

**BOSTON UNIVERSITY**  
**THE FREDERICK S. PARDEE SCHOOL OF GLOBAL STUDIES**

**IR526 NATIONAL AND HOMELAND SECURITY LAW**  
**Spring Semester, 2016**  
**Syllabus**

Professor John D. Woodward, Jr.  
Office: 156 Bay State Road, Room 301  
Office Hours: Tuesdays, 1600-1730; Wednesdays, 1400-1530 or by appointment  
E-mail: [jdwjr@bu.edu](mailto:jdwjr@bu.edu)  
Office Telephone: (617) 353-8978.  
Mobile Telephone: (703) \_\_\_\_\_

Introduction: Welcome to IR 526. The major aim of this course is to investigate leading topics in National and Homeland Security Law, blending a strong policy-oriented focus with a rich historical approach, combined with the application of basic legal reasoning. This course is taught by an attorney who will use traditional pedagogical techniques in which students will read caselaw and engage in the Socratic Method. The class, however, will devote considerable efforts trying to understand the broader policy, political, and socioeconomic implications of the topics we study. We will explore many of these topics by analyzing historical examples, starting with our examination of President Abraham Lincoln's approach to secession and rebellion.

This course is specifically tailored for students in international affairs, political science, and other related disciplines. Students do not need any legal background to do well in this course. For students wanting a more intensive legal approach, they should look to the impressive offerings taught at the BU Law School.

Course Overview:

This course will examine National Security and Homeland Security Law as the delicate balance between, on one side of the scale, the State's fundamental requirement for security and public safety juxtaposed against the citizenry's civil liberties, on the other side. We begin with a careful study of the Constitution and the separation of national security and homeland security powers among the three branches of the federal government. We then examine specific topic areas, drawing heavily on case studies and leading legal decisions. As we undertake this analysis, we will consider, *inter alia*, the balance (and how the balance shifts) between secrecy and fairness; secrecy and transparency; civil liberties and the acquisition of intelligence, and related areas.

Learning Objectives: Upon successful completion of this course, students will:

- Understand leading principles of national and homeland security law and related terms of art,
- Understand the historical perspective concerning national and homeland security threats to the US and the application of national and homeland security law to deal with those threats,

- Describe the roles of the three federal branches of government with respect to national and homeland security, and
- Explain how national and homeland security requirements may be reconciled with the US legal system.

Course Requirements: Students will participate in a(n):

- Quiz, worth 10 percent of the total grade, scheduled in-class for TBD,
- Midterm exam, worth 20 percent of the total grade, scheduled in-class for TBD,
- Two 4-5 page policy papers assessing the impact of legal cases on national security and homeland security policies and operations, worth 20 percent of total grade
- Final exam, worth 30 percent of the total grade, scheduled for TBD, and,
- Ongoing class discussion and contributions to in-class exercises, worth 20 percent of the total grade. This course's seminar format is designed to encourage the exchange of ideas and opinions.

Academic Conduct: Students are responsible for understanding and following the provisions of the CAS Academic Conduct Code and Policies. Copies of the Code are available here:

- <http://www.bu.edu/academics/policies/academic-conduct-code/>
- GRS: <http://www.bu.edu/cas/students/graduate/grs-forms-policies-procedures/academic-discipline-procedures/>

Cases of misconduct must be reported to the Dean's office. All class members are expected to maintain the highest standards of academic honesty and integrity. You are expected to provide citations in papers for all quotations, paraphrases, and ideas taken from any source other than your own original thoughts. Boston University has very strict standards for intellectual integrity, and punishment for plagiarism is severe, and can include permanent expulsion from the university.

Professor's Pedagogical Approach:

- *Socratic Method:* Students should come to class prepared and ready to discuss the topic(s) and readings. During class, I will regularly call on students at random and ask them questions. As one trained in the law, I regularly use the Socratic Method to help guide class discussions. Learning through the Socratic Method may seem a little daunting at first; however, it is a superb way to synthesize our intellectual efforts. For those interested in viewing the Socratic Method in action, please see the film, *Paper Chase* (1973) in which first-year law students try to survive their contracts course taught by the indomitable Professor Charles Kingsfield.
- *Absence from Class:* A student who, for whatever reason, is forced to miss class should advise me prior to that class and arrange to acquire class notes and otherwise ensure learning continuity.
- *Lack of Academic Preparation:* A student who, for whatever reason, is not prepared for class should advise me prior to that class so that I do not inadvertently call on him/her during that class and cause embarrassment for the student and myself. If you are not prepared for class, the world will not end. Please come to class regardless but let me know ahead of time that you are not prepared.

- *Semper Gumby* (“Always Flexible”): As this course covers many topics over several centuries, I ask students to be flexible, nimble, and adaptable in that I reserve the right to “fine tune” or make “course corrections” to the reading list. For example, I may replace some readings with others. I will notify students in advance of any modifications to the syllabus. Similarly, I may invite guest speakers to share their insights with the class. In the event that their schedules (or ours) change, we will adjust accordingly. Students taking this course should at all times maintain a flexible attitude and a hearty sense of humor.
- *Accessibility*: You should feel free to contact me at your convenience to discuss any topic. Unscheduled telephone calls to the instructor’s mobile number should be reserved for time sensitive matters. However, I check my emails messages throughout the day and respond in a timely manner. You are welcome to visit me in my office.

Publications Required for Purchase: The readings assigned to each session are indicated in the following pages. These readings will provide essential background for the course sessions and class discussions. I encourage you to be adventurous and see what interesting readings (from reputable sources) you can find for yourself. It is recommended that you purchase the following books:

- There is only one required text for this course, Stephen Dycus *et al*, *National Security Law*, (New York, Aspen Law, 5<sup>th</sup> Ed. 2011). [Hereafter referred to as Text.] This book is available in hardcover only. The “list price” is \$\_\_\_\_. The textbook is expensive but it is comprehensive and up-to-date. Please make certain you obtain the 5th Edition, 2011 version. This textbook should be available at the BU Bookstore.
- The readings assigned to each session are indicated in the following pages. These readings will provide essential background for the course sessions and class discussions. I encourage you to be adventurous and see what interesting readings (from reputable sources) you can find for yourself.

General Reading Assignments: When you are assigned a legal case to read, you should prepare a student brief for the case, which will help you immensely in class discussion. I recommend that your student brief cover the following areas:

1. Title and Citation for the Case
2. Procedural History
3. Facts of the Case
4. Issues Presented
5. Holding
6. Legal Reasoning
7. Other Separate Opinions
8. Analysis/Significance

I will also provide student brief preparation instruction in class. For a general discussion of student brief preparation, please *see, e.g.*, Lloyd Sealy Library, John Jay College of Criminal

Justice, “How to Brief a Case,” available at <http://www.lib.jjay.cuny.edu/research/brief.html> (accessed September 17, 2015) and 4LawSchool, “How to Brief a Case” available at <http://www.4lawschool.com/howto.htm> (accessed September 17, 2015).

**Understanding This Reading List and Class Schedule:** In the schedule below, I have listed assigned readings for each of the class sessions. Most of the required readings are from the textbook, Stephen Dycus *et al*, *National Security Law*, (New York, Aspen Law, 2011). For readings not in the textbook, I have placed them on the electronic blackboard (and, in some cases as a convenience, I have included a web link to the document in the syllabus). Please remember that class discussion and the final will test your knowledge of the required readings.

To avoid confusion, I have put “READ” to indicate required class readings and “RECOMMENDED” for readings that I think you should read. At a bare minimum, please read the required readings before class.

2016	Spring Semester -- National & Homeland Security Law
Date	Class #1: Course Introduction, Administration Framework & Concepts
Date	Class #2: Framework & Concepts The President’s National Security Powers Case Study: Lincoln and Secession
Date	Class #3: The President’s National Security Powers Case Study: Lincoln and Secession The Steel Seizure Case
Date	Class #4: The President’s National Security Powers
Date	Class #5: Congress’s National Security Powers
Date	Class #6: The Supreme Court and National Security Law The Role of Commissions--Case Study: WMD Commission
Date	Class #7: Using Force Abroad
Date	Class #8: Using Force Abroad Policy and Strategic Planning in Homeland Security

Date	Class #9: The Role of the Judiciary
Date	Class #10: Intelligence Operations
Date	Class #11: Counterterrorism Operations
Date:	Class #12: Screening for Security / Border Control
Date	Class #13: Consequence Management: When the Worst Happens
Date	Final Exam

## **Class #1:**

### **Course Introduction, Student Introductions, Administration, Framework & Concepts**

- READ: Text, Appendix, pp. 1313-1319.
  - Identify each constitutional provision that could have national security significance. How clear is the provision's meaning? Could there be different interpretation of the provision you have identified?
  - *Nota Bene*: Read closely the following constitutional provisions:
    - Article I, §1; §5; §8, clauses 1, 10, 11, 12, 13, 14-15, 18; §9, clause 2, 7; §10, clause 3.
    - Article II, §1; §2; §3.
    - Article III, §2; §3.
    - Amend. I, II, III, IV, V
- READ: Text, Chapters 2 & 3, pp. 7-51.
- In Class Exercise: "Divining the Meaning of the Law: Constitutional & Statutory Interpretation" (No prior preparation is necessary for this in-class exercise.)

## **Class #2:**

### **Framework & Concepts**

### **The President's National Security Powers**

#### **Case Study: Lincoln and Secession**

*Nota Bene*: As you read the articles below, focus on the actions President Lincoln took after Confederate guns fired on Fort Sumter and in the early days of the war. Think about his reasons and his legal authority for the actions he chose to take.

- READ: Daniel Farber, *Lincoln's Constitution*, (2003) Chapter 6, "Presidential Power" and Chapter 7, "Individual Rights," pp. 115-175.
- READ: William Lee Miller, *President Lincoln: The Duty of a Statesman*, (2008) Chapter 6, "Realism Right at the Border," pp. 110-139.
- READ: *The Emancipation Proclamation*, January 1, 1863 available at [https://www.archives.gov/exhibits/featured\\_documents/emancipation\\_proclamation/transcript.html](https://www.archives.gov/exhibits/featured_documents/emancipation_proclamation/transcript.html) (accessed September 17, 2015).
  - What precisely was the Emancipation Proclamation? What did it do? What was President Lincoln's legal authority for issuing it?

## **Class #3:**

### **The President's National Security Powers**

#### **Case Study: Lincoln and Secession**

- READ: Text, Chapter 3, pp. 52-89.

- BRIEF: “The Steel Seizure Case”-Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952) (in Text, Chapter 3, starting at p. 25).
- RECOMMENDED: Maeva Marcus, *Truman and the Steel Seizure Case*, (1994).

**Class #4:**

**The President’s National Security Powers**

- READ: Text, Chapter 4, pp. 59-92.
- BRIEF: United States v. Curtiss Wright Export Corp., (in Text, Chapter 4).

**Class #5:**

**Congress’s National Security Powers**

- READ: Text, Chapter 5, pp. 90-122.
- BRIEF: To be assigned.

**Class #6:**

**The Federal Courts and National Security Law**

- READ: Text. Chapter 6, pp. 123-160.

**Case Study on the Role of Commissions: The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (“WMD Commission”)**

- READ: Overview of the Report, pp. 3-37, The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction, *Report to the President of the United States*, March 31, 2005 available at <http://www.gpo.gov/fdsys/pkg/GPO-WMD/pdf/GPO-WMD.pdf> (accessed August 31, 2015).

**Class #7:**

**Using Force Abroad: How We Go To War: Vietnam Case Study**

- READ: Text, Chapter 10, pp. 267-306; Chapter 10, pp. 264-283.

**Class #8:**

**Using Force Abroad: Collective Self Defense / Unilateral Self Defense and Rescue**

- READ: Text, Chapter 12, pp. 323-342; Chapter 13, pp. 343-375.

**Policy and Strategic Planning in Homeland Security**

- READ: To be assigned.

**Class #9:**

**Targeting Terrorists / Counterterrorism Operations**

- READ: Text, Chapter 14, pp. 376-410.
- RECOMMENDED FILMS:
  - *The Battle of Algiers*, (1966).
  - *Breaker Morant*, (1980).
  - *Paradise Now*, (2005).

**Class #10:**

**Intelligence Operations / Case Study: Torture, Enhanced Interrogation, & Detention**

- READ: Text, To be assigned.
- READ: David Luban, "Liberalism, Torture and the Ticking Bomb," in Karen J. Greenberg (ed.), *The Torture Debate in America* (2006), pp. 35-83 (includes endnotes).
- RECOMMENDED: Phillippe Sands, "Green Light," *Vanity Fair*, May 2008.

**Class #11: Homeland Security and Legal Issues**

- READ: Text, Chapter 37, pp. 1115-1145
- RECOMMENDED: Text, Chapter 38, pp. 1146-1176.

**Class #12: Screening for Security / Border Control**

- READ: Text, Chapter 24, pp. 678-708

**Class #13:**

**Consequence Management: When the Worst Happens**

- READ: Korematsu v. United States, in Text, Chapter \_\_, pp. \_\_\_\_-\_\_\_\_.
- READ: To be assigned.