

Counterterrorism Law  
Fall 2017 - Richards

The exam is open book only. No extra notes or other materials. No use of any electronic devices during the exam. Read the entire exam before answering any questions. Make sure you have all the pages and that they are all different.

If you are handwriting the exam, use the supplied lined paper and the pages allocated to each question. Put your exam number on each page of the examination if you are handwriting the exam. Do not put your name or any identifying information other than your exam number on the examination. Use no more than the space provided. Do not write answers on the back. You may use the back for scratch paper. (If you are using the computer, you may use the whole exam as scratch paper.)

Each question has a word limit. If you are handwriting, don't use tiny handwriting to try to squeeze in more words. Read the question carefully and think about your answer before you start writing. Organization and clarity matter. If you use the computer, make sure to number your answers to match the question numbers. If you are handwriting, turn the exam in to my secretary, Kristi Parnell, in Room 434.

**Problem 1**

Torture – where are we now? President Trump has tweeted that he believes torture works and that we should do it. You are a junior lawyer at the DOJ and have been asked to write a memo on the current legal status of enhanced interrogation/torture under US and international law. We have been through years of litigation and several statutory revisions to US laws governing torture, so the existing OLC memos are long out of date. Reference applicable law and treaties from your book. Be objective and discuss both sides of the question. Be sure to address these points as part of your memo:

What are the current legal standards for non-military personnel, i.e., those who are outside the code of military justice?

Where would you look for guidance on what these standards mean in actual practice?

Are the standards different for those under the code of military justice?

Do the US standards differ from international law, and if so, how?

You have up to 1500 words. If you are handwriting, you have 4 lined pages.

## **Problem 2**

The DOJ wants a memo on the use of secret information (classified, state secrets, etc.) in litigation. Be sure to include these points in your memo:

When can litigants against the government, or defendants in criminal trials, get secret information and use it at trial?

What are the restrictions on the use of secret information in litigation and at trial, including procedures for using it in the courtroom?

What is the legal result when the government is unwilling to release the information in different types of cases?

You have up to 1500 words. If you are handwriting, you have 4 lined pages.

## **Problem 3**

You have a great summer internship in Paris, working for the Inhumane Weapons Convention (IWC). The IWC is concerned with the development and use of autonomous, self-targeting battlefield bots, colloquially known as slaughterbots. These bots can be in the form of drones, or ground based forms which resemble a skeletal robotic greyhound. (Models are in development which can transform between flying and ground movement.) The bots get as close as feasible to the target, then kill with high velocity, fragmentation ammunition. This ammunition does massive damage to the target, but does not penetrate walls or endanger persons other than the target. Collateral damage is limited to misidentified targets.

The bots have two modes. In the fixed target mode (FTM), the bot is given data on one or more specific individuals to target. This includes facial recognition data, gait data, voice data, phone data, and other information, which can be used to identify a specific individual. The bot seeks the target on its own – no human pilot - and can kill it without human confirmation when the bot's internal computer reaches a 95% certainty that has it identified the target.

In the general target mode (GTM), the bot is given general data that correlates with enemy combatants or other targets. This data can include insignias, uniform styles and colors, other distinctive dress information, facial recognition data specific to hostile racial or ethnic groups in the target region, data to recognize weapons, physical data such as height and weight to identify adults, and other data specific to the conflict area. In general use, the bot must have a 95% match to authorize its own kills. In a firefight situation, the bot can authorize kills on an 80% match, which has been determined to approximate the accuracy of a human soldier in the same situation.

You have been asked to write a memo analyzing the legal issues in the use of slaughterbots under US and international law. While the IWC is opposed to the use of these bots, it wants an objective brief analyzing both sides of the issue.

You have up to 1500 words. If you are handwriting, you have 4 lined pages.