

National Security Law
Fall 2012 – Richards
Study Questions – Part I

Exam Instructions

Each question has a 1000 word limit. 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.

First date and time on which students can access the exam via exam software:

8:30 AM Monday, November 26th

Last date and time students can access the exam software and have the full six hours:

6:30 AM, Saturday, December 8th

The exam will have three questions, taken from what will be a total of 12 study questions. This set is the questions on the material that we have already covered. You should research these before taking the exam and at least have an outline of an answer for each. You will not have time to do a tightly written and edited answer if you do not start work on these until you download the exam.

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 DOJ wants a brief on the use of secret information (classified, state secrets, etc.) in litigation. When is it available, what are the restrictions on its use, and what happens when the government is unwilling to release the information in different types of cases?
3. How do the United States courts deal with customary international law (CIL) and *jus cogens*? Think about the Alien Tort Statute (*Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004)) and other cases where courts have wrestled with their use.
4. Explain International Humanitarian Law (*jus in bello*). Discuss the special problems it poses in non-state and asymmetric warfare such as Afghanistan. How did it affect our actions in Libya, for example?

5. 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.
6. Discuss the attempts by Congress to rein in the president's ability to wage war without Congressional approval, the constitutional issues they pose, and their effectiveness.
7. After 9/11, we "tore down the wall" and knocked down the "silos" between national security and policing, and between federal, state, and local political boundaries. Explain what this means, using cases and/or statutory examples. What are the pros and cons to the changes?
8. The move from analog data to the TCP/IP world has dramatically reduced the cost of surveillance and has brought us the world of data mining. Based on the statutes and cases discussed in the book, discuss the current state of the legal protections on electronic communications (cell phones, email, social media, the Internet) and what, if any, are reasonable expectations of privacy in electronic communications.
9. DOJ has asked you to write a memo explaining how to use FISA for lawyers who are new to national security law. Since they will be using this as a reference brief, be sure to be specific about statutory provisions and case law.