

Teaching and Learning about Terrorism¹

William C. Banks²

The field of national security law entered the program of study in U.S. law schools in small steps. A few law school courses in national security law were taught in the decade after the ABA Standing Committee on Law and National Security was created in 1962, largely in response to the Cold War and fears of expanding communism. At the University of Virginia and then at Duke, these early offerings were essentially advanced courses in constitutional law, with some public international law added. After Vietnam and Watergate and the Church and Rockefeller Commission investigations in the mid-1970s, a few courses and seminars were created that focused on the Vietnam War or on press freedoms or CIA and FBI abuses. The first sustained effort to engage legal education more broadly in the field of national security began during the Reagan Administration, when fears of nuclear confrontation and possible first use of nuclear weapons became important public issues.

More than one hundred U.S. law schools have offered courses in national security law since the creation of the first texts in national security law in the late 1980s. By and large, these courses address broad issues in domestic and international law related to defense and security. As all of us who have witnessed events of the past fifteen years can attest, the field has grown in size and complexity, in significant part due to the growing threat of international terrorism and weapons of mass destruction (WMD).

After teaching and writing about problems of national security law since the late 1980s, I decided to work toward creating a discrete course on a subset of national security law, the legal dimensions of terrorism. Even before September 11, 2001, it was clear to many of us in the field that the legal issues surrounding terrorism were multiplying in number, difficulty, and centrality to national security. Although the academy has treated studies of terrorism as part of the curriculum in international relations and political science programs, law students have received little systematic exposure to the legal dimensions of terrorism in the law school curriculum.

The strikes on U.S. soil in the first World Trade Center bombing in 1993 and the Oklahoma City attack in 1995 may have awakened American lawyers to the legal problems presented by terrorism. There was an intense investigative effort to learn the plans of those who carried out the 1993 bombing in New York, but the cell could not be penetrated. Good police work and sloppy operational security by the terrorists in the days after the bombing led law enforcement officials to the suspects. When Sheik Rahman, Ramzi Yousef, and their co-conspirators were tried for the 1993 bombing and for their continuing plans to further terrorize important symbols including New York City

¹ William C. Banks, Teaching and Learning about Terrorism, 55 J. Legal Educ. (forthcoming 2005).

² William C. Banks is Director of the Institute for National Security and Counter Terrorism at Syracuse University and Professor of Public Administration, Maxwell School of Citizenship and Public Affairs. He also serves as the Laura J. and L. Douglas Meredith Professor at Syracuse University College of Law.

bridges, tunnels, and landmarks, only ill-fitting World War I era seditious conspiracy laws could be applied to their crimes. Vigorous free expression and religion arguments, in tandem with vagueness and overbreadth challenges, presented serious barriers to conviction. Neither the investigative nor law enforcement frameworks worked well in interdicting the terrorist activities. Nor was it ever learned who financed the plot. Likewise, there was no warning when Timothy McVeigh and John Nichols carried out the bombing of the Oklahoma City federal building,. A lucky break led police to McVeigh and good police work built the convincing mass murder cases against both of the perpetrators.

Beginning in 1995 Congress and the president brought terrorism to center stage in setting priorities for new legislation and in launching federal planning for counter terrorism and homeland security. Laws criminalizing terrorism proliferated, as did presidential directives, FBI guidelines, and military plans and exercises. The emerging threat posed by weapons of mass destruction, including especially pernicious forms of biological, chemical, and radiological devices, caused planners to anticipate the possibility of mass casualty attacks on U.S. soil, or against U.S. interests abroad. The Tokyo subway attacks with sarin by Aum Shinrikyo and the attempts by the Rajneeshee group to use poison to influence local elections in Oregon heightened concern about WMD threats. In 1999 an apparent attempt to terrorize the millennium events in the United States was thwarted when investigators spotted a suspicious traveler and vehicle entering the United States from Canada. Anthrax turned up in several locations a few weeks after September 11, undetected and producing mismanaged public affairs reporting, disruption, and costly cleanup in Washington and elsewhere, and a frank recognition among government officials that the nation was ill-prepared to anticipate and respond to a major terrorist attack with weapons of mass destruction. These incidents and others like them revealed that the legal dimensions of countering terrorism straddle traditionally discrete strategies and academic subject lines—investigations and law enforcement, war and military operations, public health and emergency management, planning and public affairs.

By 2001, in the larger field of national security law, terrorism continued to represent a subset, but the complexity and importance of the legal issues presented by terrorism has made it difficult simply to treat countering terrorism as a brief unit in a national security law course. The task I took on was to carve out a new law course—one about terrorism, not one that focused solely on anti as opposed to counter terrorism, but one that would examine the legal dimensions of countering terrorism.

Defining the field of counter terrorism for teaching purposes mirrors the problems government has had in definition. By one count, the U.S. government has promulgated nearly 150 definitions of the term “terrorism.”³ Is terrorism best understood as a subset of war, with attendant war powers questions raised in a new setting? Is terrorism a law enforcement and criminal law problem, raising fresh legal issues of investigation, detention, interrogation, and prosecution? Is terrorism about planning for and recovery from terrorist incidents, raising legal problems something like those associated with

³ Nicholas J. Perry, The Numerous Federal Legal Definitions of Terrorism: The Problem of Too Many Grails, 30 J. Legis. 249 (2004).

natural disasters, but embedded with unique and pressing problems of public health and emergency management laced with interagency and federalism issues?

In creating a first Counter Terrorism and the Law course at Syracuse, I decided, following the government's lead, that the answer is "all of the above." Just as government tried every strategy and approach in countering terrorism in overlapping programs and initiatives, so too does a counter terrorism law course cover the various modes through which the government counters terrorism.

What's In the Course And What's Out?

Our National Security Law text contained a unit on countering terrorism only in its third edition, prepared largely before and submitted for publication just after September 11.⁴ We began the unit with a broad introductory chapter, including a primer on government planning for counter terrorism and homeland security that has occurred since the mid-1980s. In three follow-up chapters, we presented extensive primary source materials and notes and questions on investigations, crisis and consequence management, and prosecution as a counter terrorism strategy. Mindful of the larger subject and our commitment to present a volume that is not so lengthy as to be unwieldy, we kept our treatment lean and necessarily incomplete.

In the 2001-2002 and 2002-2003 academic years, I taught a course that used those four chapters and an extensive web-based supplement. I recognized that law students need some exposure to materials from other disciplines to be able to appreciate, for example, how the term "terrorism" has been understood historically and is understood in different cultures and nations. They also needed to learn something about who the terrorists are, why they strike, what means they use in their attacks, and what vulnerabilities the United States presents as terrorist targets. Before looking at the law, the students should also have some appreciation for how the United States has viewed the terrorist threat, and what plans and strategies have been proposed and prescribed in countering terrorism. Meanwhile, pressing current events, such as the post-September 11 detentions and launching of the war on terrorism, required considerable and constant updating via web-assigned materials.

Although many law students who enrolled in the Counter Terrorism and the Law course were veterans of the National Security Law course, others were not. Inevitably, then, I had to forego much of the NSL text and get right to the terrorism unit. The war powers framework was not taught, even though its application was relevant and sometimes discussed. Likewise, intelligence collection and covert operations, small wars, and anticipatory self-defense operations are not in the course. Access to information and press restrictions survived the cut one year or two, but then fell by the wayside due to the weight of competing topics.

One innovation that I tried in those years was a simulation built around a hypothetical biological weapons attack. My objective was to encourage the students to learn about

⁴ Stephen Dycus et. al., National Security Law (Boston, 2002).

lawyers' roles in planning, in crisis management, and in managing the consequences of a high casualty terrorism attack. Even a relatively simple scenario, such as a threatened release of smallpox virus in an urban atmosphere by an unnamed terrorist group, can provide the backdrop for law students to examine who is in charge in such situations, what policies would be followed (for vaccinating the population, for example), what agencies would implement them, and how the federal, state, and local governments would cooperate in a lawful way to manage an attack. In addition, important considerations in the planning and response to a terrorist incident with WMD in the homeland include the role of the military, including state or federally deployed National Guard; use of military personnel in providing public health services or enforcing the laws; and the possibilities for invocation of martial law and questions about continuity of government operations in the wake of a devastating attack. Asking students to play roles and work in teams to recommend answers to these questions proved to be a highly illuminating learning experience for all of us.

Even as I began putting the course materials together and designing the syllabus, I realized that the problems of countering terrorism are not really amenable to clear or complete definition or understanding packaged within law subject boxes, such as criminal law, war powers, and public health or emergency management. The perspectives of a range of disciplines, including public policy and political science, history, international relations, psychology, public health, and media relations and public affairs are integral to understanding how to counter the threat of terrorism. Blessed with fine colleagues across these fields on a closely knit campus in a strong research university, I decided to reach out to a few colleagues and thus broaden the academic initiative, toward an interdisciplinary, team-taught course for law and graduate students from across campus, *Perspectives on Terrorism*.

Perspectives on Terrorism

In 2002, the Institute for National Security and Counter Terrorism (INSCT), a program to support teaching and research about national security and counter terrorism, was launched at Syracuse. In its first year, INSCT became a joint enterprise of the College of Law and the Maxwell School of Citizenship and Public Affairs. After nearly a year of weekly meetings with interested faculty colleagues, in January 2004 the new *Perspectives on Terrorism* course was offered.⁵ About eighty students signed on in 2004 and again in 2005 for this three credit course, roughly half law and half graduate students, with a few upper division undergraduates each time. The student evaluations have been positive, the faculty colleagues have been having fun and learning from the students and from each other, and we expect to regularize the course in our colleges and departments. The course is cross-listed in law, political science, history, and mass communications. Students in other fields are welcome to register in any of the four sections. We meet in plenary form in once-weekly three-hour sessions, and then reserve time in most weeks for meetings of our disciplinary sections or small group sections deliberately mixed to include students from a range of departments and colleges.

⁵ The course syllabus is available at <http://insct.syr.edu/Programs_Courses.htm

Four teachers are listed for the course, but we regularly include at least two other colleagues, one each from international relations and political psychology, in our planning sessions and in teaching. We also invite guest colleagues from within and outside the university to lecture and participate in simulations. For example, we have invited to class officials from the Department of Homeland Security to share current planning formulations and management challenges, to assess the Department's early years, and to discuss an agenda for reform.

The course begins with definitions, using legal examples (such as the designation of Foreign Terrorist Organizations by the Secretary of State) and historical and political science readings. Next an historical overview of terrorism is provided. For the succeeding four weeks, we identify and assess the threat of terrorism by examining who the terrorists are and how they operate; what means they use (including asymmetric warfare, weapons of mass destruction, and mass communications); religiously-driven terrorism; psychology of terrorism; risk assessments and security; and strategic responses. After establishing this context, we move to planning for homeland security, problems of interdicting and investigating terrorism, and responding to a terrorist incident (using an exercise to simulate an attack and response). The final two parts of the course survey law enforcement and prosecution modes of countering terrorism, along with the use of military force as a counter terrorism tool.

Students in Perspectives on Terrorism are asked to prepare two common work products and then to satisfy for grading purposes separate requirements in the students' discipline. The common papers have taken the form of a briefing memorandum, in anticipation of a threatened terrorist attack on the homeland, and a lessons learned memorandum, affording each student the chance to pick a topic from the course and apply its lessons from multiple disciplinary perspectives.

What Benefits and Costs Confront the Consumers?

The students who have enrolled in Perspectives on Terrorism have reported in their evaluations and informally that they were sobered by the course experience. Most educated Americans have not come to grips with the complexities of countering terrorism. Law and graduate students confront and resolve complex problems all the time, in a wide range of fields. However, I have yet to talk with a veteran of the Perspectives course who has found a more challenging set of intellectual problems than that provided in our course. Being chastened or sobered is not, in and of itself, much of an educational benefit. We hope and expect, however, that the students are motivated by this new challenge to improve their skills and to learn some important substance. Second, the shared experience in the classroom and in smaller group discussion sessions with students from a range of disciplines and programs has produced some concrete and other not so tangible benefits for the students. All of them learn better how to share their insights in ways understandable to someone outside their in-group. Less concretely, the history student is likely to have a richer appreciation of the historical instances of terrorism, for example, if she learns about how mass communications factors into

terrorism's dynamics, as a tool or weapon for the terrorist and as a means for informing the public by the government.

What are the downside costs? Obviously, all students face opportunity costs in selecting an elective course like this one. In addition, there is a fair chance that losing the depth that a full-scale history or political science or law course would provide reduces the substantive take-away. We hope that the enhanced learning from the interdisciplinary effort more than makes up for losing the extra weeks on, for example, the law of internet surveillance, but we're not sure. And, of course, there have been and will be inevitable wrinkles or glitches, rough transitions, too-lengthy reading assignments, and the like.

Teaching Law to Graduate Students

The course aims to be explicitly interdisciplinary, not simply a multi-disciplinary potpourri of our various perspectives on terrorism. We believe that one of the biggest obstacles to effective counter terrorism policies in the United States has been and is an inadequate ability to communicate and operate across fields of expertise and their related offices of responsibility. We seek to model in the classroom the hard work that is required to stitch together and integrate into a coherent whole the understandings and knowledge about countering terrorism from a range of backgrounds and expertise. What can a historian tell us about mass vaccination programs? How will the mass communications expert react to those historical lessons? Will the lawyer learn about the preferred parameters of a course of action for vaccinating large numbers of people during a crisis, and then come up with legal advice that policy makers and implementers will follow?

In the plenary class sessions, the teachers share responsibility topically. Sometimes a lecture is followed by traditional question and answer. Other times there has been modified Socratic method teaching of some foundational law cases—*Rahman*, for example, or *Keith*, or the *Padilla* case. At other times, exercises have been conducted in class, with assigned roles for faculty, students, and outside guests. The National Security Law text and its supplements continue to provide the base teaching material for the course, and the web-based supplement plays a significant role in building the materials from other disciplines and in keeping up with ongoing developments.

It is challenging but important to teach the legal issues to the graduate students without “dumbing down” the law materials. From the perspective of my political science colleague, the same holds true in teaching political science to the law students. This is a tricky problem, and we have much to learn in responding to it. One technique that shows promise is to ask a law student to help teach the Fourth Amendment material, for example, to the rest of the class, and so on. In learning about the privacy and free expression limits to surveillance, graduate students ask questions of the law student (or the law professor) that bring into the discussion some lessons of history, nagging questions of public affairs and media access, and policy insights suggesting what surveillance policy ought to be in light of the law.

Portability

National security law is a growth industry, for better or worse. Most experts predict that problems of international and domestic terrorism will be with us for at least a generation. At a minimum, our experience at Syracuse University suggests that the model of an interdisciplinary course on countering terrorism can be successful and exciting for students and faculty from a range of disciplines. There may be as much serendipity as forethought in our range of expertise and disciplines among the teachers. Add a public health expert or doctor. Bring in computer or civil engineers and information technology teachers, business planners, and city planners.

One perennial critique of legal education has been its insularity. Legal academics have traditionally walled ourselves off from the rest of our university, because of our professional orientation or because we have been viewed as less academic than our colleagues and their fields. There is no denying, however, that learning about terrorism is an important opportunity if not a professional obligation for those who aspire to be leaders and problem solvers in our communities. As national security law courses have grown to the point where some variant of the subject is now regularly offered at most U.S. law schools, there are indications that the legal issues surrounding terrorism are also being taught. As legal education grows its national security curricula, there is an opportunity to utilize the vexing problems of countering terrorism to respond to a fundamental set of legal problems while working to break down institutional barriers toward interdisciplinary education of lawyers.