

**2015-2016 Supplement**

**National Security Law**  
*Fifth Edition*

and

**Counterterrorism Law**  
*Second Edition*

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# Preface

Once again, it has been a busy and momentous year in U.S. national security law and policy — not just in courtrooms across the United States, but from faraway battlefields to the halls of Congress and the offices of the Executive Branch. Some of these continuing developments, of course, can be traced to the ongoing fallout from the massive 2013 disclosures by Edward Snowden of hitherto secret government surveillance programs — and the massive debate they have sparked with respect to the legality and propriety of such efforts. But the surveillance reform debate has been only a small piece of a far larger puzzle over the past 12 months — with developments across the spectrum of U.S. national security law and policy that provide plenty of rich (if, at times, complicated) fodder for teachers and students alike. The most important of these are reflected in this *Supplement*, along with other materials not available when the latest editions of our casebooks went to press four years ago.

Some of this year's additions to the *Supplement* will already be familiar to many readers — including the Supreme Court's major separation-of-powers ruling in *Zivotofsky v. Kerry*, 135 S. Ct. 2076 (2015), holding that Congress violated the President's exclusive "recognition" power when it required the State Department to list "Israel" as the place of birth on the passports of U.S. citizens born in Jerusalem. Ditto the Second Circuit's key ruling in *ACLU v. Clapper*, 785 F.3d 787 (2d Cir. 2015), holding that the NSA's bulk telephone metadata program was inconsistent with the statutory authority that Congress had provided in Section 215 of the USA Patriot Act of 2001, and the subsequent enactment by Congress of the USA Freedom Act of 2015, designed principally to reform Section 215. And the December 2014 release of the Executive Summary of the Senate Select Committee on Intelligence report on the CIA's detention and interrogation program certainly renewed the debate over the government's use of enhanced interrogation techniques after September 11 — providing far more details on the controversial CIA program than had previously been made public.

But we have also endeavored to include other materials that add depth and richness to the latest editions of our casebooks, even though

## Preface

they have not generated as many headlines — including the various war powers reports that President Obama has submitted to Congress with respect to the use of force in Iraq and Syria against the Islamic State of Iraq and the Levant (ISIL); different approaches to a new Authorization for the Use of Military Force (AUMF) against ISIL; important new judicial decisions arising out of the continuing military detention (and military commission trials) of Guantánamo detainees, 116 of whom remain in U.S. custody as this *Supplement* goes to press, despite President Obama’s repeated pledges to close Guantánamo; and an ever-evolving body of case law, statutory reforms, and policy initiatives concerning other U.S. counterterrorism policies on the homefront — from no-fly lists and cybersecurity to watch lists and immigration detention. As even a cursory perusal of the *Supplement*’s Table of Contents indicates, 2014-2015 may not have had the same number of national security headlines as other recent years, but it was hardly lacking in meaningful legal developments.

This *Supplement* serves two closely related casebooks: *National Security Law* (5th ed.) and *Counterterrorism Law* (2d ed.). This Preface is followed immediately by two Teacher’s Guides, one for each book, which indicate the placement of supplemental materials in each casebook. Each document listed is accompanied by a reference to one or both casebooks. For example, the D.C. Circuit’s June 2015 decision invalidating Guantánamo military commission trials of “domestic” offenses appears with this instruction: **[NSL p. 1075, CTL p. 689. Substitute the following for *Hamdan v. Rumsfeld* and subsequent material through NSL p. 1104, CTL p. 718.]** “NSL” refers to *National Security Law* (5th ed.), and “CTL” to *Counterterrorism Law* (2d ed.). Some of the instructions suggest that the *Supplement* materials be provided in addition to the relevant casebook pages; others, like the example above, suggest replacing what’s in the casebook with these more recent materials — which, in many cases, provide more concise, more relevant, or, at the very least, more definitive discussions of the topics raised in the original casebook materials. In all cases, our hope is that, as a result of this *Supplement*, you’ll find our materials not just to be pedagogically valuable in the abstract, but also *current* — an invaluable commodity in a field that is expanding in hitherto unexplored directions every month.

## Preface

Finally, as important new developments arise during the coming year, we will continue to document them by posting edited new materials on the websites for the two casebooks — supplements to this *Supplement* — from which they may be downloaded by teachers and shared with students. The website for *National Security Law (5th ed.)* may be found at [http://www.aspenlawschool.com/books/dycus\\_nationalsecurity/](http://www.aspenlawschool.com/books/dycus_nationalsecurity/); the website for *Counterterrorism Law (2d ed.)* may be found at [http://www.aspenlawschool.com/books/dycus\\_counterterrorism/](http://www.aspenlawschool.com/books/dycus_counterterrorism/). Although we always provide notice to our adopters whenever new materials are posted to the site, we also encourage students and teachers alike to periodically return to those portals to keep abreast of major developments during the year.

We also hope that our adopters and other readers join us in looking forward to the Sixth Edition of *National Security Law* and Third Edition of *Counterterrorism Law*, which should be available for courses beginning in the Fall 2016 semester. These new editions will incorporate much of this lengthy supplement, reorganize existing materials in light of new developments, introduce several new chapters, and include some innovative pedagogical changes that we believe will make the courses that use our books easier to teach.

As always, we are extremely grateful to our adopters, fellow members of the National Security Law Section of the Association of American Law Schools, fellow members of the Editorial Board of the *Journal of National Security Law & Policy*, fellow casebook authors (our collaborators in building the field), members of the ABA Standing Committee on Law and National Security, and our many friends in the national security community. We also wish to thank our research assistants. Finally, we wish to express our gratitude to John Devins and Carol McGeehan, our long-time editors and friends, for their continued encouragement and support.

Stephen Dycus  
William C. Banks  
Peter Raven-Hansen  
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July 2015

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