CONTENTS

Preface Acknowledgments Editors' Note

CHAPTER 1 INTRODUCTION

- A. Purposes
- B. Organization

PART I FRAMEWORK

CHAPTER 2 PROVIDING FOR THE "COMMON DEFENCE": THE ORIGINAL UNDERSTANDING

- A. The Constitutional Text
- B. Pre-Constitutional History and Political Theory in Europe
- C. The American Experience Prior to 1787
- D. The Framers' View
 - 1. The Convention
 - 2. Ratification
 - Notes and Questions

CHAPTER 3 THE PRESIDENT'S NATIONAL SECURITY POWERS

- A. The Spectrum of Presidential Power
 - 1. When the President Acts Pursuant to Delegated Authority in Foreign Relations *United States v. Curtiss-Wright Export Corp.*

Notes and Questions

- 2. When the President Acts in the "Zone of Twilight" in Foreign Relations

 Dames & Moore v. Regan

 Notes and Questions
- 3. When the President Takes Measures Incompatible with the Expressed or Implied Will of Congress in Foreign Relations

B. The Commander in Chief's War Powers

1. Defensive War Power

The Prize Cases

Notes and Questions

2. Customary War Power

Notes and Questions

3. "Core" Presidential War Power and Statutory Limits

Notes and Questions

C. The President's Emergency Powers

Presidential Proclamation No. 9844, Declaring a National Emergency

Concerning the Southern Border of the United States

Notes and Questions

- a. The National Emergencies Act and Standby Emergency Legislation
- b. Inherent Executive Emergency Authority?

CHAPTER 4 CONGRESS'S NATIONAL SECURITY POWERS

A. Congressional Authorizations for War

1. Declaration of War

Joint Resolution Declaring That a State of War Exists Between the Government of Germany and the Government and the People of the United States

Notes and Ouestions

2. Authorizing War by Statute

Bas v. Tingy

Notes and Ouestions

Authorization for Use of Military Force (Sept. 18, 2001)

Notes and Ouestions

3. Limiting War Power? The War Powers Resolution

War Powers Resolution, 50 U.S.C. §§1541-1548

Richard M. Nixon, Veto of the War Powers Resolution

Notes and Questions

- a. The Recital of Presidential War Powers
- b. Consultation
- c. Triggers and the Reporting Requirements
- d. The 60-Day Clock
- e. The Concurrent Resolution
- f. The Rule of Construction

B. Delegations and Appropriations for National Security

Greene v. McElroy

Notes and Ouestions

- a. Delegations of National Security Authority
- b. Implied Authorization by Defense Appropriation

c. Wielding the Appropriations Power *United States House of Representatives v. Mnuchin Sierra Club v. Trump*Notes and Questions

- C. Limitations on Congressional War Powers
 - 1. The Nondelegation Principle
 - 2. The *Lovett* Principle
 - 3. The *Chadha* Principle
 Notes and Questions
 - 4. Sovereign Immunity

CHAPTER 5 THE COURTS' NATIONAL SECURITY POWERS

- A. The Federal Judicial Power Generally
- B. A Self-Defining Role for Courts: The Justiciability Doctrines
 - 1. Standing to Sue

Smith v. Obama

Notes and Questions

2. The Political Question Doctrine

Smith v. Obama

Notes and Questions

- 3. Ripeness
- C. Substantive Hurdles: Bivens and Qualified Immunity
 - 1. A Cause of Action?

Egbert v. Boule

- 2. Qualified Immunity
- D. Evidentiary Hurdles: The State Secrets Privilege

Proposed Federal Rule of Evidence 509: Secrets of State and Other Official

Information

United States v. Zubaydah

Notes and Questions

PART II INTERNATIONAL LAW AND "OUR LAW"

CHAPTER 6 THE DOMESTIC EFFECT OF INTERNATIONAL LAW

- A. The Making and Interpretation of Treaties
 Notes and Questions
- B. Executive and Other Agreements

 Dames & Moore v. Regan

 Notes and Questions
- C. The Domestic Legal Effect of Treaties and Executive Agreements

 *Reid v. Covert

 *Committee of U.S. Citizens Living in Nicaragua v. Reagan

 Notes and Questions
- D. Statutory Incorporation of International Law
- E. The Domestic Legal Effect of Customary International Law and Jus Cogens Al-Bihani v. Obama
 Al Shimari v. CACI Premier Technology, Inc.
 - Notes and Questions
 - a. The Making and Incorporation of Customary International Law b. "Controlling" Executive and Legislative Acts and Judicial Decisions

CHAPTER 7 THE EXTRATERRITORIAL REACH OF U.S. LAW

A. Extraterritorial Reach of Constitutional Rights

Reid v. Covert

United States v. Verdugo-Urquidez

Notes and Questions

B. Extraterritorial Effect of U.S. Statutes *Kiobel v. Royal Dutch Petroleum Co.*Notes and Questions

CHAPTER 8 THE RIGHT TO WAGE WAR (JUS AD BELLUM)

- A. Law Regarding Resort to the Use of Force: The Basic Elements
 - 1. The United Nations Charter: Making War to Preserve or Restore Peace Charter of the United Nations Notes and Ouestions
 - 2. The Role of the United States Under Chapter VII Notes and Questions

B. Content of Jus ad Bellum

Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v. United States of America)

Notes and Questions

C. Case Study — Russian Aggression in Ukraine

CHAPTER 9 INTERNATIONAL HUMANITARIAN LAW (JUS IN BELLO)

- A. Authorities for Jus in Bello
 - 1. When Does IHL Apply?

Common Article 2

Common Article 3

Notes and Questions

2. IHL for the Victims of War — The 1949 Geneva Conventions

Geneva Convention Relative to the Treatment of Prisoners of War (Geneva III) Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Geneva IV)

3. IHL Revised: The Geneva Protocols Additional

Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I)

4. The International Criminal Court

Rome Statute of the International Criminal Court

Notes and Questions

Case Study — The Israel-Hamas Conflict in Gaza

B. Applying IHL — Conflict Classification and Combatant Immunity

United States v. Hamidullin

Notes and Questions

PART III USING FORCE ABROAD

CHAPTER 10 COLLECTIVE USE OF FORCE

- A. The Korean "Police Action"
 - 1. The Outbreak of War
 - 2. The U.S. Response

Notes and Questions

- B. The Persian Gulf War
 - 1. The Invasion of Kuwait
 - 2. Operation Desert Shield
 - 3. The Buildup

United Nations Security Council Resolution 678

4. Operation Desert Storm

Authorization for Use of Military Force Against Iraq (Jan. 14, 1991)

C. Afghanistan

- 1. The U.S. Response to 9/11 in Afghanistan
- 2. The United Nations' Role
- 3. A New Role for NATO
- 4. A Plan for Transition to Peace Notes and Questions

CHAPTER 11 UNILATERAL USE OF FORCE

A. Vietnam

1. How the War Began

Tonkin Gulf Resolution

2. Legal Foundations for the Commitment of U.S. Forces

Notes and Questions

3. War in the Courts

Orlando v. Laird

Notes and Questions

4. Widening the War

Notes and Questions

5. Winding Down the War

Joint Resolution Making Continuing Appropriations for Fiscal Year 1974 Notes and Questions

B. Before the Bombs Fall

- 1. Anticipatory Self-Defense
- 2. Preemptive Self-Defense
- 3. Planning for Another War in Iraq
- 4. Authority for a New War in Iraq?

Authorization for Use of Military Force Against Iraq Resolution of 2002 United Nations Security Council Resolution 1441

5. Operation Iraqi Freedom

Notes and Questions

C. New and Evolving Threats

1. Syria and the Islamic State
Notes and Questions

2. Iran

Notes and Questions

D. Retaliation, Reprisal, and Rescue

1. Legitimate Response or Illicit Reprisal?

Notes and Questions

2. Rescue

Durand v. Hollins

CHAPTER 12 TARGETED KILLINGS

- A. Targeted Killing by the United States After 9/11
- B. Targeted Killing and Human Rights Law (HRL)

Convention for the Protection of Human Rights and Fundamental Freedoms

Case Study: The Gibraltar Killings

Notes and Questions

C. Targeted Killing and International Humanitarian Law (IHL)

Public Committee Against Torture in Israel v. Israel

U.S. Policy Standards and Procedures for the Use of Force in Counterterrorism

Operations Outside the United States and Areas of Active Hostilities

Notes and Questions

Case Study: Targeting General Soleimani

D. U.S. Law and the Targeting of U.S. Citizens

Exec. Order No. 12,333, United States Intelligence Activities

Dep't of Justice, White Paper: Lawfulness of a Lethal Operation Directed Against a U.S. Citizen Who Is a Senior Operational Leader of Al-Qa'ida or an Associated Force

U.S. Dep't of Justice, Off. of Legal Counsel, Applicability of Federal Criminal Laws and the Constitution to Contemplated Lethal Operations Against Shaykh Anwar al-Aulaai

Notes and Questions

CHAPTER 13 CYBER OPERATIONS

- A. Assessing the Risk of Cyber Warfare
- B. Applying International Law to Cyber Operations
 - 1. Cyber Operations and Jus ad Bellum

Dep't of Defense, *Law of War Manual* — Chapter 16, Cyber Operations Notes and Questions

2. Cyber Operations and Jus in Bello

Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, June 8, 1977 (Protocol I) Dep't of Defense, *Law of War Manual* — Chapter 16, Cyber Operations Notes and Questions

C. Applying Domestic Law to Cyber Operations

Dep't of Defense, Summary: 2023 Cyber Strategy

Notes and Questions

D. Cyber War of Ideas

CHAPTER 14 NUCLEAR WAR

- A. The Nature and Effects of Nuclear Weapons
 - 1. One City, One Bomb

Steven Starr, Lynn Eden & Theodore A. Postol, What Would Happen If an 800-Kiloton Nuclear Warhead Detonated Above Midtown Manhattan?

- 2. Current Nuclear Arsenals
- 3. Modernization
- 4. U.S. Nuclear Policy

Notes and Questions

B. International Law of Nuclear Weapons

- 1. Arms Control Treaties
 - a. Limits on Testing
 - b. Limits on Delivery Systems and Warheads
 - c. Limits on Missile Defenses
 - d. Other Measures
- 2. The International Court of Justice's Advisory Opinion Legality of the Threat or Use of Nuclear Weapons

Notes and Ouestions

3. A Treaty Banning Nuclear Weapons

Treaty on the Prohibition of Nuclear Weapons

Notes and Questions

- C. Domestic Law of Nuclear Weapons
 - 1. A Bolt from the Blue

Notes and Questions

2. First Use

Notes and Questions

CHAPTER 15 PEACE AND HUMANITARIAN OPERATIONS

- A. Noncombat Deployments
 - 1. International Authorities
 - a. United Nations Peacekeeping
 - b. Natural Disaster Relief
 - c. Responsibility to Protect (R2P)

Notes and Ouestions

- 2. Domestic Authorities
 - a. Peace Operations

United Nations Participation Act, 22 U.S.C. §§287-2871

Detail of Personnel to International Organizations, 22 U.S.C. §2388

b. Humanitarian Operations

International Disaster Assistance, 22 U.S.C. §2292

Humanitarian and Other Assistance, 10 U.S.C. §§401-409 Notes and Questions

B. Case Study: 2011 Military Intervention in Libya
United Nations Security Council Resolution 1973

Notes and Questions

C. An Emerging Threat to Peace and Stability: Climate Change Notes and Questions

PART IV INTELLIGENCE OPERATIONS AND COLLECTION

CHAPTER 16 INTRODUCING INTELLIGENCE

A. The Intelligence Cycle

Select Committee to Study Governmental Operations with Respect to Intelligence Activities (Church Committee), *Foreign and Military Intelligence* Notes and Questions

B. How Is Intelligence Collected? — The "INTS"

Marshall Curtis Erwin, *Intelligence Issues for Congress*National Research Council, *Bulk Collection of Signals Intelligence: Technical Options*Notes and Questions

C. Covert Actions

Notes and Ouestions

CHAPTER 17 THE INTELLIGENCE COMMUNITY: ORGANIZATION AND AUTHORITY

- A. Authority for Intelligence Activities
 - 1. Statutory Authorities
 - a. The DNI

Responsibilities and Authorities of the Director of National Intelligence, 50 U.S.C. §3024

b. The CIA

Director of the Central Intelligence Agency, 50 U.S.C. §3036

- c. The FBI
- d. The NSA
- e. The National Security Council

Notes and Questions

f. Rogue Operations

Halkin v. Helms

Select Committee to Study Governmental Operations with Respect to Intelligence Activities (Church Committee), *Intelligence Activities and the Rights of Americans*

2. Presidential Authority

Executive Order No. 12,333, United States Intelligence Activities

Notes and Questions

- a. Authority for the Order
- b. Deciding on Intelligence Operations
- c. The Internal Executive Branch Process for Approving Intelligence Operations
- d. Conducting Intelligence Operations
- e. Overseeing Intelligence Operation Decisions
- B. Funding and Managing the Intelligence Community
 Notes and Questions
- C. Coordination and Sharing of Intelligence Notes and Questions

CHAPTER 18 COVERT OPERATIONS

A. Curtailing Private Actions

The Neutrality Act, 18 U.S.C. §960

Notes and Questions

B. Early CIA Covert Operations

Case Study: Covert Operations in Cuba

Notes and Questions

- C. CIA Operations and Congressional Oversight
 - 1. From the Cold War Through Vietnam

Central Intelligence Agency, CIA Activities in Chile

2. The Hughes-Ryan Amendment of 1974 and the Intelligence Oversight Act of 1980

Hughes-Ryan Amendment

Notes and Questions

3. Budget Oversight

Notes and Questions

D. The Iran-Contra Affair

Notes and Questions

E. Continuing Oversight Reforms

Intelligence Authorization Act, Fiscal Year 1991

Notes and Questions

F. Special Military Operations

Notes and Questions

G. Outsourcing Secret War

1. Employment of Foreign Paramilitary Forces

Case Study: The Armée Clandestine in Laos

Notes and Questions

2. Dirty Assets

Notes and Questions

3. Privatization

Case Study: Nisour Square Notes and Questions

CHAPTER 19 THE FOURTH AMENDMENT AND NATIONAL SECURITY

A. The Fourth Amendment Framework

Fourth Amendment, U.S. Const., amend. IV

B. A National Security Exception?

Foreign Intelligence Surveillance Act of 1977

United States v. United States District Court (Keith)

Notes and Questions

C. A Foreign Intelligence Exception?

In re Directives to Yahoo! Inc., Pursuant to Section 105B of the Foreign Intelligence

Surveillance Act

Notes and Questions

D. Surveillance Abroad

In re Terrorist Bombings of U.S. Embassies in East Africa

(Fourth Amendment Challenges)

Notes and Questions

CHAPTER 20 CONGRESSIONAL AUTHORITY FOR FOREIGN INTELLIGENCE SURVEILLANCE

A. The Foreign Intelligence Surveillance Act: Core Requirements and Procedures

United States v. Rosen

Notes and Ouestions

- a. Title III Warrants for Ordinary Criminal Investigations
- b. The Scope of FISA Electronic Surveillance and Physical Searches
- c. The FISA Application Process
- d. Constitutional Concerns
- e. FISA and Law Enforcement

B. FISA Trends

CHAPTER 21 PROGRAMMATIC ELECTRONIC SURVEILLANCE FOR FOREIGN INTELLIGENCE

A. The Origins of Section 702

- B. The FISA Amendments Act and the Future of Programmatic Surveillance
 - 1. The Statutory Framework of the FAA

Privacy and Civil Liberties Oversight Board, Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act Notes and Ouestions

2. How the Section 702 Program Operates in Practice

Privacy and Civil Liberties Oversight Board, Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act Notes and Ouestions

3. Constitutional Issues

Notes and Questions

CHAPTER 22 THE THIRD-PARTY DOCTRINE

A. Origins of the Third-Party Doctrine *Smith v. Maryland*Notes and Questions

B. The Modern Third-Party Doctrine

Carpenter v. United States
Notes and Questions

- C. Collection of Third-Party Records
 - 1. National Security Letters and Administrative Subpoenas
 - 2. Criminal Subpoenas
 - 3. Stored Electronic Communications
 - 4. Snail Mail
 - 5. Pen Registers and Trap and Trace Devices
 - 6. Business Records Orders

Notes and Questions

7. Bulk Collection Authority

Notes and Questions

D. Data Mining and Predictive Analytics

Notes and Questions

CHAPTER 23 SCREENING FOR SECURITY

A. Checkpoint Searches

United States v. Saboonchi Notes and Questions

B. Watch Listing

Ibrahim v. Department of Homeland Security

CHAPTER 24 PROFILING AND TRAVEL BANS

A. Profiling

Farag v. United States

Notes and Questions

- a. Legal Analysis of Profiling
- b. Practical Problems and Assessment of Profiling
- c. National Origin and Religious Profiling

Case Study: Hassan v. City of New York

Notes and Questions

B. The Trump Administration Travel Bans

Immigration and Nationality Act, 8 U.S.C. §1101-1537

Trump v. Hawaii

Notes and Questions

PART V NATIONAL SECURITY DETENTION AND INTERROGATION

CHAPTER 25 HABEAS CORPUS AND THE SUSPENSION CLAUSE

- A. The Origins of the Suspension Clause
- B. The Habeas Corpus Statute(s)

Habeas Corpus, 28 U.S.C. §§2241-2255

Notes and Ouestions

C. Suspending the Writ

Notes and Questions

D. The Timing and Effects of a Valid Suspension

Hamdi v. Rumsfeld

Notes and Questions

E. Where and to Whom the Privilege of the Writ Extends

Boumediene v. Bush

Notes and Questions

F. The Substantive Scope of the Suspension Clause

Boumediene v. Bush

Notes and Questions

CHAPTER 26 MILITARY DETENTION OF U.S. PERSONS

A. The Internment Camps and the Non-Detention Act

Alien Enemy Act of 1798, 50 U.S.C. §21 *Korematsu v. United States* Notes and Questions

B. Military Detention of U.S. Persons Captured Overseas *Hamdi v. Rumsfeld*Notes and Questions

- C. Military Detention of U.S. Persons Captured in the United States
 - 1. José Padilla
 - 2. Ali Saleh Kahlah al-Marri Notes and Questions
- D. Codification of Military Detention Authority
 National Defense Authorization Act for Fiscal Year 2012
 Notes and Questions
- E. Military Detention of Non-U.S. Persons *Al-Bihani v. Obama* Notes and Questions
- F. Proving Detainability: Procedural and Evidentiary Issues Notes and Questions

CHAPTER 27 PREVENTIVE DETENTION

- A. Constitutional Limits on Preventive Detention Notes and Questions
- B. "Spitting on the Sidewalk": Pretextual(?) Criminal Detention Notes and Questions
- C. The Post-9/11 Roundup of "High Interest" Detainees

 Turkman v. Hasty

 Notes and Questions
- D. Material Witness Detentions
 Release or Detention of a Material Witness, 18 U.S.C. §3144 *Ashcroft v. al-Kidd*Notes and Ouestions

CHAPTER 28 INTERROGATING NATIONAL SECURITY DETAINEES

A. The Legal Standards and their Application *United States v. Charles Emmanuel*Notes and Questions

B. When Is Interrogation Torture?

Senate Select Committee on Intelligence, Committee Study on the Central Intelligence Agency's Detention and Interrogation Program (SSCI Study) Notes and Questions

C. Other International and Domestic Laws on Abusive Interrogations

1. Geneva Conventions

War Crimes Act, 18 U.S.C. §2441

Notes and Questions

- 2. The International Covenant on Civil and Political Rights (ICCPR)
- 3. Customary International Law and Jus Cogens
- 4. Constitutional Protections

Notes and Questions

- 5. Other Domestic Constraints
 - a. The Detainee Treatment Act

Detainee Treatment Act, 42 U.S.C. §2000dd

b. A 2009 Executive Order

Exec. Order No. 13,491, Ensuring Lawful Interrogations

- c. The Army Field Manual
- 6. Civil Liability for Interrogators
 - a. Civil Liability for U.S. Government Interrogators?
 - b. Civil Liability for Lawyers?
 - c. Civil Liability for Contractors?
 - d. Civil Liability for Torture Abroad

PART VI PROSECUTING THREATS TO NATIONAL SECURITY

CHAPTER 29 INTERNATIONAL TERRORISM AND RELATED CRIMES

Definitions, 18 U.S.C. §2331

A. Federal Criminal Laws

Acts of Terrorism Transcending National Boundaries, 18 U.S.C. §2332b Notes and Questions

B. Seditious Conspiracy

Seditious Conspiracy, 18 U.S.C. §2384

United States v. Rahman

Notes and Questions

C. Material Support Crimes

Providing Material Support to Terrorists, 18 U.S.C. §2339A

Providing Material Support or Resources to Designated Foreign Terrorist Organizations, 18 U.S.C. §2339B

Prohibitions Against the Financing of Terrorism, 18 U.S.C. §2339C

Notes and Ouestions

Holder v. Humanitarian Law Project

D. The Long Arm of the Law: Extraterritorial Criminal Jurisdiction

*United States v. Bin Laden*Notes and Ouestions

CHAPTER 30 DOMESTIC NATIONAL SECURITY CRIMES AND DOMESTIC TERRORISM

Definitions, 18 U.S.C. §2331 National Strategy for Countering Domestic Terrorism

A. Domestic National Security Crimes

1. Dangerous Speech and the Anti-Riot Act

United States v. Miselis

Notes and Questions

2. Seditious Conspiracy

Seditious Conspiracy, 18 U.S.C. §2384

United States v. Rahman

Notes and Questions

- 3. Insurrection
 - a. Early History
 - b. The Calling Forth Clause and Insurrection Act Calling Forth Clause, U.S. Const., art. I, §8, cl. 15
 - c. Criminalizing "Rebellion or Insurrection" Rebellion or Insurrection, 18 U.S.C. §2383
 - d. The Fourteenth Amendment

The Fourteenth Amendment, U.S. Const., amend. XIV Notes and Questions

4. Treason

The Treason Clause, U.S. Const. art. III, §3

Treason, 18 U.S.C. §2381

Notes and Questions

5. A Crime of Domestic Terrorism?

Notes and Questions

B. The January 6, 2021 Attack on the U.S. Capitol

Thompson v. Trump (D.D.C. 2022)

Thompson v. Trump (D.C. Cir. 2021)

Notes and Ouestions

1. "Ordinary" Crimes

Notes and Ouestions

Restricted Building or Grounds, 18 U.S.C. §1752

Assaulting, Resisting, or Impeding Certain Officers or Employees, 18 U.S.C. §111

Conspiracy to Impede or Injure Officer, 18 U.S.C. §372

2. Obstruction Crimes

Civil Disorders, 18 U.S.C. §231

Definitions, 18 U.S.C. §232

Tampering with a Witness, Victim, or an Informant, 18 U.S.C. §1512

Definitions for Certain Provisions; General Provision, 18 U.S.C. §1515

3. Conspiracy to Defraud the United States

Conspiracy to Commit Offense or to Defraud United States, 18 U.S.C. §371 Notes and Questions

4. "Riot" Crimes

Notes and Questions

5. Seditious Conspiracy

Indictment, *United States of America v. Elmer Stewart Rhodes III* Notes and Ouestions

6. Insurrection

Notes and Questions

7. The January 6 Attack as Domestic Terrorism?

Notes and Questions

C. Criminal Liability of Former President Trump for Conspiring to Subvert a "Federal Government Function"?

Indictment, United States of America v. Donald J. Trump

Notes and Questions

a. Generic Defenses

b. Specific Criminal Charges Against the Former President

Conspiracy Against Rights, 18 U.S.C. §241

D. Disqualification of Donald Trump from Future Office?

Anderson v. Griswold

Notes and Questions

CHAPTER 31 NATIONAL SECURITY PROSECUTIONS

A. Civilian Courts vs. Military Commissions

Notes and Questions

B. National Security Criminal Procedure: Miranda, Presentment, and Speedy Trial

U.S. Department of Justice, Federal Bureau of Investigation, *Custodial Interrogation* for Public Safety and Intelligence-Gathering Purposes of Operational Terrorists Inside the United States

--

Notes and Questions

C. Coerced Evidence

United States v. Ghailani

Notes and Questions

D. Secret Evidence

Classified Information Procedures Act, 18 U.S.C. app. III §§1-16 United States v. Lee Notes and Questions

D. Access to Secret Exculpatory Testimony United States v. Moussaoui Notes and Questions

E. How to Solve the "Problem" of National Security Prosecutions Notes and Questions

PART VII HOMELAND SECURITY

CHAPTER 32 RESPONDING TO DOMESTIC EMERGENCIES

- A. The Covid-19 Pandemic Notes and Questions
- B. The Federal Response Role
 - 1. General Response Authorities
 - a. The Stafford Act
 - b. The Homeland Security Act and Related Directives
 - c. DHS Response Plans
 - d. The Defense Production Act Notes and Questions
 - 2. Public Health Emergency Authorities

Public Health Service Act, 42 U.S.C. §§201 to 300mm-62 Interstate Quarantine Regulations, 42 C.F.R. pt. 70

Notes and Questions

- a. Restrictions on Movement
- b. Social Distancing and Masking
- c. Vaccination
- d. Privacy
- e. Federalism
- C. State, Local, and Tribal First Responders Notes and Ouestions

CHAPTER 33 THE MILITARY'S DOMESTIC ROLE

- A. The Traditional Role of the Military in American Society
 - 1. The Posse Comitatus Act as a Background Principle Bissonette v. Haig Notes and Questions
 - 2. Exceptions to the Posse Comitatus Act Insurrection Act, 10 U.S.C. §§251-255

Military Cooperation with Civilian Law Enforcement Officials, 10 U.S.C. §§271-284 Notes and Ouestions

- 3. The National Guard's Roles
 - a. The National Guard Generally
 - b. The District of Columbia's National Guard Notes and Questions
- B. Domestic Military Intelligence Collection

*Laird v. Tatum*Notes and Questions

- C. New Domestic Military Roles?
 - 1. Border Security

Notes and Questions

2. Troops in Elections

Troops at Polls, 18 U.S.C. §592

Interference by Armed Forces, 18 U.S.C. §593

Notes and Questions

3. Troops in a Pandemic

Notes and Questions

D. Martial Law: When Planning Fails

Ex parte Milligan
Notes and Questions

PART VIII OBTAINING AND PROTECTING NATIONAL SECURITY INFORMATION

CHAPTER 34 SAFEGUARDING NATIONAL SECURITY INFORMATION

A. Classification of National Security Information

Exec. Order No. 13,526, Classified National Security Information Notes and Questions

- B. Restricting Access to Sensitive Information: Security Clearances
 - 1. Nondisclosure Agreements

Classified Information Nondisclosure Agreement (SF 312)

Sensitive Compartmented Information Nondisclosure Agreement (SF 4414)

Notes and Questions

2. Enforcing Prepublication Review

United States v. Marchetti

Notes and Questions

C. Criminal Prosecution of Leakers: The Espionage Act

Espionage and Censorship, 18 U.S.C. §§793-799

United States v. Rosen

D. "Authorized" Leaks

CHAPTER 35 ACCESS TO NATIONAL SECURITY INFORMATION

- A. The Freedom of Information Act
 - 1. The Statutory Text

Freedom of Information Act, 5 U.S.C. §552

Notes and Questions

2. Litigating FOIA Requests

American Civil Liberties Union v. United States Department of Defense Notes and Questions

- B. Other Open Government Laws
 - 1. The Presidential Records Act
 - a. Recovery of Presidential Records from Mar-a-Lago
 - b. Criminal Enforcement of the Presidential Records Act?
 Gathering, Transmitting or Losing Defense Information, 18 U.S.C. §793
 Tampering with a Witness, Victim, or an Informant, 18 U.S.C. §1512
 - 2. The Privacy Act
 - 3. Open Meetings Laws
- C. Non-Statutory Rights of Access
 - 1. Common Law Right to Know
 - 2. Constitutional Right to Know

Notes and Questions

- D. Congress's Right of Access
 - 1. Congress's Power to Investigate The Basics

Trump v. Mazars USA, LLP

Notes and Questions

2. Privileged Information

Notes and Questions

3. A Former President's Records

Trump v. Thompson (U.S. 2022)

Notes and Questions

4. All the President's Men and Women

Notes and Questions

5. Members of Congress

Notes and Questions

- 6. Enforcing Congress's Subpoena Power
 - a. Congress's Inherent Power to Compel
 - b. Criminal Liability for Contempt of Congress Refusal of Witness to Testify or Produce Papers, 2 U.S.C. §192
 - c. Civil Enforcement in Court

7. Congress's Last Resort?

CHAPTER 36 CENSORSHIP

- A. Fundamentals of Censorship: The *Pentagon Papers* Case *New York Times Co. v. United States*Notes and Questions
- B. Banning Foreign Companies: The Case of Tiktok Notes and Questions
- C. Publication as a Crime?

 Notes and Questions
- D. Shooting the Messenger's Messenger? *United States v. Sterling*Notes and Questions

Appendix — Constitution of the United States Table of Cases Index