

National Security Law
Fall 2007 - Richards

Put your exam number on each page of the examination. Do not put your name or any other identifying information on the examination. Read the entire exam before answering any questions. Make sure you have all the pages and that they are all different. Use no more than the space provided. **Do not write on the back.** If you are using the computer, number each question so I know what you are answering. Each question has a 200 word limit. If you are handwriting the exam, no tiny writing to try to get around the word count. Be clear and concise. You can use the back of the exam for notes and outlines to better structure your answer.

1) One of the most difficult issues arising from the Iraq war is the status of the detainees at Guantanamo Bay. While the moral issues would be the same if the detainees had been held in battlefield prisons in Afghanistan, how and why would this have affected the outcome of their litigation over their right of habeas corpus in the US courts?

2) Part of the debate over the detainees at Guantanamo Bay has revolved over whether they should be classified as prisoners of war or as criminals, who should be tried or released. This debate ignores a third category which is well recognized in international law. What is this category? What was traditionally done with persons in this category? Is there an example of this treatment for persons on US soil? Why doesn't this work for the Guantanamo detainees?

3) *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) is a complex and difficult case. There were two groups of defendants in *Sosa*, the DEA agents and the Mexican nationals they hired to kidnap the plaintiff. What law did the plaintiff try to use to sue the DEA and why did the claim fail? Would the plaintiff have done better with a *Bivens* claim? Why or why not?

4) In *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004), what law was used to obtain jurisdiction over the Mexican nationals? This law does not provide substantive law for deciding the case. Where does it say the court must look for the substantive law of the case? What was the act that the plaintiff based his claim on against the Mexican nationals and why did the court reject this claim?

5) Referring to your FISA Supplement, which includes the definitions of sabotage, explain whether FISA can be used against purely domestic terrorist organizations or individuals such as Timothy McVeigh, who bombed the federal building in Oklahoma City. How do the minimization procedures limit the use of FISA in this circumstance?

6) Keeping in mind the Patriot Act amendments to FISA, which overruled the test in *US v. Truong Dinh Hung*, 629 F2d 908 (1982), the language of FISA, and the pressure post-9/11 to integrate law enforcement and foreign intelligence gathering, how can FISA be used in what we might consider traditional law enforcement situations? Think about the war on drugs as you answer this question.

7) The United States has fought three major wars since World War II, but has not declared war since World War II. What is the international law value of a declaration of war and why is a particular issue in the war on terror?

8) Why was the Church Committee formed? What were its primary recommendation on covert action? How did Presidents Ford and Carter react in order to protect their powers from proposed legislation?

9) What were the Bolland Amendments and how did they lead to the Iran-Contra scandal?

10) What is the privatization of intelligence and how does it undermine constitutional protections?