

National Security Law
Spring 2011 - Richards

Each question has a 200 word limit. If you are using the computer, number each question so I know what you are answering.

1. How did the founders provide for the president to have troops to respond to invasions and insurrections without having a standing army, and what did they intend for the president to have to do if he wanted to start a war? How did the development of a federal standing army undermine this constitutional system?
2. The FBI believes that if a government agent is legally in a person's house or business, without regard to the nature of the legal status of the entry – say a rat inspection – that any evidence of a past crime that the agent observes as part of official duties is admissible in a criminal trial because it is in plain view. The rat inspector found your client's cocaine and called the FBI, who is prosecuting your client. What is your argument at the suppression hearing on the admission of the evidence of the cocaine? (Cocaine does not attract or otherwise encourage rats.) Be specific and anticipate responses by the government. Would the result be different for anti-terrorism uses?
3. What was the argument by defendants in the *Rosen* case - APIC members who solicited secret information and passed it to the press and Israel – that they were no different from reporters and thus should not be prosecuted for espionage? How might you argue for the government that they are also no different from classic cold war soviet spies?
4. Your client, a Mexican national, was kidnapped from Mexico by CIA agents and brought to the United States for trial on drug charges. He was not treated gently and was blindfolded and bound for more than 18 hours during the transit to a US jail. You want to sue for damages (not release from jail, this is not habeas corpus) on his behalf. What statute will you need to use? What sort of statute is this, and what must you find in addition to support your claim? Why are you unlikely to succeed and what case do you expect the government to use against you?
5. We have declared war on terrorism, and the AUMF gives the president broad powers of unlimited duration to fight this war. Thinking about the value in international law of the distinction between formal and informal war, and issues raised by rules on prisoners of war, what problems does the AUMF pose?
6. We have read about several large scale domestic abuses of government intelligence powers. FISA is an invitation to abuse by an overzealous DOJ, and local law enforcement agencies have been known to bend the rules in the collection of evidence. While we have a great tradition of 4th amendment jurisprudence, at last since the 1950s, what are the problems in monitoring 4th amendment abuses and holding the government agencies liable?
7. The use of classified information in trials is an ongoing national security issue. Sometimes the refusal to provide evidence causes the government to win, and sometimes to lose. Thinking of the cases we read, explain what is behind these differing results.

8. Does blogging merge publishing and reporting - thinking about the *Rosen*, *Progressive*, and *Pentagon Papers* cases, what are the arguments pro and con that a blogger/reporter has more legal protections than a traditional reporter who is not also the publisher?