

FINAL EXAM
COUNTERTERRORISM LAW

December 6, 2012

Professor Shanor

You have **two and one-half hours to write this exam**. Please read each question carefully, write succinct answers, and document your answers appropriately.

This five-page exam contains **3 parts**. **Part I consists of one factual scenario followed by four questions; part II contains a different factual scenario followed by a single question; and Part III contains two short questions**. You should spend about eighty minutes on Part I, one-half hour on Part II, and 40 minutes on Part III.

Your **exam number** should appear on **each exam page** and **each answer page**. This exam is covered by the **honor code**; by placing your exam number on this copy of the exam and your answers, you are pledging to abide by the code.

This exam is **open book** (including casebook, notes, and written study aids). Computer research, downloading, electronic cutting and pasting, etc. are **forbidden**, as is assistance from any other person.

This exam is being administered at different times. **Do not discuss the exam** – some classmates may not have taken it yet.

Answer concisely; verbose answers do not help, will interfere with your analysis, and will cause you unnecessary time pressure. If you think there is **ambiguity** or you need **additional information** to analyze any question, state what you believe is needed and why it makes a difference.

All exam questions must be returned at the end of the exam, whether you write or type your answers!

Read, think, and organize before you write!

GOOD LUCK AND HAVE A HAPPY HOLIDAY!

I.
(80 minutes)

The year is 2014. All United States troops except a few who remain to train local soldiers were withdrawn from Afghanistan in January 2014. Vice-President Biden, at a ceremony marking the withdrawal, said: "This President has ended the conflict in Afghanistan, brought peace to the region, and defeated al Qaeda, which no longer has the capability to harm the United States. He has ushered in a new era of peace and prosperity, especially for the women of Afghanistan. President Obama has kept his promises to you, just as he kept his promises to America when he ended torture and fixed the kangaroo court system his predecessor set up." After the troop withdrawal, some NGOs remained in the country to help with education and infrastructure projects, and it was rumored that some CIA personnel were attached to the brand new and heavily guarded American Embassy in Kabul.

On September 11, 2014, a coup engineered by Gulbuddin Hekmatyar overturned the corrupt Afghan government of Kermit Karzai, the younger brother of former President Hamid Karzai. Hekmatyar, a radical Islamist and former Afghan warlord who supported the Taliban in 2001, had been in hiding in Pakistan's ungoverned tribal regions for more than a decade. There, he planned and organized this coup. He allegedly boasted that "a group of martyrs, Allah be praised" were planning an attack on the United States that would make 9/11 seem "like a walk in the park." Hekmatyar's coup had the support of some troops trained by the United States as well as some former Taliban troops. Several Taliban clerics who remained alive from the pre-2001 era became advisors in Hekmatyar's informal "kitchen cabinet." The new government, when it announced itself as the "Caliphate of Afghanistan," banned education of girls.

During the coup, some of the troops involved attacked the US embassy in Kabul. The fortress held, thanks to the marine guard and the imposing physical barriers, but several marines were killed along with three embassy personnel. Hekmatyar, once assured of the coup's success, ordered that attacks cease and that Americans be flown out immediately, as he did not want "spies" in his capital city.

Assume further that Hekmatyar's references to a terrorist attack were to al Qaeda in Mali, a takfiri terrorist group formed in 2009 that committed several high profile suicide bombings in North Africa from 2012 to 2014. Its leader, Abdul Barsheba, was captured in Mali in October 2014 and brought aboard the USS Ronald Reagan, a Navy destroyer deployed to the region. CIA personnel were brought aboard the ship to interrogate Barsheba. After two

weeks of isolation, loud rock music, and subjection to extreme heat and cold, Barsheba revealed a plot to explode a large quantity of C4 explosive at the U.S Capitol in Washington, D.C. Barsheba said the C4 was to be obtained from explosives left behind in Afghanistan when American forces withdrew.

Assume Barsheba provided information leading the FBI to Fred Bannerman, an unemployed naturalized American citizen living in Pennsylvania. Bannerman, according to Barsheba, was planning to help with the C4 attack. Bannerman had never trained with al Qaeda in Mali or other terrorist groups, but learned how to handle C4 during a military tour in Afghanistan as a member of the US Army.

1. In January, 2014, a habeas petition filed in the District Court for the District of Columbia on behalf of all the detainees at Guantanamo sought immediate release of all Guantanamo detainees because the “War on Terror, hostilities in Afghanistan, and military capabilities of al Qaeda have ended.” The judge for whom you clerk wants to rule on this motion promptly. Answer using the law as it is in December 2012.

2. After the coup, could President Obama, under United States law and international law, use military force (including drones) to overturn Hekmatyar’s government and strike targets in Pakistan containing former Taliban soldiers and clerics linked to Hekmatyar? Answer using the law as it is in December 2012.

3. Could Barsheba be brought to the naval brig in South Carolina and then tried and convicted in federal court for terrorism and conspiracy to murder? Answer using the law as it is in December 2012.

4. President Obama, stung by public reaction against plans to try Barsheba in federal court, now proposes to detain Bannerman at Guantanamo Bay and try him before the same military commission that tries Barsheba. Advise him, using the law as it is in December 2012.

II.
(30 minutes)

Tarique Mehanna was convicted in federal court of seeking terrorist training and for material support of terrorism. Here is his story, as developed at trial.

Mehanna grew up in a pleasant but unassuming home in Sudbury, Massachusetts, a typical teen-ager who loved Nirvana's "Smells Like Teen Spirit." Eventually, he became interested in Arabic and a particular version of Islam. Before starting to study pharmacy, Mehanna took a trip in 2004 to Yemen. At least one of the friends who joined him on the trip traveled to Yemen seeking terrorist training, a felony that the government charged Mehanna had also committed. That aspect of the trip was quixotic, since no one found any camps to attend. Mehanna says he went on the trip for a different reason—to learn more about Islam. A friend of Mehanna's who accompanied him on the trip, Abou Abousamra, subsequently made his way to Fallujah, Iraq and other hot spots. Abousamra ultimately fled the U.S. and is currently on the FBI's "Most Wanted" list.

After returning to the U.S., Mehanna, who had become proficient in Arabic, embarked on posting translations of Islamist texts on-line for a web site, At-Tibyan Publications. The government claimed these translations were posted to assist Al Qaeda in securing new recruits. The material Mehanna translated, such as a text called "39 Ways to Serve and Participate in Jihad," was largely generic in character and already widely available on the Internet. Mehanna was arrested in March 2012.

In searching Mehanna's hard-drive, the government found numerous thumbnail photos of Osama bin Laden and the September 11 attacks. Many of the photos were introduced as evidence over the defense's objections at trial, as were Facebook posts by Mehanna indicating he "liked" articles about the Afghan government seeking to negotiate with the Taliban, the United States losing a helicopter to mechanical failures in Afghanistan, and a video entitled "Imam Anwar al Awlaki -- A Story of Courage."

Using these facts and materials from your Counterterrorism Law course, argue whether Mehanna's conviction should be overturned on appeal.

III.
(40 minutes)

A.

David Cole argues in *The Nation* that “If the government prevails in *Clapper v. Amnesty International*, the nation’s newest and most sweeping surveillance law may never be subject to adversarial constitutional review.” **Explain what Professor Cole is referring to and discuss whether you agree or disagree with him, using materials from Counterterrorism Law.**

B.

The Seventh Circuit recently issued an en banc decision in *Vance v. Rumsfeld* which began: “This appeal presents the question whether the federal judiciary should create a right of action for damages against soldiers (and others in the chain of command) who abusively interrogate or mistreat military prisoners, or fail to prevent improper detention and interrogation.” **What cases from Counterterrorism Law bear upon this question and what are their rationales?**