

## Syllabus – Law 384: National Security Law

Antonin Scalia Law School – Fall 2021  
Professor Darren M. Dick

### Learning Outcomes:

This lecture course will explore the distribution of national security powers amongst the three coordinate branches of government. Throughout this course, students will demonstrate not only their knowledge of 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, 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 materials recently declassified relating to 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.

### Class Format:

Lecture class of up to 50 students in hybrid format with some students in the classroom and some participating remotely; three credits; one class per week. **Active participation in class discussions is required** and students are expected to be **fully prepared** for each class session.

### Expectations & Evaluation:

One final three-hour in-class, closed book final exam, consisting of both multiple choice and essay questions, will account for 80 percent of your grade. The remaining 20 percent of your grade will be based on your class participation. If you are unable to attend or to prepare for a particular class, let me know before class, preferably via email, and I will refrain from calling on you that day.

We will also be taking class attendance, consistent with the law school policy. Students must attend class regularly.

When attending and participating in class virtually, you are expected to keep your camera on.

### **Class Details:**

Tuesdays: 6:05 pm – 9:00 pm.

### **Exam Details:**

To be confirmed.

### **Office Hours:**

By appointment only.

### **Faculty Contact Information:**

Prof. Dick Email: [ddick@gmu.edu](mailto:ddick@gmu.edu)

Prof. Dick Phone: 202-309-6668

### **Course Assignments:**

There is no casebook for this class. All assignments and supplementary materials will be posted online or emailed to the class. I reserve the right to add, subtract, or otherwise modify the syllabus. I will alert students of any syllabus changes via email and class announcement. An updated syllabus reflecting the modifications also will be posted online.

1. Class 1: August 24<sup>th</sup>
  - Intro to National Security Law –
    - Excerpts from Articles I, II, and III of the Constitution of the United States (TWEN)
    - Annual Threat Assessment of the US Intelligence Community, Office of the Director of National Intelligence, April 9, 2021 <https://www.dni.gov/files/ODNI/documents/assessments/ATA-2021-Unclassified-Report.pdf> (TWEN)
    - *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Read only the majority opinion and Justice Jackson's concurring opinion)
2. Class 2: August 31<sup>st</sup>
  - Separations of Power, the power of the President
    - *Little v. Barreme*, 6 U.S. (2 Cranch) 170
    - *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936)
    - *The Prize Cases*, 67 U.S. (2 Black) 635, 1863
3. Class 3: September 7<sup>th</sup>
  - Separations of Power, the role of Congress
    - *Bas v. Tingy*, 4 U.S. 37 (1800)

- *Greene v. McElroy*, 360 U.S. 474 (1959)
  - *Zivotofsky v. Kerry*, 576 U.S. \_\_\_ (20) (read only the majority opinion and Justice Scalia's dissent)
4. Class 4: September 14<sup>th</sup>
- Separations of Power, the role of the Courts
    - *Dellums v. Bush*, 752 F. Supp. 1141 (D.D.C 1990)
    - *Clapper v. Amnesty International USA*, 133 S. Ct 1138 (2013)
    - *El-Masri v. United States*, 479 F.3d 296 (4<sup>th</sup> Cir., 2007)
5. Class 5: September 21<sup>st</sup>
- International Law and Treaties
    - *Dames & Moore v. Regan*, 453 U.S. 654 (1981)
    - *Comm. of U.S. Citizens Living in Nicaragua v. Reagan*, 859 F.2d 929 (D.C. Cir., 1988)
    - *Al-Bihani v. Obama*, 619 F.3d 1 (D.C. Cir., 2010) (read only the concurring opinion of then-Judge Kavanaugh)
    - *Medellin v. Texas*, 552 U.S. 491 (2008)
6. Class 6: September 28<sup>th</sup>
- Jus ad Bellum and Jus in Bello
    - Chapter VII, Articles 39 – 43, 51, of the United Nations Charter, 59 Stat. 1031 <https://www.un.org/en/sections/un-charter/un-charter-full-text/>
    - Excerpt from the Department of Defense Law of War Manual (only the pages included in the excerpt under Course Materials on TWEN)
    - Authorization for the Use of Military Force, Pub. L. No. 107-40, 115 Stat. 224 (Sept. 18, 2001): <https://www.congress.gov/107/plaws/publ40/PLAW-107publ40.pdf>
    - Authorization for the Use of Military Force Against Iraq Resolution, Pub. L. No. 107-243, 116 Stat. 1498 (Oct. 16, 2002) <https://www.congress.gov/bill/107th-congress/house-joint-resolution/114/text>
    - Excerpts from The 1949 Geneva Conventions
7. Class 7: October 5<sup>th</sup>
- Us Person Detention and Habeas
    - *Hamdi v Rumsfeld*, 542, U.S. 507 (2004)
    - Jose Padilla – read BBC article: <https://www.bbc.com/news/world-us-canada-29131833>
  - Non-Us Person Detention and Habeas
    - *Rasul v. Bush*, 542 U.S. 466 (2004)
    - *Hamdan v. Rumsfeld*, 548 U.S. 537 (2006)
    - *Boumediene v. Bush*, 553 U.S. 723 (2008)
8. Class 8: October 19<sup>th</sup>
- 50 U.S.C. Ch. 33, War Powers Resolution
  - Policy Roundtable, The War Powers Resolution

- Process for Approving Direct Action vs. Terrorist Targets Outside the US and AOA
  - OLC Opinion on Awlaki Operation
9. Class 9: October 26<sup>th</sup>
- Intelligence
    - Excerpts from the National Security Act of 1947, as amended
  - Surveillance and FISA
    - Foreign Intelligence Surveillance Act 50 U.S.C. §§ 1801-1813
    - FISA Amendments Act, 50 U.S.C. §§ 1881a
10. Class 10: November 2<sup>nd</sup>
- Covert Action
    - Intelligence & Covert Action Excerpts from the National Security Act of 1947, as amended
    - Deeks, Covert Action and International Law Compliance
  - Interrogation
    - The Torture Act, 18 U.S.C. §§ 2340 & 2340A
    - War Crimes Act, 18 U.S.C. § 2441
11. Class 11: November 9<sup>th</sup>
- Cyber
    - Law of War Manual (Cyber-related excerpt)
    - 10 U.S.C. §§ 391 – 396
    - The Tallinn Manual 2.0
12. Class 12: November 16<sup>th</sup>
- Domestic Use of Military (posse comitatus and some police issues)
    - Read pages 467-481 of Posse Comitatus Article:  
<https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1668&context=nlj>
    - Read militarization article:  
<https://www.theatlantic.com/national/archive/2011/11/how-the-war-on-terror-has-militarized-the-police/248047/>
13. Class 13: November 23<sup>th</sup>
- Review.