

UMBC UGC New Course Request: POLI 431 National Security Law

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Proposed Effective Date: Fall 2018

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COURSE INFORMATION:

Course Number(s)	431
Formal Title	Spies, Assassins, and Cyber-Warriors – Modern National Security Law
Transcript Title (≤30c)	National Security Law
Recommended Course Preparation	POLI 220, 230, 233, 260, 280, 281, 334, 318 or 337
Prerequisite NOTE: Unless otherwise indicated, a prerequisite is assumed to be passed with a "D" or better.	
# of Credits Must adhere to the UMBC Credit Hour Policy	3
Repeatable for additional credit?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Max. Total Credits	3 This should be equal to the number of credits for courses that cannot be repeated for credit. For courses that may be repeated for credit, enter the maximum total number of credits a student can receive from this course. E.g., enter 6 credits for a 3 credit course that may be taken a second time for credit, but not for a third time. Please note that this does NOT refer to how many times a class may be retaken for a higher grade.
Grading Method(s)	<input checked="" type="checkbox"/> Reg (A-F) <input type="checkbox"/> Audit <input type="checkbox"/> Pass-Fail

PROPOSED CATALOG DESCRIPTION (Approximately 75 words in length. Please use full sentences.):

Are modern national security operations such as drone strikes, cyber warfare, indefinite detention, and mass surveillance legal under domestic and international law? To what extent can officials be held accountable for abuses committed in these operations? Through this course, students will understand how various laws, treaties, cases, and legal principles influence modern national security and counter-terrorism operations. It will equip students to critically analyze these policies – and to work for the changes they deem appropriate.

RATIONALE FOR NEW COURSE:

Over the past several years the world has learned of massive electronic surveillance programs, damaging cyber attacks, and the targeted killing of suspected terrorists often by unmanned aerial vehicles. The slightly older controversies over the detention and interrogation of alleged terrorists remain on the front pages. These national security operations, and the efforts to constrain them to the law, challenge the legal frameworks typically applicable to war, security and policing. It is crucial for people to critically engage in the debates over quickly evolving national security and counter-terrorism strategies. This course will equip students to understand the legal issues arising from current national security and counter-terrorism operations. It will give them the tools to hypothesize on how the rule of law can facilitate more effective and accountable security protections.

I taught this course twice as an Honors Seminar (HONR 300) and it was very successful. I plan to offer this as a POLI course every other academic year. National security and the effort to constrain security operations with the rule of law are, of course, political processes. The class fits well within our upper level law and politics offerings

without duplicating any of the concepts covered in POLI 430, 432, 433 or 437. It is a comparative course – examining cases from different countries – so this will be compelling to students of comparative politics, international relations, as well as Global Studies students and students interested in security in general. It is appropriate at the 400 level, with some academic background, because the course will take on complex concepts, and require students to critically analyze them in part with a substantial research project.

ATTACH COURSE SYLLABUS (mandatory): Please see below.

POLI 431
Spies, Assassins and Cyber Warriors: Modern National Security Law
PROPOSED Syllabus

Professor: Jeffrey Davis
Phone: 410.455.2181
Email: davisj@umbc.edu
Office: PUP 316
Office Hours: MW 11:00 – 1:30 and by appointment.

Course Description

Over the past several years the world has learned of massive electronic surveillance programs, U.S. cyber attacks against Iran's nuclear program, and the targeted killing of suspected terrorists often by unmanned aerial vehicles. The slightly older controversies over the detention and interrogation of alleged terrorists remain on the front pages. These national security operations, and the efforts to constrain them to the law, challenge the legal frameworks typically applicable to war, security and policing. This seminar will engage the following questions:

- Are modern national security operations such as targeted killing, drone attacks, cyber warfare, and mass surveillance lawful under domestic and international law?
- To what extent can states and officials be held accountable for abuses committed in these national security operations?
- What are the barriers to constraining national security operations with the rule of law?

Learning Objectives

- Students will understand legal issues arising from *current* national security operations.
- They will comprehend the various laws, treaties, cases and legal principles that constrain national security operations, that facilitate accountability, and that block accountability.
- Students will be equipped to critically assess rapidly developing national security and counter-terrorism policy – and to work for the changes they deem appropriate.
- Students will gain the ability to:
 - Critically analyze legal, political, ethical and historical arguments;
 - Apply legal principles to factual situations;
 - Resolve legal and political controversies;
 - Hypothesize on the role of law in national security operations; and to
 - Hypothesize on how law can facilitate more effective and accountable national security operations.

Expectations

Our study of the topics in this course is a collaborative, discussion driven effort. It is therefore absolutely essential that students come to class having read the material assigned, and prepared to ask and answer probing questions. The material assigned is challenging so students must stay current in order to fully appreciate classroom discussions. Assignments must be turned in on the date assigned. Many are designed to provide you with feedback to improve your performance on subsequent work. Timing is therefore very important. Extensions will only be granted if approved in advance and for serious, unavoidable causes.

This course is a collaborative learning experience in which students and the professor work together to understand and challenge current national security controversies. Therefore, students must come to class prepared in order for the course to be fully successful. Also, changes to the syllabus may be necessary in order to respond to current developments in national security and to the needs of the course. Please check with the professor before reading ahead.

Grading

Your final grade will be calculated as follows:

Assignment	% Final Grade	Due Date
Class Participation	5%	
Quizzes (on Blackboard)	2 * 20% = 40%	October 13 November 30
Moot Court Simulation	15%	Group 1 and 2: October 12 Group 3 and 4: November 9 Group 5 and 6: December 7
Blog Entry	10%	Group A: Before October 12 Group B: Before November 9 Group C: Before December 7
Legal Brief/Persuasive Essay	30%	December 7

Class participation will be graded on the quality of student participation in class and the degree to which a student's comments and questions reflect an analysis of the readings.

- Solely attending class will not result in a passing attendance score.
- Students should ask and answer questions, and offer opinions, based on an analysis of the course materials in order to ensure a good or excellent participation score.
- I am happy to give students their current participation grade at any time during the semester.

Quizzes will consist of multiple choice questions and will be administered on Blackboard. The quiz should take one hour to complete and students will have all day to take the quiz on the day indicated.

The remaining assignments will be described in detail in the Course Documents section on Blackboard. (I HAVE ATTACHED THESE BELOW)

Academic Integrity

If a student deviates from UMBC's policies on academic honesty, he or she may receive a failing grade for the assignment, or for the course. Please see:
http://www.umbc.edu/undergrad_ed/currentstudents.html

Text

Most readings will be available through Blackboard. The required book is:
 David Sanger, *Confront and Conceal: Obama's Secret Wars and the Surprising Use of American Power*, 2013.

Course Plan

Class	Topic	Reading
08/31	Introduction	<p>Owen Bowcott, "Osama bin Laden: US responds to questions about killing's legality," <i>The Guardian</i></p> <p>Dan Levine, "U.S. will not appeal judge's ruling in no-fly list challenge," <i>Reuters</i>.</p> <p><i>Ibrahim v. DHS</i>, Summary (ND Cal. 2014)</p>
09/7		Labor Day – No Class
09/14	<p>Foundation</p> <p>New Security Challenges</p> <p>Foundational Law</p> <p>Detention and Interrogation</p>	<p>Sanger, Prologue</p> <p><i>Ex Parte Merryman</i></p> <p><i>The Prize Cases</i></p> <p>Geneva Convention Selected Articles</p> <p>Convention Against Torture</p> <p>Statute Criminalizing Torture</p> <p>Torture Victim Protection Act</p>
09/21	<p>Detention and Interrogation</p> <p>Evading National Prohibitions on Torture</p> <p>Extraordinary Rendition</p> <p>Enforcing the Law Prohibiting Torture</p>	<p>US Office of Legal Counsel Memo on Interrogation (2002)</p> <p>US Office of Legal Counsel Memo on Interrogation (2004)</p> <p>US Office of Legal Counsel Memo on Interrogation (2009)</p> <p>"Outsourcing Torture," <i>The New Yorker</i></p> <p>Whitlock, Craig, "Renditions Continue under Obama, Despite Due-Process Concerns," <i>Washington Post</i>, January 1, 2013.</p> <p><i>A v. Secretary of State for the Home Department</i> (UK Law Lords, 2004)</p>
09/28	<p>Enforcement Challenges: State Secrets Privilege</p> <p>Sovereign Immunity</p> <p>Transnational Enforcement</p>	<p><i>El Masri v. Tenet</i> (4th Cir. 2007)</p> <p><i>Jones v. UK</i> (European Court of Human Rights 2014)</p> <p>Whitlock, Craig, "German Prosecutors Investigate Abduction,"</p>

		<p><i>Washington Post</i>, October 4, 2006</p> <p>Secret Communiqué from US Embassy in Berlin to Sec. State, "El-Masri Case -- Chancellery Aware of USG Concerns."</p>
10/05	Transnational Enforcement	<p>Goldman, Adam, "The Hidden History of the CIA's Prison in Poland," <i>Washington Post</i>, January 23, 2014.</p> <p><i>Mohamed v. Secretary of State for Foreign & Commonwealth Affairs</i> (UK Court of Appeals, 2010)</p> <p>William Glaberson, "Questioning 'Dirty Bomb' Plot, Judge Orders U.S. to Yield Papers on Detainee," <i>New York Times</i></p> <p><i>El Masri v. Macedonia</i> (European Court of Human Rights, 2012)</p>
10/12	Moot Court 1	<p><i>Mohamed v. Jeppesen Dataplan</i> (9th Cir. 2010).</p> <p><i>Al Nashiri v. Poland</i> (European Court of Human Rights)</p>
10/19	Cyber War	<p>Sanger, Part 2, Iran: The Zone of Impunity</p> <p>Gervais, Michael, "Cyber Attacks and the Laws of War," <i>Berkeley Journal of International Law</i></p> <p><i>Prosecutor v. Galic</i> (ICTY 2003)</p>
	Enforcing the Law on Targeted Killing	
10/26	Drones and Targeted Killing	<p>Sanger, Part 3, Drones and Cyber: The Remote Control War</p> <p>Bowden, Mark "The Killing Machines," <i>The Atlantic</i>, Sept. 2013</p> <p>Beard, Jack, "Law and War in the Virtual Era," <i>American Journal of International Law</i>.</p>
11/2	Drones and Targeted Killing	<p>Koh, Harold "The Obama Administration and International Law" Speech of State Department Legal Advisor</p> <p>Letter from Attorney General Holder to Senator Leahy.</p> <p>President Obama's Speech at National Defense University</p> <p><i>Schneider v. Kissinger</i> (DC Cir. 2005)</p>
	Challenges to Accountability – the Political Question Doctrine	
11/9	Moot Court 2	<i>Al-Aulaqi v. Panetta</i>
11/16	Spying and Surveillance	<p>"NSA Files: Decoded," <i>The Guardian</i></p> <p>Including video interviews:</p>

		<ul style="list-style-type: none"> • Stewart Baker, Former NSA General Counsel • Thomas Drake, Former Senior Executive, NSA • Jameel Jaffer, Deputy Counsel, ACLU <p>Glanz , James, Jeff Larson and Andrew W. Lehrenjan, “Spy Agencies Tap Data Streaming From Phone Apps” <i>New York Times</i>, January 27, 2014</p> <p>Bakerjan, Peter, “Obama’s Path From Critic to Overseer of Spying,” <i>New York Times</i>, January 15, 2014.</p>
11/23	<p>Foreign Intelligence Surveillance Court</p> <p>Prosecutions with Secret Evidence</p> <p>Enforcement Challenges: Combatant Immunity</p>	<p>Swire, Peter, “The System of Foreign Intelligence Surveillance Law,” <i>George Washington Law Review</i>.</p> <p><i>US v. US District Court</i> (1972)</p> <p><i>U.S. v. Daoud</i> (7th Cir. 2014)</p> <p><i>Kahn v. Sec. of State</i> (UK Court of Appeals, 2014)</p>
11/30		Watch <i>Citizen Four</i> in Class
12/7	Moot Court 3	<i>Klayman v. Obama</i> (DC D.Ct. 2013)

Blog Assignment

Write a short, two to five paragraph summary of a news story on an issue related to the topics we are studying in this class. You should:

- Summarize the news story
- Explain the controversy portrayed in the story, and how it raises issues related to those discussed in class
- If you choose to, you may give your opinion about the legality or legitimacy of the topic of the story
- Please include a link to the news story on which your post is based

To post your blog entry:

1. I recommend writing the entry in your word processor first, then pasting it into the blog page
2. Go to <http://umbclaw.blogspot.com>
3. Click “New Post” on the top right of the page

(This will not work until I have authorized you to contribute to the blog by entering your email address.)

Grading Rubric

Criteria	Percent of Grade
Relevance of news story and blog entry to issues studied in the course	10%
Strength of description and analysis of controversy and legal, ethical and/or policy issues	60%
Clarity of writing, including grammar and spelling	20%
Organization	10%

Here are the due dates for the blog assignment. If you have an early moot court assignment your due date is later and vice versa.

Essay Assignment

Select a national security or counter-terrorism action, strategy or policy and write a 10 - 15 page persuasive essay arguing its legality and/or legitimacy. I recommend emailing me your topic to ensure that it is appropriate.

- Your paper should be a standard essay in which you answer the question above as efficiently as possible. The answer to the question above is your thesis. Follow [this link for help writing an essay](#).
- For your legal analysis, you need not cite any sources beyond the cases and readings used for the course. You may cite additional cases and readings but no outside research is required.
- To cite cases you need only include the case name in italics and the year of the decision. You may use any accepted citation method to cite other sources.
- Your memorandum must be entirely your own work.
- The assignment must be emailed to the professor (davisj@umbc.edu) or uploaded to Blackboard by 11:59 p.m. on December 2. Please use MS Word or other standard word processor.

Rubric

Your grade on this assignment will be based on the following criteria:

Criteria	Percentage
Relevance of topic to the subject matter of the course.	5%
The quality of analysis on whether the legality of the action, strategy or policy is legal and/or legitimate. This includes: <ul style="list-style-type: none">• Using cases and readings to apply rules of law and principles of legitimacy to the selected topic. (25%)• An understanding of how the law of these cases relates to the selected topic. (25%)• The degree to which your argument is supported by the law and readings used. (25%)	75%
The organization and clarity of the essay.	10%
Grammar and spelling	10%

Moot Court Assignment

In this assignment students will work in teams of two to draft an oral argument supporting one party in a legal case. Students will present their arguments in class on the day assigned against two students arguing for the opposing side.

A moot court is a hypothetical appeal from a lower court decision in which one side argues the lower court decision was wrong and should be overturned and one side argues it was correct and should be upheld. It is very similar to a debate.

- In this class, students are assigned to one of three moot court cases.
- So, for example, the first moot court will consider the appeal from the Federal Court of Appeals decision in *Mohamed v. Jeppesen*.
- Two teams of two students each are assigned to represent Mohamed and will argue the Court of Appeals decision was wrong and should be overturned.
- Two teams of two students are assigned to represent the United States and will argue the Court of Appeals decision should be upheld.
- I assigned students to teams alphabetically, while separating students by major as much as possible.

I will give a short lecture on oral argument technique in class. In the meantime here are some basic instructions:

1. Read the case from which the appeal is to be taken.
2. Note the arguments and justifications made by the majority and dissent.
3. Read the supplemental reading in the assignment if there is one.
4. As a team, organize your case into the two arguments or topics you wish to present to the higher court to convince that court that your client should prevail.
5. Assign one argument or topic to each student on your team.
6. Draft your twelve minute oral argument. Base your arguments on the cases, treaties, statutes, and policies discussed in the case and/or covered in class.
7. On the day the assignment is due each student shall present her or his argument.
8. Each student's argument should be no longer than twelve minutes, with each team arguing 24 minutes.
9. The petitioner's team (the first name in the case) will argue first.

Grading Rubric

Criteria	Percent
Identification and understanding the legal issues in the case	20%
Arguments grounded on case law, treaties, statutes, and policy	60%
Organization	10%
Presentation	10%