

George Washington
University Law School

December 3, 2010

PAST EXAMINATIONS

This document contains the past examinations that I have given in Counterterrorism Law (Course No. 383) and Human Rights and Military Responses to Terrorism (Course No. 836). These examinations were given on the following dates:

May 2, 2007
May 2, 2006
July 30, 2004

Gregory E. Maggs
Interim Dean and Professor of Law

Final Examination in
COUNTERTERRORISM LAW
(Course No. 383-10)

Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have 2 hours to complete this examination.
2. This examination consists of four problems of equal weight. I recommend that you devote approximately 30 minutes to each problem, but you may divide your time as you see fit.
3. This is an open-book examination. In answering the problems, you may use any written materials that you have brought with you.
4. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
5. You must write your answers in essay form, using complete sentences and proper paragraphs. The quality of your writing will affect your grade.
6. Each problem includes two specific questions. In grading, weight will be given to these questions according to their difficulty. Answers will be evaluated based on how well they: (1) identify the governing legal doctrines; (2) apply these doctrines to the specific facts of the problems; (3) compare the facts of the problems to precedents considered in the course; and (4) provide other arguments, explanations, and examples as required by the questions.
7. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.**(25 percent)**

The following edited excerpt comes from This Time It's Revenge: Somalia, The Economist, Jan. 13, 2007:

BELATEDLY, if inevitably, the fist of American military power has smashed back into Somalia. On January 7th and 8th, an AC-130 gunship struck Islamist targets in Somalia. The surviving Islamist fighters seem to be surrounded. They have fought a disastrous campaign. Since attacking Somali transitional-government positions, they have been relentlessly driven back. Taken together, the attacks claimed dozens, possibly hundreds of lives. Sketchy reports suggest that women and children were among the dead. The Americans used the AC-130, a behemoth designed to shred large areas instantly, in the knowledge that the killing fields would be cleared before journalists and aid workers could reach them. The Americans said that their action was limited to stopping "al-Qaeda terrorists" from escaping. But that label hardly describes the bulk of the Islamist fighters, many of whom are little more than boys. Their crime was to have sheltered three al-Qaeda men wanted for their part in the 1998 bombings of the American embassies in Nairobi and Dar es Salaam. Somalia's transitional president, Abdullahi Yusuf, has praised the American action, but it is doubtful whether he speaks for most Somalis. There has been sharp criticism in the Muslim and wider world.

On the basis of this information, answer the following questions:

- A. At a subsequent Congressional hearing, Senator Robert Byrd asked General Peter Pace about the strikes:

SEN. BYRD: . . . [U]nder what authority were the airstrikes in Somalia executed?

GEN. PACE: Under the authority of the president of the United States, sir.

SEN. BYRD: What authority did he have? What did he base his authority on?

What arguments could General Pace make under international and U.S. law, and what counter-arguments might he expect?

- B. Might the United States face civil liability or other formal consequences in connection with the attacks?

PROBLEM II.**(25 percent)**

The following edited excerpt comes from a statement issued by President George W. Bush on October 17, 2006, when he signed the Military Commissions Act of 2006 (MCA):

The Military Commissions Act of 2006 is one of the most important pieces of legislation in the war on terror. This bill will allow the Central Intelligence Agency to continue its program for questioning key terrorist leaders and operatives like Khalid Sheikh Mohammed, the man believed to be the mastermind of the September the 11th, 2001 attacks on our country. This program has been one of the most successful intelligence efforts in American history. It has helped prevent attacks on our country. And the bill I sign today will ensure that we can continue using this vital tool to protect the American people for years to come. The Military Commissions Act will also allow us to prosecute captured terrorists for war crimes through a full and fair trial.

By allowing the CIA program to go forward, this bill is preserving a tool that has saved American lives. The CIA program helped us gain vital intelligence from Khalid Sheikh Mohammed and Ramzi Binalshibh, two of the men believed to have helped plan and facilitate the 9/11 attacks. The CIA program helped break up a cell of 17 southeastern Asian terrorist operatives who were being groomed for attacks inside the United States. The CIA program helped us uncover key operatives in al Qaeda's biological weapons program, including a cell developing anthrax to be used in terrorist attacks.

On the basis of this information, answer the following questions:

- A. In what ways does the MCA "allow the Central Intelligence Agency to continue its program for questioning key terrorist leaders?"
- B. Notice that the President stresses first how the MCA will facilitate intelligence gathering and only secondarily mentions how it will make prosecutions possible. Why might the President have considered the ability to use military commissions to prosecute suspected terrorists to be a less significant aspect of the MCA?

PROBLEM III.**(25 percent)**

The following edited excerpt comes from Al-Marri ex rel. Berman v. Wright, 443 F. Supp.2d 774 (D.S.C. 2006):

Ali al-Marri is a Qatari national who legally entered the United States on September 10, 2001, with his wife and children. He had previously obtained a bachelor's degree from Bradley University in Peoria, Illinois and was returning to obtain a master's degree.

On December 12, 2001, al-Marri was arrested by FBI agents in Peoria as a material witness in the investigation of the September 11, 2001, terrorist attacks. On June 23, 2003, President Bush designated al-Marri as an enemy combatant and directed that he be transferred to the control of the Defense Department for detention. Al-Marri was then immediately transferred into military custody and transported to the Naval Consolidated Brig in South Carolina.

[The U.S. justifies al-Marri's detention with a declaration of a U.S. intelligent agent, which says:] Al-Marri trained at Bin Laden's Afghanistan terrorist training camp for 15-19 months between 1996 and 1998. In the summer of 2001 al-Marri was introduced by Khalid Shaykh Muhammed, September 11th mastermind, to Usama Bin Laden, and al-Marri offered to be an al Qaeda martyr or do anything else al Qaeda requested. He was directed to enter the United States as a "sleeper agent," and to explore computer hacking methods to disrupt bank records and the U.S. financial system.

[Al-Marri] denies he was affiliated with, al Qaeda. Despite being given numerous opportunities to come forward with evidence supporting this general denial, [he] has refused to do so. Instead, he stated, "Petitioner respectfully declines to assume the burden of proving his own innocence, a burden that is unconstitutional." [Al-Marri is now the only enemy combatant held in the United States.]

On the basis of this information, answer the following questions:

- A. Does al-Marri have a right to habeas corpus or any other procedure for having the legality of his detention reviewed?
- B. Does the United States have a legally sufficient basis for detaining al-Marri?

PROBLEM IV.**(25 percent)**

The following edited excerpt comes from Salman Masood, Judge in Pakistan Dismisses Charges in Reported Plane-Bomb Plot, N.Y. Times, Dec. 14, 2006:

A judge [in Pakistan] threw out terrorism charges against Rashid Rauf, a Briton of Pakistani descent whom prosecutors depicted as a major figure in a plot to smuggle liquid explosives onto trans-Atlantic airliners and detonate the bombs in flight.

Reports of a bombing conspiracy created powerful strains between American and British investigators over the timing of a crackdown on suspects in which British authorities rounded up 25 people on Aug. 9 and 10. British officials said that American investigators had pushed for quicker arrests but that the British had wanted to wait to gather admissible evidence.

Pakistani officials identified [Mr. Rauf] as a "key figure" and said he had contacts to Al Qaeda in Afghanistan. But Mr. Rauf appeared in a counter-terrorism court and the judge dismissed most of the charges against him, upholding a defense objection that they lay outside the court's jurisdiction. "Rauf was booked under six charges, such as impersonation, cheating, forging documents, presenting those forged documents as real and keeping explosives," Hashmat Habib, his lawyer said. "[N]one of the charges fell under the jurisdiction of the antiterrorism court."

Mr. Rauf has not been charged in Britain in connection with any airline plot, and a Home Office spokeswoman said no extradition request had been made.

On the basis of this information, answer the following questions:

- A. What recurring issues faced by law enforcement officials in dealing with terrorism does this case illustrate?
- B. If Pakistan turns Mr. Rauf over to U.S. custody for trial by military commission, what legal questions would arise?

END OF EXAMINATION

Please note that some sentences and words were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification or other purposes.

Final Examination in
HUMAN RIGHTS AND MILITARY RESPONSES TO TERRORISM
(Course No. 836-10)

Professor Gregory E. Maggs

Instructions:

1. Absent special arrangements, you have 2 hours to complete this examination.
2. This examination consists of four problems of equal weight. I recommend that you devote approximately 30 minutes to each problem, but you may divide your time as you see fit.
3. This is an open-book examination. In answering the problems, you may use any written materials that you have brought with you.
4. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
5. You must write your answers in essay form, using complete sentences and proper paragraphs. The quality of your writing will affect your grade.
6. Each problem includes two specific questions. In grading, weight will be given to these questions according to their difficulty. Answers will be evaluated based on how well they: (1) identify the governing legal doctrines; (2) apply these doctrines to the specific facts of the problems; (3) compare the facts of the problems to precedents considered in the course; and (4) provide other arguments, explanations, and examples as required by the questions.
7. You may keep this copy of the examination at the end of the examination period. Good luck!

PROBLEM I.**(25 percent)**

The following edited excerpt comes from Mark Hosenball, Can the President Order a Killing on U.S. Soil?, Newsweek, Feb. 13, 2006, at 6:

In the latest twist in the debate over presidential powers, a Justice Department official suggested that the president might have the power to order the killing of terrorist suspects inside the United States. Steven Bradbury, acting head of the department's Office of Legal Counsel, went to a closed-door Senate intelligence committee meeting to defend President George W. Bush's surveillance program. California Democratic Sen. Dianne Feinstein asked Bradbury questions about the extent of presidential powers to fight Al Qaeda; could Bush, for instance, order the killing of a Qaeda suspect known to be on U.S. soil? Bradbury replied that he believed Bush could indeed do this, at least in certain circumstances.

Current and former government officials said they could think of several scenarios in which a president might consider ordering the killing of a terror suspect inside the United States. One former official noted that before Flight 93 crashed in Pennsylvania, top administration officials weighed shooting down the aircraft if it got too close to Washington, D.C. What if the president had strong evidence that a Qaeda suspect was holed up with a dirty bomb and was about to attack? University of Chicago law professor Cass Sunstein says the post-9/11 congressional resolution authorizing the use of military force against Al Qaeda empowered the president to kill 9/11 perpetrators, or people who assisted their plot, whether they were overseas or inside the United States.

Assuming the truth of the factual assertions in this article, answer the following questions:

- A. What legal arguments can be made in support and in opposition to the positions of the persons quoted above?
- B. Professor Sunstein also said that "the president would be on less solid legal ground were he to order the killing of a terror suspect in the United States who was not actively preparing an attack." Is this view correct?

PROBLEM II.**(25 percent)**

The following edited excerpt comes from Stephen Thorne, Head of Defence Ops Confirms JTF2 Killed, Captured Enemy in Afghanistan, Canadian Press NewsWire, Sept. 20, 2005:

Canadian special forces troops have killed and captured Taliban and al-Qaida fighters in Afghanistan, the head of defence operations acknowledged in an unprecedented look at his secretive commando unit.

Brig.-Gen. Mike Ward told a media briefing Tuesday that Joint Task Force 2 has been involved in multiple operations.

Prisoners have been taken, questioned and turned over to U.S. or Afghan authorities with assurances they will be treated humanely and in accordance with elements of the Geneva Conventions, Ward said.

"If we are going to keep the (enemy) at arms' length from these Afghani officials and protect them from murder and assassination . . . we have to engage in combat operations that take the offensive into the mountains, into the remote regions where they have their bases and their sanctuaries and keep them off-guard."

"We have detained people. Our aim in operations is to capture where possible in order to use the intelligence value that any of these detainees may have for us."

Canadian troops hold detainees only long enough to process them and acquire any tactical -- immediately valuable -- intelligence before turning them over to the appropriate authorities, he said.

Assuming the truth of the factual assertions in this article, answer the following questions:

- A. What international law theories might justify a country like Canada in using military force against members of the Taliban and al-Qaida in Afghanistan after the attacks of September 11, 2001?
- B. Under what circumstances would Canada bear responsibility for unlawful treatment of prisoners by the United States or Afghanistan?

PROBLEM III.**(25 percent)**

The following edited excerpt comes from Warren Richey, Innocent, but in Limbo at Guantanamo, Christian Science Monitor, Feb. 13, 2006, at 3:

Five Muslim detainees from China's western Xinjiang province are stranded in a legal no man's land at the US terrorism prison camp at Guantanamo Bay, Cuba.

They shouldn't be there. Even the US military has found that the men, members of the besieged Uighur ethnic group, are not enemy combatants. But their ordeal in custody isn't over. Because they could face harsh treatment back in China -- and the US doesn't want to set a precedent by granting them asylum here [i.e., in the United States] -- they sit in a barracks-like detention center waiting for a country to give them a home.

Now, more than four years after their imprisonment by US military forces, the men are asking whether individuals captured abroad can be held in military detention indefinitely -- even after the US government has declared that they pose no threat to national security.

Though the five are not considered enemy combatants, the men can be held indefinitely under the executive branch's power to wind up wartime detentions in an orderly fashion, government lawyers say.

Besides the Uighur detainees, four other non-enemy combatants are being held at Guantanamo because of human rights concerns if they are returned to their home countries of Saudi Arabia, Algeria, Egypt, and Uzbekistan.

Assuming the truth of the factual assertions in this article, answer the following questions:

- A. To what extent, if any, may the United States lawfully detain the non-enemy combatants described in this article?
- B. What obstacles might the detainees face in obtaining a remedy in federal court?

PROBLEM IV.**(25 percent)**

The following edited excerpt comes from Amir Zia, Pakistan Parades "Indian Agent," Gulf News, Oct. 1, 2002:

Police have arrested a Pakistani Hindu in the port city of Karachi on charges of espionage and deadly acts of terrorism, saying that he worked for the prime Indian spy agency.

Bajal Ramji, 29, was caught red handed on Sunday while he was taking photographs of exit and entry points of the Expo Centre, where earlier this month an international defence exhibition was held.

"Ramji has confessed to carrying out a bomb explosion on November 20, 1999 near the railway station of Lahore in which seven people were killed and 14 others were wounded," he said. He was given explosives and Rs 5,000 [\$82] by one of his contacts.

New Delhi regularly accuses Pakistan of fomenting violence in India especially in its troubled Kashmir region, while Islamabad blames the Indian spy agency of sponsoring bomb explosions and other acts of terror in Pakistan. But both countries, which are at loggerheads over the disputed Kashmir region and have amassed more than a million troops along their border in the biggest military buildup since they last fought a war in 1971, deny the charge.

Ramji confessed that [the Indian agency] gave him a 15-day training course in explosives in Jodhpur and sent him illegally back to Pakistan.

Army authorities are part of the investigations and a military court will hold Ramji's trial to ensure secrecy of the information relating to defence.

Assuming the truth of the factual assertions in this article, answer the following questions:

- A. Under what circumstances would international law permit Pakistan to use a military court to try Ramji for the charges on which he was arrested?
- B. Why might a military trial be necessary to "ensure secrecy of the information relating to defence?" What other advantages (or disadvantages) might a military trial have in comparison to a civilian criminal trial?

END OF EXAMINATION

Please note that some sentences and words were omitted from the preceding quotations without indication by ellipses. Text appearing in brackets was added to the quotations for clarification or other purposes.

The University of Oxford and the George Washington University
Joint Programme in International Human Rights

Final Examination in
HUMAN RIGHTS AND MILITARY RESPONSES TO TERRORISM

Professor Gregory E. Maggs
George Washington University

Given at New College, Oxford
July 30, 2004

Examination Instructions:

1. Native speakers of English have 2 hours to complete this examination. Non-native speakers of English have 2 hours and 30 minutes.
2. The examination consists of 4 problems of equal weight.
3. Each problem includes several specific questions. Points will be allocated among the questions within a problem according to their difficulty.
4. In general, answers will be evaluated based on how well they (1) identify the governing legal standards; (2) apply these standards to the specific facts of the problems; (3) compare the facts of the problems to precedents considered in the course; and (4) provide examples, explanations, and policy arguments as appropriate to the questions. The quality of the answers matters more than the specific conclusions reached.
5. This is an open-book examination. You may consult any materials that you have brought with you to the examination.
6. You should make reasonable assumptions about any facts not stated in the problems. If you find the problems ambiguous in any sense, describe the ambiguity in your answer.
7. You must write your answers in essay form, using complete sentences and proper paragraphs.
8. You may keep this copy of the examination at the end of the examination period.

PROBLEM I.**(25 percent)**

The following edited excerpt comes from David Holley, Separatists Tied to '99 Bombings, Los Angeles Times, May 1, 2003, at 5:

[In September 1999, bombs destroyed two apartment buildings in Moscow, killing 243 people and wounding 1,742 others.] The two bombings in Moscow and one in Volgodonsk were organized by two Arabs, later killed by Russian forces, who were leaders of separatist guerrillas in Chechnya, the Russian prosecutor general's office said.

These bombings and another apartment blast that year in the Dagestan region, quickly blamed on Chechen rebels, became one of the justifications for sending Russian troops back into Chechnya -- a move that launched the second war there in a decade.

Omar Ibn al Khattab and his aide Abu Umar masterminded the bombings, prosecutors said. The former, identified as Saudi or Jordanian born, became prominent under just the name Khattab when he was known as a warlord accused by Moscow of running terrorist training camps in Chechnya.

The Russian news agency Interfax reported that Khattab and Abu Umar "were killed during the counter-terrorist operation in Chechnya." Some reports have said Khattab was poisoned.

Assuming the truth of the assertions in this article, answer the following questions:

- A. Subsequent reports revealed that Russian security forces killed Khattab by bribing a Chechen to deliver a poisoned letter to him. Was this action lawful?
- B. The U.N. Commission on Human Rights condemned Russia's actions in Chechnya, citing "disappearances, ... torture, [and] arbitrary detentions" in violation of the Geneva Conventions and the International Covenant on Civil and Political Rights. What legal responses might Russia make about the scope of these treaties?
- C. Russia threatened to use military force in the neighboring nation of Georgia, where persons linked to the bombings had fled. How would the legality of using force in Georgia differ from the legality of using force in Chechnya?

PROBLEM II.**(25 percent)**

The following edited excerpt comes from Egypt Sentences 6 To Death for Attacks, N.Y. Times, Jan. 14, 1996, at 12:

An Egyptian military court gave death sentences today to six men who the Government contends trained in neighboring Sudan to carry out attacks aimed at overthrowing the Egyptian Government.

Twelve other defendants were sentenced to up to 15 years of hard labor, and six defendants were acquitted. Prosecutors contended the 24 had planned terrorist attacks and said the case was evidence of Sudanese support for Islamic militants in Egypt.

Egypt contends that groups seeking to overthrow the Government and install Islamic rule smuggle men and arms across the desert border with Sudan.

Since 1992, Egypt has used military courts to try suspected Muslim militants accused of taking part in a nearly four-year campaign against the Government. Lawyers for the defendants accused the Government of using beatings and electric shocks to force confessions. Journalists were barred from the courtroom, at a base 30 miles east of Cairo.

Human rights groups in Egypt and the West have condemned the military trials, which typically issue quick, harsh sentences with no possibility of appeal.

Assuming the truth of the assertions in this article, answer the following questions:

- A. What legal challenges might be made against the trial procedures described in this article and how should they be evaluated?
- B. How might the persons detained by Egypt for trial be classified under international law and how might their classification affect their rights?
- C. May military tribunals lawfully assert jurisdiction to try persons accused of the offense of having "planned terrorist acts?"

PROBLEM III.**(25 percent)**

The following edited excerpt comes from Jeffrey Rosen, How to Detain a Terrorist, New Republic, May, 17, 2004, at 14:

In Britain, after preventive detention of Irish Republican Army suspects led to wrongful convictions and mistaken identifications, Parliament passed a terrorism act in 2000 that forbids indefinite detention. Police can arrest suspected terrorists without a warrant but must charge or release them after 48 hours unless a court approves a maximum five-day extension. Detainees can respond to the allegations against them and must have access to counsel "as soon as is reasonably practicable." (The British lawyers are senior members of the bar, with security clearances, who can discuss classified information with the judge without necessarily divulging it to their clients.) The British Anti-Terrorism Act of 2001 allows the indefinite detention of foreign nationals who can neither be prosecuted nor deported. But they have the right to appeal their designation to the judiciary and the House of Lords, and Parliament must renew the detention authority every year. In Israel, the Knesset has mandated that detainees have access to counsel to contest their status and must be brought before a court within 48 hours to ensure there are public security reasons to approve the detentions. Although the minister of defense can renew each detention order every six months, courts must continue to review the basis for the detention every three months. In other words, both Britain and Israel recognize the importance of oversight by the legislative branch, as well as the courts.

Assuming the truth of the assertions in this article, answer the following questions:

- A. To what extent, if at all, does international law require judicial review procedures of the kind found in the British and Israeli laws?
- B. Does international law limit the power of legislative bodies like the British Parliament to renew authority for detaining suspected terrorists?
- C. What legal and policy arguments might be made against active legislative and judicial oversight of military detentions of suspected terrorists?

PROBLEM IV.**(25 percent)**

The following edited excerpt comes Vanessa Gezari, Military Learns Value of Sincere "I'm Sorry," Chicago Trib., May 29, 2003, at C1:

One night last month, an American bomb killed all of Mawiz Khan's children [in Shkin, Afghanistan].

The U.S. military says it is not liable for death and damage suffered by civilians in combat. Publicly, it says it does not compensate families for the deaths of relatives, even in cases like the one in Shkin, when the bombing was a result of American mistakes.

Yet here, U.S. military officers did something they have rarely, if ever, done in Afghanistan. They went to Mawiz Khan's house, apologized and promised to rebuild it, relatives and Afghan officials say.

The apology represents a subtle shift in the way American forces are dealing with civilian casualties here, 19 months after the U.S.-led coalition began bombing Afghanistan. No longer are the dead labeled collateral damage. Quietly, the U.S. government is searching for ways to win back those who have suffered--by rebuilding their homes and villages, giving them money and gifts or simply expressing condolences.

Assuming the truth of the assertions in this article, answer the following questions:

- A. What legal obstacles would civilian victims like Mawiz Khan face in seeking compensation from the United States?
- B. Why might the United States be reluctant to admit openly that it compensates victims of harm caused by military mistakes?
- C. Does the United States have an enforceable obligation to protect persons like Mawiz Khan from attacks by al-Qaida terrorists?

END OF EXAMINATION

Please note: For purposes of brevity, in the excerpts quoted in these problems, text was removed without indication by ellipses. Text appearing within brackets was added for clarification.