 577-606
15. 10/13/2022 **Programmatic Elec. Surveillance for Foreign Intell**
  - Ch. 22 pps. 641-672

16. 10/18/2022 **The Third-Party Doctrine: Origins and Apps**
- Ch. 23 pps. 679-704
17. 10/20/2022 **The Collection and Use of Third-Party Records**
- Ch. 24 pps. 707-738
18. 10/25/2022 **Habeas Corpus: The Structure of the Suspension Clause  
The Scope of the Suspension Clause**
- Ch. 27 pps. 823-846
  - Ch. 28 pps. 847-861
19. 10/27/2022 **Habeas Corpus: The Scope of the Suspension Clause  
Military Detention of U.S. Persons**
- Ch. 28 pps. 861-871;
  - Ch. 29 pps. 875-906
20. 11/01/2022 **Military Detention of Non-U.S. Persons**
- Ch. 30 pps. 909-934
21. 11/03/2022 **Interrogating Terrorism Suspects**
- Ch. 32 pps. 973-978
  - Ch. 33 pps. 997-1021
22. 11/08/2022 **Criminalizing Terrorism and Its Precursors**
- Ch. 34 pps. 1031-1065
23. 11/10/2022 **IEEPA and Economic Sanctions Lecture**
- Reading Assignment TBD
24. 11/15/2022 **Obtaining and Protecting National Security Info**
- Ch. 39 pps. 1217-1251

25. 11/17/2022

**Censorship**

- Ch. 41 pps. 1299-1321

26. 11/22/2022

**NO Assignment: Course Review and Exam Preview.**

**END**