

THE UNIVERSITY OF MISSISSIPPI
SCHOOL OF LAW
UNIVERSITY, MS 38677

Professor Davis
Constitutional Law 505-02
Spring Semester 1992

FINAL EXAMINATION

PLEASE READ THESE DIRECTIONS CAREFULLY BEFORE BEGINNING THE EXAMINATION.

MAKE SURE THAT THE FRONT OF EACH BLUE BOOK HAS YOUR EXAM NUMBER ON IT. YOU MAY USE TWO (2) BLUE BOOKS FOR THIS EXAMINATION.

RETURN THIS EXAMINATION WITH YOUR BLUE BOOK(S) UPON COMPLETION. WRITE YOUR EXAMINATION NUMBER ON YOUR BLUE BOOK(S) AND ON THIS EXAMINATION.

THIS IS A CLOSED BOOK EXAMINATION. YOU MAY ONLY HAVE A PEN OR PENCIL WITH YOU DURING THIS EXAMINATION.

THIS EXAMINATION CONSISTS OF A TOTAL OF THREE (3) QUESTIONS. YOU ARE REQUIRED TO ANSWER EACH QUESTION. READ EACH QUESTION CAREFULLY BEFORE ANSWERING IT AND ONLY ANSWER THE QUESTION(S) ASKED.

PLEASE BE SURE TO WRITE OR PRINT LEGIBLY IN EACH BLUE BOOK. YOU HAVE A TOTAL OF THREE (3) HOURS WITHIN WHICH TO COMPLETE THIS EXAMINATION.

YOUR EXAMINATION CANNOT BE GRADED UNLESS YOU ACKNOWLEDGE THE FOLLOWING PLEDGE WITH YOUR EXAMINATION NUMBER WRITTEN BENEATH THE PLEDGE:

BY THE ACT OF SUBMITTING MY EXAMINATION PAPER OR BOOKS FOR EVALUATION, I DO PLEDGE ON MY HONOR THAT I HAVE NEITHER GIVEN NOR RECEIVED ANY IMPROPER ASSISTANCE AND THAT I WILL REPORT ANY IMPROPER ASSISTANCE GIVEN OR RECEIVED BY OTHERS THAT I AM MADE AWARE OF.

FAILURE TO SUBMIT THE ABOVE PLEDGE MAY RESULT IN ZERO CREDIT FOR THIS COURSE.

RELAX, TAKE YOUR TIME, AND THINK THROUGH YOUR ANSWERS. HAVE FUN AND GOOD LUCK!

PROBLEM I

On November 5, 1992, Russia, a former republic of the Soviet Union before the breakup, decided to invade the neighboring countries of Turkey, Romania, and Bulgaria in order to control the Black Sea, a major military chokepoint for Russia. This action came as a surprise to the world community because it thought that the dissolution of the former Soviet Union, though peaceful, would ultimately be accompanied by severe violence between the former sister states. The aggressive action against Russia's neighbors to the Southwest was not anticipated by the general public. The United States military intelligence sources did notice troop and equipment movement to the Southwestern border areas of Russia and was not surprised by the invasion. President Bush, only hours after surviving a testy campaign against a philandering former Governor from Arkansas, immediately sent United States military forces to the Mediterranean Sea area to deter Russian aggression and to preserve the integrity of Turkey, Romania, and Bulgaria. The United States, generally by presidential order and at times with congressional concurrence, also took other steps, including a blockade of Russia, which was approved by the United Nations Security Council, and supported by other nations. Moreover, the President obtained from the United Nations Security Council, a resolution authorizing the use of all available means to remove Russia from Turkey, Bulgaria and Romania, including the use of force.

On November 8, 1992, President Bush announced a substantial increase in the Mediterranean Sea military deployment, raising the troop level to above 500,000 present in the area. The President indicated that the presence of the troops in the area are for peace keeping purposes. Additionally, the President suspended troop rotation and leave provisions. At the same time, the President stated that the objective was to provide an "adequate offensive military option" should that be necessary to achieve the withdrawal of Russian forces from Turkey, Romania and Bulgaria. The President has given Russia until December 15, 1992 to withdraw from the occupied countries. Several meetings are scheduled in late November and early December between President Bush, the Secretary of Defense, and the President of Russia and its Foreign Minister. President Bush has indicated that he will attempt diplomatic negotiations until the deadline.

The House of Representatives and the Senate have in various ways expressed their support for the President's past and present actions in the Mediterranean Sea. However, the Congress was not asked for, and it did not take, action pursuant to Article I, Section 8, Clause 11 of the Constitution "to declare war" on Russia.

On November 18, 1992, recently elected United States Senator from Mississippi, Mark Mockingbird (affectionately referred to by

his friends as "Birdbrain"), and several other members of the House and Senate filed a lawsuit in the United States District Court for the District of Columbia, seeking a preliminary injunction to prevent the President from initiating an offensive attack against Russia without first securing a declaration of war or other explicit congressional authorization for such action. The plaintiffs proceed on the premise that the initiation of offensive United States military action is imminent, that such action would be unlawful in the absence of a declaration of war by the Congress, and that a war without concurrence by the Congress would deprive the congressional plaintiffs of the voice to which they are entitled under the Constitution.

You are the Attorney General, acting on behalf of the President. You oppose the motion for preliminary injunction, and move to dismiss the lawsuit. Fully discuss the defenses you would raise as Attorney General in opposition to the preliminary injunction. Include in your discussion any applicable case law. Also indicate your assessment of how the Court would rule on each defense raised.

PROBLEM II

In February 1990 the Sentencing Project of Washington, D.C., reported that almost one in four African-American men in the age group 20-29 is either in prison, jail, on probation, or parole. Moreover, the report found that there were approximately 200,000 more African-American men under the control of the criminal justice system than the number of African-American men in college.

The epidemic of drugs and crime that plagues so many African-American men in today's cities also afflicts urban school-age African-American boys. Students' lives are profoundly affected by the problems that vex their parents' generation. By the time many children are old enough to begin school they have witnessed murders, lost parents to drug abuse or violence, or become drug users themselves. Although they may wish to do well in school, many of these students fail due to lack of support at home.

These debilitating social conditions, coupled with bleak economic prospects for African-American men in inner cities, makes school seem pointless for many children. Some educators notice signs of distraction among boys as young as seven or eight. Many of these students view life on the streets as the natural alternative to school, and the apparently glamorous trappings of modern drug entrepreneurs make such a life seem all the more appealing. At the same time, they are surrounded by predominantly female authority figures in the African-American community because many of them live in single-parent, female-headed households. They therefore have limited first hand experience with African-American men who have succeeded in legitimate society. These factors detrimentally affect the performance of African-American males in school. In Milwaukee, fewer than twenty percent of black male high school students have grade averages of C or better. And while they are less than twenty-eight percent of enrollment, they account for fifty percent of suspensions.

Central High school is an inner-city public school in Jackson, Mississippi enrolling grades 9 through 12. The school is about 95% African-American and 5% White, Hispanic and Asian. The school's population reflects that of the surrounding East Jackson neighborhood. The principal, Ms. I. M. Progressive, in an effort to combat the statistics reported by the Sentencing Project, developed a class of about thirty African-American boys chosen from the regular student population based on low income level, unstable home environment and disciplinary record. The

school neither announced nor imposed any restriction by race or gender when it created this class. The Jackson City School Board approved principal Progressive's proposal and stated that the primary goal was to focus on the problems of African-American children. The School Board also stated that race and gender were never part of the selection criteria for the class. The curriculum for this class concentrates on solving the problems of young African-American males.

Several parents in the neighborhood learned about the program and were upset that their children were not included. In particular, girls and boys of the White, Hispanic and Asian families were not selected to participate. These parents called the principal and threatened to file a lawsuit in federal court if their children were not admitted to the special classes immediately.

You are an associate with the law firm of Watkins & Eager, legal counsel to the Jackson City School Board. I. M. Progressive calls you and asks whether or not Central High school can constitutionally operate this class. She also wants to know whether or not the class must admit the other children. How do you advise her? Discuss and explain any relevant case law in your advice to Progressive.