Syllabus – Law 384: National Security Law

George Mason University Law School – Fall 2016

Profs. Jamil N. Jaffer & Kiran S. Raj

Brief Course Description:

This lecture course will explore the distribution of national security powers amongst the three coordinate branches of government and engage students in understanding the laws and policies that govern the legality of war, military operations in wartime, intelligence collection, protection of national security information, foreign intelligence surveillance, covert action, special military operations, offensive counterterrorism operations, the detention, interrogation, and prosecution of terrorism suspects, including military commissions, the domestic use of the military, homeland security, cybersecurity, and other current issues in the national security area.

The class will also include discussion of materials recently declassified relating to foreign intelligence collection and offensive counterterrorism operations, as well as materials previously declassified, and will examine the legal analysis supporting these specific efforts and the policy questions raised by them.

Class Format:

Lecture class of up to 50 students; three credits; two classes per week, each an hour and fifteen minutes. Active participation in class discussions is required and students are expected to be fully prepared for each class session.

Grading:

Grades will be based on an in-class final exam and class participation consistent with the law school grading policy. We will also be taking class attendance, consistent with the law school policy.

Class Details:

Mondays and Wednesdays: 8:00 pm – 9:15 pm.

Exam Details:

The in-class exam for this class will be held on December 6 at 6 p.m.

Office Hours:

By appointment only.
Faculty Contact Information:

Jaffer Email: jjaffer@gmu.edu  Jaffer Phone: 202-247-8390
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Course Materials:

The core text for this class will be:


Additional course materials will be posted on TWEN. Please be sure to check TWEN regularly—at least once a week—for syllabus and course material updates.

Course Assignments:

Class 1 – Introduction to National Security Law (August 22)


Class 2 – Introduction to Separation of National Security Powers (August 24)

1. Dycus – pp. 25-52

Class 3 – National Security Powers of the President (August 29)

1. Dycus – pp. 53-60, 62-67, 73-85, 87-92, 102-103 (summary box only)

Class 4 – National Security Powers of Congress (August 31)

1. Dycus – pp. 105-114, 120-129, 132-133 (summary box only)

Class 5 – National Security Powers of the Courts (September 7)

1. Dycus – pp. 135-158, 161-174
Class 6 – International Law and Treaties (September 12)

1. Dycus – pp. 177-204, 208-217

Class 7 – Legality of War (Jus ad Bellum) (September 14)

1. Dycus – pp. 253-275

Class 8 – Law of War (Jus in Bello) (September 19)


Class 9 – Entering Into War I: Collective and Individual Self-Defense, Preemption, and Rescue (September 21)

1. Dycus – pp. 363-416 (note: this is a long assignment; but the text is fairly straightforward and should be a quick read, so please do read through the whole thing)

Class 10 – Entering Into War II: Peacekeeping and Humanitarian Interventions (September 26)

1. Dycus – pp. 467-485

Class 11 – The War Powers Resolution: Legislative and Executive Competition (September 28)

1. Dycus – pp. 349-362, 371-373, 375 (inset box only) 387, 396-397 (inset boxes only), 396-397 (inset boxes only).

2. August and September 2014 War Powers Reports of the President (TWEN)


Class 12 – Introduction to Intelligence Collection and Operations (October 3)

1. Dycus – pp. 489-90, 495-498, 501-502 (summary box only), 503-504, 511-517, 529-544,

2. Dycus – pp. 504-511 (skim), 518-529 (skim)

Class 13 – Covert Action and Sensitive Military Operations (October 5)

1. Dycus – pp. 499-501, 545-563, 569-590 (note: this is a long assignment; but the text is fairly straightforward and should be a quick read, so please do read through the whole thing)
2. Dycus – pp. 564-569 (skim)

Class 14 – Targeting Terrorists (October 11 (Tuesday))

1. Dycus – pp. 417-444

Class 15 – Access to Classified Information and National SecurityLeaks (October 12)

1. Dycus – pp. 1277-1283, 1349-1356, 1359-1360, 1366-1380, 1382 (summary box only), 1383-1399, 1403-1408

Class 16 – Case Study: Vietnam War (October 17)

1. Dycus – pp. 317-349

Class 17 – Guest Lecture (October 19)

2. TBD

Class 18 – U.S. Person Detention and Habeas in National Security Cases (October 24)


Class 19 – Non-U.S. Person Detention and Habeas in National Security Cases (October 26)

1. Dycus – 859-871, 874-883, 885-886 (summary box only), 924-929, 954 (summary box only), 955-959

Class 20 – Interrogation of Terrorism Suspects (October 31)

1. Dycus – pp. 993-998, 1007-1017, 1019-1035, 1052-1053 (summary box only)

Class 21 – Federal Prosecution of National Security Cases I (November 2)

1. Dycus – pp. 1057-1063, 1067-1081, 1094 (summary box only), 1100-1103, 1113-1120, 1122 (summary box only)

Class 22 – Federal Prosecution of National Security Cases II (November 7)

1. Dycus – 1123-1130, 1134-1144, 1147-1153, 1159 (summary box only)

Class 23 – Military Commissions (November 9)
1. Dycus – 1061-1066, 1168-1174, 1176-1192, 1196-1197 (summary box only)

Class 24 – Introduction to National Security Surveillance and FISA (November 14)


Class 25 – The STELLAR WIND PROGRAM – Bulk Metadata and Content Collection for Counterterrorism Surveillance (November 16)

1. Dycus – pp. 667-672, 677-678, 680-685, 705 (summary box only), 707-712 (5), 742-760 (18), 773-774 (summary box only)

Class 26 – Cyber Threats and Cyber Operations (November 21)

1. Prepared Statement of Jamil N. Jaffer on Foreign Cyber Threats: Small Business, Big Target (July 6, 2016), pp. 3-11
   http://smallbusiness.house.gov/uploadedfiles/7-6-16_jaffer_testimony.pdf (TWEN)

2. Dycus – pp. 445-466


Class 27 – Domestic Use of the Military (November 28)

1. Dycus – pp. 1229-1238, 1243-1256, 1258-1259

2. OLC Memorandum on the Authority for Use of Military Force to Combat Terrorist Activities within the United States (Oct. 23, 2001) – pp. 15-34 (TWEN)


Class 28 – Guest Lecture (November 30)