

Class 26: National Security

Administrative

No Next Time!

For those attending 12/4 Conference at CU

Students who satisfied requirements at DU

- Abell
- Chahal
- Coble
- Crandall
- Harris
- Mulkey
- Reid

Assignment posted on website

Questions due to me by 1 pm on Thursday, 12/3

PDF with exam will be sent to you via email 8:00am - 8:15am

You will use your word processor to compose the answer

You MUST include a word count at the end of each answer

Responses must be emailed back to Cindy exactly nine hours or earlier after they are first sent out.

Timestamps on Cindy's computer will be the official indicators

Please don't be late!

Add a header and a footer with exam number

Final Exam Issues

Take-home

You CAN use electronic materials you provide (PDFs, mindmaps)

E.g., No last-minute google searches

You may NOT use the Internet

One exception/ Only exception: paulohm.com/classes/cc09

Materials

Everything as printed in the back of the book EXCEPT

Cornell LII version is up to date

Statutes

1030

Current version

1030(a)(2)(C) should say, simply, "information from any protected computer"

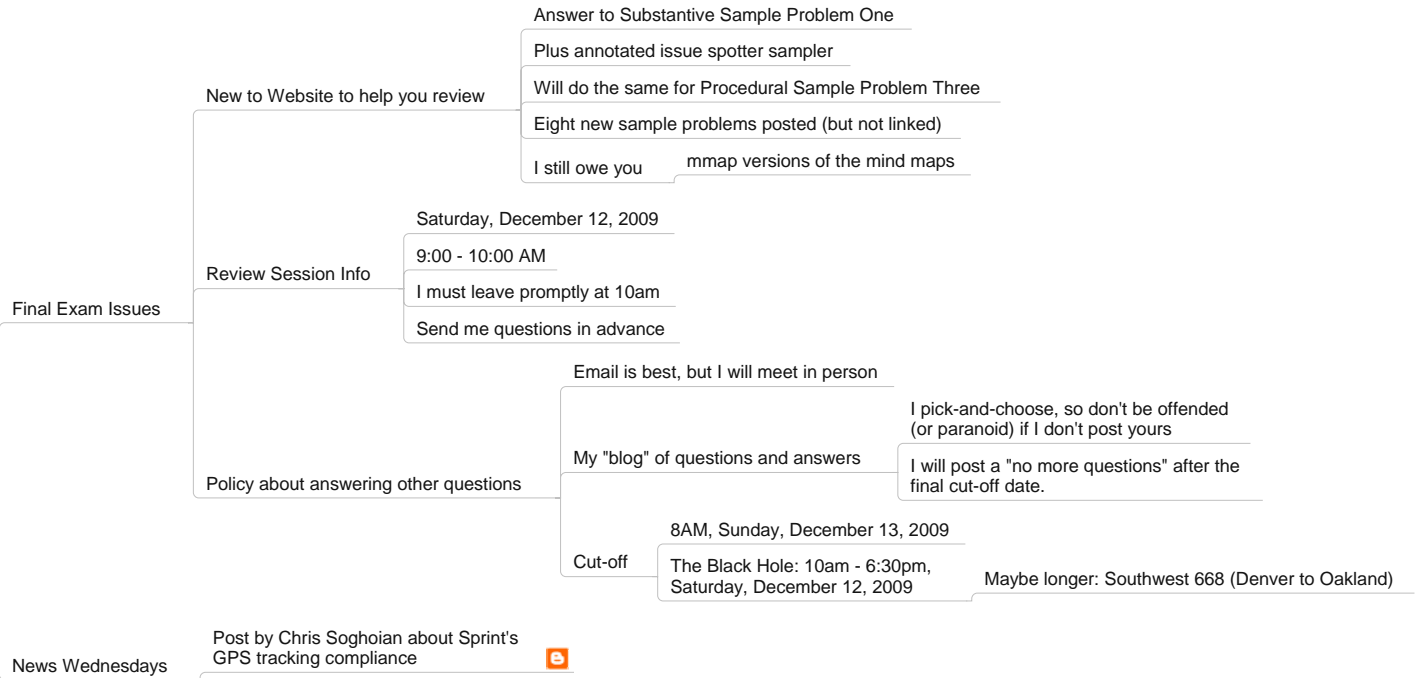
How do you know?

Not "if the conduct involved an interstate or foreign communication"

No use of online statutory supplements

Class 26: National Security

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Class 26: National Security

Last Time

Barona

International investigation of cocaine smuggling from Columbia

Defendants are from many countries

Some are US resident aliens

Villabona

Wife: Nielsen (from Denmark)

Some are citizens

Bennett

Harris

McCarver

DEA/LAPD cooperation with Danish authorities

American agents requested the wiretaps

All info obtained forwarded immediately to them

Spanish to English interpreter supplied by US

Facts

DEA / LAPD cooperation with Italian authorities?

Got tip about travel to Italy

US agent called Italian agent asking for "physical surveillance"

Italian agent (Major Rabiti) is the one who requested wiretap

At least five phone wiretaps or bugs

4 in Denmark

1 in Italy

For Danish wiretaps, court pre-approval

Target notification allowed to be delayed/waived

For Italian wiretap, "obtained authorization"

Held

1. Do resident aliens get protection of IV?

2. Was this a joint venture?

Reasoning

3. Did they comply with the law of the country where the surveillance took place?

4. Did the US authorities believe in good faith that they complied?

Dissent

Better approach?

What about searches conducted exclusively by US officials in foreign countries?

Cross-border searches: Should it matter if agents are still in US?



Class 26: National Security

The Fourth Amendment and National Security

US v. US District Court (the "Keith" case)

Why "Keith" District Court Judge Keith--writ of mandamus

Facts Several people conspired to explode a bomb at a CIA office in Ann Arbor
No foreign powers involved; domestic organizations only
As part of classified, national security investigation, conspirators wiretapped AG approved
Conspirators charged criminally
Motion to disclose wiretapped information to check for illegality and taint

Lower courts District Court: Surveillance violated Fourth Amendment; ordered full disclosure
Writ of Mandamus to 6th Circuit Refused to issue writ
Surveillance unlawful

Held
Reasoning

What about surveillance of foreign powers?

How do we draw the line?
What should the standard be for foreign surveillance? Remember: Border search
Verdugo-Urquidez
Neutral and detached magistrate?

FISA

Enacted in 1978
For domestic security surveillance Must follow criminal statutes

Class 26: National Security

FISA

For foreign security surveillance

The Foreign Intelligence Surveillance Court (FISC)

FISCA

"Foreign Power"

Added in Patriot Act: "a group engaged in international terrorism or activities in preparation therefore."

Wiretap-Like surveillance

"Electronic surveillance" using different definitions of terms like "wire communication"

Must submit application for order to the FISC

Granted upon probable cause to believe that the target is a foreign power or agent of a foreign power

Other super-warrant like requirements like necessity and minimization

Pen-Register-Like surveillance

Borrows same definitions

Certification and relevance

SCA-Like surveillance

National Security Letters (NSLs) +

"Physical Searches" +

Section 215 Orders +

Compared to Criminal Authorities?

Parting Thoughts

What to do with this class

In the near term

TLPC next semester

Silicon Flatirons

JHTL

In the middle to long term

Careers

Thank You