

TERRORISM AND THE LAW

CASES AND MATERIALS

Gregory E. Maggs

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TERRORISM AND THE LAW

CASES AND MATERIALS

By

Gregory E. Maggs

Professor of Law

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Preface

Choosing the materials to include in this book proved difficult. Terrorism concerns many, many different areas of the law. In addition, as the United States and other nations confront the threat of terrorism, new statutes, cases, and policies seem to emerge almost daily. No introductory text could include everything. And no one knows for sure which legal principles will remain important over time.

In the end, I have sought to emphasize major terrorism cases and events. Even if some specifics in the law change, the significant incidents and the responses that they provoked will remain relevant. Law and policy makers will consider them in deciding what steps to take in the future. They will not forget, for example, the events of September 11, 2001, and the legal challenges that governments have faced in mounting a response, even if they ultimately decide to change course.

Terrorism has become a topic of global concern. The United States has taken actions to counter terrorism both in this country and abroad. Many other nations face challenges similar to those confronted by the United States. For this reason, the book contains various foreign and international cases and materials.

This book grew out of a set of readings that I prepared for the George Washington/Oxford University Program in International Human Rights during the summer of 2004. I am very grateful to the Program Directors, Professors Ralph Steinhardt and Andrew Shacknove, for inviting me to participate. I benefitted greatly from the comments of the students and the other faculty members participating in the program. In addition, Professor Jose Carillo generously invited me to participate in his Human Rights Clinic at the George Washington University Law School, where I had the opportunity to discuss issues related to this book and to meet students and attorneys involved in defending persons accused of offenses related to terrorism.

As an officer in the U.S. Army Reserve, Judge Advocate General's Corps, I have worked on several terrorism-related policies and cases. Most significantly, I have assisted a team involved in drafting the rules for trials by military commissions and I also have advised the military commissions prosecution team on various issues. The other military attorneys with whom I have

worked have educated me on many subjects addressed in these materials and tremendously increased my interest in them. But the views stated in this book are my own, and do not represent the official views of the U.S. Department of Defense or Department of the Army.

I am extremely grateful to Professor Ronald Rotunda for his advice and assistance throughout the entire process of developing this book. (In fact, I have attempted to replicate here the format of his very successful *Modern Constitutional Law* casebook). I am also thankful to Professors Bradford Clark, Jerome Baron, Mary Cheh, Peter Raven-Hansen, Jonathan Turley, and John Yoo for sharing their ideas on the subject of terrorism with me. My father, Professor Peter B. Maggs, helped me with this project in many ways, especially by translating excerpts from a decision of the Constitutional Court of the Russian Federation regarding the use of force in the Chechen Republic (included with the notes on page 178 below). Colonel Mark Harvey, U.S. Army retired, a former judge on the U.S. Army Court of Criminal Appeals and now Clerk of Court for the U.S. Military Commissions, gave me accurate and useful guidance on many military law issues. All errors are my fault.

Please note that in editing the cases and other materials excerpted in this book, I have indicated omitted paragraphs by three asterisks (“* * *”) and omitted sentences or portions of sentences by ellipses (“...”). I have placed in brackets (“[]”) any text that I have added when editing quoted materials. I have omitted footnotes without indication, but have retained the original numbering of the footnotes that remain. Please consult the actual sources when conducting further research.

GREGORY E. MAGGS

Washington, D.C.
May 2005

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