

Exam Number _____

FINAL EXAM
ANTITERRORISM LAW

December 16, 2009

Professor Shanor

This **two and one-half hour exam** contains **3 parts**. **Part I consists of one factual scenario with five questions, each of which is weighted approximately equally; parts II and III each contain one question.** You should spend about 15-20 minutes on each question in Part I, 25 minutes on Part II, and 35 minutes on Part III. Including this cover sheet, the **exam has four pages.**

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, 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.

Answer concisely; verbose answers do not help you, will interfere with your analysis, and will cause you unnecessary time pressure. If you think 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!

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I.
(60 points; 90 minutes)

In early December 2009, five young Islamic men from the Washington, D.C. suburbs were detained in North Waziristan, where the Pakistani authorities are fighting insurgent forces including the Taliban. The United States has provided aid to Pakistan for military actions in North Waziristan, which borders Afghanistan. The detention of these young men (“the Alexandria Five”) followed a Pakistani raid on a house allegedly linked to Jaish-e-Muhammad, a banned Pakistani militant group with ties to al-Qaeda. The Alexandria Five, ranging in age from 17 to 22, first met at a mosque which they all attended. Two of the Alexandria Five were of Pakistani descent, one of Egyptian origin, and one of Yemeni descent. All are United States citizens except the youngest. One of the men left behind an 11-minute farewell video calling for the defense of Muslims in conflicts with the West. Pakistani authorities have allowed the FBI to question the men, who are currently under “house arrest” in a facility owned by the United States and used to train Pakistani military on counterinsurgency techniques.

Based on the foregoing and additional information given below, answer the following questions, using materials and concepts from Antiterrorism Law:

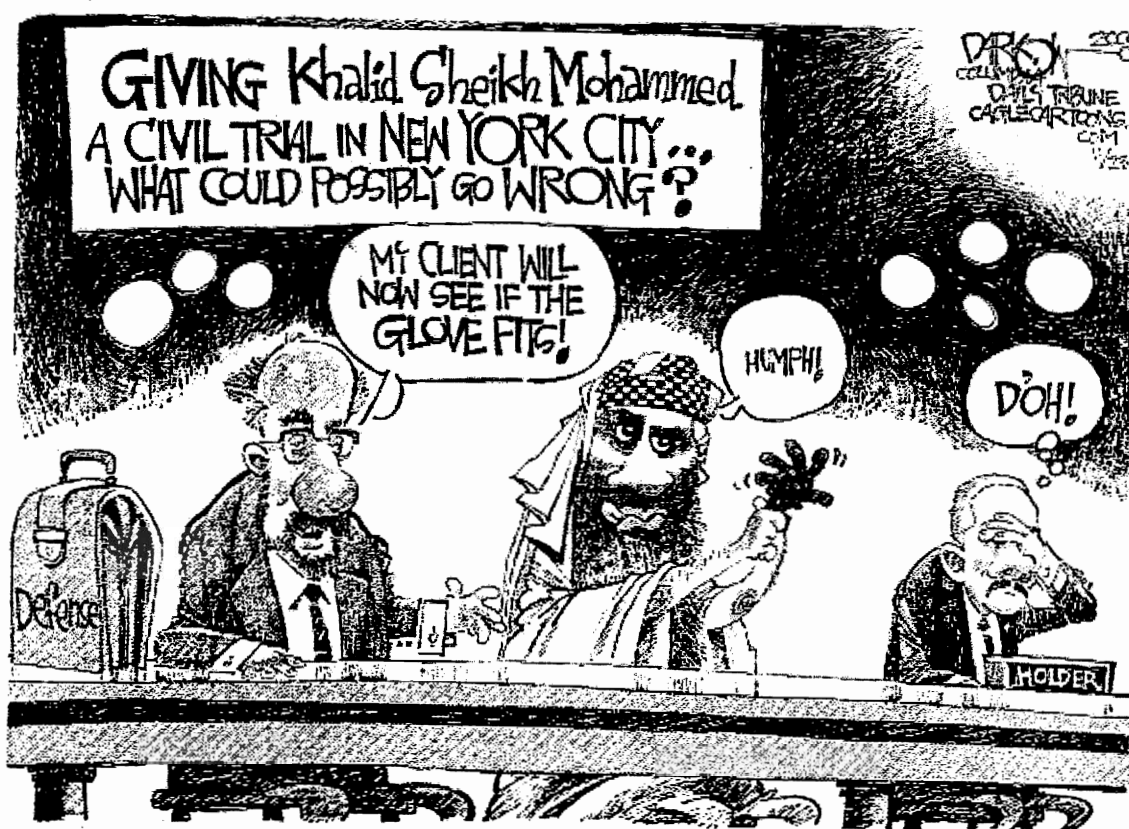
- a. Might a habeas corpus petition or other legal action return the Alexandria Five to the United States?
- b. If returned to the United States, could the Alexandria Five be placed in military detention as enemy combatants (or enemy belligerents)?
- c. Assume that the imam at the mosque attended by the Alexandria Five specifically referred to certain web sites as containing “blasphemous” English-language al Qaeda indoctrination materials. This mention aroused the young men’s interest and they visited the sites, which inspired their actions. The Saifullah (“Sword of Allah”) site provided them with contacts to help them travel in the Pakistan/Afghanistan border areas. What is the imam’s exposure under United States law for material support of terrorism?
- d. Assume that the North Waziristan raid resulted from United States National Security Agency (NSA) surveillance in mid-2009 of terrorist web sites and individuals who visited these sites. Assume further that the NSA did not get a FISA warrant before engaging in this surveillance. Can the young men successfully challenge this surveillance?
- e. If the Alexandria Five obtain the surveillance materials and introduce them to defend themselves in federal court, could the United States exclude these materials based on the state secrets doctrine or CIPA (the Classified Information Procedures Act)?

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II.

(15 points; 25 minutes)

The cartoon below presents one cartoonist's view of the trial of Khalid Sheikh Mohammed, the self-professed mastermind of the 9/11 attacks by al Qaeda, in federal court rather than before a military commission.



Because you are a law student and not a cartoonist, examine in words what obstacles the prosecution will face in federal court trial rather than in a military commission trial and whether these are substantial.

III
(25 points; 35 minutes)

Al Bahlul joined al Qaeda in Afghanistan in 1999 and attended an al Qaeda training camp. He was Usama bin Laden's personal secretary, drafted speeches for bin Laden, and produced a video entitled "The Destruction of the American Destroyer *Cole*," which was intended to capitalize on the *Cole*'s destruction to recruit new members. He also prepared "martyr's wills" for two 9/11 hijackers to be used for propaganda and recruiting purposes.

The Obama Administration has decided to continue al Bahlul's prosecution before a military commission, and al Bahlul's lawyers have made the following arguments (among others) on his behalf:

"Material Support, with which Mr. al Bahlul was charged, is a novel domestic crime that violates the First Amendment. In the context of the War on Terror, punishment of al Bahlul for these crimes by a military commission violates the ex post facto clause of the United States Constitution because al Bahlul's actions occurred before President Bush created military commissions by a Military Order of November 13, 2001.

The preceding factors undercut any serious argument that this so-called crime has obtained the "general assent of civilized nations" as a war crime, and military commissions may only try war crimes. No one even claimed that Material Support offenses were triable by military commission until the passage of the Military Commissions Act of 2006.

Finally, since Material Support is not an offense listed in the Military Commission Act of 2009, al Bahlul cannot be tried for it before a military commission."

As a lawyer for the Obama Administration, respond to these arguments, using authorities and concepts from your Antiterrorism Law course.