## Study Guide – Chapter 11

## How does Meeker argue that the SEATO treaty authorized the military actions in Vietnam?

## Does the President have to get permission from Congress to fulfill a treaty military obligation?

## What was the Tonkin Gulf Incident?

## What does the declassified history show?

## Why do you think Johnson reacted as he did to the Tonkin Gulf Incident?

## Why do you think Johnson introduce the Tonkin Gulf Resolution, rather than relying on the SEATO treaty?

## What does the Tonkin Gulf Resolution authorize? P. 321

## Is the Tokin Gulf Resolution a declaration of war?

## Is it anything at all, legally, if it is not a declaration of war?

## If not, what does that tell us about presidential power?

## What does the authorization of force after 9/11 provide?

## How does it differ from the Tonkin Gulf Resolution?

## What did Johnson tell the American people on April 7, 1965? P322

## What did McNamara say about the war?

## What was the Tet Offensive?

## Might the Pentagon Papers have affected the vote on the Tonkin Gulf Resolution if they had available?

## Laos and Cambodia - what does "mutual participation" mean for secret operations in the war?

## Does it matter that the war has expanded beyond the original aggressor state?

## Would it matter more if there was a declaration of war?

## How should the president justify such incursions?

## What did it mean to repeal the Gulf of Tonkin Resolution?

## Did Congress stop other support for the war?

## How does the court use this to find authorization for the war in Orlando v. Laird, p. 332.

### What were the standing facts for the plaintiffs?

## What is a signing statement?

## What did Nixon say in the signing statement to the bill that included the Mansfield amendment, which urged him to end the war?

## What did Nixon do when presented with a bill cutting off funding for Cambodia and Laos?

## Based on this, what do the plaintiffs argue in Holtzman v. Schlesinger, 484 F.2d 1307 (1973)?

## Did the court accept this?

## What did Nixon agree to in a bill passed by Congress in 1973?

## How did the war finally end?

## War Powers Resolution

### How was the War Powers Resolution passed?

### The War Powers Resolution p.349

#### Parse each provision of the War Powers Resolution - figure out what each part means and be prepared to explain it.

#### What is the purpose of the Resolution?

#### What is Congress claiming about its right to control presidential powers?

#### When can the president use troops?

#### What is the ambiguity in #3?

#### What does Congress want consultation to mean?

#### What do presidents think it means?

#### REPORTING

#### SEC. 4.

#### What triggers reporting?

#### Who does the president report to?

#### What must the report contain?

#### Is this a continuing duty to report?

#### CONGRESSIONAL ACTION

#### SEC. 5.

#### What does Congress do with the report?

#### What is the clock that the report starts ticking?

#### How long is it?

#### What is supposed to happen if Congress does not act before the clock runs out?

#### What tolls the clock, allowing the troops to stay?

#### What does the resolution say Congress can do by concurrent resolution?

#### What does section 8, INTERPRETATION OF JOINT RESOLUTION, try to do to limit the president's actions?

#### Who is the Rule of Construction section aimed at?

#### Is this a proper role for Congress?

#### Is this binding on subsequent laws?

#### Why or why not?

#### How does it attempt to turn all mutual defense treaties into non-self-executing treaties?

#### What is the constitutional problem with this?

#### What treaty required military actions did it leave unaffected?

### Why did Nixon veto the War Powers Resolution?

### Did it pass anyway?

### Why did Nixon's veto undermine the original intent of the resolution?

### Have any subsequent presidents agreed to be bound by it?

### What did Clinton do that violated it?

### Why did Nixon say it would undermine the president's ability to conduct foreign policy?

### How might it encourage an enemy to keep fighting?

### Why is the 60 day clock a constitutional problem?

### Why is this exactly why Congress wanted it?

### Why doesn't Congress want to vote on cutting off presidential action?

### What was the first WPR report?

### What was the "tanker war"?

### *Lowry v. Reagan*, 676 F. Supp. 333 (D.D.C. 1987)

#### Who did the plaintiffs represent?

#### What did the court find about the legal standards in the Resolution as regards what needed to be reported?

#### Did the court see itself as well positioned to evaluate hostilities?

#### Did the court find that the Resolution contained enforceable standards?

### *Koohi v. United States*, 976 F.2d 1328 (9th Cir. 1992)

#### Who are the plaintiffs?

#### What law are the claiming under?

#### (there is another provision blocking actions outside the US and I am not sure why it was not applied in this case)

#### Why aren't they blocked by the provisions that prevent claims based on intentional actions?

#### Why doesn't the US claim it was a discretionary action?

#### What exception is the court reviewing?

#### What did Lowry say about the court deciding if there were hostilities going on?

#### What did this court say?

#### Why?

#### How can you reconcile these holdings?

#### Are they answering the same question?

### *Crockett v. Reagan*, 558 F. Supp. 893, 901 (D.D.C. 1982), aff’d, 720 F.2d 1355 (D.C. Cir. 1983)

#### What did the court say about whether courts should be ordering the president to pull out troops?

#### What are the problems with a court-ordered troop withdrawal?

### What is the "free pass" theory?

### Should/Could Congress revise the War Powers Resolution to make it more effective?

### The WPR in practice

#### Why didn’t President Obama cite WPR §4(a)(1) when he had deployed aircraft to conduct ‘‘a series of strikes against air defense systems and military airfields. . . .’’?

#### Weren’t these ‘‘imminent hostilities,’’ if anything is?

#### Did the report and its timing comply with the letter of the WPR? Its spirit?

#### Does a tweet count as a report?