

# Chapter 17: Law and Terrorism

Street Law



# Since Sept. 11. 2001

- a. Many new laws and policies have been created in response to terrorism in recent years.
- b. Law enforcement officials at the federal, state, and local levels have all become involved in the "war on terror."
- c. Civil liberties groups and others have challenged many of the laws, concerned that important American freedoms will be sacrificed in the name of national security.
- d. Others argue that these measures are necessary to ensure the safety of the country.

# The Law in Times of War

- a. After the September 11, 2001, terrorist attacks, President George W. Bush requested increased powers to fight the war on terrorism, many of which were granted in the USA Patriot Act of 2001.
- b. The act expanded the powers of certain law enforcement and intelligence agencies, such as the FBI and the CIA.
- c. Some people questioned whether these expanded powers interfered with the privacy rights of individuals suspected of terrorist connections or activity.
- d. Others point to historical examples of need for greater security in the “exigencies of wartime” – denial of **habeas corpus** during the Civil War; **Espionage Act** in WWI; and **Japanese Internment** in WWII.

# Surveillance and Searches

- a. The *USA Patriot Act of 2001* gave the government broader powers to conduct airport searches of people and luggage
- b. Under court order, it can read Internet correspondence, and listen to telephone communications any time a person is believed to be involved in terrorist activities.
- c. These actions are validated by a court (known as a **FISA Court**) that does not conduct its trials publicly.
- d. The court does not have to follow the rules that other United States courts must follow and is exempt from certain constitutional requirements.

# Changes since 2001

- a. The Patriot Act came under criticism as soon as it was passed, and several attempts have been made to **amend, repeal, or limit** it through challenges in court.
- b. One part that has been substantially changed concerns the ability of the NSA (National Security Agency) to collect mass **phone data** without a court order. Congress and President Obama made this change in 2014.
- c. Mass phone data concerned the **times, durations, names, and locations** of calls, not the **content**.





# Detention and Interrogation

- a. Following the attacks of September 11, many people suspected of terrorism have been **detained**—or held—in the custody of the United States government.
- b. These actions mainly affect **non-citizens** and have had a significant effect on the **Muslim** and **Arab** communities in the United States.

NATIONAL SECURITY AGENCY

## Terror suspects to challenge wiretaps

■ Lawyers for terrorism defendants are anxious to learn whether their clients were secretly taped and whether information that could exonerate their clients was withheld.

BY ERIC LICHTBLAU AND JAMES RISEN  
New York Times Service

WASHINGTON — Defense lawyers in some of the country's busiest terrorism

The question of whether the NSA program was used in criminal prosecutions and whether it improperly influenced them raises "fascinating and difficult questions," said Carl W. Tobias, a law professor at the University of Richmond who has studied terrorism prosecutions.

"It seems to me that it would be relevant to a person's case," Tobias said. "I would expect the government

search for terrorists.

But Duffy said: "This is not about monitoring phone calls designed to arrange Little League practice or what to bring to a potluck dinner. These [programs] are designed to monitor calls from very bad people to very bad people who have a history of blowing up commuter trains, weddings and churches."

Government officials, in defending the value of the

But a number of defense lawyers said in interviews that circumstantial evidence has led them to question whether the NSA identified their clients through wiretaps.

The first challenge is likely to come in Florida, where lawyers for two men charged with Jose Padilla, who is jailed as an enemy combatant, plan to file a motion to determine if the NSA program was used to gain incriminating information on



# Patriot Act Court Challenges

- a. Under the *Patriot Act*, non-citizens suspected of being Taliban or al-Qaeda operatives were detained and held without being charged.
- b. In 2006, the Supreme Court ruled in *Hamdan v Rumsfeld* that the Geneva Convention applied to these prisoners, and they could not be held without **due process**.





WE FOUND PLENTY ON THIS GUY:  
A CONCEALED FIRST  
AMENDMENT, A SUSPICIOUS  
FREEDOM OF ASSEMBLY,  
A DUBIOUS FREEDOM  
FROM UNREASONABLE  
SEARCHES, AND  
ON AND ON!!!

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# Rights at Trial

- a. A person charged with terrorism could be tried in a U.S. court and provided with the full rights of other criminal defendants.
- b. However, the government and some other groups fear that trying a suspected terrorist publicly provides the person with an opportunity to advance his or her politics and views against the United States.
- c. So far, that hasn't happened in any trial.

# Venue

- The Bush administration preferred to try these people in a military tribunal where they have significantly fewer rights than other defendants in a criminal case.
- In 2008, the Supreme Court ruled that Guantanamo Bay detainees had to be given the right to challenge their detention in federal courts
- President Obama wanted to try some defendants in federal court in New York City and others by military tribunals.
- The number of detainees in Guantanamo has diminished to 107 in November 2015 from a total of 775 since 2001.

