

## TABLE OF CONTENTS

<b>Dedication</b>	<b>v</b>
<b>Acknowledgments</b>	<b>xiii</b>
<b>Preface [to the First Edition]</b>	<b>xv</b>
<b>Preface to the Second Edition</b>	<b>xvii</b>
<b>Preface to the Third Edition</b>	<b>xix</b>
<b>Preface to the Fourth Edition</b>	<b>xxi</b>
<b>Chapter One Threats Associated with Foreign Enemies:</b>	
<b>Treason, Espionage, and Terrorism</b>	<b>1</b>
<b>Section 1. Treason</b>	<b>1</b>
Tomoya Kawakita v. United States	1
Notes and Questions	8
<b>Section 2. Espionage</b>	<b>11</b>
United States v. Rosenberg	11
United States v. Pelton	18
United States v. Miller	26
United States v. Robel	29
Notes and Questions	35
<b>Section 3. Terrorism</b>	<b>42</b>
A. Application of Anti-Terrorism Statutes	42
United States v. Rodriguez	42
United States v. Rahman	45
United States v. Salameh	49
United States v. Yousef	54
Humanitarian Law Project v. Ashcroft	61
Humanitarian Law Project v. Holder	69
Notes and Questions	72
B. Patriot Act	79
C. Intelligence Reform and Terrorism Prevention Act of 2004:	
Reorganizing the Intelligence Community	80
D. Border Initiatives	85
Fong Yue Ting v. United States et al. (Chinese Exclusion Case)	85
Timothy J. Healy Testimony	89

Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats	96
Notes and Questions	100
<b>Chapter Two Threats That Arise from Within</b>	<b>103</b>
<b>Section 1. Threats from Domestic Anti-Government and Hate Groups</b>	<b>104</b>
Brandenburg v. Ohio	104
United States v. Branch	107
United States v. McVeigh	113
United States v. Parr	119
Notes and Questions	121
<b>Section 2. Disclosure of Information Detrimental to National Security</b>	<b>129</b>
New York Times Co. v. United States	129
United States v. Sterling	146
Snepp v. United States	150
Central Intelligence Agency v. Sims	156
Haig v. Agee	162
Notes and Questions	166
<b>Section 3. Export Control</b>	<b>172</b>
United States v. Hernandez	172
United States v. Gregg	175
United States v. Evans	178
United States v. Malsom	180
15 C.F.R. § 744.2	185
More Than an Assertion: How United States v. Pulungan Nudged the Directorate of Defense Trade Controls Toward Increased Transparency	189
United States v. Pulungan	190
Notes and Questions	193
<b>Section 4. Crimes Committed by Government Officials under Alleged Public Authority</b>	<b>197</b>
United States v. North	197
Judgment in Case of Lieutenants Dithmar and Boldt Hospital Ship “Llandoverly Castle “	199
United States v. Staff Sergeant (E-6) Walter Griffen, RA 17542182, U.S. Army, Company D, 1st Battalion (Airborne), 8th Cavalry, 1st Cavalry Division (Airmobile), APO San Francisco 96490	204
Notes and Questions	211

<b>Chapter Three The Government’s Power to Act Domestically in a Crisis</b>	<b>213</b>
<b>Section 1. Habeas, Military Tribunals and Military         Commissions</b>	<b>213</b>
Ex parte Milligan	213
Ex parte Quirin	223
Notes and Questions	228
Hamdi v. Rumsfeld	232
Notes and Questions	245
Johnson v. Eisentrager	246
Notes and Questions	250
Hamdan v. Rumsfeld	253
Notes and Questions	262
<b>Section 2. Use of the Military Short of Martial Law</b>	<b>267</b>
Bissonette v. Haig	267
United States v. Khan	273
CRS Report for Congress	275
Satellite Surveillance: Domestic Issues	275
Notes and Questions	280
<b>Section 3. Extraordinary Measures</b>	<b>282</b>
Youngstown Sheet & Tube Co. v. Sawyer	282
Notes and Questions	301
Korematsu v. United States	305
Racial Profiling and Antiterrorism Efforts	319
Ashcroft v. Iqbal	324
Notes and Questions	327
Pandemic Influenza Benchguide	333
Legal Issues Concerning Quarantine and Isolation	333
Notes and Questions	335
<b>Chapter Four Obtaining Evidence Against Those Who Constitute a Threat to National Security</b>	<b>339</b>
<b>Section 1. Extraterritorial Application of the Fourth         Amendment</b>	<b>340</b>
Stonehill v. United States	340
United States v. Callaway	348
United States v. Verdugo-Urquidez	350
In re Terrorist Bombings of U.S. Embassies in East Africa	361
United States v. Barona	370
Notes and Questions	380
<b>Section 2. Electronic Surveillance</b>	<b>385</b>
The Fourth Amendment and Electronic Searches	385

A. Transponders, Cell Phones and Computers	387
United States v. Jones	387
Riley v. California	393
United States v. Rigmaiden	400
Carpenter v. United States	403
United States v. Cotterman	412
Notes and Questions	416
B. Foreign Intelligence Surveillance Act	421
United States v. Cavanagh	421
United States v. Pelton	426
In re Sealed Case	428
United States v. Aldawsari	437
50 U.S.C. § 1801	439
United States v. Mohamud	440
Notes and Questions	448
<b>Section 3: Interrogation</b>	<b>454</b>
FBI Interrogation Guidelines	454
In re Terrorist Bombings of U.S. Embassies in East Africa (Fifth Amendment Challenges)	455
United States v. Abu Ali	460
United States v. Ghailani	464
18 U.S.C.A. § 2340	469
18 U.S.C.A. § 2441	469
National Defense Authorization Act of 2016	472
Army Field Manual	473
Justification, Duress, or Coercion	475
Notes and Questions	475
<b>Section 4. Extradition and Rendition</b>	<b>480</b>
A. Formal Extradition	480
Demjanjuk v. Petrovsky	480
Eain v. Wilkes	489
Notes and Questions	494
B. Extraordinary Rendition	496
Ker v. People of the State of Illinois	496
United States v. Alvarez-Machain	500
United States v. Noriega	513
United States v. Yunis	521
Notes and Questions	529
<b>Section 4. Classified Information Procedures Act</b>	<b>533</b>
United States v. North	533
United States v. Fernandez	541

Table of Contents	xi
United States v. Rahman	545
Notes and Questions	551
<b>Chapter Five The Government’s War Power</b>	<b>557</b>
<b>Section 1. Executive and Congressional Authority and the</b>	
<b>Scope of Judicial Review</b>	<b>557</b>
Bas v. Tingy	557
Cunningham v. Neagle	560
United States v. Curtiss-Wright Export Corp.	564
Massachusetts v. Laird	571
Notes and Questions	579
UN Authorization and US War Powers	584
<b>Section 2. Efforts to Restrain Executive Military Actions</b>	<b>588</b>
A. The War Powers Resolution	588
War Powers Resolution	588
Notes and Questions	592
B. Restrictions on the Intelligence Community and Covert Action	594
Notes and Questions	596
C. The Gulf War	598
Gulf War Chronology	598
Notes and Questions	599
Dellums v. Bush	601
Notes and Questions	614
D. Attacks by U.S. Forces Against the Federal Republic of	
Yugoslavia	615
Tom Campbell, Member, U.S. House of Representatives, et	
al., Appellants v. William Jefferson Clinton, President of	
the United States, Appellee	617
Notes and Questions	626
E. Authorization for Use of Military Force	629
Al-Aulaqi v. Obama	631
Smith v. Trump: AUMF Challenge Pretrial Motion Summary	634
<b>Section 3. “Limited” War</b>	<b>636</b>
A. Libyan Intervention 2011 without Congressional AUMF	636
B. 2012 Executive Policy on Drone Strikes	637
C. Air and Missile Attacks in Syria	639
1. President Obama’s 2013 Statement Claiming Authority but	
Asking for Congressional Authorization	639
2. Department of Justice Office of Legal Counsel 2018 Historical	
Analysis of the President’s War Power	640
Notes and Questions	649

**Table of Cases**

**651**

**Index**

**655**