Course Description**:** This course surveys the framework of domestic laws—constitutional, statutory, and regulatory—that variously authorizes and constrains the U.S. government’s pursuit of national security policies. Covered subjects include the use of force, surveillance, criminal prosecution of terrorism and war crimes, detention, and information security.

Learning Outcomes: Through and as a result of this course, students will: (1) develop an understanding of substantive law applicable in various national security contexts; (2) engage in legal analysis and reasoning—both written and oral—related to legal issues raised by U.S. national security policy; (3) evaluate the strength of legal arguments presented on either side of national security debates; and (4) assess the efficacy and implications of various doctrines applied in U.S. courts.

I. Class Policies and Information

**Reading Materials**:

* The casebook is *National Security Law* (Dycus et al. eds, 7th ed. 2020), ISBN-13: 978-1543806793; ISBN-10: 1543806791.
* Each assignment that is not in the 7th edition of *National Security Law* will be posted on Blackboard in the Handouts folder.

**Assignments**:

* Each numbered item on the syllabus is designed to be covered in one class session.
* There might be times, however, when one topic spills over into the beginning of the next class.
* I reserve the right to modify the syllabus. I will notify students of any modification far in advance of any changes.

Attendance

* This is an in-person class. I expect you to be present and prepared for every class. I will use a combination of cold calling and volunteers. If you are unable to attend or to prepare for a particular class, let me know ***before class***, preferably via e-mail, and I will refrain from calling on you that day. My presumption is that no student will need to avail him- or herself of this option more than ***3 times*** during the semester; any student who does so will not be penalized but will be ***ineligible*** for the participation bump.
* If you fail to attend at least 80% of class meetings, you will be in violation of Law Center policy and may be dropped from the course.

## Assessment

* **Exam:** Your grade will be based on *one final three-hour exam*, administered via *Electronic Bluebook*, which will consist of both multiple choice and essay questions, and will be *open book*—you may refer to your class notes, any assigned reading material, and any study guides or outlines that you participated in generating. The exam is scheduled for December 7, 9a-12p
* **Participation**: I may “bump” your final grade up/down one “iteration” (*e.g.*, B+ to A- or to B) based upon your class participation.

**Preparation**: Unless it is labeled as “optional” on the syllabus, you are expected to read all of the material indicated on the syllabus for each class session.

Chosen Names/Preferred Pronouns: I will gladly honor requests to use alternate names or gender pronouns—including non-binary ones such as they/them/theirs. Please advise me of your preference early in the semester so that I may make appropriate changes to my records.

Computer Policy**:** Use of computers or other electronic devices is permitted for class-related purposes only. Violations of this policy will be treated as unpreparedness.

II. University Policies and Information

**COVID-Related Information**:

* If you are experiencing any COVID-19 symptoms that are not clearly related to a pre-existing medical condition, do not come to class. Please see [Student Protocols](https://www.uh.edu/covid-19/guidelines-protocols/diagnosis-symptoms/#students) for what to do if you experience symptoms and [Potential Exposure to Coronavirus](https://www.uh.edu/covid-19/guidelines-protocols/index#exposure) for what to do if you have potentially been exposed to COVID-19.
* Students are encouraged to visit the University’s [COVID-19](https://www.uh.edu/covid-19/information-for/students/) website for important information including diagnosis and symptom protocols, on-campus testing, and vaccine information. Please check the website throughout the semester for updates.
* Data suggests that vaccination remains the best intervention for reliable protection against COVID-19. Students are asked to familiarize themselves with pertinent [vaccine information](https://www.uh.edu/covid-19/information/#vaccines) and to consult with their health care provider. The University strongly encourages all students, faculty and staff to be vaccinated.

**Reasonable Academic Adjustments/Auxiliary Aids**: The University of Houston complies with Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990, pertaining to the provision of reasonable academic adjustments/auxiliary aids for disabled students. In accordance with Section 504 and ADA guidelines, UH strives to provide reasonable academic adjustments/auxiliary aids to students who request and require them. If you believe that you have a disability requiring an academic adjustments/auxiliary aid, please contact [the Justin Dart Jr. Student Accessibility Center](https://uh.edu/accessibility/) (formerly the Justin Dart, Jr. Center for Students with DisABILITIES).

**Recording of Class**: Students may not record all or part of class, livestream all or part of class, or make/distribute screen captures, without advanced written consent of the instructor. If you have or think you may have a disability such that you need to record class-related activities, please contact the [Justin Dart, Jr. Student Accessibility Center](https://uh.edu/accessibility/). If you have an accommodation to record class-related activities, those recordings may not be shared with any other student, whether in this course or not, or with any other person or on any other platform. Classes may be recorded by the instructor. Students may use instructor’s recordings for their own studying and notetaking. Instructor’s recordings are not authorized to be shared with *anyone* without the prior written approval of the instructor. Failure to comply with requirements regarding recordings will result in a disciplinary referral to the Dean of Students Office and may result in disciplinary action.

**Title IX/Sexual Misconduct**: Per the UHS Sexual Misconduct Policy, your instructor is a “responsible employee” for reporting purposes under Title IX regulations and state law and must report incidents of sexual misconduct (sexual harassment, non-consensual sexual contact, sexual assault, sexual exploitation, sexual intimidation, intimate partner violence, or stalking) about which they become aware to the Title IX office. Please know there are places on campus where you can make a report in confidence. You can find more information about resources on the Title IX website at <https://uh.edu/equal-opportunity/title-ix-sexual-misconduct/resources/>.

**University Resources:** Counseling and Psychological Services (CAPS) can help students who are having difficulties managing stress, adjusting to the demands of a professional program, or feeling sad and hopeless. You can reach CAPS ([www.uh.edu/caps](http://www.uh.edu/caps)) by calling 713-743-5454 during and after business hours for routine appointments, or if you or someone you know is in crisis. No appointment is necessary for the “Let's Talk” program, a drop-in consultation service (<http://www.uh.edu/caps/outreach/lets_talk.html>) available at convenient times.

**\*\*Caveat**: Due to the changing nature of the COVID-19 pandemic, please note that the instructor may need to make modifications to the course syllabus and may do so at any time. Notice of such changes will be announced as quickly as possible through email and in-class announcements.

**III. Reading Assignments**

**NSL**: ***National Security Law* (Dycus et al. eds, 7th ed. 2020)**

***Supplement***: Excerpts from *2022-23 National Security Law Supplement* PDF

**Handout #x**: Posted in the Handouts folder on Blackboard

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| National Security & The Separation of Powers | | | | | |
| # | **Class Date & Topic** | | | | **Assignment** |
| 1  1..d | **Monday, August 22:**  **Introduction to National Security Powers**   * The Class Syllabus * Select Provisions of The U.S. Constitution * The Spectrum of the President’s National Security Powers | | | | Yes, this document, esp. p. 1-2.  [**NSL 1325-1331**]  [**NSL 25-52** (through Chief Justice Roberts’ dissent)] |
| 2. | **Wednesday, August 24:**  **The President’s National Security Powers**   * The Prize Cases & *Little v. Barreme* * The President’s Emergency Powers | | | [**NSL 55-60; 63-68**]  [**NSL 68-80 *only* notes 1, 2, 6, 7, + *Supplement* p. 2**] | |
| 3. | **Monday, August 29:**  **Congress’s Natl Security Powers**   * Declarations of War & AUMFs * The 2001 Authorization for the Use of Military Force – what did it authorize? * The War Powers Resolution * Harold Koh Testimony re: Libya | [**NSL 81-89; 483-84 n.1**]  Podcast: Radiolab, “60 Words,” <http://www.radiolab.org/story/60-words/>  **Required**: Intro – 00:00-06:30 & Segment 2 – 23:40-40:25; otherwise **optional**]  [**NSL 89-99**]  [**Handout #1**] | | | |
| 4. | **Wednesday, August 31:**  **The Courts’ National Security Role**   * Intro to Justiciability * Legislative Standing * Causes of Action * The State Secrets Privilege | | [**NSL 129-32**]  [**NSL 139-40 (note 5) + *Supplement* 8-12: *House of Rep. v. Mnuchin***]  [**Supplement** **12-28: *Egbert v. Boule***]  [**NSL 154-161 + *Supplement* 28-29**] | | |

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| The Use of Force | | | | | | | | |
| # | | **Class Date & Topic** | | **Assignment** | | | | |
| 5 | | **Wednesday, September 7:**  **Use of force**   * U.N. Charter, ***only*** Articles 2(4) & 51 * Unilateral use of force * Syria and Beyond | | | [**NSL 241-244**]  [**NSL 347-60**]  [**NSL 361-67 *only* notes 4, 6 + *Supplement* 47-49**] | | | |
| 6 | | **Monday, September 12:**  **Targeted Killing**   * Introduction * Targeted Killing Standards * Targeting U.S. Citizens | | [**NSL 375-377**]  [**NSL 392-99 notes 2, 5, 6, 8, 9 + *Supplement* 50-52; 53, 55-56 (Soleimani case study section on *applying U.S. law*)**]  [**NSL 400-11**] | | | | |
| 7. | | **Wednesday, September 14:**  **Cyber Operations**   * Cyber weapons & int’l law * Cyber weapons and domestic law & Information warfare | | | [**NSL 413-416; *Supplement* 56-57;**  **NSL 416-27**]  [**NSL 427-28; *Supplement* 58;**  **NSL 429-34 + *Supplement* 58-61**] | | | |
| Intelligence Collection | | | | | | | | |
| 8 | | **Monday, September 19:**  **The Intelligence Community**   * Introduction to Intelligence * **[Optional]**: The “–INTs” & SIGINT processes * Statutory authorities for intelligence activities * Presidential authority for intelligence activities | | | | [**NSL 489-92 + *Supplement* 67**]  [**NSL 493-99**]  [**NSL 505-513**]  [**NSL 519-35 (*skim EO 12,333* + *Supplement* 67-69**] | | |
| 9. | | **Wednesday, September 21:**  **A National Security Exception to the Fourth Amendment?**   * The *Keith* Case & In re Directives * *In re* Terrorist Bombings of U.S. Embassies in East Africa | | | | | | [**NSL 577-99**]  [**NSL 600-06**] |
| 10 | | **Monday, September 26:**  **The Foreign Intelligence Surveillance Act**   * United States v. Rosen | | | | | | [**NSL 611-31 + *Supplement* 72-76**] |
| 11 | | **Wednesday, September 28:**  **Programmatic Foreign Intelligence Surveillance**   * Terrorist Surveillance Program (TSP) * The FISA Amendments Act (FAA) | | | | [**NSL 641-42; *optional* 642-50**]  [**NSL 650-77; *Supplement* 76-77**] | | |
| 12 | | **Monday, October 3:**  **The Fourth Amendment & The Third Party Doctrine**   * Origins * Carpenter v. United States * Applications of the Third-Party Doctrine | | | | [**NSL 679-84**]  [**NSL 684-700 + *Supplement* 78**]  [**NSL 701-05**] | | |
| 13 | | **Wednesday, October 5:**  **Collection of Third-Party Data**   * Targeted Collection of Third-Party Data * Bulk Collection of Third-Party Data | | | [**NSL 707-22**]  [***Supplement* 79-81**]  [***Supplement* 82-93**] | | | |
| 14 | | **Monday, October 10: Domestic Intelligence Collection**   * Excerpt of the Church Committee Report * Attorney General’s Guidelines for the FBI * Domestic Investigations & the First Amendment * **[Optional]** *Raza v. New York*, FAQs & Ruling on Proposed settlement * **[Optional podcast episode]** This American Life, “The Convert” | | | | | [**NSL 516-18**]  **[Handout #2]**  [**Handout #3**]  [**Handout #4 & #5**]  <http://www.thisamericanlife.org/radio-archives/episode/471/the-convert> | | |

|  |  |  |  |
| --- | --- | --- | --- |
| Domestic Security | | | |
| 15 | **Wednesday, October 12: Security at the Border**   * Border Searches * The Trump Administration Travel Bans | | [**NSL 743-59 (*only* nn. 4, 6, 7) + *Supplement* 93-94**]  [**NSL 794-818 + *Supplement* 95-96**] |
| 16 | **Monday, October 17: Domestic Emergency Response**   * Disaster & Emergency Response Authorities | | [**NSL 1161-65 (thru n. 2) + *Supplement* 168-69**]  [**NSL 1166-72 + *Supplement* 171-77**] [**NSL 1175-80 + *Supplement* 177-85**] |
| 17 | **Wednesday, October 19:**  **Domestic Role of the Military**   * Domestic Use of the Military * **[Optional podcast]**: Lawfare, *How to Fix the Insurrection Act* | [**NSL 1185-96 + *Supplement* 190-92**] [**NSL 1203-07 + *Supplement* 192-200**]  <https://www.lawfareblog.com/lawfare-podcast-how-fix-insurrection-act> | |

|  |  |  |  |
| --- | --- | --- | --- |
| Detention & Interrogation | | | |
| 18 | **Monday, October 24: Law-of-War Detention of U.S. Persons**   * Introduction * *Hamdi v. Rumsfeld* | [**NSL 823-26**]  [**NSL 886-98; 837-43; 898-902**] | |
| 19 | **Wednesday, October 26: The Suspension Clause Abroad**   * The Scope of the Suspension Clause * The Requirements of the Suspension Clause * **[Optional podcast series]**: Radiolab, *The Other Latif*, about a particular Guantanamo detainee | [**NSL 847-863**]  [**NSL 863-72**]  <https://podcasts.apple.com/podcast/1500048571> | |
| 20 | **Monday, October 31: Interrogation**   * + Post 9/11 CIA Interrogation Methods   + Torture & International Law Standards   + **[Optional]** Post-9/11 U.S. Interrogation Program   + Senate Intelligence Committee Study   + Recent developments   + **[Optional]** Bybee Memo, Abu Zubaydah Memo   + **[Optional]** *The Report* (staring Adam Driver) (dramatizing the SSCI’s investigation of the CIA’s interrogation program) | [**NSL 973-80**]  [**NSL 980-83; 987-991**]  **Optional**: [**NSL 997-1002**]  [**NSL 1002-18**]  [***Supplement* 104-05**]  [**Optional** **Handouts**]  **Available on Prime Video (free with Prime Subscription)** | |
| Prosecuting Terrorism & War Crimes | | | |
| 21 | **Wednesday, November 2:**  **Federal Crimes of Terrorism**   * Introduction to Terrorism Crimes * Domestic Terrorism – *United States v. Stone* + Seditious Conspiracy * Material Support for International Terrorism – *Holder v. HLP* | | [**NSL 1031-32**]  [**NSL 1042-47** + ***Supplement* 106-09; 129-32; 154-60**]  [**NSL 1048-65**] |
| 22 | **Wednesday, November 9:**  **Procedural Issues in Civilian Court**   * Presentment & *Miranda* Warnings (*U.S. v. Khattaleh*) * Coerced Evidence * The Classified Information Procedures Act | [**NSL 1083-90**]  [**NSL 1090-96**]  [**NSL 1096-07**] | |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| National Security Information | | | | |
| # | | **Class Date & Topic** | **Assignment** | |
| 24 | | **Monday, November 14:**  **The Espionage Act & “Authorized” Leaks**   * *Optional*: Kahn, The Law of Classified Information: A Primer * The Espionage Act, *United States v. Rosen* (redux) * **[Optional podcast]**: Advisory Opinions, *Mar-a-Lago Search Part of Espionage Act Investigation* (the Espionage Act and the search of President Trump) (note: this one is informative but kind of dry…) | | [**Optional** **Handout**]  [**NSL 1234-51; *Supplement* 202-06**]  <https://podcasts.apple.com/us/podcast/mar-a-lago-search-part-of-espionage-act-investigation/id1490993194?i=1000576219390> |
| 25 | | **Wednesday, November 16:**  **Access to National Security Information**   * The Media: The “Pentagon Papers” Case * Congress * **[Optional podcast series]**: NPR GroundTruth, *The Whistleblower: Truth, Lies, Dissent, and the Legacy of Daniel Ellsberg* (the story of Pentagon Papers leaker Dan Ellsberg) | | [**NSL 1299-1314**]  [***Supplement* 211-30**]  <https://www.npr.org/podcasts/512643364/ground-truth> |