

Harry Phillips
American Inn of Court

Terrorism and Constraints on Civil Liberties

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Part One

Historical Perspective of Limitations of Civil Liberties in Times of War.

1. Civil War.

- i. *Ex parte Merryman*, 17 F. Cas. 144 (Circuit Court, Maryland, 1861).
- ii. *Ex parte Vallandigham*, 68 U.S. 243 (1863).
- iii. *Ex parte Milligan*, 71 U.S. 2 (1866).

2. World War One.

- i. *Goldman v. United States*, 245 U.S. 474, 38 S. Ct. 166 (1918).
- ii. *Schenck v. United States*, 249 U.S. 47, 39 S. Ct. 247 (1919).
- iii. *United States ex rel. Milwaukee Social Democratic Pub. Co. v. Burleson*, 255 U.S. 407, 41 S. Ct. 352 (1921).

3. World War Two.

- i. *Ex parte Kawato*, 317 U.S. 69, 63 S. Ct. 115 (1942).
- ii. *Hirabayashi v. United States*, 320 U.S. 81, 63 S. Ct. 1375 (1943).
- iii. *Ex parte Endo*, 323 U.S. 283, 65 S. Ct. 208 (1944).
- iv. *Korematsu v. United States*, 323 U.S. 214, 65 S. Ct. 193 (1945).
- v. *Duncan v. Kahanamoku*, 327 U.S. 304, 66 S. Ct. 606 (1946).

4. Korean War.

- i. *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 72 S. Ct. 863 (1952).

5. State Secrets Privilege.

- i. *Ellsberg, et al v. Mitchell*, 709 F. 2d 51 (D.C. Cir. 1983).

6. Military Tribunals and Enemy Combatants.

- i. *In the Matter of Jose Juan Vidal, et al*, 179 U.S. 126, 21 S. Ct. 48 (1900).
- ii. *United States ex rel. Quirin v. Cox*, 317 U.S. 1, 63 S. Ct. 2 (1942).
- iii. *Application of Yamashita; Yamashita v. Styer*, 327 U.S. 1, 66 S. Ct. 340 (1946).
- iv. *Johnson v. Eisentrager*, 339 U.S. 763, 70 S. Ct. 936 (1950).
- v. *Hamdi v. Rumsfeld*, 294 F.3d 598 (4th Cir., 2002).
- vi. *Hamdi v. Rumsfeld*, 296 F.3d 278 (4th Cir. 2002).
- vii. *Coalition of Clergy v. Bush*, 189 F. Supp.2d 1036 (C.D. CA, 2002).

7. Deportation

- i. *Detroit Free Press, et al. v. Ashcroft*, 2002 WL 1972919 (6th Cir. Mich.).
- ii. *North Jersey Media Group, Inc. v. Ashcroft*, 2002 WL 31246589 (3rd Cir. N.J.).

Part Two

USA PATRIOT ACT.

Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (Oct. 25, 2001).

An act to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes.

Selected Sections from the Act.

1. Authority to Share Criminal Investigative Information.

SEC. 203. (a) AUTHORITY TO SHARE GRAND JURY INFORMATION- (1) IN GENERAL.

Rule 6(e)(3)(C) of the Federal Rules of Criminal Procedure is amended to read as follows:

(C)(i) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made - (V) when the matters involve foreign intelligence or counterintelligence (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), or foreign intelligence information (as defined in clause (iv) of this subparagraph), to any Federal law enforcement, intelligence, protective, immigration, national defense, or national security official in order to assist the official receiving that information in the performance of his official duties.

(iii) Any Federal official to whom information is disclosed pursuant to clause (i)(V) of this subparagraph may use that information only as necessary in the conduct of that person's official duties subject to any limitations on the unauthorized disclosure of such information. Within a reasonable time after such disclosure, an attorney for the government shall file under seal a notice with the court stating the fact that such information was disclosed and the departments, agencies, or entities to which the disclosure was made.

(iv) In clause (i)(V) of this subparagraph, the term "foreign intelligence information" means - (I) information, whether or not concerning a United States person, that relates to the ability of the United States to protect against - (aa) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power; (bb) sabotage or international terrorism by a foreign power or an agent of a foreign power; or (cc) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of foreign power; or (II) information, whether or not concerning a United States person, with respect to a foreign power or foreign territory that relates to - (aa) the national defense or the security of the United States; or (bb) the conduct of the foreign affairs of the United States.