Introduction: Welcome to IR 526. The major aim of this course is to investigate leading topics in national security 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. As a seminar, class participation is encouraged and expected. 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 the legal and policy implications of President Abraham Lincoln’s approach to secession and rebellion.

This course is specifically tailored for students in international relations, political science, economics, and other related disciplines. Students do not need any legal background to do well in this course. Students wishing a more intensive legal focus should look to offerings at BU Law (e.g., LAW JD890, National Security & Foreign Relations Law).

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 justice; secrecy and transparency; civil liberties and the acquisition of intelligence, and related areas.

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

- 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 & Grading: Students will participate in a(n):

1. Policy paper, worth 10 percent of the total grade, to be turned in on TBD.
2. Midterm exam, worth 30 percent of the total grade, scheduled in-class for Feb. 29,
3. Final exam, worth 50 percent of the total grade, scheduled for TBD, and,
4. Ongoing class discussion and contributions to in-class exercises, worth 10 percent of the total grade.

This course’s seminar format is designed to encourage a robust exchange of ideas and opinions.
Following a template designated by the instructor, students will also submit short case briefings for three designated cases which will be factored into the participation grade.

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:

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 from fellow students 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.
- **Use of Electronic Devices in Class:** I believe that laptop computers, tablets, cell phones, and the like can be serious distractions to your in-class learning. However, you may use these devices in class provided that you, as a user, are using them only to take notes or refer to notes and that you seat yourself such that your computer screen is not visible to others around you. Please do not text or email in class.
Publications Required for Purchase: It is recommended that you purchase the following book:

- There is only one **required** text for this course, Stephen Dycus *et al.*, *National Security Law*, (New York, Aspen Law, 6th Ed. 2016). [Hereafter referred to as Text.] This book is available in hardcover only. The textbook is expensive but it is comprehensive and up-to-date. We will use this text extensively for the course. Please make certain you obtain the 6th Edition, 2016 version. This textbook should be available at the BU Bookstore and through other vendors.

- 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 brief for the case, which will help you immensely in class discussion. I recommend that your 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


Understanding This Reading List and Class Schedule: In the schedule below, I have listed assigned readings for each of the class sessions. Nearly all of the required readings are from the textbook, Stephen Dycus *et al.*, *National Security Law*, (New York, Aspen Law, 6th Ed. 2016). For readings not in the textbook, I have placed them on the electronic blackboard or, in some cases, I have included a web link to the document in the syllabus.

To avoid confusion, I have put “READ” to indicate required class readings and “RECOMMENDED” for readings that I think you should read.

**Please read the required readings before class. If you have not done the readings, please let me know in advance so we avoid embarrassment.**
<table>
<thead>
<tr>
<th>WK</th>
<th>DATE</th>
<th>Spring Semester 2017 – IR 526</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>JAN 19</td>
<td>Class #1: Course Introduction, Student Introductions, Course Administration &amp; Housekeeping, Student Exercises.</td>
</tr>
<tr>
<td>3</td>
<td>JAN 31 &amp; FEB 02</td>
<td>Class #4 &amp; 5: Case Study: US Civil War–Lincoln and Secession (continued). The President’s National Security Powers--The Steel Seizure Case.</td>
</tr>
<tr>
<td>4</td>
<td>FEB 07 &amp; 09</td>
<td>Class #6 &amp; 7: The President’s National Security Powers.</td>
</tr>
<tr>
<td>6</td>
<td>FEB 23</td>
<td>Class #10: No class on Tuesday (Monday schedule). Guest speaker on Thurs., Feb. 23.</td>
</tr>
<tr>
<td>7</td>
<td>FEB 28 &amp; MAR 02</td>
<td>Class #11 &amp; 12: Using Force Abroad: How We Go To War: Vietnam Case Study. Midterm Examination. Spring Recess: March 4-12.</td>
</tr>
<tr>
<td>12</td>
<td>APR 11 &amp; 13</td>
<td>Class #21 &amp; 22: Screening for Security / Border Control.</td>
</tr>
<tr>
<td>13</td>
<td>APR 18 &amp; 20</td>
<td>Class #23 &amp; 24: Special Topics to be Assigned.</td>
</tr>
<tr>
<td>14</td>
<td>APR 25 &amp; 27</td>
<td>Class #25 &amp; 26: Consequence Management: When the Worst Happens.</td>
</tr>
<tr>
<td>15</td>
<td>MAY 02</td>
<td>Class #27: Course Review</td>
</tr>
</tbody>
</table>
Week #1: JAN 19
(R) Course Introduction, Student Introductions, Administration, & Housekeeping.
Student Exercises.

- In Class Student Exercise: “Divining the Meaning of the Law: Constitutional & Statutory Interpretation”
  (No prior preparation is necessary for this in-class exercise.)

Week #2: JAN 24 & 26

- READ: Text, Appendix, pp. 1419-1425.
  o 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?
  o N.B. (“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 1 & 2, pp. 1-23.
  o Please think deeply about Note 2 (p. 22) and Note 6 (p. 23).

(R) Framework & Concepts (continued).
The President’s National Security Powers.
Case Study: Lincoln and Secession.

- President Abraham Lincoln made extensive use of his national security powers during the U.S. Civil War. What insights can we draw from that experience?
  o N.B.: 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, the policies he sought to pursue, and his legal authority for the actions he chose to take.


  o What precisely was the Emancipation Proclamation? What did it do? What was President Lincoln’s legal authority for issuing it?
Week #3: JAN 31 & FEB 02
(T) The President’s National Security Powers (continued).
Case Study: Lincoln and Secession (continued).

(R) The Steel Seizure Case.

- READ: Text, Chapter 3, pp. 25-52.

  - “The Steel Seizure Case,” decided by the Supreme Court in 1952, remains one of the most influential cases on national security law.
  - Students must turn in a brief of the Steel Seizure case, which will be included as part of the class participation grade. Please include citations for any brief material you find on the Internet.


Week #4: FEB 07 & 09
(T) The President’s National Security Powers.
The Steel Seizure Case (continued).

(T & R) POTUS’s Foreign Relations Powers, Commander in Chief’s Powers, “Core” Presidential Powers, Emergency Powers

- READ: Text, Chapter 4, pp. 53-103.


Week #5: FEB 14 & 16

- READ: Text, Chapter 5, pp. 105-133.
  - N.B.: Students may find Chapter 5 heavy going. Budget extra time to digest it.

Week #6: FEB 23 (R)
(T) Tuesday, Feb 21 is a BU Monday schedule. Therefore, we do not have class.
(R) Guest Speaker: Topic TBD.

- READ: TBD.

Week #7: FEB 28 & MAR 02
(T) Using Force Abroad: How We Go To War: Vietnam Case Study.

- READ: Text, Chapter 11, pp. 317-362.

(R) Mid-term Examination (1.5 hours).
Week #8: MAR 14 & 16
(T) Review midterm.

- READ: Text, Chapter 6, pp. 135-174.
- DISCUSS: El-Masri v United States, starting at p. 162.
- DISCUSS: Clapper v. Amnesty International USA starting at p. 145; ACLU v. Clapper, starting at 152.

Week #9: MAR 21 & 23

- READ: Text, Chapter 12, pp. 363-384; Chapter 13, pp. 385-416.

Week #10: MAR 28 & 30
(T & R) Targeting Terrorists / Counterterrorism Operations / Intelligence Activities.
Case Study: The Gibraltar Killings (IRA).

- READ: Text, Chapter 14, pp. 417-444.
- READ: Text, Chapter 17, pp. 487-502.
- WATCH:

- RECOMMENDED FILMS:
  - Breaker Morant, (1980).

Week #11: APR 04 & 06
Interrogating Terrorist Suspects.

- READ: Text, Chapter 18, pp. 503-544.
- READ: Text, Chapter 32, pp. 991-1018.

(R) POLICY PAPER ASSIGNED: Students will be given a hypothetical and will write a no more than three-page policy paper addressing the hypothetical. The policy paper is due to the instructor NLT _______. The policy paper is worth ten percent of the total grade. Additional details will be provided.
• RECOMMENDED READINGS:

• RECOMMENDED MUSIC:
  o Warren Zevon, Roland the Headless Thompson Gunner (1976).

Week #12: APR 11 & 13
(T & R) Screening for Security / Border Control.

• READ: Text, Chapter 26, pp. 775-827.
  o Please think deeply about Notes 1-10 (pp. 787-792).
  o Please think deeply about Notes 1-7 (pp. 804-808).

Week #13: APR 18 & 20
(T & R) Special Topics to be Assigned.

• READ: TBD.

Week #14: APR 25 & 27
(T & R) Consequence Management: When the Worst Happens.

• READ: Korematsu v. United States, in Text, Chapter 29, pp. 887-897.
  o Please think deeply about Note 1 (p. 887), Note 7 (p. 897).

• WATCH: Videos on the internment of Japanese-Americans:
  o Video clip (14:31 minutes), “Japanese Internment during WW2,” https://www.youtube.com/watch?v=6mr97qyKA2s&ebc=ANyPxKpfiJFY8BeNQACH0bdTHZbw_P46rpw0a2apVX5irve8dUBG4n_G3bZ5ZHk8zb5mnGZjDg63lKCYdQ4dy57LAP52fg--A (accessed Jan. 16, 2017).

• BRIEF & DISCUSS: Korematsu v. United States, (per above).
  o Students must turn in a brief of the Korematsu case, which will be included as part of the class participation grade. Please include citations for any brief material you find on the Internet.

Week #15: MAY 02
(T) Course Review

FINAL EXAM: MAY DD, 2017, per the BU final examination schedule.