Instructor       Andrew G. McCabe  
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Office Hours    Available for in person and remote by request. Schedule via email.

Overview

National security policy begins with law. We will examine the legal framework that both empowers and restrains intelligence, military and law enforcement authorities in national security. Through reading and discussion, we will apply those authorities to policy debates and decisions on topics like covert action, encryption, electronic surveillance, detention, interrogation, criminal prosecutions and military commission trials. Special guests will augment our discussions by relating their own experiences in the national security policy trenches. At the conclusion of this course, each student will compose a policy options paper, outlining the facts and law at issue, a range of potential options, and a final policy recommendation.

Learning Outcomes

1. Students will demonstrate an understanding of US national security law by being able to summarize and compare the sources of legal authority exercised by the president, the military, intelligence, and law enforcement agencies.

2. Students will analyze competing interests in national security policy debates by deconstructing and comparing the equities of opposing elements of the national security enterprise.

3. Students will be able to communicate their knowledge of national security legal authorities and competing policy interests by writing a proposed policy decisional document, which will state the facts, outline the law, describe policy options, and make a preferred policy recommendation.

Course Requirements
Students must read all assignments, attend all classes, and actively participate in class. Completing written answers to questions based on the weekly reading is one element of class participation and will ensure every student is ready to join in an active discussion each week.

Evaluations

Student evaluations will be comprised of the following:
- 10% Written answers to questions based on weekly reading, due 24 hours before class each week, no longer than one page typed, single spaced.
- 10% Class participation
- 30% Mid-term evaluation: timed, at home, essay-style test in which students will answer questions of their choice from a list of options.
- 50% Final evaluation: NSC-style options paper on the topic of your choice. 10-20 pages, due on the last day of final exams.

Required Texts


Schedule (Note: readings and agenda subject to change)

Class 1: Introduction to National Security Law
Tuesday, January 26, 2021

As an introduction to the sources of national security legal authority, we will discuss Articles I, II and III of the Constitution of the United States and the pivotal supreme Court case of *Marbury v. Madison*. I will explain my thoughts on grading, class participation, and goals for the semester.

Reading:

1. The Constitution of the United States
   [https://www.archives.gov/founding-docs/constitution-transcript](https://www.archives.gov/founding-docs/constitution-transcript)

   [https://supreme.justia.com/cases/federal/us/5/137/#tab-opinion-1958607](https://supreme.justia.com/cases/federal/us/5/137/#tab-opinion-1958607)


Class 2: The National Security Enterprise
Tuesday, February 2, 2021

How does national security policy get made and who makes it? We examine the process and the major players to better understand the unique legal authorities they bring to the table and the equities they seek to protect.

Readings:


**Class 3: Military Commissions**
Tuesday, February 9, 2021

We examine the interplay of three branches of government in national security law - constitutional, statutory and international - that impact national security policy regarding military commissions and the post 9/11 world.

Reading:

1. *Ex Parte Quirin*, 317 U.S. 1 (1942)
   [https://supreme.justia.com/cases/federal/us/317/1/#tab-opinion-1937489](https://supreme.justia.com/cases/federal/us/317/1/#tab-opinion-1937489)

2. Savage, *Power Wars*, Chapters 4 and 7

**Class 4: The 9/11 Attacks**
Tuesday, February 16, 2021

The terrorist attacks on 9/11 served as a catalyst to change the way intelligence and law enforcement entities approach not only their own mission, but their interactions with each other. The transition to greater interagency coordination, as called for by the 9/11 Commission, challenged preexisting policies and practices regarding intelligence sharing and the “blending” of the counterterrorism mission space. We will review some of the major findings of the 9/11 commission as a jumping off point to terrorism issues later in the semester.

Reading:

1. *The 9/11 Commission Report* (Chapters 1, 12 and 13)

**Class 5: Criminal Authorities, Part 1: A New National Security Tool**
Tuesday, February 23, 2021
After 9/11, the criminal justice system became an integral piece of the national security framework. We will examine the strengths, weaknesses and limitations of criminal law as a national security tool.

Readings:

1. Savage, *Power Wars*, Chapter 1


### Class 6: Criminal Authorities, Part 2: Domestic Terrorism

Tuesday, March 2, 2021

We examine the historically overlooked, but increasingly more prominent national security threat of domestic terrorism and discuss whether or not the United States should consider a new legal regime to target what FBI now considers the most dangerous terrorist threat we face today.

Readings:

1. Mary McCord and Jason Blazakis, “*A Road Map for Congress to Address Domestic Terrorism*” Lawfare, February 27, 2019.

2. Robert Chesney, “*Should We Create a Federal Crime of ‘Domestic Terrorism’?*” Lawfare, August 8, 2019
   [https://www.lawfareblog.com/should-we-create-federal-crime-domestic-terrorism](https://www.lawfareblog.com/should-we-create-federal-crime-domestic-terrorism)

### Class 7: Mid Term Evaluation

Tuesday, March 9, 2021

### Class 8: Covert Action

Tuesday, March 16, 2021

We examine covert action - the President’s hazy authority to do things in secret. We will debate the pros and cons of a tool intended to hide the involvement of the United States in national security operations abroad.

Readings:

https://www.lawfareblog.com/legal-basis-mughniyah-killing

3. Michael Devine, Covert Action and Clandestine Activities of the Intelligence Community: Selected Definitions in Brief Congressional Research Service, June 14, 2019

Class 9: Foreign Influence Operations
Tuesday, March 23, 2021

Foreign influence operations have jumped from the background of national security policy to the front page of America’s political reality. We will examine Russia's use of “active measures” to interfere in the 2016 US presidential election, and the national security policy decisions made during that attack on our democracy.

Readings:


Class 10: Surveillance as a National Security Tool
Tuesday, March 30, 2021

We examine the authorities under which the United States conducts physical and electronic surveillance against national security threats and discuss the policy conflicts embedded in the debate of security versus privacy.

Readings:

1. Savage, Power Wars, Chapters 5 and 11

2. Department of Justice, Office of Inspector General, Review of Four FISA Applications and Other Aspects of the FBI’s Crossfire Hurricane Investigations, December 2019, Executive Summary, pages i-xix.

Class 11: Encryption and Lawful Access
Tuesday, April 6, 2021

Is encryption a vital tool to secure American’s privacy or a threat to national security? Does it enable hostile nation states, terrorists, spies and criminals to threaten us in ways we cannot
detect? Do technology platforms and providers have an obligation to provide lawful access to law enforcement and intelligence entities, or does that open a door to our foreign enemies? Is the choice between privacy and security a legitimate balancing act or a false trade off? Who should make that choice?

Readings:


2. Tim Cook, A Message To Our Customers, February 16, 2016


**Class 12: Killing the Enemy**
Tuesday, April 13, 2021

Few issues are more controversial than the government’s decision to eliminate a threat to national security by killing the enemy. We examine the rules under different legal systems - law enforcement, warfare and covert action - for the intentional killing of security threats.

Readings:


   https://www.lawfareblog.com/obamas-term-end-thoughts-targeted-killing
Class 13: Detaining and Interrogating the Enemy  
Tuesday, April 20, 2021

Mitigating national security threats frequently relies on detaining the enemy and exploiting his intelligence through interrogation. In the years following 9/11, the United States changed its policies and practices around detention and interrogation in significant ways. We will examine these decisions and how this fierce debate still impacts policy choices.

Readings:


2. Jeffrey F. Addicott, The Legality of Dual Interrogations for High-Value Terrorists, Georgetown Journal of International Affairs, January 25, 2018  


Class 14: National Security and a Free Press  
Tuesday, April 27, 2021

We conclude our exploration of national security law and policy with a discussion of the role of the press in reporting on issues that impact key policy decisions.

Readings:

1. Savage, Power Wars, Chapter 8


Tuesday, May 9, 2021: final evaluation paper due