## Zivotofsky ex rel. Zivotofsky v. Kerry (Zivotofsky II), 135 S. Ct. 2076 (2015) p71.

### What is the Jerusalem problem?

### What does the supplement tell us Congress did in 1995 about Jerusalem?

### How was the President able to avoid recognizing Jerusalem as the capital of Israel in the past?

### What did Trump do in 2017 under this act?

### Prior to Trump policy change in 2017, how did the state department deal with the problem of people born in Jerusalem?

### What did the statute allow people born in Jerusalem to request?

### What constitutional clause did the president invoke in contesting this statute?

### What does this deal with?

### Does it specifically answer the question?

### Why does the court say it is an important foreign power to control the recognition of foreign nations?

### What legal consequences flow from recognition?

### What does the court say about stability of the president versus congress?

### What of Jackson’s categories does this fit in?

### What does the president have to show to win in a Jackson 3 conflict?

### How did the majority link this to the recognition clause?

### How does the dissent limit this?

## The Prize Cases, 67 U.S. (2 Black) 635 (1863) - 67

### What precipitated this case?

### Why didn't the president go to Congress for a declaration of war?

### What did the president order?

### What is the plaintiff trying to get in this case?

### Where does the law of prize and capture come from?

### What is the legal prerequisite to legally seizing ships at a blockade?

### Can the president declare war?

### What does the court tell us about de facto war, i.e., what really determines if there is a war?

### Is there a statutory provision recognizing that the president might need to respond to attack without Congressional action?

### What was the president responding to?

### Did Congress authorize the action once they were back in session?

### How does the majority treat this ratification?

### Does the majority say that this authorization was necessary?

### Assuming that it was necessary, what was the dissent's problem with a post action authorization?

### Why does the majority reject this position?

### Has this view prevailed?

### What does the superfund laws tell us about this?

### What did the dissent say was necessary before the president could take this as an emergency action?

### How do the dissenters see this action in the absence of a declaration of war?

## Note 3 – Statutory authority for the blockade (Who decides if the statute is satisfied?)

### Martin v. Mott - 1813

#### Congress passes a law saying the president can repel invasions and deal with insurrections.

#### What does the Court say about who gets to decide if there is an invasion?

#### Is this decision reviewable in court?

#### Is this classic agency deference?

## 2 Customary War Power

### Looking at the report, Instances of Use of United States Armed Forces Abroad, 1798-2018, in Resources, How often have we declared war, versus how often has the president ordered the use of force abroad?

### What might Congress have done if wanted to really limit the president’s authority to use force abroad without its authorization? (stay tuned for the War Powers Act)

### Has Congress lost the power to do this by not using it for so long?

### How does this ratify Napoleon's assertion that Authority belongs to he who uses it?

## 3. “Core” Presidential War Power and Statutory Limits

### Little v. Barreme, 6 U.S. (2 Cranch) 170 (1804)

#### Who is the defendant?

#### Why were we seizing ships that were headed to France?

#### Was this ship bound for France?

#### What did the statute provide?

#### Why did the captain think he could seize a ship headed from a French port?

#### What legal theory did the ship's owners use to sue the Captain?

#### Does the court decide whether had there not been a law, would this have been within the president's powers?

#### What is the effect of the law in this courts' view?

#### What is the impact on the captain of the court's decision?

#### Who would have to pay the damages today?

#### What was different in that period?

### Notes

#### 2. Command, Tactics, and “Core” Presidential War Powers.

##### Fleming v Page - 1851

###### President orders seizure of a Mexican port

Does this make it US territory?

What is the president's legal role in directing the seizure?

Military commander or policy maker?

Does the president's seizure of the port make it US territory?

What does the court say about this?

Remember the Halls of Montezuma in the Marine Hymn?

#### Are there any constitutional distinctions between tactical decisions and strategic decisions, such as the decision to use force in the first place?

#### There have been few Congressional limits on the use of force, the Iran-Contra Affair is the clearest example.