

National Security and Counterterrorism Law – Fall 2015 - Exam

The exam will be turned in to my administrative assistant, Kristi Parnell <Kristi.Parnell@law.lsu.edu>, by email. It will be due by 2PM, Friday, December 11th, 2015. Submit it in a Microsoft word compatible file, with only your exam number in the file. Name the file Law 5461 Exam – [your exam number] (Law 5414 Exam – 4677). She will send me the files so I do not know who they are from. She will reply when she gets your email. If you do not get the reply, check with her to make sure it was received.

Mechanics: 12pt font, single spaced, a blank line between paragraphs (like this exam). Footnotes should be citations and/or URLs. If you use URLs, try to make them hot. No text footnotes, i.e., do not try to write the article in the footnotes. Think CLE materials or an academic article in any area but law. Bluebook is fine, but not required for non-legal materials. Just make sure the cite will allow the reader to identify the work. This is an open book, open materials exam, but it must be your own work. Do not confer with others and attribute any published work you use. Organization and clarity count.

Question 1 – Fighting ISIS over there - not to exceed 3,750 words, including footnotes.

President Obama is exploring the issues in putting troops on the ground in Syria and Iraq to fight ISIS. This will be classic asymmetric warfare, with all the attendant legal problems. You have been hired as a special consultant to the White House Office of Legal Counsel to develop a guidance memo for the troops sent to fight ISIS. The troops will encounter non-combatants, Syrian and Iraqi soldiers, and various radical factions, including ISIS. Syrian forces may consider us enemy invaders. Iraqi forces may aid Shiite militias who are fighting against ISIS (Sunnis) but who may also see us as enemy invaders. Write a memo that outlines how the applicable laws and treaties govern how we treat different groups when we capture them, and how we may go about fighting ISIS. Be realistic about what can be done on the ground – no Ivory Tower solutions such as sending everyone to a spa. Specifically address, through the applicable laws and treaties, the suggestion by hawks in the administration that we just “kill them all.” How indiscriminate can we be under the law? What are the proportionality and military objective issues?

Question 2 – Fighting ISIS over here – not to exceed 3,750 words, including footnotes.

ISIS has released a video threatening to attack Washington, DC. The OLC was so pleased with your memo on the law of asymmetric warfare against ISIS that they have asked you to do a second memo on surveillance to detect and prevent domestic ISIS attacks. This will include communications between persons in the US and non-citizens outside the US, communications wholly between persons in the US, as well as physical searches. What electronic surveillance can the government do within the current law as developed in the cases and materials we read, when will warrants be needed and what kind of warrants, and what about physical searches? Be careful to distinguish the legal standards for detecting and preventing terrorism and those for searches for evidence that we want to use for criminal prosecutions for terrorist acts and plots in the United States.