



### FALL 2025 COURSE SYLLABUS (Tentative)

Course Number: 149-001  
Course Title: Ethics in National Security Law  
Credit Hours: 2  
Grading Mode: Letter grade  
Meeting Time(s): WED 6:05-8:05P  
Meeting Mode: ON CAMPUS  
Exam Time(s): DEC 10, 6:00P  
Exam Mode: ON CAMPUS  
Prerequisite(s): N/A  
Corequisite(s): N/A  
Instructor(s):  
CHRISTOPHER TOSCANO

Contact Info:  
TBD

Office hours are by appointment. Students may visit during office hours or contact me to coordinate an alternate meeting.

#### Reading(s) & Supplement(s):

Primary casebook: *National Security Law* (8th Ed.), Dycus, Banks, Berman, Raven-Hansen, Vladeck. Aspen Casebook Series, ISBN 979-8-8890-6290-5 (Digital ISBN 979-8-8890-6292-9).

All other course materials are cases or articles available on Westlaw or Lexis-Nexis.

#### Course Overview

This course is intended to provide students a broad exploration of the ethical concerns related to the theory and practice of national security law. Using the case study method and Socratic discussions in a seminar format, this course will prepare lawyers for professional roles in the executive departments, Congress, and the judiciary that involve the conduct of United States national security policy. It will also include substantial components of jurisprudence, ethical reasoning, and professional responsibility considerations. Specifically, it will further one of the JD Program's six key learning outcomes, namely "Professionalism and Professional Responsibility: Students will demonstrate the professional skills necessary for effective and ethical participation in the legal profession."

While prior coursework in national security law or professional responsibility may be helpful for students, there are no formal prerequisites for this class.

#### Course Learning Outcomes

By the end of the course students should have acquired/be able to:

- 1) A deeper understanding of the ethical challenges and potential conflicts of interest that confront practicing national security lawyers.
- 2) Knowledge of the jurisprudential, constitutional, statutory, and international treaty foundations for legal ethics in the national security arena.
- 3) Distinguish between the advocacy and advisory roles of national security lawyers.
- 4) Critically analyze national security policy decisions, directives, and actions for both legal violations and ethical concerns in order to properly safeguard the rule of law.

### Grading Policies

Grades will be based on an in-class final exam and class participation consistent with the law school grading policy. The exam score amounts to 90% of a student's final grade. The exam will consist of 20-25 MBE-style questions and two essay questions. Exam questions will be drawn from reading assignments and class discussion. 10% of a student's final grade is from class participation. Class attendance will be recorded, consistent with the law school policy.

### Classroom Policies

**Attendance:** Per AR 3-1.4, "maintenance of matriculation requires regular class preparation, participation and attendance, registration in the course of study required for the student's program (full-time or part-time), successive registration for each fall and spring term of each academic year until study is completed, and compliance with all other relevant requirements."

**Absences:** Per AR 4-1.1, "if a student is absent for any reason for more than 20 percent of the sessions of a course, the student is not eligible for credit in that course. A student who is not present for at least 75 percent of a session of the course is absent from that session."

### Class Format:

Exam-based course; up to 25 students; two credits; one two-hour class per week. **Active participation in class discussion is required and students are expected to be fully prepared for each class session, including completion of all assigned readings and a readiness for engagement.** Students are permitted one laptop computer for exam taking purposes. Additional laptop computers or any other electronic data storage devices are not allowed in an exam room, unless permitted by the course instructor's written exam instructions. Electronic textbooks (e-books) may be used during exams that are designated as open book by the instructor and the instructor allows textbooks to be used during the exam and allows access to a student's computer files during the exam (open exam).

This class will be held in person. In cases of emergency and/or inclement weather, this class may be held online.

### Participation & Preparation:

- 1) Students are expected to complete the assigned readings before each week's class and to come prepared to discuss them. Socratic dialogues will be employed by the instructor to facilitate learning outcomes. If unforeseen circumstances prevent a student from preparing for class, the student is nonetheless encouraged to attend and should inform the instructor in advance if they are not prepared to be called upon.
- 2) All students are expected to treat each other and the instructor with courtesy and respect. Ideas and theories are welcome and encouraged to be challenged, but such critiques should never take the form of personal attacks on another speaker within the classroom setting. The instructor

encouraged an academic environment wherein ethical and philosophical issues can be intellectually explored.

- 3) Subject to other possible Law School determinations, final examination question(s) will be distributed (or made accessible) in person on the day of the examination and students will be required to submit their written or electronically drafted responses within the prescribed time period. Further instructions will be provided in advance of the final examination date.
- 4) Students must use their MasonLive email account to receive important University information, including communications related to this class. The instructors will not respond to messages sent from or send messages to a non-Mason email address.

#### Use of Technology & AI:

*Strict Use Policy:* The use of generative AI tools is not permitted for any coursework in this course. Unauthorized use will be treated as a violation of academic standards.

#### Class Recordings:

Recording of class sessions by any means is prohibited. See AR 4-2.2: "Unless expressly permitted in writing by an instructor, no portion of a class session or an examination may be preserved by means of recording device (such as an audio recording device or a camera)."

## Course Schedule & Assignments

Please note that the assigned readings may be revised during the semester based on, among other factors, policies issued by the new Presidential Administration, current events, time, or availability of guest lectures.

**\*\*It is likely that the syllabus and readings will be updated over the course of the semester; therefore, please **regularly check your email for updates to the syllabus and readings.**\*\***

### Week 1 – The Basis for American National Security Ethics (43 pp.)

1. The Declaration of Independence (1776) – Preamble., (1 pp.)
2. The Articles of Confederation (1777) – Art. III-Art. VIII, Art. XIII, (5 pp.)
3. The United States Constitution (1787) – Art. II, Sec. 1, Cl. 5, (1 pp.)
4. *Little v. Barreme*, 6 U.S. (2 Cranch) 170 (1804). (9 pp.)
5. *Rumsfeld v. Padilla*, 542 U.S. 426 (2004). (27 pp.)

### Week 2 – Professional Responsibility in the National Security Context (85 pp.)

1. Dycus, “Introduction to National Security Law”, Chs. 1-2. (23 pp.)
2. Federal Oath of Office – 5 U.S.C. § 3331 (1 pp.)
3. Attorney Oath for the Commonwealth of Virginia – VA Code § 54.1-3903 (1 pp.)
4. ABA Model Rules of Professional Conduct – Rules 1.2, 1.6, 1.13, 1.16, 2.1, 2.3, 3.3, 4.1, 5.2, and 8.4 (12 pp.)
5. Jamil N. Jaffer, *The Ethics of National Security Lawyering: A Response to Jeh Johnson*, 31 Yale L. & Pol. Rev. 173, 173-83 (2012) (10 pp.)
6. Charles J. Dunlap, Jr., *Ethical Issues of the Practice of National Security Law: Some Observations*, 38 Ohio N. Univ. L. Rev. 1057, 1057-95 (2012) (38 pp.)

### Week 3 – Foreign and Domestic Surveillance (53 pp.)

1. Commission on CIA Activities Within the United States, *Report to the President* (June 1975) – Chs. 1-2, pp. 3-8 (6 pp.) (do not print full PDF – is very long)
2. John Napier Tye, *Meet Executive Order 12,333: The Reagan Rule that Lets the NSA Spy on Americans*, Wash. Post, pp. 1-4 (July 18, 2014) (4 pp.)
3. Charlie Savage, *Declassified Report Shows Doubts About Value of N.S.A’s Warrantless Spying*, New York Times (April 24, 2015) (2 pp.)
4. James P. Pfiffner, *Presidents Bush, Obama, and the Surveillance of Americans* in THE QUEST FOR LEADERSHIP: ESSAYS IN HONOR OF THOMAS E. CRONIN, Cambria Press (2015) – pp. 1-12 of PDF (12 pp.)
5. Office of the Director of National Intelligence, *The FISA Amendments Act: Q&A*, pp. 1-10 (Apr. 18, 2017) (10 pp.)
6. Clarke, Richard A. “Hostile State Disinformation in the Internet Age.” *Daedalus* 153, no. 3

(2024) (19 pp.)

#### Week 4 – Detention and Interrogation (56 pp.)

1. Geneva Convention (III) Relative to the Treatment of Prisoners of War, Common Article 3 (1949) (1 pp.)
2. Jay S. Bybee, *Memorandum for Alberto Gonzales, Counsel to the President, Standards of Conduct for Interrogation under 18 U.S.C. §§ 2340-2340A*, U.S. Department of Justice, pp. 1- 46 (Aug. 1, 2002) (46 pp.)
3. *Hamdan v. Rumsfeld*, 548 U.S. 557, 557-65 (2005) (9 pp.)

#### Week 5 – Espionage (97 pp.)

1. Department of Justice, *Russian Computer Hacker Sentenced To Three Years in Prison*, (Oct. 4, 2002) (1 pp.)
2. Cate Cadell, *U.S. soldiers arrested in scheme to send classified data, missile documents to China*, Washington Post (March 6, 2025) (3 pp.)
3. David Robarge, *Review: Fair Play: The Moral Dilemmas of Spying*, 51 Stud. in Intel. 1 (2007) (2 pp.)
4. *Scarbeck v. United States of America*, 317 F.2d 546 (D.C. Cir. 1963) (35 pp.)
5. Jared Beim, *Enforcing a Prohibition on International Espionage*, 18 Chi. J. of Int'l L. 647, 647-71 (2018) (24 pp.)
6. Dycus, "Extraterritorial Reach of U.S. Law", Ch. 7, pps. 213-40, Ch. 29 pps. 955-60 (32 pp.)
7. TBD guest speaker

#### Week 6 – Targeted Killings (67 pp.)

1. Dycus, "Targeted Killing," Ch. 12, pps 357-98 (41 pp)
2. The White House, Executive Order 12333 – United States Intelligence Activities ¶¶ 2.11 & 2.12 (Dec. 4, 1981) (19 pp.)
3. Charlie Savage, *How 4 Federal Lawyers Paved the Way to Kill Osama bin Laden*, New York Times (Oct. 28, 2015) (7 pp.)

#### Week 7 – Just War (69 pp.)

1. Seymour M. Hersh, *The Massacre at My Lai*, The New Yorker (Jan. 15, 1972) (25 pp.)
2. Mark Hull, *Vengeance Is Not Our Goal: A Conversation with Nuremberg Prosecutor Benjamin Ferencz*, War on the Rocks (Aug. 5, 2014) (7 pp.)
3. Dycus, "International Terrorism and Related Crimes," Ch. 29, pps 929-66 (37 pp)

#### Week 8 – Weapons of Mass Destruction (51 pp.)

1. *Legality of the Threat or Use of Nuclear Weapons*, International Court of Justice (July 8,

1986) (45 pp.)

2. Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (1993) [review briefly]
3. International Committee of the Red Cross, *Chemical and Biological Weapons*, (Apr. 8, 2013) (3 pp.)
4. J. M. Appel, *Is All Fair in Biological Warfare? The Controversy over Genetically Engineered Biological Weapons*, 35 *Journal of Medical Ethics* 429, 429-32 (2009) (3 pp.)

#### Week 9 – International Norms (77 pp.)

1. Charter of the United Nations, Ch. 14 (1945) (1 pp.)
2. Statute of the International Court of Justice, Art. 38 (1945) (1 pp.)
3. United Nations General Assembly, *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States* (Dec. 9, 1981) (3 pp.)
4. *Military and Paramilitary Activities In and Against Nicaragua* [*Nicaragua v. United States of America*], International Court of Justice (27 June 1986) [selected excerpts] (54 pp.)
5. United Nations General Assembly, *Text of the Draft Conclusions on Peremptory Norms of General International Law (jus cogens)*, International Law Commission Reports, Doc. A/74/10, at Section C.1, ¶ 56, pp 142-147 (2019) (5 pp.)
6. Karčić, Hikmet. "History of Ethnic Relations in Bosnia and Herzegovina." In *Torture, Humiliate, Kill: Inside the Bosnian Serb Camp System*, University of Michigan Press, 2022. Pp 1-13 (13 pp.)

#### Week 10 – Treaty Law (35 pp.)

1. Constitution of the United States of America, Art. 6 (1787) (1 pp.)
2. Convention on the Law of Treaties (1969) (31 pp.)
3. Naturalization Treaty Between the United States and Bavaria (1868) (3 pp.)

#### Week 11 – Cyber Operations (32 pp.)

1. Charles Dunlap, *Some Reflections on the Intersection of Law and Ethics in Cyber War*, 27 *Air & Space Power J.* (2013) (22 pp.)
2. Edward Barrett, *On the Relationship Between the Ethics and the Law of War: Cyber Operations and Sublethal Harm*, 31 *Eth. & Int'l Aff.*, (2017) (10 pp.)

#### Week 12 – Artificial Intelligence and National Security Law (28 pp.)

1. James H. Moor, *Why We Need Better Ethics for Emerging Technologies*, 7 *Eth. & Inform. Tech.* 111, 111-19 (2005) (8 pp.)
2. Sean Kanuck, *Humor, Ethics, and Dignity: Being Human in the Age of Artificial Intelligence*, 31 *Eth. & Int'l Aff.* 3, 3-12 (2019) (9 pp.)
3. Uk, YANG, and Asan Institute for Policy Studies. "New Arms Race: Rising Demand,

Renewing Supply.” *ASAN INTERNATIONAL SECURITY OUTLOOK 2025: Renewal*. Asan Institute for Policy Studies, 2024. (11 pp.)

### Week 13 – Ethical Oversight and Accountability (33 pp.)

1. War Powers Resolution, 50 U.S.C. §§ 1541-1550 (1973) (3 pp.)
2. James S. Van Wagenen, *A Review of Congressional Oversight: Critics and Defenders*, 97 Stud. in Intel. \_\_, (Apr. 14, 2007) (3 pp.)
3. Freedom of Information Act, 5 U.S.C. § 552 et seq. [selected excerpts] (7 pp.)
4. Congressional Research Service, *Intelligence Community Whistleblower Protections*, (Sept. 23, 2019) (15 pp.)
5. The White House Situation Room, *Transcript: Telephone Conversation with President Zelenskyy of Ukraine* (July 25, 2019) (5 pp.)

## [Student Resources](#)

[Antonin Scalia Law School Academic Regulations](#)

[GMU Common Course Policies Addendum](#)

[Mason Square Services](#)

[Mason Square Police](#)

Van Metre Hall, Room 110

Emergency - Dial 911

Escort Services - 703-993-8070

Dispatch – 703-993-2810

[Student Support and Advocacy Center \(SSAC\)](#)

Mason Square Sexual Assault Services:

Van Metre Hall, Room 222D

703-993-8186

**Notice of Mandatory Reporting of Sexual Assault, Sexual Harassment, Interpersonal Violence, and Stalking:**

As a faculty member, I am designated as a “Non-Confidential Employee,” and must report all disclosures of sexual assault, sexual harassment, interpersonal violence, and stalking to Mason’s Title IX Coordinator per University Policy 1202. If a student wishes to speak with someone confidentially, please contact one of Mason’s confidential resources, such as Student Support and Advocacy Center (SSAC) at 703 -380-1434 or Counseling and Psychological Services (CAPS) at 703 -993-2380. Students may also seek assistance or support measures from Mason’s Title IX Coordinator by calling 703 -993-8730, or emailing [titleix@gmu.edu](mailto:titleix@gmu.edu).

[Mason Square Clinic](#)

Van Metre Hall, Room B102

703-991-2831

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