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國立清華大學 108 學年度碩士班考試入學試題

系所班組別：**科技法律研究所 甲組**

考試科目(代碼)：**文獻評析(含中文文獻及英文文獻)**(4702)

## —作答注意事項—

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一、 請閱讀以下文章，並以英文回答問題：(20%)

(Yale E360, November 1, 2018, with certain modifications)

**Can Citizen Lawsuits Force Governments to Act on Climate Change?**

By Fred Pearce https://e360.yale.edu/features/can-citizen-lawsuits-force-governments-to-act-on-climate-change

Are the courts now the arena of last resort for citizens hoping to force governments to take serious steps to slow global warming? Over the past several weeks, as the Intergovernmental Panel on Climate Change (IPCC) issued its most dire warning to date, courts on two continents have weighed in on the issue, with dramatically different results.

In Europe, The Hague Court of Appeal ruled that the preservation of a stable climate system is a fundamental human right and ordered the Dutch government to meet its promises of making sharp cuts in greenhouse gas emissions. In the United States, a landmark climate case filed by 21 young Americans, ages 11 through 22, hit a snag at the U.S. Supreme Court and, especially given the court's increasingly conservative makeup under President Donald J. Trump, now faces long odds of success. Climate activists have hailed the October 9 ruling in The Hague appeals court as an important victory in the fight to combat climate change. The court decided that the Dutch government had to up its ambition on cutting greenhouse gas emissions and ordered it to ensure reductions of at least 25 percent from 1990 levels by 2020, rather than the 17 percent planned. The court said anything less was a breach of promises made in the Paris Agreement of 2015, would not be a fair contribution to meeting internationally agreed emissions targets, and violated the human rights of the 886 citizens who brought the case, under the umbrella of an NGO, the Urgenda Foundation. There was, the Dutch court concluded after hearing scientific evidence from past IPCC reports, "a real threat of dangerous climate change, resulting in the serious risk that the current generation of citizens will be confronted with loss of life and/or a disruption of family life." It insisted that "the state has a duty to protect against this real threat" – a "duty of care" enshrined in the

European Convention on Human Rights.

For a few days following the Dutch court's decision, climate activists worldwide looked forward to a new era of fighting climate change in the courts. Then, the U.S. Supreme Court weighed in. Chief Justice John Roberts, in a highly unusual step, intervened on the U.S. government's behalf and ordered a temporary halt to a federal district court trial in the so-called "climate kids" case, just 10 days before the trial was scheduled to begin on October 29.

Roberts ordered a stay in the case while the plaintiffs responded to the government's request to dismiss the suit. Since it was first filed in 2015 during the Obama administration, the "climate kids" case, backed by some of the country's top climate scientists, has made unexpected progress, with the U.S. Ninth Circuit Court of Appeals twice ruling that the case should proceed to a trial on its merits. In July, the Supreme Court, while noting that the "breadth of [Plaintiff's] claims is striking," nevertheless denied a Trump administration request to halt the suit — an action that made Roberts' most recent intervention all the more unusual.

Representing the 21 young people is Our Children's Trust, an NGO based in Eugene, Oregon, and the thrust of the suit is that the plaintiffs have a fundamental right to live in a world with a stable climate system. Their claim rests on a long-established legal principle called the public trust doctrine, which holds that certain common natural resources — including navigable waters and coastal shorelines — should be held in public trust for the benefit of present and future generations. A stable climate system, the young people contend, is one of those essential public trusts.

The suit asks that the government create "a national remedial plan to phase out fossil fuel emissions and draw down excess atmospheric CO2." The goal, the suit says, is "to stabilize the climate system and protect the vital resources on which Plaintiffs now and in the future will depend." Julia Olson, executive director of Our Children's Trust and the chief counsel

in the suit — known as the Juliana case after the lead plaintiff, Kelsey Juliana — says her clients are hoping to use the foundational principle of the public trust doctrine to force the U.S. government to draft a detailed plan to substantially reduce the nation's greenhouse gas emissions. "What we need is a national plan for energy, which we think we can push for through law," Olson said. "We need a plan that can arbitrate about which [energy] projects go ahead and which don't. The EPA [Environmental Protection Agency] does not have an overview of the energy system. We need an interdisciplinary approach that goes to the heart of the purpose of government and of our rights as citizens."

To which the government's lawyers essentially reply: nonsense. The U.S. Department of Justice insisted in court depositions that the Juliana suit "is an attempt to redirect federal environmental and energy policies through the courts rather than through the political process" by asserting what it called "a new and unsupported fundamental due process right to certain climate conditions." Trump's solicitor general, Noel Francisco, says that the Juliana case flies in the face of the separation of powers, and that the courts have no business making environmental policy — a contention that legal analysts say is likely to be met with sympathy by the conservative majority on the Supreme Court.

The Juliana trial, which was expected to last six weeks or more, is now on hold as Chief Justice Roberts considers whether to accept the government's case against allowing it to proceed, or to agree with the plaintiff's 100-plus-page response, submitted on October 22, that it should. Legal analysts say that in all likelihood, the Juliana case will ultimately be rejected by the Supreme Court, which now includes two conservative judges appointed by Trump, Neil Gorsuch and Brett Kavanaugh.

The Dutch and American cases have strong similarities, each being brought on the basis of both climate science and human rights law. And like the U.S. government, the Dutch government has contended that courts have no role in a political debate such as fixing climate change.

Both the Dutch and U.S governments also have argued that climate change is a global problem that no one country can fix, so national courts should not get involved. But the Dutch appeals court rejected that argument, concluding that the global dimension "does not release the state from its obligation to take measures in its territory, within its capabilities."

The appeals court in The Hague also rejected the Dutch government's recent claim that time was now too short to alter its 2020 CO2 emissions target, saying that the government had known for more than a decade that the IPCC believed industrial nations would need to make emissions cuts of 25 to 40 percent by 2020. That was the only way to give the world a better-than-even chance of holding warming to below 2 degrees Celsius — a contention supported by an IPCC report last month saying that the world will face dire consequences from climate change as early as 2040.

The Dutch and U.S. lawsuits raise wider issues globally about the role and competence of courts to hold governments around the world to account when they fail to act on their pledges to limit greenhouse gas emissions. And evidence is growing that those failures are increasing in number.

The ruling by the Dutch appeals court should make the Netherlands the 17th country to match national law and international promises. But it is far from clear which country will be next.

As climate change moves from theoretical risk to brutal reality, the courts may be our last chance of salvation. Even if the Juliana case fails, activists say that legal action to battle global warming will continue in courts in the U.S. and across the globe. Our Children's Trust and its partners are working on legal climate challenges from Norway, to the Philippines, to Pakistan. "We see the Juliana case as a model for action in other countries, and we are working with attorneys in other countries [to challenge] government support for fossil fuels," said Elizabeth Brown, global program manager for Our Children's Trust.

1. Please summarize the main points of this article. (10%)

2. Recent years have witnessed more NGOs around the world use the court to change national energy policy. After reading this article, please analyze what potential functions that courts have in climate change lawsuits. (10%)

## 二、 請閱讀以下文章，並以中文回答問題：(30%)

(Commissioner for Human Rights, Council of Europe, March 7, 2018, with certain modifications)

Safeguarding Human Rights in the Era of Artificial Intelligence

By Dunja Mijatović

https://www.coe.int/en/web/commissioner/-/safeguarding-human-rights-in-the-era-of-artificial-intelligence?inheritRedirect=true

The use of artificial intelligence in our everyday lives is on the increase, and it now covers many fields of activity. Something as seemingly banal as avoiding a traffic jam through the use of a smart navigation system, or receiving targeted offers from a trusted retailer is the result of big data analysis that AI systems may use. While these particular examples have obvious benefits, the ethical and legal implications of the data science behind them often go unnoticed by the public at large.

Artificial intelligence, and in particular its subfields of machine learning and deep learning, may only be neutral in appearance, if at all. Underneath the surface, it can become extremely personal. The benefits of grounding decisions on mathematical calculations can be enormous in many sectors of life, but relying too heavily on AI which inherently involves determining patterns beyond these calculations can also turn against users, perpetrate injustices and restrict people's rights. The way I see it, AI in fact touches on many aspects of my mandate, as its use can negatively affect a wide range of our human rights. The problem is compounded by the fact that decisions are taken on the basis of these systems, while there is no transparency, accountability or safeguards in how they are designed, how they work and how

they may change over time.

**Encroaching on the right to privacy and the right to equality**

The tension between advantages of AI technology and risks for our human rights becomes most evident in the field of privacy. Privacy is a fundamental human right, essential in order to live in dignity and security. But in the digital environment, including when we use apps and social media platforms, large amounts of personal data are collected - with or without our knowledge - and can be used to profile us, and produce predictions of our behaviours. We provide data on our health, political ideas and family life without knowing who is going to use this data, for what purposes and how.

Machines function on the basis of what humans tell them. If a system is fed with human biases (conscious or unconscious) the result will inevitably be biased. The lack of diversity and inclusion in the design of AI systems is therefore a key concern: instead of making our decisions more objective, they could reinforce discrimination and prejudices by giving them an appearance of objectivity. There is increasing evidence that women, ethnic minorities, people with disabilities and LGBTI persons particularly suffer from discrimination by biased algorithms.

Studies have shown, for example, that Google was more likely to display adverts for highly paid jobs to male job seekers than female. Last May, a study by the EU Fundamental Rights Agency also highlighted how AI can amplify discrimination. When data-based decision making reflects societal prejudices, it reproduces – and even reinforces – the biases of that society. This problem has often been raised by academia and NGOs too, who recently adopted the Toronto Declaration, calling for safeguards to prevent machine learning systems from contributing to discriminatory practices.

Decisions made without questioning the results of a flawed algorithm can have serious repercussions for human rights. For example, software used to inform decisions about healthcare and disability benefits has wrongfully excluded people who were entitled to them,

with dire consequences for the individuals concerned. In the justice system too, AI can be a driver for improvement or an evil force. From policing to the prediction of crimes and recidivism, criminal justice systems around the world are increasingly looking into the opportunities that AI provides to prevent crime. At the same time, many experts are raising concerns about the objectivity of such models. To address this issue, the European Commission for the efficiency of justice (CEPEJ) of the Council of Europe has put together a team of multidisciplinary experts who will "lead the drafting of guidelines for the ethical use of algorithms within justice systems, including predictive justice".

**Stifling freedom of expression and freedom of assembly**

Another right at stake is freedom of expression. A recent Council of Europe publication on Algorithms and Human Rights noted for instance that Facebook and YouTube have adopted a filtering mechanism to detect violent extremist content. However, no information is available about the process or criteria adopted to establish which videos show "clearly illegal content". Although one cannot but salute the initiative to stop the dissemination of such material, the lack of transparency around the content moderation raises concerns because it may be used to restrict legitimate free speech and to encroach on people's ability to express themselves. Similar concerns have been raised with regard to automatic filtering of user-generated content, at the point of upload, supposedly infringing intellectual property rights, which came to the forefront with the proposed Directive on Copyright of the EU. In certain circumstances, the use of automated technologies for the dissemination of content can also have a significant impact on the right to freedom of expression and of privacy, when bots, troll armies, targeted spam or ads are used, in addition to algorithms defining the display of content.

The tension between technology and human rights also manifests itself in the field of facial recognition. While this can be a powerful tool for law enforcement officials for finding suspected terrorists, it can also turn into a weapon to control people. Today, it is all too easy for governments to permanently watch you and restrict the rights to privacy, freedom of

assembly, freedom of movement and press freedom.

**What can governments and the private sector do?**

AI has the potential to help human beings maximise their time, freedom and happiness. At the same time, it can lead us towards a dystopian society. Finding the right balance between technological development and human rights protection is therefore an urgent matter – one on which the future of the society we want to live in depends.

To get it right, we need stronger co-operation between state actors - governments, parliaments, the judiciary, law enforcement agencies - private companies, academia, NGOs, international organisations and also the public at large. The task is daunting, but not impossible.

A number of standards already exist and should serve as a starting point. For example, the case-law of the European Court of Human Rights sets clear boundaries for the respect for private life, liberty and security. It also underscores states' obligations to provide an effective remedy to challenge intrusions into private life and to protect individuals from unlawful surveillance. In addition, the modernised Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data adopted this year addresses the challenges to privacy resulting from the use of new information and communication technologies.

States should also make sure that the private sector, which bears the responsibility for AI design, programing and implementation, upholds human rights standards. The Council of Europe Recommendations on human rights and business and on the roles and responsibilities of internet intermediaries, the UN guiding principles on business and human rights, and the report on content regulation by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, should all feed the efforts to develop AI technology which is able to improve our lives. There needs to be more transparency in the decision-making processes using algorithms, in order to understand the reasoning behind them, to ensure accountability and to be able to challenge these decisions in effective ways.

A third field of action should be to increase people's "AI literacy". States should invest more in public awareness and education initiatives to develop the competencies of all citizens, and in particular of the younger generations, to engage positively with AI technologies and better understand their implications for our lives. Finally, national human rights structures should be equipped to deal with new types of discrimination stemming from the use of AI.

It is encouraging to see that the private sector is ready to cooperate with the Council of Europe on these issues. As Commissioner for Human Rights, I intend to focus on AI during my mandate, to bring the core issues to the forefront and help member states to tackle them while respecting human rights. Artificial intelligence can greatly enhance our abilities to live the life we desire. But it can also destroy them. It therefore requires strict regulations to avoid morphing in a modern Frankenstein's monster.

1. 根據此則文章，人工智慧對當代人權可能帶來哪些風險與挑戰。(15 分)
2. 面對上述風險，請依據文章分點說明可能的因應方案。(10 分)
3. 請嘗試針對上述解決之道，提出您的個人見解。(5 分)

## 三、請閱讀以下文章，以中文回答問題：

**我們這群人民**

「不是對科技有信心，而是對人有信心。」—史蒂夫・賈伯斯

想到組織罪犯、恐怖分子、駭客和流氓政府究竟犯下多大規模和範圍的惡意活動，絕對足以讓人感到沮喪、害怕，甚至鬱悶。然而，我在全球安全領域工作將近 20 年之後，如果說有什麼事讓我深感安慰，那就是：在這個世界上，善良的人要遠遠多於邪惡的人。這是一項巨大的優勢，但也是一項還沒有充分發揮的優勢。犯罪有限公司深諳群眾外包的道理，大旗一揮就是成千上萬，例如在 2013 年的自動櫃員機網路攻擊中，不過短短 10 小時，這些竊賊就在 27 個國家發動人類共犯進行了 36,000 次交易，捲走高達 4,500 萬美元，無論在速度、膽識、創新和影響力，都相當驚人。然而，怎麼公共安

全就從沒發揮過這種力量？到目前為止，這種力量就是還不存在；然而在這個新數位時代來臨的前夕，我們必須改變這種情形，才能強化自我防禦、能夠依賴自己。

讓人感到痛苦的事實擺在眼前：在科技方面，政府對上罪犯，只是節節敗退。執法機關的工作量令人不堪負荷，預算刪減又叫人綁手綁腳，情況危殆，難以跟上腳步。此外，警力屬於封閉系統：管轄權只限於各國國內，但現在的威脅卻橫跨國際。目前的執法方式靠的是槍、邊防、高大的圍牆，但這只能說是過時到令人難以想像。網路上的位元以光速在世界奔馳，這些機制全無阻擋的能力。為了設法克服這些目前公共安全機構與現況的明顯落差，我們需要更新、更激進的解決方式，引進更開放、參與式的犯罪打擊形式。網路空間的鄰里糾察隊和社區守護方案在哪？我們不見得只能靠一小撮受過高度訓練的精英分子來保護所有人，也可以透過群眾外包，讓一般大眾也能共同對抗這個問題。要在犯罪有限公司的戰場打敗它，我們就必須也懂規模化，而且還要做得更大、更好。

將執法這件事交給群眾外包已經不是新鮮事。1865年，約翰·威爾克斯·布斯(John Wilkes Booth)刺殺林肯總統的時候，就成了第一個照片出現在通緝海報上的通緝要犯。而在今天，距美國第16任總統遭到刺殺150年後，政府將執法交由群眾外包的方式卻絲毫沒有進步。警方仍然發著照片給地方新聞頻道和廣播，警告著這個通緝要犯「擁有武力，十分危險，如有目擊，請聯繫當地執法單位。」這是在開玩笑嗎？都已經2015年了，除了「如果看到xxx，請做yyy」之外，肯定還有什麼更能做的事、讓大眾更能發揮力量吧？

我們這些民眾也像犯罪有限公司一樣，能夠好好利用科技帶來的優勢，保護和捍衛我們自己。克雷·薛基(Clay Shirky)是用「認知剩餘(cognitive surplus)」一詞來形容「全球人口能夠自願投入、貢獻、合作大型(甚至是全球性)計畫的能力」。就在這個時候，我們應該開始使用自己的認知剩餘，協助保護和捍衛自己的未來。面對開放原始碼的戰爭，以及群眾外包的犯罪，就必須用開放原始碼、群眾外包的公共安全措施來應對。幸好，在公共安全的新典範中，有幾個亮點已經開始大放異彩。像是「Crisis Commons」和「Ushahidi」的類似組織，能在發生公共事件時協調民眾行動，重塑了救災的典範、拯救寶貴的生命，在海地地震或是奈洛比西門購物商場的恐怖攻擊事件，都發揮了效力。在墨西哥，自2006年至2012年已有超過5萬起與毒品有關的謀殺案，而現在民

眾就用著像是 Google 地圖之類的工具，以群眾外包的方式追蹤犯罪集團的行蹤及活動。在東歐也有「組織犯罪及貪腐報導計畫」(Organized Crime and Corruption Reporting Project)，由記者和公民組成，將各種複雜的跨國調查交付群眾外包，以揭露各地獨裁者、不法官員、恐怖分子和組織犯罪集團如何在全球移動其龐大的不義之財、進行洗錢。至於公共貪污腐敗，2009 年英國《衛報》的編輯曾經推出一套軟體，讓民眾「群眾調查」(crowdvestigate)報社手中超過 455,000 頁的資料，希望能找出英國國會議員公然私帳公報的情況。這項數位調查共有超過 25,000 位志願民眾參與，而且結果好到驚人。開跑才 80 小時，已經有超過 17 萬頁文件完成審查，群眾發現上千筆私帳公報情事，多位內閣部長、甚至下議院議長都因此被迫去職，成為自 1965 年以來最大的人事地震。

在這些案例中，個人發揮的作用都遠遠不只是向執法機關呈報犯罪情事而已，而是投入時間精力，解讀資料、取得結果，比起單獨由任何警察或政府機構完成要快上太多。在這個呈指數變化的世界上，專職的網路安全人員嚴重短缺，而將公共安全群眾外包不僅成效明確，更必須成為未來全球安全策略的重要部分。美國智庫蘭德公司指出，美國聯邦政府在全國各地都缺少科技安全專家，而且情況已經嚴重到危及全國及國土安全。而思科的《2014 年度安全報告》也呼應這項結果。該報告估計，目前全球的網路安全專業人員嚴重不足，短缺人數達 100 萬，而且預計到 2017 年將達 200 萬。因此我們亟需更多公眾參與，保護我們科技的未來，甚至連政府管道也開始承認這一點。

2012 年，FBI 的首席網路事務律師史蒂芬·夏賓斯基(Steven Chabinsky)就表示，政府打擊網路犯罪採取了「失敗的作法」，如果要打擊網路威脅，需要民眾更強力的投入。這項工作已慢慢展開。在一項案例中，阿拉巴馬大學的一位教授在刑法課與學生合作，協助 FBI 破獲位於烏克蘭和俄羅斯的犯罪有限公司所經營的網路犯罪集團，該集團犯案金額已高達 7,000 萬美元。這場由學生運作的「群眾調查」計畫，成功辨識出多位在美國以 Zeus 金融木馬程式盜竊上百萬美元的嫌犯，就是因為這些學生的努力，最後這些罪犯都遭到聯邦調查局逮捕。然而，如果希望這些成功可長可久，群眾外包就不能只是偶一為之，而必須系統化正式成形，才能達到需要的規模、繼續成長。2011 年，英國警方就朝這個方向邁進了一步，在全國招募具備解決網路犯罪技能的志願者，組成特別警察隊。

不論在全球各地，都應該吸取這些成功經驗，並繼續前進。像是在美國，警察有各種後備及輔助警力，軍方也有兼職的後備陸海空軍和國民兵。在民間，則有和平隊(Peace Corps)和美國和平隊(AmeriCorps)。所以，在網路世界我們也需要有個「國家網路民防團」之類的組織，由社會各領域請來專家，保護我們的重要資訊基礎設施不受攻擊、保護我們的國家不受眼前龐大科技威脅的影響。這些成員必須仔細篩選，接受廣博的訓練和背景調查，並且在定義明確的作業和法律框架下運作。想要為善的一方打造出這種群眾外包的力量，時機會是一大關鍵：現在就開始，搶在網路危機爆發之前。要讓這種組織跳接啟動，許多民間專業組織都能發揮很大的助力，例如「國際資訊系統安全認證聯盟」(International Information Systems Security Certification Consortium，又稱(ISC))，這個非盈利組織有超過 10 萬名經過認證的網路安全專家待命，一旦選擇投入參與，必能帶來正面影響。

犯罪有限公司一直在積極招募爪牙。難道我們不該找找幫手？這種力量歡迎任何背景出身的加入，不論年輕年長都有幫得上忙的地方，甚至像是駭客，只要願意為公益付出，一定幫得上忙。正如蘋果聯合創始人史蒂夫·沃茲尼克提醒我們的：「對規則有點挑戰會是好事。」我們需要創造機會，特別是對年輕人，將他們的天份和精力導向正軌，而不是讓犯罪有限公司引誘他們為惡。公共安全實在太重要，重要到不能只交給專業人士處理。在這個指數式發展的世界裡，在這場正邪之間的戰爭中，能夠發動更大一群人的一方，就能得到最後的勝利。現在應該輪到我們來「操弄一下這系統」(gaming the system，一般有「操弄系統」或「鑽漏洞」的意思)的時候了，讓我們控制系統朝向善的一方前進，並確保科技工具為人類帶來最大的整體效益。

**〔文章出處：全球資訊安全專家·國際刑警組織顧問 馬克·古德曼(Marc Goodman) 著，林俊宏 譯，未來的犯罪(Future Crimes)，木馬文化出版，2016 年 3 月，504-508 頁〕**

問題：

1. 群眾外包(Crowdsourcing)是甚麼意思？跟外包(Outsourcing)有甚麼差別? (5 分)

2. 對於作者提出將執法交給群眾外包(crowdsourcing law enforcement)的建議，您有甚麼看法？請寫出支持或反對的理由。(10 分)

3. 您認為執法群眾外包的作法，在台灣是否可行？請寫出理由。(10 分)

## 四、請閱讀以下敘述，以中文回答問題：

以往在偵查階段之羈押審查程序，實務上基於偵查不公開原則，以及刑事訴訟法第三十三條第一項及同法第一百零一條第三項之規定，認為偵查階段辯護人並無閱卷權，而法院開羈押審查庭時，也僅告知檢察官聲請羈押事由所依據之事實，並未告知聲請羈押之各項理由之具體內容及有關證據，導致犯罪嫌疑人及其辯護人經常是在沒有任何具體資料的情況下，參與羈押審查庭，無法有效行使防禦權，而所面臨的羈押結果卻是人身自由的重大限制，因此大法官於 2016 年 4 月 26 日做成釋字第 737 號解釋要求立法機關修法解決。

釋字第 737 號 【偵查中羈押審查程序卷證資訊獲知案】

解釋理由摘錄：

「現行偵查階段之羈押審查程序是否滿足前揭憲法正當法律程序原則之要求，應綜合觀察刑事訴訟法相關條文而為判斷，不得逕以個別條文為之。刑事訴訟法第三十三條第一項規定：「辯護人於審判中得檢閱卷宗及證物並得抄錄或攝影。」同法第一百零一條第三項規定：「第一項各款所依據之事實，應告知被告及其辯護人，並記載於筆錄。」致偵查中之犯罪嫌疑人及其辯護人得從而獲知者，僅為聲請羈押事由所依據之事實，並未包括檢察官聲請羈押之各項理由之具體內容及有關證據，與上開憲法所定剝奪人身自由應遵循正當法律程序原則之意旨不符。有關機關應於本解釋公布之日起一年內，基於本解釋意旨，修正刑事訴訟法妥為規定。逾期未完成修法，法院之偵查中羈押審查程序，應依本解釋意旨行之。至於使犯罪嫌疑人及其辯護人獲知檢察官據以聲請羈押之理由及有關證據之方式，究採由辯護人檢閱卷證並抄錄或攝影之方式，或採法官提示、告

知、交付閱覽相關卷證之方式，或採其他適當方式，要屬立法裁量之範疇。惟無論採取何種方式，均應滿足前揭憲法正當法律程序原則之要求。

至偵查不公開為刑事訴訟法之原則，係為使國家正確有效行使刑罰權，並保護犯罪嫌疑人及關係人憲法權益之重要制度。然偵查中之羈押審查程序使犯罪嫌疑人及其辯護人獲知必要資訊，屬正當法律程序之內涵，係保護犯罪嫌疑人憲法權益所必要；且就犯罪嫌疑人及其辯護人獲知資訊之範圍，上開解釋意旨亦已設有除外規定，已能兼顧犯罪嫌疑人及關係人憲法權益之保護及刑罰權之正確行使。在此情形下，偵查不公開原則自不應妨礙正當法律程序之實現。至於羈押審查程序應否採武器平等原則，應視其是否採行對審結構而定，現行刑事訴訟法既未採對審結構，即無武器平等原則之適用問題。

又因偵查中羈押係起訴前拘束人民人身自由最為嚴重之強制處分，自應予最大之程序保障。相關機關於修法時，允宜併予考量是否將強制辯護制度擴及於偵查中羈押審查程序，併此指明。」

問題：

1. 請問「閱卷權」(檢閱卷宗證物之權利)與大法官於本號解釋中所使用之「卷證資訊獲知權」內涵有何不同？(10分)

2. 對於解釋理由書中所稱「羈押審查程序應否採武器平等原則，應視其是否採行對審結構而定，現行刑事訴訟法既未採對審結構，即無武器平等原則之適用問題。」(註：對審結構是指例如在訴訟程序中，以雙方攻防為主的狀態，而我國現行羈押審查庭則是採法官職權訊問方式)您的看法如何？(15分)