

Cases and Materials on Terrorism

Three Nations' Response

Edited by

MICHAEL F. NOONE

The Catholic University of America

and

YONAH ALEXANDER

The George Washington University



KLUWER LAW INTERNATIONAL
THE HAGUE / LONDON / BOSTON

TABLE OF CONTENTS

Preface	xv
Acknowledgments	xix
 PART I THE SUSPECT ALIEN	
 Chapter 1 The Admission and Exclusion of Aliens	
A INTRODUCTION	3
B THE UNITED KINGDOM	4
<i>Musgrove v. Chun Teeong</i>	4
<i>"NSH" v. Secretary of State for the Home Department</i>	5
C IRELAND	10
D THE UNITED STATES	11
<i>Knauff v. Shaughnessy</i>	11
<i>Azzouka v. Sava</i>	15
<i>Abourezk v. Regan</i>	20
 Chapter 2 Resident Aliens' Civil Rights	
A INTRODUCTION	30
B THE UNITED KINGDOM	31
<i>Rex v. Inspector of Leman Street Police Station,</i> <i>ex parte Venicoff</i>	31
<i>Regina v. Governor of Brixton Prison,</i> <i>ex parte Soblen</i>	32
Immigration Act, 1971 (s. 15)	38
<i>R. v. Secretary of State for the Home Department,</i> <i>ex parte Cheblak</i>	38
C IRELAND	51
D THE UNITED STATES	51
<i>Hines v. Davidowitz</i>	51
<i>Rafeedie v. INS</i>	52
Immigration Act, 1990 (s. 602, extract)	59
E ADDITIONAL READING	60

Chapter 3 Extraditing Political Offenders

A	INTRODUCTION	61
B	THE UNITED KINGDOM	62
	<i>In re Castioni</i>	62
	<i>In re Meunier</i>	64
	<i>Regina v. Governor of Brixton Prison, ex parte</i> <i>Kolczynski</i>	66
	<i>R. v. Governor of Brixton Prison, ex parte Schtraks</i>	68
	<i>Reg. v. Governor of Pentonville Prison, ex parte</i> <i>Tzu-Tsai Cheng</i>	70
	Suppression of Terrorism Act, 1978 (c. 26)	73
C	IRELAND	76
	<i>Bourke v. Attorney General</i>	76
	<i>McGlinchy v. Wren</i>	81
D	THE UNITED STATES	84
	<i>Eain v. Wilkes</i>	84
	<i>Matter of Doherty</i>	90
	<i>Quinn v. Robinson</i>	95
E	ADDITIONAL READING	101

PART II THE SUSPECT CITIZEN**Chapter 4 Membership in Proscribed Organizations**

A	INTRODUCTION	105
B	THE UNITED KINGDOM	106
	The Emergency Provisions Act, 1978 (s. 21)	106
	<i>McEldowney v. Forde</i>	107
	<i>R. v. Adams</i>	112
C	IRELAND	117
	Offences Against the State Act, 1939 (Extract)	117
	<i>The People (Director of Public Prosecutions) v. Cull</i> <i>Clancy and McCarthy v. Ireland and the</i> <i>Attorney General</i>	123
D	THE UNITED STATES	126
	<i>Dennis v. United States</i>	126
	<i>Scales v. United States</i>	129
	The Anti-Terrorism Act, 1987 (Extract)	134
	<i>Mendelsohn v. Messe</i>	135
E	ADDITIONAL READING	142

Chapter 5 Surveillance

A	INTRODUCTION	143
B	THE UNITED KINGDOM	144
	<i>Malone v. United Kingdom</i>	144
	<i>R. v. Secretary of State for the Home Department, ex parte Ruddock</i>	150
	Interception of Communications Act, 1985 (Extracts)	160
C	IRELAND	165
	<i>Kennedy v. Ireland</i>	165
D	THE UNITED STATES	168
	<i>United States v. United States District Court</i>	168
	<i>United States v. Duggan</i>	173
	<i>In re Kevork</i>	180
	<i>Laird v. Tatum</i>	185
	<i>Handschu v. Special Services Division</i>	188
E	ADDITIONAL READING	191

Chapter 6 Informants

A	INTRODUCTION	192
B	THE UNITED KINGDOM	193
	<i>R. v. Graham and others</i>	193
	<i>R. v. Steenson and others</i>	200
C	IRELAND	206
	<i>Director of Public Prosecutions (Hanley) v. Holly</i>	206
	<i>Director of Public Prosecutions v. Connolly</i>	209
D	THE UNITED STATES	211
	<i>Illinois v. Gates</i>	211
	<i>United States v. Duggan</i>	216
	<i>United States v. Kikumura (1989)</i>	219
	<i>United States v. Kikumura (1990)</i>	222
E	ADDITIONAL READING	224

Chapter 7 Interrogation

A	INTRODUCTION	226
B	THE UNITED KINGDOM	227
	<i>R. v. Gargan</i>	227
	<i>R. v. McCormick and others</i>	233
	<i>Ireland v. United Kingdom</i>	239
	<i>R. v. McGrath</i>	247

C	IRELAND	250
	<i>The People (Director of Public Prosecutions) v. Madden</i>	250
	<i>The People (Director of Public Prosecutions) v. McNally and Breathnach</i>	254
D	THE UNITED STATES	258
	<i>Patterson v. Illinois</i>	258
E	ADDITIONAL READING	261

Chapter 8 Arrest

A	INTRODUCTION	262
B	THE UNITED KINGDOM	263
	<i>In re McElduff</i>	263
	<i>McVeigh, O'Neill and Evans v. United Kingdom</i>	269
	<i>McKee v. Chief Constable for Northern Ireland</i>	275
	<i>Fox, Campbell and Hartley v. United Kingdom</i>	278
	<i>Murray v. Ministry of Defence</i>	284
C	IRELAND	288
	<i>In re O'Laighleis</i>	288
	<i>The State (Hoey) v. Garvey</i>	291
	<i>The People (Director of Public Prosecutions) v. McCaffrey</i>	294
	<i>The People (Director of Public Prosecutions) v. Byrne</i>	297
	Extract from <i>Re Gillen</i>	300
D	THE UNITED STATES	301
E	ADDITIONAL READING	301

Chapter 9 Detention

A	INTRODUCTION	302
B	THE UNITED KINGDOM	303
	<i>R. v. Halliday, ex parte Zadig</i>	303
	<i>Liversidge v. Anderson</i>	308
	<i>Greene v. Home Secretary</i>	312
	<i>Kelly v. Faulkner and others</i>	315
	<i>Ireland v. United Kingdom</i>	321
	<i>Ex parte Lynch</i>	329
	<i>Re Gillen</i>	331
	<i>Brogan and others v. United Kingdom</i>	338
C	IRELAND	344
	<i>Lawless v. Ireland</i>	344

	<i>Re Article 26 and the Emergency Powers Bill</i>	353
D	THE UNITED STATES	355
	<i>Ex parte McCardle</i>	355
	<i>Ex parte Endo</i>	357
	The Emergency Detention Act, 1950 (Extract)	365
E	ADDITIONAL READING	366

Chapter 10 Jury Trial

A	INTRODUCTION	367
B	THE UNITED KINGDOM	368
	<i>R. v. Bennett</i>	368
	<i>R. v. Thompson</i>	371
	<i>Spratt v. Doherty</i>	377
C	IRELAND	383
	<i>The People (Director of Public Prosecutions) v. Rice</i>	383
	<i>The People (Director of Public Prosecutions) v. McMahon</i>	386
	<i>O'Reilly and Judge v. Director of Public Prosecutions</i>	390
	<i>Eccles v. Ireland</i>	393
	<i>The People (Director of Public Prosecutions) v. Quilligan</i>	398
D	THE UNITED STATES	404
	<i>Ex parte Milligan</i>	404
	<i>Duncan v. Kahanamoku</i>	410
E	ADDITIONAL READING	413

Chapter 11 Self Incrimination

A	INTRODUCTION	414
B	THE UNITED KINGDOM	414
	Evidence Act, 1851 (Extract)	414
	Police and Criminal Evidence Act, 1984 (Extract)	415
C	IRELAND	416
	<i>The People v. Brian McGowan</i>	416
	<i>The People v. Charles Conroy</i>	419
D	THE UNITED STATES	421
	<i>United States v. Yunis</i>	421
E	ADDITIONAL READING	427

PART III OTHER LEGAL CONSIDERATIONS AFFECTING GOVERNMENTAL RESPONSES TO TERRORISM

Chapter 12 Use of the Military

A	INTRODUCTION	431
B	THE UNITED KINGDOM	433
	Emergency Provisions Act, 1978 (s. 14(1))	433
C	IRELAND	433
D	THE UNITED STATES	433
	<i>Laird v. Tatum</i>	433
	<i>Bissonette v. Haig</i>	440
E	ADDITIONAL READING	445

Chapter 13 Governmental Liability for Injury and Damage

A	INTRODUCTION	446
B	THE UNITED KINGDOM	447
	<i>Attorney General v. Nissan</i>	447
	<i>Farrell v. Secretary of State for Defence</i>	449
	<i>Lynch v. Ministry of Defence</i>	453
	<i>C. v. Secretary of State for Northern Ireland</i>	458
	<i>Pierce and others v. Ministry of Defence</i>	459
	<i>Fox, Campbell and Hartley v. United Kingdom</i>	460
C	IRELAND	463
	<i>Kennedy v. Ireland</i>	463
D	THE UNITED STATES	465
	<i>Lopez-Pacheco v. United States</i>	465
E	ADDITIONAL READING	471

Chapter 14 Personal Liability of Government Officials

A	INTRODUCTION	472
B	THE UNITED KINGDOM	473
	<i>R. v. MacNaughton</i>	473
	<i>Attorney General for Northern Ireland's Reference</i>	476
	<i>R. v. Bohan and Another</i>	480
	<i>R. v. Thain</i>	484
	<i>Kelly v. Faulkner and others</i>	487
C	IRELAND	488
	<i>Dunne v. Clinton</i>	488

D	THE UNITED STATES	490
	<i>Hobson v. Wilson</i>	490
E	ADDITIONAL READING	494
Chapter 15 Limitations on Media Coverage		
A	INTRODUCTION	495
B	THE UNITED KINGDOM	496
	<i>R. v. Secretary of State for the Home Department</i>	496
C	IRELAND	498
	<i>In the Matter of Hibernia National Review</i>	498
	<i>The State v. Patrick Cooney</i>	500
D	THE UNITED STATES	503
	<i>New York Times Co. v. United States</i>	503
	<i>United States of America v. Morison</i>	509
E	ADDITIONAL READING	511
Chapter 16 Global Terrorism: An Overview		512
Selected Bibliography		527
Index		535
Table of Cases		543
Table of Statutes and Related Materials		553