

Counterterrorism Law Spring 2019 - Richards

The exam is open book only. The allowed books are the Dycus National Security Law text and the supplement. The book may have tabs (indicating chapters or page numbers for example) and margin notes and highlighting, but no sticky notes with substantive notes/reading notes. No extra notes or other materials may be used. No use of any electronic devices during the exam. Read the entire exam before answering any questions. The longer questions are at the end of the exam. Make sure you have all the pages and that they are all different. If you are using the computer, you may use the whole exam as scratch paper. When you are finished, put your exam in the box at the back of the room.

Each question has a word limit. Read the question carefully and think about your answer before you start writing. Reference the law and cases, not just policy. Organization and clarity matter. If you use the computer, make sure to number your answers to match the question numbers.

Handwriting - Use the supplied lined paper and make sure you stay within the word court. Put your exam number on each page. Do not put your name or any identifying information other than your exam number on the examination. Do not write answers on the back. You may use the back for scratch paper. If you are handwriting, put your exam answers in the box in Room 427. (Don't give it to me, that will violate anonymity.)

Problem 1

The Constitution seems to indicate that Congress should control war making, since it has the sole power to declare war. However, the President is given very broad powers over foreign policy and the use of the military.

What assumptions did the drafters make about the structure of the federal government that have changed, giving the President the ability, if not necessarily the right, to make unilateral war?

What did the founders assume a president would have to do before he could make war?

How can Congress end a war the president wants to fight if the Congressional opponents of the war have enough votes to override a veto?

What if they have a majority but not a 2/3 majority? What are the political constraints?

This is not a technical legal question, i.e., you do not need to reference cases or statutes. You have up to 500 words.

Problem 2

What is the justification for targeted (extra-judicial) killings under applicable U.S. law, CIL, and International Human Rights Law? Assume that while we do not submit to the jurisdiction of the International Court of Criminal Justice, the president wants the strongest arguments supporting our use of targeted killings, and whether those arguments comport with appropriate precedent. (Don't forget that we killed a US citizen through the targeted killings program, so this is not just "foreigners on foreign shores have no rights.") You have up to 500 words.

Problem 3

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 an administrative search for rats – any evidence of a crime that the agent observes is admissible in a criminal trial because it is in plain view. The rat inspector found your client's cocaine and called the FBI, which is prosecuting your client. Write a short bench brief for the judge 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. You have up to 500 words

Problem 4

Your law firm has been retained by the House Judiciary Committee to provide advice on its legal options in contesting the President's border emergency declaration. You have been given the National Emergency Power Act, the President's Emergency Declaration, and the DOD statement on the Declaration. You have been asked to write a memo to the Judiciary Committee analyzing the best strategy for Congress or a Congressperson to challenge the declaration in court. (They were unable to get enough votes to use the statutory mechanism to cancel the Declaration.) Can they get standing, and, assuming that they can, what is the best substantive attack? Be sure to put this in the context of previous congressional litigation against the president and other emergency powers cases such as Youngstown. You have up to 1000 words.

Problem 5

There are calls in the press and in Congress to treat domestic white supremacist groups and Neo-Nazis as terrorist groups. You have been asked to write a memo explaining who FISA targets and why this limits the use of FISA against these groups. You should also address any situations that might arise where it would be legal to use FISA and other national security surveillance techniques, rather than just criminal law investigative techniques. You have up to 1000 words.

Problem 6

Journalists are worried that Assange will be brought back to the US and prosecuted for espionage, not just computer hacking. (An executive agreement requires the Brits to approve new charges, but this is not legally binding on DOJ.) Review the facts stated in his indictment to see if these fears are justified. Write a memo explaining how the law may apply to journalists as well as spies. Be sure to address whether the legal issues are different for reporters and publishers, and how bloggers blur this distinction. You have up to 1,500 words.