

Professor Nathan Sales
National Security Law
Fall 2009

Reading assignments. The casebook for this course is *National Security Law*, by Dycus, Berney, Banks & Raven-Hansen, along with the 2009-2010 supplement (which should be available in mid-August). I will also assign a number of supplemental readings throughout the semester. Fair warning: The casebook is organized somewhat counterintuitively, so we're going to jump around a bit.

Class participation. I expect you to be prepared to discuss the assigned reading in every class session. In effect, each student will be "on call" in each class. I reserve the right to adjust your grade up or down a half-step (e.g., A to A-minus, or B to B-plus) based on your preparation and contributions to class discussion.

Reaching me. I don't keep regular office hours, but I can meet virtually anytime. Please call or email to set up an appointment. My office is room 424, phone is (703) 993-4420, and email is nsales1@gmu.edu.

Course outline. The following outline is tentative and may change based on the speed with which we progress through the material. I will announce the reading assignments for upcoming classes at intervals throughout the semester. For the first class, please read assignment I.a. ("CB" refers to the casebook.)

- I. Introduction
 - a. Historical background (CB 1-26)
 - b. *Steel Seizure* and separation of powers (CB 27-58)
 - c. *Curtiss-Wright* and presidential powers (CB 59-67)
 - d. The judicial role (CB 133-56)

- II. Initiating hostilities
 - a. Congressional initiation of hostilities
 - i. Perfect vs. imperfect war (CB 93-101; 67-71)
 - ii. 9/11 Authorization for Use of Military Force
 - iii. Iraq Authorization for Use of Military Force (CB 303-13)
 - b. Presidential initiation of hostilities
 - i. Repelling attacks, reprisals, and targeted killings (CB 71-80; 255-64; 273-83)
 - ii. Rescue (CB 80-87; 264-73)
 - c. War Powers Resolution (CB 240-54; Miller Center report pp. 6-10, 21-26, 35-48)
 - d. Appropriations and ending hostilities (CB 111-14; 230-39)

- III. International law and national security
 - a. Treaties and international agreements (CB 157-82)
 - b. Geneva Common Article 3 (CB 764-74; 794-98; Reagan statement; *Hamdan*)
 - c. Customary international law (CB 182-98)

- IV. Detention, prosecution, and interrogation
 - a. Habeas corpus: *Milligan* and *Rasul* (CB 680-90; 878-82; 690-702)
 - b. Habeas corpus: *Boumediene*
 - c. Military detention of U.S. citizens (CB 720-55)
 - d. Military commissions (CB 714-20; 876-906)
 - e. Prosecuting national security crimes (CB 817-47)
 - f. Interrogation (CB 759-64; 785-804; Bybee memo pp. 1-15, 31-46; CIA interrogation memos; Obama executive order; Army Field Manual)
 - g. Extraordinary rendition (CB 804-16; CA2 *Arar* opinion)

- V. Surveillance
 - a. Introduction to intelligence (CB 339-68)
 - b. Electronic surveillance
 - i. The Fourth Amendment and national security (CB 477-505)
 - ii. FISA (CB 512-32)
 - iii. Terrorist Surveillance Program and FISA modernization (CB 548-56; law professors' letter; David Kris analysis)
 - iv. "The wall" and information sharing (CB 532-48; 634-39)
 - c. Third party records and data mining (CB 506-12; 557-87)
 - d. Surveillance and dissent (CB 430-47; *Laird v. Tatum*)

- VI. Using and protecting national security information
 - a. Classifying information (CB 87-92; 975-88)
 - b. Secret evidence (CB 848-56)
 - c. CIPA (CB 857-66)
 - d. Exculpatory information (CB 866-75)
 - e. State secrets privilege (CB 1037-50)
 - f. Leaks of classified information (CB 1051-81)
 - g. Publication of classified information (CB 1082-1111)