

**2021-2022 Supplement**

**National Security Law**  
*Seventh Edition*

**and**

**Counterterrorism Law**  
*Fourth Edition*

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**2021–2022 Supplement**

**National Security Law**  
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**Counterterrorism Law**  
*Fourth Edition*

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# Preface

For most casebooks, the immediate aftermath of a new edition is relatively calm, with little need to quickly address new developments, and even less likelihood of multiple field-shifting events following shortly on the heels of publication. But as is so often true in the fields of National Security Law and Counterterrorism Law, and has so often been true for the *National Security Law* and *Counterterrorism Law* casebooks for which this *Supplement* exists, the last year has been . . . busy. Indeed, the new content in this *Supplement* runs to a total of 142 pages. Not only has the COVID-19 pandemic raised many important, novel, and complex legal questions about governmental emergency powers, especially in the field of public health, but the 2020 election and its violent aftermath have likewise surfaced (or resurfaced) long-running debates over the difference between international and domestic terrorism — and how (if at all) the authorities for the former can and should be mapped onto the latter.

Nor are these questions entirely in the rear-view mirror. As this *Supplement* goes to press, for example, litigation is ongoing over many of the state and federal responses to COVID-19, and the criminal cases arising out of the January 6 violence at the U.S. Capitol continue to produce new and interesting judicial decisions that, in some cases, must construe long-dormant statutory authorities. Meanwhile, the Supreme Court is set to consider during its October 2021 term its first-ever case about the Foreign Intelligence Surveillance Act (FISA), along with a major case about the state secrets privilege as it relates to the CIA's torture of terrorism suspects overseas in the first years after the September 11 attacks.

Speaking of FISA, there have also been a number of important new developments on that front in all three branches of government — including curious decisions by Congress to allow surveillance authorities that had expanded dramatically after September 11 to either revert to their pre-9/11 form or completely expire. The *Supplement* addresses these developments in detail, as well.

And, of course, there is still the ongoing military detention and military commission regimes at Guantánamo, where 40 men remain in custody as this *Supplement* goes to press. New in this *Supplement* is detailed coverage of the *Al-Hela* case — in which the en banc D.C. Circuit is set to hear argument in September 2021, and which may have

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major implications not just for Guantánamo habeas cases, but for the constitutional rights of non-citizens outside the United States more generally.

As ever, we have tried to keep up with these and many other developments without overly complicating the use of the core casebooks. Achieving that practical goal necessarily requires discriminating selection and presentation. As in past supplements, we have carefully edited the principal new cases and supplied a minimum of new Notes and Questions, trusting our enterprising adopters to use (and embellish) them as they feel best fits their teaching goals.

To aid us in this project, we have also brought onboard a terrific new co-author, Professor Emily Berman from the University of Houston Law Center, who adds her formidable professional and academic background and cutting-edge scholarship to our cohort.

This *Supplement* serves two closely related casebooks: *National Security Law* (7th ed. 2020) and *Counterterrorism Law* (4th ed. 2020). This Preface is followed immediately by two Teacher’s Guides, one for each book, which indicate the placement of supplemental materials within each casebook (and are intended to make it easier for adopters to match *Supplement* entries to their syllabi). Each document in the *Supplement* is accompanied by a reference to one or both casebooks, depending on where the relevant underlying material appears. For example, the insert concerning the ongoing dispute over the government’s reliance upon evidence obtained through torture in one of the Guantánamo military commission prosecutions appears with this instruction: **[NSL p. 1156, CTL p. 808. Insert after Note 6.]** “NSL” refers to *National Security Law* (7th ed.), and “CTL” to *Counterterrorism Law* (4th ed.).

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* (7th ed.) may be found at <https://www.wklegaledu.com/Dycus-NationalSec7>; the website for *Counterterrorism Law* (4th ed.) may be found at <https://www.wklegaledu.com/Dycus-Counterterrorism4>. For each book, log in with a validated professor account for access to our materials.

However, adopters are forewarned that when events move as quickly as they have in our field, the first responsibility for keeping up lies with them. Thus, the adopter who wishes to discuss the implications of the January 6, 2021 riots for domestic terrorism laws, or the government’s

## Preface

authority to buy third-party data or to obtain the metadata of journalists in a leak investigation, should consider the materials in the casebooks and this *Supplement* as, at most, a platform for discussion, on which they must build with contemporaneous materials that they themselves locate and curate from the media and from the wonderful national security blogs available to them. (And, when they do, share them with us!)

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 Carol McGeehan, John Devins, and Jeff Slutzky, our long-time editors and friends, for their encouragement and support in this work.

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July 15, 2021

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