

TEACHING CRIMINAL LAW IN THE POST-9/11 WORLD: IF EVERYTHING HAS CHANGED, SO MUST WE

DAVID A. HARRIS*

I. INTRODUCTION

In the aftermath of the terrorist attacks on our country on September 11, 2001, we quickly became accustomed to hearing that the terrifying events of that day “changed everything.” This phrase was repeated so often that it quickly took on the aura of a sacred cliché—something every public figure, every news anchor, and every journalist said constantly, and something that no one dared challenge. Looking back on that period from the vantage point of several years later, we can see that in some ways this assessment was overblown. Clearly, not everything had changed. Our country still had its own internal issues to deal with: education, taxes, and campaign finance reform, to name just a few. And, except for a regrettably short period of bipartisan unity in the wake of the attacks, our ideological and political divisions have remained as strong as they have ever been.

Nevertheless, for lawyers, and especially for teachers in law schools, some very important things have indeed changed. Those of us who make our livings parsing legal texts and publishing our solutions to legal problems in law reviews and the mainstream press know that when a society experiences great stress, the law comes under great pressure—especially in the areas of law that involve confrontations between government power and the individual. In such times, the Constitution and the criminal law are always severely tested. Surveying the first thirty months after the events of September 2001, that is exactly what we see. Grand, macro-scale questions have come into focus. For example, when, if ever, is it possible or proper for the United States government to hold a U.S. citizen in custody without laying any charges, without access to counsel, without trial—indeed, without any of the safeguards that we have come to associate with the rights of the accused who are in the custody of the state?¹ In what circumstances may the U.S. government hold

* Eugene Balk Professor of Law and Values, University of Toledo College of Law.

1. See, e.g., *Hamdi v. Rumsfeld*, 316 F.3d 450 (4th Cir. 2003), *reh'g and reh'g en banc denied*, 337 F.3d 335 (4th Cir. 2003), and *cert. granted*, 124 S.Ct. 981 (Jan. 9, 2004) (No. 03-

persons in custody, but refuse to release any information identifying them?² Thus, teachers of both Constitutional Law and Criminal Law must ask an important question: How should they change what they teach in light of these new realities?

With regard to Constitutional Law, the answers fairly jump out. If the Supreme Court decides that an American citizen can be detained as an “enemy combatant” when he has been captured on the battlefield, and then held without any of the rights we associate with government custody of the accused, the constitutional issues are both clear and substantial. They involve the separation of powers, the extent of the President’s power as head of the Executive Branch and as Commander-in-Chief of the Armed Forces, and the proper limitations on the role of the judiciary in such a situation. These issues and the questions they present would not, by any stretch, be easy to resolve, but the constitutional categories they fall into, and the issues that they affect, would be fairly obvious.

The issues would also be easy to spot in the area of law we call criminal procedure. Indeed, some law schools refer to the course on this area of law as *Constitutional Criminal Procedure*. The material and the issues in this course concern the constitutional regulation of law enforcement: when police may stop, search, and seize an individual (governed by the Fourth Amendment); when the police may question someone (governed by the Fifth and Sixth Amendments); and when an individual is entitled to the assistance of counsel (governed by the Sixth Amendment). In short, criminal procedure is constitutional law.

Yet in the area of substantive criminal law, the issues are not so immediately clear. We know that, in the very recent past, when terrorists have struck, they have been apprehended under the criminal law in United States courts.³ Thus, the criminal law has been our primary tool in asserting the values of our society and protecting our citizens against the likes of Timothy McVeigh, who destroyed the federal building in Oklahoma City in a terrorist bombing, and Sheik Abdel Rahman and his followers, the terrorists who carried out the first attack against the World Trade Center in New York City in 1993. How, then, should the teacher of Criminal Law approach this important subject in the post-9/11 world?

6696); *see also* Padilla v. Rumsfeld, 352 F.3d 695 (2d Cir. 2003), *cert. granted*, 124 S.Ct. 1168 (U.S. Jan. 23, 2004) (No. 03-1027).

2. Ctr. for Nat’l Sec. Studies v. U.S. Dep’t of Justice, 331 F.3d 918 (D.C. Cir. 2003), *cert. denied*, 124 S.Ct. 1041 (Jan. 12, 2004) (No. 03-472).

3. *See, e.g.*, U.S. v. Rahman, 189 F.3d 88 (2d Cir. 1999) (defendants charged with conspiracy to, among other things, bomb the World Trade Center); U.S. v. Salameh, 261 F.3d 271 (2d Cir. 2001) (appeals of convictions and sentencing surrounding the February 1993 bombing of the World Trade Center in New York City).

For me, the answer has been both simple and complex, daunting and inviting: include the post-9/11 realities in teaching Criminal Law *any way you can*. No, it does not always fit the material neatly; the issues aren't as obvious as in the Criminal Procedure course. But, like it or not, our students will begin practice in a legal world fundamentally changed by what happened on September 11, 2001, and I believe it is our obligation to bring this home to them at every possible juncture that makes sense. They need to see that the changes that are happening in real time in the society and the legal culture all around them will have an enormous impact on the way that many of them will practice law and the way that all Americans understand what law is. They simply cannot leave law school with the belief that these changes have nothing to do with them—that if they are not immigrants or Arabs or Middle Easterners or Muslims, they need not be concerned. To allow them to leave our classrooms thinking this way would do them an enormous disservice. On the contrary, it is the duty of the legal profession to attempt to mediate the tensions that have arisen in our society since 9/11. Finding the balance we must seek between the safety of citizens and the protection of the defendant and the countermajoritarian values in the Bill of Rights is never easy, not even in the safest of times. It is made much less so by the existence of a real and dangerous threat: the undeterrable terrorist, whose desire to kill us is greater than his own desire to live. It is a challenge unlike any other we have faced. But, if we are to preserve what is best about our country and our society, we must make sure that we as citizens and as lawyers have a keen sense of what is at stake and teach this to our students so that they can understand and embrace the core values of our profession in everything they do.

Some will say that there is a danger that one can go too far in this direction—that a law school instructor might talk about post-9/11 developments in criminal law simply for the sake of talking about them. Surely, this is possible, but I believe the risks are actually rather low as long as one is reasonably selective. First, there is little doubt that, along with immigration law, criminal law is indeed proving to be one of the major weapons in the government's arsenal as it attempts to fight terrorists. In other words, there is no need to make up the connection between the war on terror and criminal law. It is real, and examples abound. The important thing is to select examples carefully, so that the connections to particular issues under study are clear enough for students to see. Second, one can argue persuasively that the danger of overemphasis simply does not exist. For any lawyer whose practice sometimes involves any kind of public law (as opposed to matters strictly between private parties), the war on terror and its effects on our legal system will be a fact of life for many years to come. Witness the many changes that have already taken place in the legal system in the first two years after 9/11. The war on terror is likely to be the single largest influence in the development of public law in the United States over the next forty to fifty

years—that is, over the course of the entire career of law students who graduate in the next ten years. Thus, it seems that the benefits of covering some of this material in Criminal Law far outweigh the risks involved.

Of course, it is possible to cover these issues more directly than by just raising them occasionally in Criminal Law. For example, for some years I have taught Advanced Criminal Procedure. I run the course on two parallel tracks. The first track consists of an in-depth study of many of the issues that we only touch on in the basic Criminal Procedure course. We do this by reading cutting-edge theoretical and empirical work. For example, in the basic Criminal Procedure course, our discussions often include some speculation concerning the actual deterrence value of the Fourth Amendment's exclusionary rule. In Advanced Criminal Procedure, we read the empirical studies and explorations of alternatives. What evidence is there that the Fourth Amendment exclusionary rule actually deters police misconduct?⁴ What other rules might we design that might work better to accomplish this purpose? Would we actually be better off without the *Miranda* rules, as some contend?⁵ Should we videotape all statements suspects make to the police *instead of* administering *Miranda* warnings,⁶ or should we videotape statements *in addition to* using the *Miranda* rules?⁷ Or, should we bar police interrogation altogether and leave the questioning of suspects to judges?⁸ The second track of the course parallels the first by allowing students to apply this knowledge practically and build their forensic skills by briefing and arguing two different criminal procedure problems that incorporate the issues we have studied. This gives students a chance to become better oral advocates and writers, as they bring their new knowledge of the subject matter to bear.

As I prepared to teach Advanced Criminal Procedure in the fall of 2002, I was struck by the fact that the issues at the forefront of the field of criminal procedure no longer concerned the exclusionary rule or the *Miranda* warnings. These issues were clearly still important, but everyone I knew with strong interests in criminal procedure was now talking about other things, such as the USA Patriot Act, the possible use of military tribunals, the strengthening of the Foreign Intelligence Surveillance Act (FISA) court, and the detention of large numbers of people without identifying them, to name just a few. Thinking

4. E.g., Thomas Y. Davies, *A Hard Look at What We Know (and Still Need to Learn) About the "Costs" of the Exclusionary Rule: The NIJ Study and Other Studies of "Lost" Arrests*, 1983 AM. B. FOUND. RES. J. 611 (1983).

5. See Paul G. Cassell, *Miranda's Social Costs: An Empirical Reassessment*, 90 NW. U. L. REV. 387, 486-97 (1996).

6. *Id.*

7. Stephen J. Schulhofer, *Miranda's Practical Effect: Substantial Benefits and Vanishingly Small Social Costs*, 90 NW. U. L. REV. 500, 556-60 (1996).

8. Donald A. Dripps, *Supreme Court Review—Foreword: Against Police Interrogation—And the Privilege Against Self-Incrimination*, 78 J. CRIM. L. & CRIMINOLOGY 699 (1988).

about this, I decided to make a wholesale change in what Advanced Criminal Procedure would cover. I preserved the two-track structure of the course, but replaced all of the material focusing on Fourth, Fifth and Sixth Amendment with the basic texts of the war on terror. For example, students would read, among many other items, the USA Patriot Act,⁹ the presidential¹⁰ and Department of Defense¹¹ orders on military tribunals, and the memorandum of the Deputy Attorney General ordering the “voluntary” questioning of 5,000 young Middle Eastern men in late 2001 and early 2002.¹² The forensic track of the course was changed, too: students did briefs and arguments challenging and defending particular sections of the USA Patriot Act.

The students were enthusiastic about the changes. In post-course evaluations, they praised the opportunity to study items that were both relevant to their educations and constantly in the news, and they were very happy to have the chance to sharpen their forensic skills on the most important anti-terror statute passed thus far. Indeed, the one negative aspect of the experience was borne primarily by me. With a course so attuned to current legal events, the issues could sometimes become a moving target. Issues that seemed likely to be important before the beginning of the course, at the time that I put the course materials together for the students, would sometimes recede in importance by the time the course was under way. For example, in preparing to teach the course in the fall of 2003, I included in the materials draft legislation then popularly known as “Patriot Act II.”¹³ This bill was meant to strengthen the USA Patriot Act and broaden its reach. By the time the class reached the point in the course in which this material would have been appropriate, it had become fairly clear that the proposal was dead; the Bush Administration did not even try to introduce it in Congress. A second example of the “moving target” phenomenon concerned material I had to add midway through the course during the fall of 2003—the designation of U.S. citizens as

9. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001, Pub. L. No. 107-56, 115 Stat. 272.

10. Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57,833 (Nov. 13, 2001).

11. See Fact Sheet: Department of Defense Order on Military Commissions (Mar. 21, 2002), available at <http://www.defenselink.mil/news/Mar2002/d20020321fact.pdf> (last visited Sept. 27, 2004).

12. See Office of the Attorney General, Memorandum for All United States Attorneys All Members of the Anti-Terrorism Task Forces (Nov. 9, 2001), available at <http://www.usdoj.gov/ag/readingroom/terrorism1.htm> (last visited Sept. 27, 2004).

13. See Domestic Security Enhancement Act of 2003 (Draft) (Jan. 9, 2003), available at <http://www.poptel.org.uk/statewatch/news/2003/feb/patriot2draft.html> (last visited Sept. 27, 2004).

enemy combatants and the several decisions that had then been made by courts on the issue.¹⁴

But if it is easy to see how to work material on the war against terror into courses concerning criminal procedure, this leads us back to the initial question: How should one attempt to teach post-9/11 legal developments in a first-year Criminal Law course? I offer the following example to explain how I attempted it.

II. THE ELEMENTS OF CRIMES: *UNITED STATES V. SATTAR*¹⁵

When I teach Criminal Law, I include a short section early in the course on the elements of crimes for several reasons. First, I do this because Criminal Law is taught as a required first-year course at my institution. The practical effect of this is that I use Criminal Law to teach many legal concepts that are basic to the students' entire legal education. Second, I can use the material on elements of crimes generally to teach briefly about certain crimes that bar examiners seem interested in testing, when those crimes, standing alone, are simply not interesting enough to justify spending even a small section of the course discussing. When my students see these offenses in the course of the bar preparation study or the examination itself, it will not be the first time. Third and most importantly, certainly for those who may one day practice criminal law, students simply must understand that the job of the lawyer is to prove (or cast doubt upon) various facts in contention. Most probably do, but we err as teachers in assuming that this sinks in automatically for every student. It pays to help students start the course with an almost mechanical understanding that lawyers who work as prosecutors must prove the elements of the offenses charged. To address all three of these concerns, I give the students a short primer of my own on the elements of crimes—what they are, constitutional requirements, and the like—and then a number of typical statutes that they might encounter, followed by a problem set. Each problem spells out a hypothetical factual scenario. Students are instructed to set out the elements that must be proven for each crime, and then asked to supply a short answer explaining which of the defendants might be guilty of one or more of the particular crimes laid out in the statutes.

For the Spring 2004 Criminal Law class, I followed these materials by assigning part of a case called *United States v. Sattar*.¹⁶ This case was still in the throes of pretrial litigation when I assigned it. It concerned a group of

14. See *Hamdi v. Rumsfeld*, 316 F.3d 450 (4th Cir. 2003), *reh'g and reh'g en banc denied*, 337 F.3d 335 (4th Cir. 2003), *cert. granted*, 124 S.Ct. 981 (U.S. Jan. 9, 2004) (No. 03-6696); see also *Padilla v. Rumsfeld*, 352 F.3d 695 (2d Cir. 2003), *cert. granted*, 124 S.Ct. 1168 (U.S. Jan. 23, 2004) (No. 03-1027).

15. 272 F. Supp. 2d 348 (S.D.N.Y. 2003).

16. *Id.*

defendants accused of providing help to a foreign terrorist organization. This opinion, ruling on several of the pretrial motions in the case, contained a section in which these very serious charges raised an argument in which a careful analysis of the elements of the crime was absolutely crucial. The case thus appeared to be a perfect opportunity to tie the lessons of street-level criminal law to the war on terror. This is how I taught the case to the class.

We began the discussion with a basic exploration of the facts of the case and the arguments made in it. One of the defendants in the *Sattar* case, Lynne Stewart, is a well-known criminal defense attorney in New York City. In 1995, Stewart took on the defense of Sheikh Abdel Rahman.¹⁷ Rahman was one of the principal leaders of the Islamic Group, also known as Gama'a al-Islamiyya or Islamic Gama'at (IG).¹⁸ IG, which has been designated a foreign terrorist organization by the Secretary of State,¹⁹ has had a presence in the U.S. since the early 1990s.²⁰ In 1995, Stewart defended Sheikh Rahman on charges that he was part of a conspiracy to conduct terrorism on American soil, including the bombing of the World Trade Center in 1993 and a plot to bomb a number of other New York City landmarks.²¹ Stewart continued to represent Sheikh Rahman throughout his trial, conviction, and sentencing to life in prison plus sixty-five years, and she continued to meet with him in prison after he was sentenced.²² Among the allegations against Stewart in the *Sattar* case is that in the course of those meetings, Stewart helped to allow Sheikh Rahman to communicate with his followers outside the prison by distracting guards while Rahman both received and sent communications to his followers through one Yousry—a man that Stewart brought to the prison as an Arabic translator.²³ Translator Yousry allegedly passed messages to, and received responses to these messages from, Sheikh Rahman during prison meetings, all in Arabic. Stewart helped “cover” for the Sheikh and the translator by speaking in English to distract the guards. Stewart is also alleged to have passed a message to the Sheikh’s followers herself when she announced one of the Sheikh’s positions to the media at a news conference.²⁴ These actions resulted in the first two counts in the indictment: providing material support to a foreign

17. *Id.* at 354.

18. *Id.* at 353.

19. *Id.*

20. *Sattar*, 272 F. Supp. 2d at 353.

21. *Id.* at 354.

22. *Id.*

23. *Id.* at 354-55.

24. *Id.* at 355.

terrorist organization, under 18 U.S.C. § 2339B, in the form of “communications equipment” and “personnel.”²⁵

Attorney Stewart and her co-defendant Sattar moved to dismiss Counts I and II as “unconstitutionally vague and overbroad.”²⁶ In essence, they argued that the charges that they “provided material support” in the form of “communications equipment” and “personnel” were too indefinite to provide ordinary persons with an understanding of what conduct the law prohibits or to provide sufficient prosecutorial standards to protect against arbitrary and discriminatory law enforcement.²⁷ The indictment alleged that Stewart and Sattar and others “provided communications equipment and other physical assets, including telephones, computers and telefax machines . . . to IG”²⁸ by acting, essentially as a “communications pipeline” between Sheikh Abdel Rahman and the outside world.²⁹ For example, the indictment alleged that for purposes of the uses of communications equipment, Sattar had telephone conversations with IG leaders in which he passed on to them Sheikh Abdel Rahman’s instructions, and Stewart released one of Sheikh Abdel Rahman’s statements to the press.³⁰ As far as providing material support in the form of “personnel,” the indictment alleged that Sattar, Stewart, and others “provided personnel, *including themselves*, to IG, in order to assist IG leaders and members in the United States and elsewhere around the world, in communicating with each other”³¹ In other words, Stewart and Sattar were themselves the personnel they provided to IG. In order to examine the argument that the statute was unconstitutionally vague as applied, the court moved directly to a consideration of the elements of the crime alleged. The opinion quoted the pertinent part of the “material support” statute, which said that “[w]hoever, within the United States or subject to the jurisdiction of the United States, knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be [guilty].”³² The statute defines “material support or resources” as “currency or other financial securities, financial services, lodging, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other

25. *Sattar*, 272 F. Supp. 2d at 354-55. The other charges in the indictment are not relevant to the discussion of the elements of the crime, and I do not have students read any other sections in these cases.

26. *Id.* at 355.

27. *Id.* at 356-57.

28. *Id.* at 356.

29. *Id.*

30. *Sattar*, 272 F. Supp. 2d at 356-57.

31. *Id.* at 357 (emphasis supplied).

32. 18 U.S.C. § 2339B(a)(1) (2000).

physical assets, except medicine or religious materials.”³³ Therefore, the court said, “Section 2339B . . . requires only that a person ‘knowingly’ ‘provides’ ‘material support or resources’ to a ‘foreign terrorist organization.’”³⁴ Stewart and her co-defendant Sattar argued that the indictment charged them “with merely talking . . . [and] using communications equipment rather than providing such equipment to IG.”³⁵

When the class discussion had progressed to this point, I could see that the students understood that unlocking the case had to involve examining the elements of the crime, followed by performing the same task that any attorney would when confronted with criminal charges: seek definitions of the key statutory terms. In *Sattar*, the students saw that this was exactly what had happened. Defendants Stewart and Sattar pointed out to the court that the legislative history produced by the relevant congressional committee in the course of enacting the “material support” statute indicated that, in fact, Congress *did not* intend to criminalize the *mere use* of communications equipment; rather, it only criminalized *the actual giving of communications equipment to a foreign terrorist organization* like IG.³⁶ Stewart and Sattar thus argued that simply making phone calls, or talking or communicating one’s thoughts, did not fall within the statute. The court agreed, holding that “criminalizing the mere use of phones and other means of communication . . . provides neither notice nor standards for its application such that it is unconstitutionally vague as applied.”³⁷

The opinion then focuses on the fact that the government had argued in its brief opposing the defendants’ motion to dismiss Counts I and II that the defendants had in fact actively provided members of IG with communications equipment. This contradicted what the government said in the indictment, where it had only charged that Sattar and Stewart had *used* communications equipment. The court apparently confronted the government with this contradiction at oral argument, as the opinion notes that “[t]he Government . . . changed course and stated at oral argument that the mere use of one’s telephone constitutes criminal behavior under the statute and that, in fact, ‘use equals provision.’”³⁸ This 180-degree change in direction prompted the court to come to the only reasonable conclusion: If the government itself were confused on the theory of its case and how it fit the elements of the statute,

33. *Id.* § 2339A(b).

34. *Sattar*, 272 F. Supp. 2d at 356.

35. *Id.* at 357.

36. *Id.* at 357-58. The court also referenced a committee report as evidence of the statute’s legislative history. See COMMITTEE ON THE JUDICIARY, COMPREHENSIVE ANTITERRORISM ACT OF 1995, H.R. REP. NO. 104-383, at 45 (1995).

37. *Sattar*, 272 F. Supp. 2d at 358.

38. *Id.*

surely a person of ordinary intelligence would be too; the statute surely was vague as applied to the charge.

Stewart and Sattar argued next that the statute was unconstitutionally vague as applied in the context of the “‘provision’ of ‘personnel.’”³⁹ The case indicates that the government relied on *United States v. Lindh*,⁴⁰ the so-called “American Taliban” case, in which a court stated that the statute covered the provision of personnel through one’s own employment by a terrorist organization—in other words, that providing oneself to the organization was sufficient to constitute providing “personnel.”⁴¹ The court in Stewart and Sattar’s case asserted that, whatever the merits of such a position in a case like *Lindh*,⁴² in which the defendant “provides himself” by literally becoming a soldier in a terrorist organization’s army,⁴³ this does nothing to overcome the unconstitutional vagueness of the “provision of personnel” idea in the statute. The court then concluded that to charge that a defendant has provided a foreign terrorist organization with herself is particularly troublesome in the context of an attorney who represents a terrorist, as Stewart did in her representation of Sheikh Abdel Rahman. Every lawyer is an agent of her client, the court said, so under the government’s theory, any lawyer who represents someone charged as a leader of a foreign terrorist organization would always be providing material support to the terrorist organization.⁴⁴ Incredibly, just as with the discussion of the provision of communications equipment, the government was unable to answer the court’s inquiries at oral argument concerning its own theories. The government asserted at oral argument that there might be some difference between a member and a “quasi-employee” of a foreign terrorist organization for purposes of its “personnel” theory, and the court asked the government to explain. With an abundance of delicacy, the court says in its opinion that “the Government initially responded ‘You know it when you see it.’”⁴⁵ Of course, this statement recalls Justice Stewart’s famous “method” for identifying obscenity,⁴⁶ but the court rightly concluded that it is a laughable way to explain the application of a powerful federal criminal statute. It is, the court says, “an insufficient guide by which a person can predict the legality of that person’s conduct.”⁴⁷ With a bit more discussion, the court

39. *Id.*

40. 212 F. Supp. 2d 541 (E.D. Va. 2002).

41. *Id.* at 572-73.

42. The court doubts the correctness of this idea, noting that it is not supported any place in the statute. *Sattar*, 272 F. Supp. 2d at 359.

43. *Id.*

44. *Id.*

45. *Id.* at 360.

46. *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring).

47. *Sattar*, 272 F. Supp. 2d at 360.

dismissed Counts I and II of the indictment against Sattar and Stewart as unconstitutionally vague.

III. THE LESSONS LEARNED

The proof of the efficacy of any teaching is what students actually learn from it. In a typical large class, an instructor cannot gauge what everyone in the class has picked up from any one session or block of material, at least in the absence of an examination question focusing on the particular point. My discussion with students brought out the following overall points in ways that were consistent enough that I felt confident that those participating in or paying attention to the interchanges would have understood them.

First, students understood that the first task of any lawyer working in the criminal justice process, whether on behalf of the government or the defendant, is to familiarize oneself with the elements of the charges. This process applies whether the charges are complex and serious, even newsworthy ones like providing material support to a foreign terrorist organization, or simple charges seen so much more often (such as theft, which appeared in the initial exercises I gave the students). They also saw how important it was to obtain a thorough understanding of the elements through the process of statutory interpretation and how working with the elements of crimes and using statutory interpretation were actually intertwining skills.

Second, the exercise of using the *Sattar* case brought home that the things we learn in Criminal Law, even very basic skills like understanding what the elements of crimes are and how to find, interpret, and use them, are neither purely academic matters nor musty ideas from dusty old pages. They are, rather, vital tools in the most important cases in our judicial system right this minute. Likewise, one got the strong sense from the discussion that among the students who already found Criminal Law interesting, and perhaps especially among those who did not, they developed a much more pointed understanding of the vital nature of the material in terms of the most important issues facing our society.

Third, the class discussion revealed feelings of surprise among the students that the government seemed to have made some important mistakes in its advocacy in the case. Some students asked whether, in fact, the government's lawyers had indicted the defendants without fully researching or understanding what the elements of the crime were, or they asked how the allegations in the indictment dovetailed (or rather, did not dovetail) with the elements. Of course, I could not answer those questions because I had no direct knowledge, but I had a rather easy time convincing the students of the importance of obtaining a strong understanding of the elements of any crime before drafting an indictment. Having to change one's theory of the case midstream, as they saw, was at the least embarrassing, and could even be fatal to the case—an outcome any lawyer wants to avoid.

Fourth, the students clearly obtained a new understanding of the importance of the law, the legal system, and well-honed reasoning and lawyering skills in the war on terror. They also began to understand the fact that lawyers—who will inevitably represent those accused of crimes in the war against terror—will not only suffer the slings and arrows of public opinion but could also find themselves actually accused of cooperating in the worst possible crimes against the American people and the United States. In short, the case was a pointed reminder of the stakes in this struggle. The government, students saw, is prepared to do whatever is necessary, even sweep attorneys into its net. I can think of little that could have brought the gravity of the situation to my students' attention so directly—and so personally.

IV. CONCLUSION

As a teacher with an abiding interest in criminal law and our Constitution, and with a deep belief that the stakes for both have never been so high, I plan to continue to use whatever I can from the war on terror to illustrate important concepts in criminal law. I have always begun the semester in the class by telling my students that it is in criminal law that we can see the most basic, naked confrontations between the awesome power of the government and the individual. The war on terror and the changes it continues to bring about in our legal system do not change this. Rather, the war on terror exemplifies and magnifies the effect. I would urge anyone who teaches the subject to explore the opportunities for teaching that terrorism cases will bring to a Criminal Law class.