

National Security Law
Spring 2007 - Richards

Put your exam number on each page of the examination. Do not put your name or any other identifying information on the examination. Read the entire exam before answering any questions. Make sure you have all the pages and that they are all different. Use no more than the space provided. **Do not write on the back.** If you are using the computer, number each questions so I know what you are answering. Each question has a 500 word limit. If you are hand writing the exam, no tiny writing to try to get around the word count. Be clear and concise. You can use the back of the exam for notes and outlines to better structure your answer.

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? Under their assumptions, what would the president 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?

2) The use of private military forces in Iraq poses difficult legal questions. What are letters of marque and reprisal? What formally ended the use of letters of marque and reprisal? Why does the use of Blackwater forces in Iraq raise these issues? Assume the President, with the advice and consent of the Senate, signs a treaty with the Iraq government, agreeing that the US will try US citizens who commit crimes under the laws of Iraq. Since there are no US civilian courts in Iraq, military tribunals will be used. A Blackwater employee, who is a US citizen, has committed a murder, and is protesting his trial. Can he be tried under this treaty? Why or why not, and what is the controlling case?

3) How does the FISA search warrant procedure and scope differ from the traditional standards for pure domestic criminal law searches? Explain the standard for handling criminal conduct detected during an investigation under a FISA warrant as established by *US v. Truong Dinh Hung*, 629 F2d 908 (1982). When was *Truong* overruled, and what standard replaced the *Truong* standard?

4) Why were domestic law enforcement and foreign intelligence investigations traditionally separated? How did the 9/11 commission characterize this separation and how have post-9/11 laws changed this separation? What are risks of merging these functions?

5) Contrast the rights of aliens and U.S. citizens as regards detention, profiling, criminal prosecution. What are the due process rights of aliens to contest their deportation when the government has found visa violations?

