



NAVIGATING LAW AND ETHICS AT THE CROSSROADS OF JOURNALISM AND NATIONAL SECURITY

November 9-10, 2017

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Schedule

THURSDAY, NOVEMBER 9

8:30 – 9:30 am: Registration and Continental Breakfast

Annenberg School For Communication

3620 Walnut Street - Room 500

Transportation to conference not provided

9:30 – 9:45 am: Welcoming Remarks:

Claire Finkelstein, Algeron Biddle of Professor of Law and Professor of Philosophy,
University of Pennsylvania Law School and CERL Faculty Director

Michael Delli Carpini, Walter H. Annenberg Dean and Professor of Communication,
Annenberg School of Communication, University of Pennsylvania

9:45 – 11:00 am: **Session 1 – The carnage of war, terrorist attacks, and classified information: What are a journalist's ethical limits on reporting?** *Beyond the coverage of acts of terror, journalists' textual and photographic coverage of armed conflict and violent atrocities abroad (e.g., lines of refugees, grief-stricken mothers, images of American soldiers in body bags) can have a direct influence on public opinion and, thus, impact the counterterror efforts of governments. News outlets say they operate with the understanding that what they choose to cover and how they choose to do so shapes public discourse. To what extent, then, should journalists and their publishers pursue the dissemination of coverage related to violence and terror given the risk of dangerous blowback at home and abroad? How should this risk be balanced against the need for an informed society and educated public debate? What actual choices do editors have, given the constraints of audience, budget and attention?*

Moderator: Prof. William Burke-White, Director, Perry World House

11:00 – 11:30 am: Break (refreshments served)

11:30 am – 12:45 pm: **Session 2 – Leaks of classified information and whistleblower protection: Do the laws strike the right balance for journalists?** *A surplus of leaks of national security information in recent years has turned into a geyser in the new administration. Has the relationship between the executive branch changed enough to warrant a more adversarial approach? Is it time for a federal shield law with teeth? What steps should journalists take before publication to balance equities? How can whistleblowers utilize formal and informal mechanisms to make their cases public? Under what circumstances (if any) may whistleblowers violate their oaths? Should the motive of the whistleblower—or the source of classified information—matter? How can whistleblowers better protect themselves from criminal, civil, and governmental harassment?*

Moderator: [Marc Ambinder](#), *journalist-in-residence, CERL and ASC*

- 12:45 – 2:15 pm:** Lunch at The Inn at Penn
- 2:15 – 3:30 pm:** **Session 3 – Court subpoenas and government surveillance: Have our laws left journalists too exposed?** *Mass surveillance, targeted surveillance, data retention, expanded and broad anti-terror measures and national security laws all compromise the ability of journalists to protect the confidentiality of their sources. Journalists have also been complicit: their cyber hygiene is often subpar. What are best practices in this area? Should reporters' metadata be granted additional protection under the law? Do laws and governmental practices intimidate and inhibit effective journalism?*
- Moderator: [Carrie Cordero](#)
- 3:30 – 4:00 pm:** End of Conference Programming - Day 1
- 3:45 – 4:30 pm:** Participants are transported to the National Constitution Center (NCC)
- 5:00 – 6:30 pm:** **Keynote Panel – Freedom of the Press and National Security in the Trump Era: Reconciling Competing Values in Democratic Governance - (moderated discussion) at the NCC**
- This Keynote Panel has been approved for 1.5 ethics CLE credits for Pennsylvania lawyers. CLE credit may be available in other jurisdictions as well. Attendees seeking CLE credit should bring separate payment in the amount of \$60.00 (\$30.00 public interest/non-profit attorneys) cash or check made payable to **The Trustees of the University of Pennsylvania**.*
- Moderator: [Jeffrey Rosen](#), *President and CEO, National Constitution Center*
- Keynote participants: Helle Dale, Laura Handman, James Risen, Charlie Savage*
- 6:30 – 7:30 pm:** Cocktails for conference participants at the NCC
- 7:30 – 9:00 pm:** Dinner for conference participants at the NCC

FRIDAY, NOVEMBER 10

- 8:30 – 9:30 am:** Registration and Continental Breakfast
- Annenberg School For Communication
- 3620 Walnut Street - Room 500
- Transportation to conference not provided
- 9:30 – 10:45 am:** **Session 4 – Protecting society from fake news and weaponized information: European and American perspectives.** *Does the government and private sector have an ethical duty to do more? Prior restraints and media blackouts under European law are counterbalanced in the United States by an influential lobby that argues loudly that any legal constraints on technology will stunt its development, and by a strong (perhaps overbroad?) First Amendment tradition. Do new times —*

and new weapons — call for new compromises?

Moderator: [Dean Michael Delli Carpini](#)

10:45 – 11:15 am:

Break (refreshments served)

11:15 am – 12:30 pm:

Session 5 – Journalists at risk: online harassment, physical attacks and intimidation: *Journalists can face, easily, and without consequence for the perpetrators, malevolent online harassment campaigns, hate-based attacks, or related physical threats or intimidation, due to their race, religion, or nationality, and such conduct can affect the coverage of national security matters, whether directly or indirectly. In conflict zones, as embedded journalists or while on their own, the risks are acute and the ethical challenges can be significant. Is there a distinction between the way the government and companies should protect ordinary citizens and journalists? Is embedded journalism inherently “tainted” by the circumstances under which it is produced? Because newsroom budgets have been pared down, reporters are often sent into disaster zones and denied areas without adequate back-up; what legal and ethical responsibilities do corporations have to protect their employees?*

Moderator: [Susan D. Moeller](#)

12:30 – 1:30 pm:

Lunch at The Annenberg School For Communication - Plaza Lobby

1:30 – 2:45 pm:

Session 6 – National Security Journalism In the Age of Trump: *Although change in journalism is constant, no single factor has so rapidly upended the decision rules that reporters and editors abide by than the man who now has the power of the executive branch at his command: President Donald Trump. Should journalists treat him as simply another power to hold to account? As an existential threat to democracy? Do aggressive efforts to restore political norms violate journalism’s ethical codes? How can journalists better persuade audiences about the importance of critical national security matters in this age of information anarchy?*

Moderator: [Katherine Eban](#)

2:45 – 3:00 pm:

Concluding remarks by CERL Faculty Director Prof. Claire Finkelstein



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Participants

Mr. Marc Ambinder	<i>CERL journalist-in-residence, editor-at-large, The Week</i>
Mr. Douglas Birch	<i>Freelance Journalist; former senior journalist, Center for Public Integrity; former Moscow bureau chief and diplomatic and military editor, Associated Press</i>
Ms. Hannah Bloch-Wehba	<i>Clinical Lecturer in Law; Associate Research Scholar in Law; and Stanton First Amendment Fellow, Information Society Project, Yale Law School</i>
Dean David Boardman	<i>Dean of the Klein College of Media and Communication, Temple University</i>
Mr. Bruce Brown	<i>Executive Director, Reporters Committee for Freedom of the Press</i>
Prof. William W. Burke-White	<i>Richard Perry Professor and Inaugural Director, Perry World House, and Professor of Law, University of Pennsylvania</i>
Carrie Cordero, Esq.	<i>Counsel, ZwillGen PLLC</i>
Mr. Bill Craven	<i>Chairman, Federal Systems; CERL Board Member</i>
Ms. Pamela Craven	<i>Chief Administrative Officer, Avaya; Member, Penn Law Board of Overseers</i>
Mr. John Daniszewski	<i>Vice President and Editor at Large for Standards, Associated Press</i>
Dean Michael Delli Carpini	<i>Dean, Annenberg School for Communication, University of Pennsylvania</i>
Mr. Thomas A. Drake, PhD	<i>Former Senior Executive, National Security Agency</i>
Ms. Katherine Eban	<i>Investigative Journalist; Contributor, Fortune; former staff writer, The New York Times and New York Observer</i>
Arlene Fickler, Esq.	<i>Partner, Schnader Harrison Segal & Lewis LLP; CERL Board Member</i>
Prof. Claire Finkelstein	<i>Co-Founder and Faculty Director of CERL, Algernon Biddle Professor of Law and Professor of Philosophy, University of Pennsylvania</i>
Brian Fleming , Esq.	<i>Member, Miller & Chevalier Chartered</i>
Dr. Christopher Fuller	<i>Lecturer, Marketing Officer, University of South Hampton</i>
Prof. Kevin Govern	<i>Professor of Law, Ave Maria School of Law; CERL Board Member</i>
Prof. Hannah Gurman	<i>Clinical Associate Professor, New York University</i>
Mr. Paul Haaga	<i>CERL Executive Board Chair; Board of Directors, National Public Radio; Chairman of the Board, Capital Research and Management Company (ret.)</i>
Laura Handman , Esq.	<i>Partner, Davis Wright Tremaine LLP</i>
Mr. Robert Hennelly	<i>Investigative Journalist</i>
Mr. Burt Herman	<i>Director of Innovation Projects, Lenfest Institute for Journalism</i>
Ms. Maura Kennedy	<i>Director of Business & Sponsorships at The American Law Journal</i>
Prof. Seth Kreimer	<i>Kenneth W. Gemmill Professor of Law, University of Pennsylvania Law School</i>

Prof. Sam Lebovic	<i>Director of the Ph.D. Program and Assistant Professor, George Mason University</i>
Prof. Duncan MacIntosh	<i>Professor and Department Chair, Department of Philosophy, Dalhousie University; CERL Board Member</i>
Selina MacLaren	<i>National Security Legal Fellow, Reporters Committee for Freedom of the Press</i>
Kel McClanahan, Esq.	<i>Executive Director, National Security Counselors</i>
David McCraw , Esq.	<i>Vice President and Assistant General Counsel, The New York Times</i>
Kyra McGrath	<i>Executive Vice President/Chief Operating Officer, WHYY</i>
Prof. Susan Moeller	<i>Professor of Media and International Affairs and Director of the International Center for Media and the Public Agenda, Philip Merrill College of Journalism, University of Maryland</i>
Prof. Christopher Morris	<i>Professor and Department Chair, Department of Philosophy, University of Maryland; CERL Board Member</i>
Prof. Burt Neuborne	<i>Norman Dorsen Professor of Civil Liberties and Founding Legal Director of the Brennan Center for Justice, New York University School of Law</i>
Col. Tim Nye	<i>Retired Colonel of combined service in the United States Marine Corps and the United States Army and AGOGE founder</i>
Barry Pollack, Esq.	<i>Member and Chair, White Collar Defense Department, Miller & Chevalier Chartered</i>
Mr. James Risen	<i>Investigative Journalist, The Intercept and First Look Media</i>
Prof. Connie Rosati	<i>Associate Professor of Philosophy, University of Arizona; CERL Board Member</i>
Mr. Jeffrey Rosen	<i>President and Chief Executive Officer, National Constitution Center</i>
Mr. David Sadoff	<i>CERL Executive Director</i>
Mr. Charlie Savage	<i>Washington Correspondent; The New York Times</i>
Mr. Andrew Seaman	<i>Senior Medical Journalist, Reuters; Ethics Committee Chairperson, Society of Professional Journalists</i>
Ms. Sandra Sheller	<i>President and Director of the Sheller Family Foundation</i>
Mr. John Sipher	<i>Director, Customer Success at CrossLead, Inc.; Former Senior CIA Case Officer</i>
Dr. Cassandra Steer	<i>Executive Director, Women in International Security Canada Inc.</i>
Mr. Shawn Turner	<i>CNN National Security Affairs analyst, and former Director of Public Affairs, Office of the Director of National Intelligence</i>
Dr. Stephen Xenakis	<i>Brigadier General and Medical Corps officer (ret.), United States Army; CERL Board Member</i>
Jules Zacher, Esq.	<i>Attorney at Law; CERL Board Member</i>
Prof . Barbie Zelizer	<i>Raymond Williams Professor of Communication, Director, Scholars Program in Culture and Communication, Annenberg School for Communication, University of Pennsylvania</i>

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Journalism is under attack. The tensions between the responsibilities of journalists and the prerogatives of the government when dealing with issues of national security are exacerbated by a body politic fortified by partisan certitude, by technology designed to ferret out confidential sources, and by nation-states with unknown agendas.

The U.S. government suffers from significant and damaging disclosures of classified information, and the secrecy bureaucracy is struggling to adapt to a world where the locus of control over national security information is distributed, and where secrets themselves are an increasingly perishable commodity. And whistleblowers find themselves in the most precarious state of all. There is no guidebook for them; there are few means for them to convey their concerns responsibly without attracting a partisan following that can diminish or cast aspersions on their own motives and efforts.

This conference hopes to meaningfully advance the understanding of four broad challenges, using the conference as a point of departure to inject fresh thinking about these critical issues into the public sphere.

The first issue involves the responsible reporting of national security crises: while such events are inherently newsworthy, journalists must grapple with the troubling reality, born out by experience and by scholarship on how audiences consume information, that such reporting can fuel more terrorist attacks by stoking public fear and providing the terrorists with the kind of visibility they seek for their cause. Independent media coverage of their actions can have a reinforcing impact on terrorists' violent narratives while glorifying the image of those in charge.

The second topic for discussion is how best to ensure the physical and legal safety of journalists, as well as the integrity of the constitutionally protected freedom of the press. Journalists can face, easily, and without consequence for the perpetrators, malevolent online harassment campaigns, hate-based attacks, or related physical threats or intimidation, due to their race, religion, or nationality, and such conduct can affect the coverage of national security matters, whether directly or indirectly. Because newsroom budgets have been pared down, reporters are often sent into disaster zones and denied areas without back-up. The best efforts to protect critical sources can now be bypassed using communications metadata to identify sources who may be reluctant to reveal their communications with the media.

Third: the re-publishing of unauthorized disclosures of classified information by WikiLeaks or other such third-party, quasi-journalistic outlets, or independent platforms with cultures of disclosure that differ from the established media's formal processes and well-considered habits. In such cases, the disclosed information usually remains classified, and intelligence agencies are unlikely to acknowledge whether the leaks are based on bona fide classified documents regardless of independent coverage. When dealing with these disclosures, how should news organizations that operate according to more conventional ethical codes disseminate such information?

The fourth challenge relates to the advent of "fake news" and its use as a weapon of asymmetric warfare. It has become a national security threat. Our recent electoral experience with foreign disinformation raises the question of the responsibilities vested in journalists, private firms, and the government to protect democracy from foreign political subversion through the dissemination of "fake news" intended to affect political discourse or undermine national security. The field is professionally unprepared for this new reality.

This two-day, workshop-style conference consisting of experts from such diverse fields as the law, academia, the media, the national security establishment, and the whistleblowing community, will explore these complex legal and ethical problems through a series of moderated sessions.

The objective is to foster a constructive, interdisciplinary dialogue among people who do not often talk with one another and to provide all participants with a more nuanced appreciation of the issues that lie at the intersection of journalism and national security. We also hope to provide solutions, even temporary ones, to the problems we've identified.

This event is co-sponsored by the Annenberg School for Communication (ASC), the Center for Advanced Research in Global Communication at ASC, the Middle East Center at the University of Pennsylvania, and the law firm of Miller & Chevalier.

