

National Security Law  
Fall 2012 - Richards

Each question has a 1000 word limit. You have to answer all three of them. You have six hours from when you download the exam. You can use your notes and your book, but no outside resources or other materials. Be specific when answering the questions, using statutes and cases to illustrate your answers. I am looking for tightly written answers. While the questions have policy implications, you cannot successfully answer without reference to law, or when applicable, treaties or international conventions.

1. The OLC wants a brief on the role of courts in reviewing military actions. Think about *El-Shifa Pharmaceutical Industries Co. v. United States*, 607 F.3d 836 (DCC 2010), *Curtiss-Wright*, *Dames & Moore*, *Little v. Barreme*, *Bas v. Tingy*, and other relevant cases. When will the court review a military action and when will the court decline to review the action, and why?
2. The OLC wants a brief on targeted killings under applicable U.S. law, CIL, and International Human Rights Law. Assume that while we do not submit to the jurisdiction of the International Court of Criminal Justice, the president wants the strongest arguments supporting our use of targeted killings, and whether those arguments comport with appropriate precedent. Mention any special issues surrounding the killing of Bin Laden.
3. Publication by a Seal Team Six member of *THE FINISH: THE KILLING OF OSAMA BIN LADEN*, without prior approval, has raised difficult issues about the control of classified information. Assume that the author was bound by the most restrictive national security agreements discussed in the book. What is the applicable law? What are all the administration's legal options? What is the tension, if any, with the 1<sup>st</sup> Amendment?