

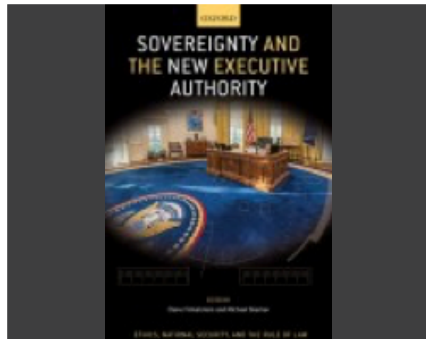
ENTER for ETHICS and the RULE of LAW  
UNIVERSITY of PENNSYLVANIA

ANNUAL REPORT 2018-2019



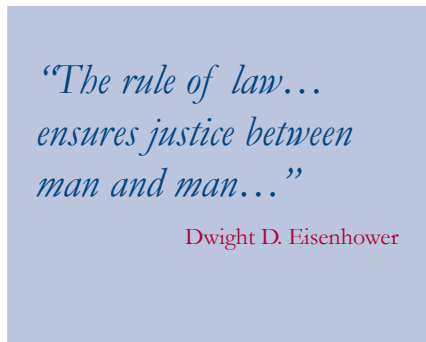
*“Certain other societies  
may respect the rule of  
force--we respect the  
rule of law.”*

John F. Kennedy



*“A sacred respect for the  
constitutional law is the  
vital principle...”*

Alexander Hamilton





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# ABOUT CERL

CERL is a non-partisan interdisciplinary institute dedicated to the preservation and promotion of the rule of law in twenty-first century warfare and national security. CERL draws from the study of law, philosophy, and ethics to answer the difficult questions that arise in times of war and contemporary transnational conflicts.

CERL unites scholars, policymakers, and legal practitioners to address ethical dilemmas in the national security space. The center also enjoys a constructive partnership with the armed services and collaborates frequently with members of the intelligence community and the private sector's defense industry. It also collaborates with renowned public interest organizations, other academic partners, and the media on news items.

Since 2012, CERL has been raising public consciousness and influencing policy through conferences, briefings, published volumes and papers, public events, and media outreach. Through its activities, CERL continues to expose and explore critical ethical issues to help academia, students, government servants, and the public cultivate a clearer understanding of the rule of law.



*CERL's Executive Board and Leadership*

*Back row from left: Paul Welsh, Arlene Fickler, Christopher Morris, Duncan MacIntosh, William Craven, Paul Haaga, Jr., Jules Zacher*

*Front row from left: Connie Rosati, Vivian Berger, Claire Finkelstein, guest H.R. McMaster, Shawn Turner, Sean Carter*

*Not pictured: Harold Berger, Kevin Govern, Alberto Moro, Jens David Ohlin, Joseph Votel, Stephen Xenakis*



## LETTER FROM THE FACULTY DIRECTOR AND EXECUTIVE BOARD CHAIR

October 2019

Dear Friends of CERL,

For seven years, CERL has shined a bright light on questions relating to ethics and the rule of law in the theory and practice of national security. At this moment in time, the issues CERL addresses are of the utmost importance for the future of our democracy. What has become abundantly clear since the United States entered the post-9/11 era is that the rule of law is an essential ingredient – perhaps *the* essential ingredient – in our national defense. We cannot be strong as a nation without cultivating a principled system of laws and a series of deeply felt ethical practices to help maintain them.

The 2018-19 academic year was a highly successful one for CERL. The center continued to grow in prominence and impact, as its rule of law message extended increasingly beyond the Philadelphia area. The reach of CERL's work was particularly evident in the partners it has attracted in the past year. During the 2018-19 season, CERL formed new collaborations with the University of Geneva, the American Enterprise Institute, *The New York Times*, the Judge Advocate General's Legal Center and School, and the Knight First Amendment Institute at Columbia University, in addition to the many partners it continues to engage in the Philadelphia area, such as the Wharton School and Perry World House at Penn, and the National Constitution Center and public radio station WHYY in downtown Philadelphia.

CERL was proud to host a number of prominent keynote speakers this year, such as former National Security Advisor Lt. General H.R. McMaster (ret.) who presented the annual Haaga Lecture; Juan Méndez, former U.N. Special Rapporteur on Torture; and General Michael Hayden (ret.), former director of the National Security Agency, who spoke about his book, *The Assault on Intelligence*. We were also delighted to welcome Elizabeth Rindskopf Parker, Dean Emerita of the Pacific McGeorge School of Law, and Admiral Michael Rogers (ret.), former Commander of U.S. Cyber Command, who delivered a keynote address at our conference on grey zone conflict at The Judge Advocate General's Legal Center and School in Charlottesville.

CERL is also proud to have entered the world of advocacy during the past academic year. In conjunction with the Knight First Amendment Institute, CERL filed an amicus brief challenging the process for individuals with security clearances to surmount the hurdle of pre-publication review prior to publishing. The center also partnered with *The New York Times* to file a FOIA request for information relating to a current interrogation technique under the Army Field Manual on Interrogation. With the help of its highly capable summer interns, CERL has been able to undertake significant projects beyond the reach of academic discussion and debate. It is our hope to continue impact-oriented work of this sort, particularly in the context of exposing our summer interns to elements of national security practice.

Since its founding in 2012, CERL has been committed to educating students, national security practitioners, and members of the public about what it means for a society to be governed by ethical principles and the rule of law. This is particularly important in a domain where principled conduct is most challenging, namely, in the critical arena of our national defense. There are daily reminders of the importance of this work, and the deep divisions in our politics and public life relating to national defense suggest that CERL's work is only just beginning. We hope you will continue to help CERL grow as well as partner with us in protecting the rule of law.

Claire Finkelstein, Faculty Director

Paul Haaga, Jr., Executive Board Chair

## PEOPLE

Cultivating relationships across academic disciplines and industry sectors is central to advancing interdisciplinary discussion and analyses on some of the most difficult and controversial issues of our time. CERL successfully bridges the academic, private, and public sectors to facilitate these vital conversations. CERL owes its success to its leadership, staff, executive board, and program participants and partners, all of whom are dedicated to perpetuating rule of law values and democratic ideals.



*Prof. Claire Finkelstein, CERL Faculty Director*



*Dean Theodore Ruger, Penn Law*



*Chris Welsh, CERL Executive Director*



*Xander Meise, CERL Senior Fellow*



*Jesse Hamilton, CERL 2019 summer intern*

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*Former Senior Executive, Department of Homeland Security; International Security Consultant*



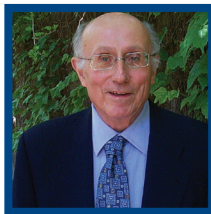
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*Professor of Clinical Psychology in Psychiatry; Director of the Center for the Treatment and Study of Anxiety, University of Pennsylvania*



**ROBERT G. FULLER, JR.**

*Captain, U.S. Navy, Judge Advocate General's Corps (Ret.)*



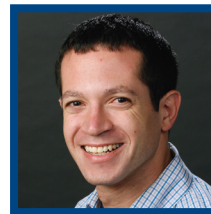
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*Distinguished Teaching Professor, Art History and Museum Leadership, Drexel University*



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*Professor of Philosophy, Emeritus, Vanderbilt University*



**JEFF MCMAHAN**

*White's Professor of Moral Philosophy, University of Oxford*



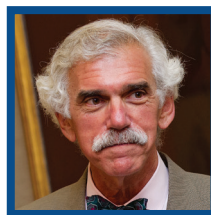
**PAUL E. MENOHER, JR.**

*Lieutenant General (Ret.), U.S. Army*



**MARY ELLEN O'CONNELL**

*Robert and Marion Short Professor of Law; Research Professor of International Dispute Resolution, University of Notre Dame*



**HARVEY RUBIN**

*Professor of Medicine, Microbiology and Computer Science, University of Pennsylvania*



**STEPHEN SHELLER**

*Founding Partner, Sheller P.C.*



**ROGERS SMITH**

*Christopher H. Browne Distinguished Professor of Political Science, University of Pennsylvania*

# THE CERL TEAM

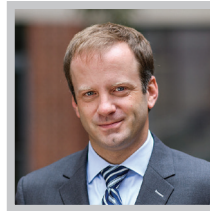
## Leadership



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*CERL Faculty Director*



**PAUL G. HAAGA, JR.**  
*CERL Executive Board Chair*



**CHRISTOPHER WELSH**  
*Executive Director*



**EILEEN KENNEY**  
*Director of Engagement*

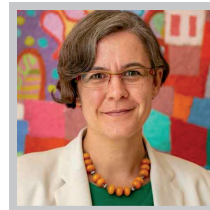
## Fellows



**CASSANDRA STEER**  
*Nonresident Fellow*  
[www.cassandrasteer.net](http://www.cassandrasteer.net)



**CHRISTOPHER JACOBS**  
*Senior Fellow*

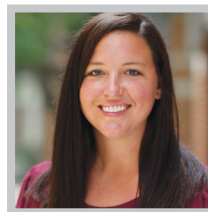


**ALEXANDRA MEISE**  
*Senior Fellow*

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**ELISABETH AULEPP**  
*Events Coordinator*



**JENNIFER EVANS**  
*Associate Director,  
Faculty Support*



## 2018-2019 CONFERENCES AND SYMPOSIA



### **Interrogation and Torture: Integrating Efficacy with Law and Morality** **September 20-21, 2018, Philadelphia**

Two novel and significant developments are unfolding in this area: there is emerging scientific research into the most effective interrogation techniques; and drawing on these scientific findings, there are efforts to set universal standards for non-coercive interrogation and to integrate them into international law. The leaders of the symposium are the editors of a forthcoming volume entitled *Interrogation and Torture: Integrating Efficacy with Law and Morality* to be published in 2019 under the Oxford Series in Ethics, National Security, and the Rule of Law. In closed sessions, five unique panels of volume contributors from multiple disciplines and countries examined these developments and their potential outcomes and international impact.

#### **PUBLIC KEYNOTE ADDRESS**

“A Universal Protocol for Investigative Interviewing: An End to Interrogation and Torture” was delivered by Juan E. Méndez, former UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

#### **CO-SPONSORS**

Université de Genève Global Studies Institute, Quattrone Center for the Fair Administration of Justice



*Roundtable discussion at the University of Pennsylvania Law School*



*From left: Dr. Stephen Xenakis, Mr. Alberto Moro, Prof. Claire Finkelstein, Prof. Juan Méndez, and Dr. Steven Barela*



*From left: Dr. Stephen Reisner, Prof. Stephen Soldz, and Prof. Gloria Gaggioli*



*Mr. Mark Fallon, author of *Unjustifiable Means: The Inside Story of How the CIA, Pentagon, and US Government Conspired to Torture* and member of CERL's Advisory Council*



## A UNIVERSAL PROTOCOL FOR INVESTIGATIVE INTERVIEWING: An End to Interrogation and Torture



*A public keynote address presented by*

### **Juan E. Méndez**

*Professor of Human Rights Law at American University Washington  
College of Law*

*Former United Nations Special Rapporteur on Torture and Other  
Cruel, Inhuman and Degrading Treatment or Punishment*

**THURSDAY, SEPTEMBER 20, 2018 • 4:30 – 6:30 p.m.**

Fitts Auditorium • Penn Law • 3501 Sansom Street, Philadelphia, PA 19104

*Panel discussion to follow, moderated by CERL director Professor Claire Finkelstein and featuring Alberto Mora, Senior Fellow at the Carr Center for Human Rights Policy at Harvard Kennedy School and former General Counsel for the U.S. Navy, and Stephen Xenakis, M.D., Brigadier General (Ret.), U.S. Army, and anti-torture advisor to Physicians for Human Rights*

Professor Juan Méndez is one of the world's most recognized advocates of a universal protocol for non-coercive interviews conducted by law enforcement officials, military and intelligence personnel, and other bodies with investigative authority. As UN Special Rapporteur on Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, he introduced the universal protocol initiative at the close of his mandate in 2016.

Through a universal set of standards and safeguards, the protocol aims to end the use of coercive techniques and torture on all detainees—criminal suspects, terrorist internees, political prisoners, and prisoners of war all over the world.

Professor Méndez will make the case for the protocol, which calls for the presumption of innocence, search for truth, constructive interaction with international human rights law, and adaptation to different legal cultures. He will also report on the current state of the initiative and the need to generate worldwide support.

**Open to the public and free of charge**  
**Register at <http://bit.ly/2CMcacu>**

*This program has been approved for 2.0 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 \$80.00 (\$40.00 public interest/non-profit attorneys) cash or check made payable to The Trustees of the University of Pennsylvania.*

Co-sponsored by Université de Genève Global Studies Institute and Quattrone Center for the Fair Administration of Justice





*From left: Ms. Laure Brimbal, Col. Steven Kleinman (Ret.), and Prof. Michael Skerker*



*Prof. Juan E. Méndez, public keynote speaker*



*From left: Public keynote panelists Dr. Stephen Xenakis, Mr. Alberto Moro, and Prof. Juan Méndez with moderator Prof. Claire Finkelstein*



## **DEMOCRACY IN THE CROSSHAIRS:**

Cyber Interference, Dark Money and Foreign Influence

November 1-3, 2018

### **Democracy in the Crosshairs: Cyber Interference, Dark Money and Foreign Influence**

**November 1-3, 2018, Philadelphia**

U.S. historical and political roots have always signaled a deep-rooted aversion to any form of foreign interference in our country's democratic institutions. But today, the threat and activity are astonishing. Rapid advances in technology, creation of social media "bubbles," and anonymized financial networks have fed effective foreign interference efforts on a scale and scope not seen before. This closed-session conference addressed the legal, ethical, and political issues raised by cyber and non-cyber foreign interference in democratic institutions along with ways to help protect against such interference.

#### **THE PAUL G. HAAGA, JR. LECTURE IN LAW, GOVERNMENT, AND PUBLIC POLICY**

The Haaga lecture opened the conference and served as the public keynote address. Guest lecturer Lt. General H.R. McMaster, U.S. Army (Ret.) and former National Security Advisor, presented "Russian New Generation Warfare and the Threat to the Free World."

#### **PUBLIC KEYNOTE PANEL PRESENTATION**

"Foreign Interference in the Democratic Process: Countdown to the Midterms," was presented by Raymond Baker, founding president of Global Financial Integrity; Mitchell Orenstein, professor of political science at the University of Pennsylvania; Shawn Turner, professor of national security communication at Michigan State University and CNN national security analyst; and Clint Watts, Distinguished Research Fellow at the Foreign Policy Research Institute (FPRI). Trudy Rubin, foreign affairs columnist for *The Philadelphia Inquirer*, moderated the discussion.

The presentation took place at the National Constitution Center and was recorded by NPR-affiliated public radio station WHYY for broadcast.

#### **CO-SPONSORS**

Foreign Policy Research Institute (FPRI), The Andrea Mitchell Center for the Study of Democracy, The Carol and Lawrence Zicklin Center for Business Ethics Research at Wharton, and the Office of Information Services at the University of Pennsylvania



*Lt. General H.R. McMaster (Ret.) delivering the Paul Haaga, Jr. Lecture in Law, Government, and Public Policy*



*Lt. General H.R. McMaster (Ret.) meeting with the CERL Executive Board*



*Conference roundtable discussion at the National Constitution Center*



*From left: Mr. Paul Welsh, Prof. Eric Orts, Ms. Mary Chaney, and Prof. Connie Rosati*

# DEMOCRACY IN THE CROSSHAIRS:

Cyber Interference,  
Dark Money and  
Foreign Influence

November 2 – 3, 2018

## FRIDAY, NOVEMBER 2, 2018

National Constitution Center

- 8:30 – 9:30 a.m. **Sign-In and Continental Breakfast**  
John C. Bogle Chairman's Room
- 9:30 – 9:45 a.m. **Welcome Remarks**
- 9:45 – 11:00 a.m. **Session 1 — Historical Roots of Foreign Interference: The Framers' and Their Efforts to Secure Democratic Independence**  
MODERATOR: Professor Stanley Katz
- 11:00 – 11:30 a.m. **Break**
- 11:30 a.m. – 2:45 p.m. **Session 2 — Patterns of Disinformation in Domestic and Foreign Elections**  
MODERATOR: Professor Mitch Ornstein
- 12:45 – 2:00 p.m. **Lunch**  
Delegates Dining Room
- 2:00 – 3:15 p.m. **Session 3 — Cyber-Based Foreign Interference**  
MODERATOR: Professor Michael Posner
- 3:15 – 4:00 p.m. **Break**
- 4:00 – 6:00 p.m. **Public Keynote Panel — "Foreign Interference in the Democratic Process: Countdown to the Midterms"**  
F.M. Kirby Auditorium, National Constitution Center  
MODERATOR: **Trudy Rubin**  
PANELISTS: **Mr. Clint Watts, Mr. Raymond Baker, Mr. Shawn Turner, Professor Mitchell Ornstein and other distinguished guests**
- 6:00 – 7:00 p.m. **Reception**  
The Monaco Hotel, The Vapor Lounge on the rooftop
- 7:00 – 8:30 p.m. **Participant Dinner**  
The Monaco Hotel, Lafayette North Ballroom  
KEYNOTE PRESENTATION: **Dean Elizabeth Rindskopf Parker**

## SATURDAY, NOVEMBER 3, 2018

National Constitution Center

- 8:30 – 9:30 a.m. **Sign-In and Continental Breakfast**  
John C. Bogle Chairman's Room
- 9:30 – 10:45 a.m. **Session 4 — Dark Money: Domestic Regulation, Transnational Law Enforcement, and the Political Philosophy Protecting Democratic Processes**  
MODERATOR: Professor Eric Orts
- 10:45 – 11:15 a.m. **Break**
- 11:15 a.m. – 12:30 p.m. **Session 5 — The 2018 Midterm Elections: Will They Be Free and Fair?**  
MODERATOR: Mr. Shawn Turner
- 12:30 – 1:45 p.m. **Lunch**  
Bogle Terrace  
KEYNOTE PRESENTATION: Professor Richard Harknett
- 1:45 – 3:00 p.m. **Session 6 — The Long-term Game: What is the Future of Information Warfare, Political Cyber-Interference and Can Democracy Prevail?**  
MODERATOR: Professor Claire Finkelstein



*From left: Mr. Raymond Baker, Dr. Megan Reiss, Prof. Kevin DeSouza, and Prof. Young Mie Kim*



*Prof. Richard Harknett delivering the luncheon keynote speech*



*Dean Emerita Elizabeth Rindskopf Parker delivering the dinner keynote speech*





*From left: Keynote participants Mr. Clint Watts, Mr. Raymond Baker, Prof. Mitchell Ornstein, Ms. Trudy Rubin, and Prof. Shawn Turner with Prof. Claire Finkelstein*



*Keynote panel presentation at the National Constitution Center*



*From left: Prof. Mitchell Orenstein and Mr. Clint Watts*

THE PENN LAW NATIONAL SECURITY SOCIETY PRESENTS ITS INAUGURAL SYMPOSIUM

# REPORTING ON NATIONAL SECURITY:

## What is the Media's Role?

### Reporting on National Security: What is the Media's Role?

February 7, 2019, Philadelphia

CERL co-sponsored the inaugural symposium of the Penn Law National Security Society. The society's co-chairs, Penn Law students Katherine Joseph and Katharina Schwarz, organized the event. CERL Faculty Director Prof. Claire Finkelstein and CERL Executive Board member Prof. Shawn Turner were delighted to participate in a panel examining the tensions between national security and freedom of the press.

#### KEYNOTE ADDRESS

David G. Bradley, chairman and owner of Atlantic Media, delivered the keynote "Journalists Taken Hostage Abroad."

#### SPONSORS

Center for Ethics and the Rule of Law (CERL), Penn Law Dean's Speaker Fund



*Penn Law Dean Theodore Ruger introducing panelists (from left) Mr. Nathan Siegel, Prof. Shawn Turner, Mr. David McCraw, and moderator Prof. Claire Finkelstein*



*Mr. David G. Bradley, owner and Chairman of Atlantic Media, delivering the keynote speech*



*Prof. Shawn Turner, CNN National Security Analyst and CERL Executive Board member*



*From left: Mr. Nathan Siegel, Prof. Shawn Turner, Mr. David McCraw, and moderator Prof. Claire Finkelstein*



## CHALLENGING THE GREY ZONE:

The Changing Character of Warfare and the Application of International Law

April 3-4, 2019

## Challenging the Grey Zone: The Changing Character of Warfare and the Application of International Law

April 3-4, 2019

**The Judge Advocate General's Legal Center and School  
Charlottesville, Virginia**

Grey zone conflicts aim to avoid meeting the threshold of an armed attack that would trigger a legal conventional military response, and they abound in today's world. This two-day closed-session conference addressed the complex issues involved in grey zone conflicts. Held at the Army JAG Legal Center and School in Charlottesville, the conference brought together experts from the military, law, private sector, government agencies, and academia to facilitate a dialogue on myriad ethical, legal, and policy questions that arise from grey zone conflicts.

### PUBLIC KEYNOTE ADDRESS

Lt. General Charles Pedo, Judge Advocate General of the United States Army, presented "Grey Zone and Future War: Simplifying for Success."

### CO-SPONSORS

The Judge Advocate General's Legal Center and School, Middle East Center at the University of Pennsylvania



*Roundtable discussion at The Judge Advocate General's Legal Center and School*



*Mr. Michael Adams, Brig. General Patrick Huston, Prof. Claire Finkelstein, and Admiral Michael Rogers, U.S. Navy (Ret.)*



*Admiral Michael S. Rogers, U.S. Navy (Ret.), former Commander of U.S. Cyber Command and former Director of the National Security Agency (NSA)*



## Protecting Democracy: Modernizing the Foreign Agents Registration Act April 17, 2019

### **Protecting Democracy: Modernizing the Foreign Agents Registration Act** **April 17, 2019, Washington, D.C.**

Among other developments, the conviction of President Trump’s campaign chairman Paul Manafort thrust what was viewed as an obscure law into the limelight: the Foreign Agents Registration Act (FARA). Since the 2016 election, more indictments for FARA violations have been brought than in the previous 50 years. There is general agreement among stakeholders, however, that FARA is flawed and requires revision if the law is to be aggressively enforced. Held at the headquarters of American Enterprise Institute (AEI), this symposium brought together scholars and legal, business, and government experts to forge consensus on proposals for reform and formulate a plan for enactment.

#### **PUBLIC FORUM**

Held at AEI’s headquarters, “Modernizing the Foreign Agents Registration Act (FARA)” featured John Demers, Assistant Attorney General for National Security; Claire Finkelstein, Professor of Law and Professor of Philosophy and CERL Faculty Director at Penn Law; and Robert Kelner, partner at the law firm Covington & Burling. Danielle Pletka, Senior Vice President of Foreign and Defense Policy Studies at AEI, moderated the discussion.

The forum was broadcast live by C-SPAN2.

#### **SPONSOR**

American Enterprise Institute (AEI)

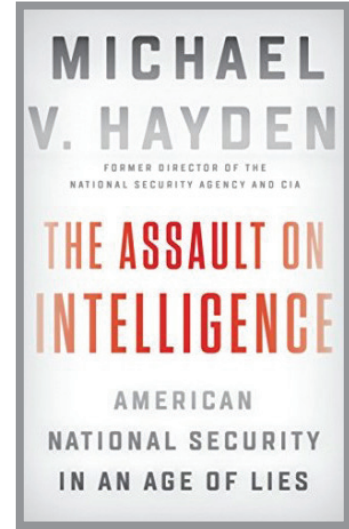


*From left: Mr. Robert Kelner, Prof. Claire Finkelstein, Mr. John Demers, and moderator Ms. Danielle Pletka*

## BOOK TALK SERIES 2018-2019

**September 13, 2018**  
***THE ASSAULT ON INTELLIGENCE: AMERICAN NATIONAL SECURITY IN AN AGE OF LIES***  
**by Michael V. Hayden**

Michael V. Hayden, retired four-star U.S. Air Force general and former director of the CIA and the National Security Agency (NSA), discussed his “blistering critique of the forces threatening the American intelligence community.”



*General Michael Hayden (Ret.) and Prof. Claire Finkelstein speak to a full house at the University of Pennsylvania Law School*



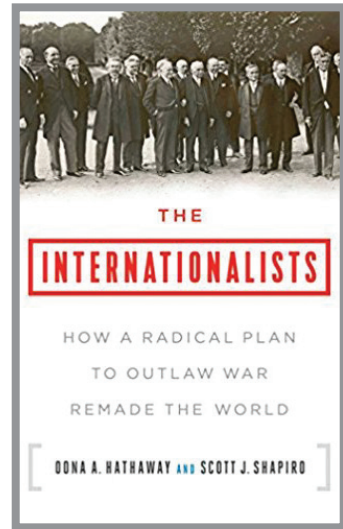
*Prof. Claire Finkelstein and General Hayden (Ret.)*

October 4, 2018

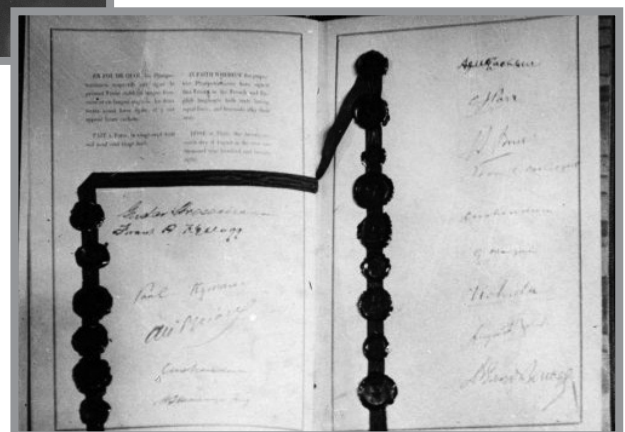
**THE INTERNATIONALISTS: HOW A RADICAL PLAN TO OUTLAW WAR  
REMADE THE WORLD**

by Oona Hathaway and Scott Shapiro

The authors, two Yale Law professors, discussed the Kellogg-Briand Pact of 1928 and its impact on the international system that has outlawed wars of aggression, bringing unprecedented stability to the world.



*Signing of the Kellogg-Briand Pact of 1928*



*The Kellogg-Briand Pact*



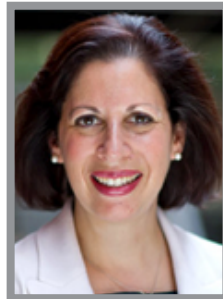
## BOOK TALK SERIES 2018-2019

February 14, 2019

### **PRESIDENTIAL POWER AND THE CURRENT CRISIS OF EXECUTIVE AUTHORITY**

a panel discussion based on the book *Sovereignty and the New Executive Authority*  
edited by Claire Finkelstein and Michael Skerker

Four panelists discussed how executive authority has changed over past administrations and how its unprecedented expansion in the current administration will likely fare before the Congress, courts, and the public. The University of Pennsylvania Law School's *Journal of International Law* was an event sponsor.

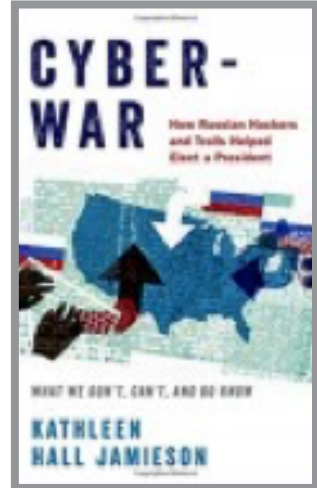


*Panelists taking questions from the audience  
From left: Prof. Michael Skerker, Prof. Jonathan Turley, Prof. Sharon Lloyd, Prof. Sanford Levinson,  
and moderator Prof. Claire Finkelstein*

**April 11, 2019**

***CYBERWAR: HOW RUSSIAN HACKERS AND TROLLS HELPED ELECT A PRESIDENT,  
WHAT WE DON'T, CAN'T AND DO KNOW  
by Professor Kathleen Hall Jamieson***

The question of how Donald Trump won the 2016 election still looms over his presidency. Kathleen Hall Jamieson, professor and Director of the Annenberg Public Policy Center at the University of Pennsylvania, discussed Russian troll and hacker efforts and how the press, social media, candidates, party leaders, and a polarized public abetted them.



*Discussion at the  
University of Pennsylvania Law School*



*From left: Prof. Kathleen Hall Jamieson and Prof. Claire Finkelstein*

# CERL'S IMPACT

## BRIEFINGS AND ENGAGEMENT

In April 2019, CERL leadership and national security Penn Law students traveled to the Pentagon to conduct a briefing for Army Judge Advocate General National Security Law Division attorneys. The subject of the briefing was presidential emergency powers and the use of military resources at the southern border. After the briefing, CERL and students met with U.S. Army General Counsel James E. McPherson and U.S. Air Force General Counsel Thomas E. Ayers for roundtable discussions on other issues.

Early in the academic year, CERL leadership met with a Lebanese delegation on ethics and the rule of law at the request of Citizen Diplomacy International. A few weeks later, CERL met with James G. Breckenridge, Ph.D., 2nd Provost of the U.S. Army War College, and Megan J. Hennessey, Ph.D., Professor of Educational Methodology at the college, to discuss the role of ethics and the rule of law in the college's curriculum.

In October 2018, CERL hosted an informal discussion at Penn Law with Elizabeth Sherwood-Randall, former U.S. Deputy Secretary of Energy, on current national security issues, particularly nuclear deterrence. Ms. Sherwood-Randall is the Global Order Distinguished Visiting Fellow at Perry World House at the University of Pennsylvania, a Senior Fellow at Harvard Kennedy School's Belfer Center for Science and International Affairs, and a Distinguished Professor at the Georgia Institute of Technology.

Throughout the academic year, CERL engaged with Penn Law student groups. CERL partnered with Penn Law's National Security Society to produce the society's inaugural symposium, Reporting on "National Security: What is the Media's Role?," in February 2019. CERL coordinated an information session with Lt. General H.R. McMaster (Ret.) for the National Security Society, Veteran's Law Project, and Penn Law Vets in November 2018, and participated in the "Army War College International Strategic Crisis Negotiation," a Penn Law course, in spring 2019. CERL's collaborations bring more attention to important ethics and rule of law issues and raise the center's profile and mission among Penn Law students.



*Lt. General H.R. McMaster (Ret.) with Penn Law students and fellows*

# CERL'S IMPACT

## ADVOCACY FOR THE RULE OF LAW

### Prepublication Review

CERL Executive Director Christopher Welsh and Executive Board member Arlene Fickler filed an amicus brief in the U.S. District Court for the District of Maryland in support of a lawsuit filed by former intelligence and military officials challenging the U.S. government's prepublication review system. The plaintiffs, represented by the Knight First Amendment Institute at Columbia University, claim that the system used to review and clear their manuscripts, which cover details about their prior government service, is an onerous restriction on their free speech and due process rights. One of the plaintiffs is Mark Fallon, author of *Unjustifiable Means: The Inside Story of How the C.I.A., Pentagon, and U.S. Government Conspired to Torture* and a member of CERL's Advisory Council. A group of CERL interns researched and drafted the brief with guidance from Ms. Fickler and her colleagues at the law firm Schnader Harrison.



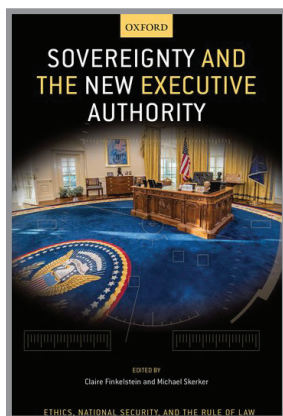
### FOIA Request

In collaboration with *The New York Times*, CERL drafted the newspaper's FOIA (Freedom of Information Act) request for records relating to the use of a restricted interrogation technique authorized by Appendix M of the Army Field Manual on Interrogation. Appendix M authorizes an interrogation technique called "separation" that in certain scenarios could potentially violate domestic and international legal prohibitions against torture. The FOIA request, filed in June 2019, sought records from all government agencies that potentially used this restricted technique. After not receiving any records from the government, *The New York Times* and CERL filed a complaint in the U.S. District Court for the Southern District of New York. The litigation is pending.

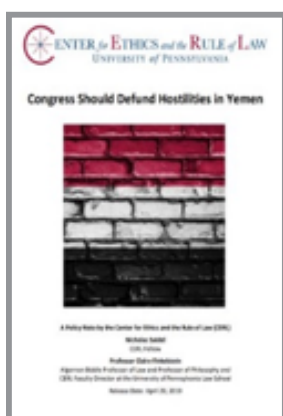


## CERL'S IMPACT

### PUBLICATIONS



Oxford University Press published *Sovereignty and the New Executive Authority*, co-edited by Claire Finkelstein and Michael Skerker, in September 2018. It is the fourth installment in OUP's Series on Ethics, National Security, and the Rule of Law, a CERL and OUP collaboration. In the aftermath of 9/11 in the United States, the growth of the national security state has resulted in an ongoing struggle to maintain the legal and ethical boundaries surrounding executive authority. This volume's 15 essays, drawn from the disciplines of law, political science, philosophy, and international relations, covers an expansive series of topics, from historical theories and international affairs, to governmental transparency and legitimacy. The volume also examines the changes in the concept of sovereignty post-9/11 in the United States and their impact on democracy and the rule of law, particularly in the area of national security practice.



CERL issued a briefing paper entitled “Congress Should Defund Hostilities in Yemen” on April 29, 2019. S.J.Res. 7, a bipartisan effort to end U.S. military action in Yemen’s civil war, was vetoed by President Trump on April 16, 2019. It is likely the Senate will not be able to garner the needed votes to override the veto, effectively ending this congressional effort to withdraw U.S. support via the 1973 War Powers Resolution, which draws upon Congress’ war-making authority under the U.S. Constitution. This paper takes a different view: To end U.S. military action in Yemen (not related to Al-Qaeda), the U.S. Congress should draw upon its constitutional “power of the purse” and defund U.S. support. This paper provides necessary background on the war and humanitarian crisis, challenges the basis for continued support, and explains why defunding U.S. military operations is the better strategy.

### THE RULE OF LAW POST

CERL launched its blog in November 2018: [www.TheRuleOfLawPost.org](http://www.TheRuleOfLawPost.org). CERL colleagues and guest authors contribute posts on today’s important and timely national security, war, and U.S. governance topics analyzed through the lens of ethics and the rule of law.



## **CERL'S IMPACT**

### **MEDIA AND PUBLIC PRESENTATIONS**

#### **IN THE NEWS**

Executive Board Member Jens David Ohlin quoted in “Former CIA Director John Brennan said Trump’s press conference with Putin was ‘treasonous’—here’s what legal experts say,” by Grace Panetta, Business Insider, July 16, 2018

Executive Board Member Shawn Turner quoted in “Dan Coats, the Intelligence Chief, Finds His Voice. Will It Anger Trump?,” by Julian Barnes, The New York Times, July 17, 2018

Faculty Director Claire Finkelstein interviewed on “Trump and Pardoning Power,” WHYY Radio Times, July 28, 2018

Faculty Director Claire Finkelstein quoted in “Prosecutors’ practice of getting defendants to ‘flip’ is key tool in going after the kingpin, experts say,” The Boston Globe, August 23, 2018

Executive Board Member Jens David Ohlin quoted in “U.S. Prosecutors Grant Trump Organization CFO Immunity in Cohen Probe,” by Karen Freifeld, U.S. News & World Report, August 24, 2018

Faculty Director Claire Finkelstein interviewed on “The Tense Relationship Between the President and Department of Justice,” WBUR On Point with Meghna Chakrabarti, September 25, 2018

Executive Board Member Vivian Berger quoted in “NY Law Professors Explain Why They Tried to Prevent Brett Kavanaugh From Joining the Supreme Court,” by Susan DeSantis, New York Law Journal, October 5, 2018

Executive Board Member Jens David Ohlin quoted in “Factbox: Can the New U.S. Attorney General Shut Down the Mueller Probe?,” by Jan Wolfe, Reuters, November 7, 2018

Faculty Director Claire Finkelstein quoted in “Acting Attorney General Whitaker’s views on Mueller probe prompt calls for his recusal,” by Kevin Breuninger, CNBC, November 8, 2018

Faculty Director Claire Finkelstein quoted in “White House: Trump unhappy but not concerned by latest Mueller developments,” by Stephen Loiaconi, ABC6, November 28, 2018

Executive Board Member Stephen Xenakis quoted in “Inside Trump’s Gitmo, Which Is Scheduled To Stay Open Another 25 Years,” by Julia Ainsley, NBC News, November 30, 2018

Executive Board Member Jens David Ohlin quoted in “Trump Urges ‘Full Sentence’ for His Ex-Lawyer Cohen in Russia Probe,” by Doina Chiacu and Jan Wolfe, Reuters, December 3, 2018

Executive Board Member Stephen Xenakis quoted in “Defense Dept. grappling with care for ailing Guantanamo detainees,” by Patty Nieberg and Lucas Robinson, United Press International, Inc., January 16, 2019

Executive Board Member Stephen Xenakis included in “40 Retired Generals and Diplomats Support Continued US-North Korea Diplomacy,” by Stephen Xenakis et al., *The National Interest*, February 20, 2019

Faculty Director Claire Finkelstein quoted in “End of Mueller probe is only the start of a longer fight,” by Jonathan Tamari, *The Philadelphia Inquirer*, March 25, 2019

Faculty Director Claire Finkelstein quoted in “Some Americans cheer Mueller’s report, others feel let down,” by Matt Sendensky, *Associated Press*, March 25, 2019

Faculty Director Claire Finkelstein quoted in “Mueller Report Shows Policy Gaps Where Congress Could Act,” by Michael Macagnone, *Law 360*, April 26, 2019

Faculty Director Claire Finkelstein interviewed on “Is President Trump Defying the Rule of Law in the United States?,” *WBUR On Point with Meghna Chakrabarti*, April 29, 2019

Faculty Director Claire Finkelstein interviewed on “House Judiciary Votes to Recommend Contempt Citations Against William Barr,” *Al Jazeera*, May 8, 2019

Faculty Director Claire Finkelstein quoted in “Trump turns the full force of the government on perceived political enemies,” by Jonathan Allen, *NBC News*, May 24, 2019

Faculty Director Claire Finkelstein quoted in “Kamala Harris foists Trump legal battle upon 2020 race,” by Stephen Collinson, *CNN*, June 14, 2019

## **OPINION PIECES**

Faculty Director Claire Finkelstein, “Trump Risks Leading the World into a Space Arms Race,” *The Hill*, with Mark Nevitt, August 21, 2018

Faculty Director Claire Finkelstein, “Democrats Have the Wrong Argument against Kavanaugh,” *The Hill*, August 26, 2018

Executive Board Member Kevin Govern, *Thirteen Years On: Lessons (re)Learned From “The Good, The Bad, and The Ugly” of Hurricanes Katrina and Rita Government Effort*, *JURIST, Academic Commentary*, August 31, 2018

Fellow Nick Saidel, “Dealing with the Russia factor in North Korea negotiations,” *The Hill*, September 19, 2018

Executive Board Member Stephen Xenakis, “What I Learned: Science and Humanities, Doctors and Torture,” *Princeton Alumni Weekly*, October 3, 2018

Executive Board Member Shawn Turner, “Republicans must ask why so many people with racist values embrace the GOP,” *CNN.com*, November 11, 2018

Faculty Director Claire Finkelstein, “A Wounded Public Searches for Moral Leadership: Can a Divided Congress Produce It?,” *The Rule of Law Post*, November 12, 2018

Faculty Director Claire Finkelstein, “It’s Time to Defund the Saudi-led Coalition’s War in Yemen,” *The Hill*, with Nicholas Saidel, March 8, 2019

## PUBLIC PRESENTATIONS

Executive Board Member Duncan MacIntosh, Lecturer, “De-Weaponizing Incivility & Disinformation,” Halifax Public Library’s Media Literacy Week, November 6, 2018

Executive Board Member Duncan MacIntosh, Panelist, “Big Thinking – The Social Implications of Artificial Intelligence,” Dalhousie University, November 14, 2018

Faculty Director Claire Finkelstein, Presenter and Panelist, Sovereignty and the New Executive Authority, Harvard Law School Book Talk, Harvard Law School, March 13, 2019

Faculty Director Claire Finkelstein, Panelist, Is Russia Undermining Democracy in the West?, The Andrea Mitchell Center for the Study of Democracy, University of Pennsylvania, March 14, 2019

Faculty Director Claire Finkelstein Panelist, Security and the Autonomous Future, Spring 2019 Symposium, Penn State Center for Security Research and Education (CSRE) at Penn State Law, April 4-5, 2019

Faculty Director Claire Finkelstein, Panelist, Sovereignty RIP, University of Pennsylvania Faculty Working Group on Concepts, Ideas, and Discourses, April 29, 2019

Faculty Director Claire Finkelstein and Executive Board Member Stephen Xenakis, Panelists, Legal and Psychological Perspectives on National Security, IAA’s Academic Affairs and Wharton Global Research and Consulting, University of Pennsylvania, May 27, 2019

Faculty Director Claire Finkelstein, Panelist, Autonomous Moral Reasoning, Trusted Autonomous Systems Conference, Oxford University, May 2019



*Brig. General Stephen Xenakis (Ret.), M.D., CERL Executive Board member*



*Prof. Duncan MacIntosh, CERL Executive Board member*



## 2019 CERL SUMMER INTERNSHIP PROGRAM

CERL's Summer Internship Program provides an ethics and rule of law foundation for students interested in pursuing a career or further studies in the national security area. For eight weeks during summer 2019, 15 graduate and law students from the University of Pennsylvania and other schools participated in this unique academic program.

Ten teams were formed to work on research and writing projects and conference planning in such areas as technology and the rise of autocracy, ethical challenges of new weaponry, women in national security, and climate change in the Arctic and related national security issues. In addition, there were special collaborations with the Knight First Amendment Institute concerning pre-publication review, and with *The New York Times* pertaining to freedom of information (FOIA) requests. Students also met with outside experts each week on a variety of topics. There were two guest speaker series: Lunch Lecture, which focused on substantive developments, and Professional Development, which introduced students to national security career options. The internship culminated with presentations of the interns' findings at the "summer intern soiree."



*Top row from left: Jon Blomberg, Alex Rojavin, Theo Wilson, Natasha Spreadborough, William Meade, Emmett Orts*

*Middle row from left: Noman Quandri, All Lauren Forbes*

*Bottom row from left: Nicholas Portillo, Jesse Hamilton, Sherry Tseng, Kathryn Farrell, Mónica Pellerano, Nathan Riehl*





*Guest speaker Mr. Ben Freeman, Director of the Foreign Influence Transparency Initiative at the Center for International Policy*



*Guest speaker Mr. Scott Shane of The New York Times and Prof. Claire Finkelstein*



*Interns Natasha Spreadborough and Emmett Orts at a lunch lecture*

### **Lunch Lecture Series**

- Defense Procurement 101, by Charles Blanchard, partner, Arnold & Porter
- National Security and the Challenge of New Weaponry, by Prof. Kevin Govern and Brig. General (Ret.) Stephen Xenakis, M.D., both CERL executive board members
- Appendix M of the Army Field Manual on Interrogations, by Scott Shane, national security reporter for *The New York Times*
- Foreign Agents Registration Act (FARA), by Ben Freeman, Director of the Foreign Influence Transparency Initiative at the Center for International Policy; Nick Robinson, Legal Advisor, International Center for Not-for-Profit Law (ICNL); and Sean Carter, partner at Cozen O’Conner and CERL executive board member
- Autocracy and Technology, by Jacques deLisle, Stephen A. Cozen Professor of Law & Professor of Political Science, University of Pennsylvania
- National Security and Climate Change, by Mark Nevitt, Sharswood Fellow at Penn Law
- Autocracy and Technology, by Prof. Shawn Turner, CNN national security analyst and CERL executive board member, and Eugene Kiely, Director of FactCheck.org
- Threat Escalation and Anticipatory Self Defense, by John Burroughs, Executive Director, Lawyers Committee on Nuclear Policy; and Jules Zacher, attorney and CERL executive board member



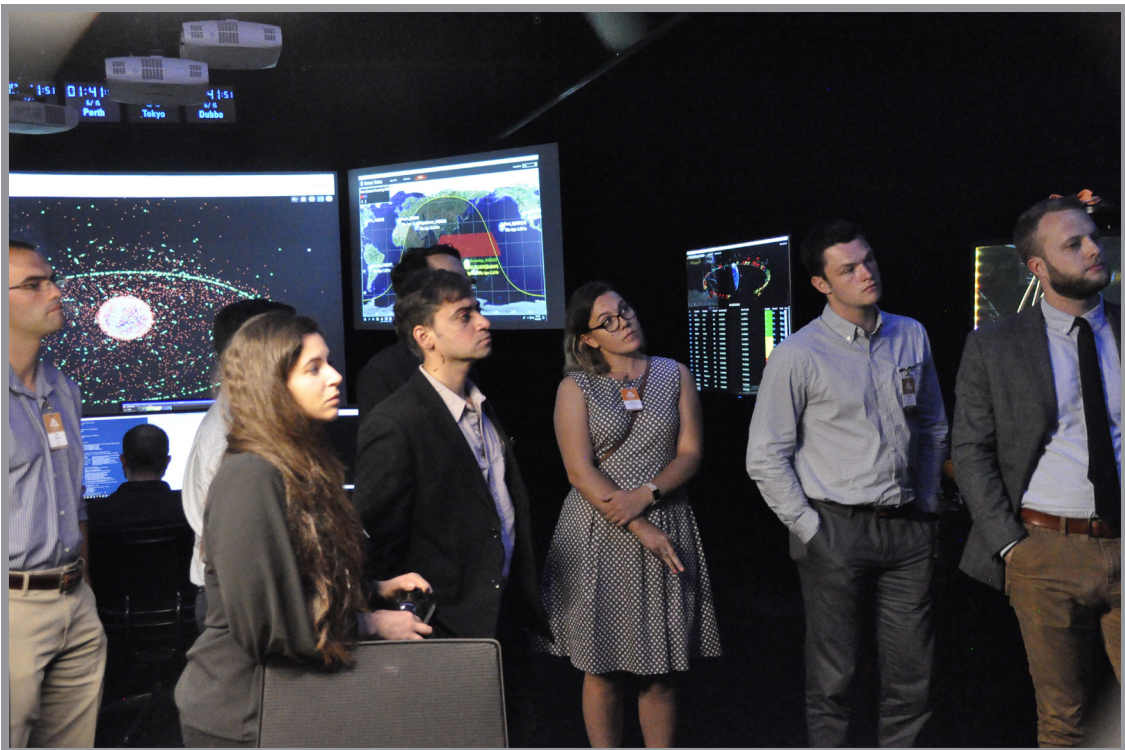
*Interns with guest speaker Brig. General John Baker, U.S.M.C. Chief Defense Counsel for U.S. Military Commissions, Guantanamo Bay*  
*Top row from left: Theo Wilson, Matthew Estes, Nathan Riehl, Alex Rojavin, Emmett Orts, Jon Blomberg, William Meade*  
*Middle row from left: Jesse Hamilton, Natasha Spreadborough, Mónica Pellerano, Nicholas Portillo*  
*Bottom row from left: CERL Senior Fellow Christopher Jacobs, Brig. General John Baker, Sherry Tseng, Kathryn Farrell, All Lauren Forbes, Noman Quandri*

### **Professional Development Series**

- George Croner, Senior Fellow, Foreign Policy Research Institute (FPRI), and former principal litigation counsel, Office of General Counsel at the National Security Agency (NSA)
- Steven B. Kantrowitz, attorney, Thomson, Rhodes & Cowie, P.C.
- Michael Levy, Chief, Computer Crimes, U.S. Attorney's Office for the Eastern District of Pennsylvania, and Penn Law Adjunct Professor
- Paul Graziani, Chief Executive Officer and co-founder of Analytical Graphics, Inc. (AGI)
- Brig. General John Baker, U.S.M.C., Chief Defense Counsel for U.S. Military Commissions, Guantanamo Bay
- Raymond duBois, Senior Advisor, Center for Strategic and International Studies (CSIS)



*Interns visit Analytic Graphics, Inc.*



*From left: William Meade, Mónica Pellerano, Noman Quandri, Natasha Spreadborough, Emmett Orts, Theo Wilson*



*Interns Natasha Spreadborough, Mónica Pellerano, and Nathan Riebl presenting their findings at the “soiree”*



*Interns Nicholas Portillo, Sherry Tseng, and Theo Wilson presenting their findings at the “soiree”*



*From left: Intern Noman Quandri, Mr. Raymond duBois, and Mr. Stephen Sheller, CERL Advisory Council member*



*Center: Intern Alex Rojavin with (left) Mr. Daniel Medina and (right) Mr. Matthew Shabat, both from Glasswall Solutions, Mr. Rojavin's internship sponsor*



*Mr. Jules Zacher, CERL Executive Board member and internship sponsor*

## WHAT CERL INTERNS HAD TO SAY ABOUT THE SUMMER PROGRAM....

“I could not have imagined a more enlightening experience than the CERL Summer Internship Program. As a captain in the U.S. Army, my hope was to return to my military career with a plethora of new perspectives on the challenges to national security that we face today. The interdisciplinary and diverse composition of both the intern cohort as well as the impressive guest speaker lineup provided just that. I have no doubt that the CERL internship will allow me to move forward as a better student, Army officer, and citizen.”

**Nathan Riehl, M.A. Candidate in Philosophy**  
*University of Pennsylvania*

“The CERL Summer Internship Program is an unparalleled opportunity for professional engagement and personal development. The research that was conducted on the legal and ethical issues of national security was greatly enhanced by the interdisciplinary nature of the research teams. These teams included law students, philosophy doctoral candidates, and international relations master’s candidates, among others. The projects were further augmented through the unique opportunity to work alongside leading experts, including generals, civilian practitioners, think tank experts, and national security lawyers. The program strengthened my own critical thinking ability concerning the legal and ethical implications involved in national security, and I developed a high regard for the important work being undertaken at CERL.”

**Emmett P. Orts, M.A. Candidate**  
*Georgetown’s Center for Security Studies*

“My experience at CERL was as challenging as it was educational. The diversity in expertise and incredible talent of the cohort is made evident in the highly rigorous and comprehensive research produced. I really appreciated and benefited from not only the conversations I had with my colleagues, but also by the eminent academics and practitioners who we had the pleasure to host. It was an honor to have had the opportunity to contribute to the CERL’s mission, and I intend to continue working towards the promotion of ethics and the rule of law.”

**Mónica Pellerano, M.A. Candidate of Law and Diplomacy**  
*The Fletcher School*

“Participating in CERL’s Summer Internship Program was one of the most gratifying experiences of my academic career. The research topics, guest speakers, and projects all contributed to this unique program. Each week, the interns focused on important aspects of national security, such as torture, autonomous weapons, and gender equality and the military. Subject matter experts came to reinforce our weekly readings and discussions. They were fantastic and certainly contributed to the learning experience. Finally, the projects we worked on were relevant, well-thought-out, and gratifying. I encourage anyone interested in national security to apply — you won’t regret it!”

**Jesse Hamilton, Ph.D. Candidate in Philosophy**  
*University of Pennsylvania*

“I am incredibly thankful that I had the opportunity to work at the Center for Ethics and the Rule of Law after my 1L year. It was an enriching experience that allowed me to research and write about international issues while working with graduate students in law, public policy, national security, and philosophy.”

**Jon Blomberg, J.D. Candidate**  
*University of Pennsylvania Law School*

“My summer at CERL was transformative in solidifying my objective of becoming a lawyer. I loved the opportunity to finally work with lawyers and law students. The internship introduced me to national security policy from a legal perspective, and while I’ve always been interested in human rights, I’m now interested in the intersection of human rights advocacy and national security and hope to pursue this subject in law school and as a lawyer.”

**Theo Wilson, Master of Public Affairs Candidate**  
*Woodrow Wilson School of Public and International Affairs, Princeton University*

## **2019-2020 CERL EVENTS**

**Book Talk – September 17, 2019**

*Truth in Our Times: Inside the Fight for Press Freedom in the Age of Alternative Facts*  
by David McCraw

**Symposium – September 26, 2019**

**Ethical Challenges in the Development of New Weaponry**

**Book Talk – October 10, 2019**

*An Innocent Bystander: The Killing of Leon Klinghoffer*  
by Julie Salamon

**Symposium – October 22, 2019**

**Violence Against Women and the U.S. Military**

**Conference – November 21-22, 2019**

**Autocrats' Tech Assault and Democracy's Response**

**Book Talk – December 5, 2019**

*The Lands in Between: Russia vs the West and the New Politics of Hybrid War*  
by Mitchell Orenstein

**Conference – December 6-7, 2019**

**Hybrid Threats in the Grey Zone: Mapping the Terrain**

**Symposium – February 7, 2020**

**Gender and National Security: Spotlight on Women, Peace and Security Initiatives**

**Book Talk – February 27, 2020**

*Facts and Fears: Hard Truths from a Life in Intelligence*  
by James R. Clapper

**Book Talk – April 2, 2020**

*War by Agreement*  
by Daniel Statman and Yitzhak Benbaji

**Conference - April 24-25, 2020**

**Presidential Communications and Threat Escalation in a Nuclear Age**



## **CERL BENEFACTORS AND SPONSORS**

### **CUMULATIVE CONTRIBUTIONS (2012-PRESENT)**

#### **\$50,000 and above**

- Pamela and William Craven Charitable Fund
- Captain Robert G. Fuller, Jr, Esquire., JAGC, USNR (Ret.)
- Heather and Paul G. Haaga, Jr.
- The Windover Foundation

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- Symantec Corporation
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- The Carol and Lawrence Zicklin Center for Business Ethics Research, The Wharton School

#### **\$10,000 to \$19,999**

- The Barnes-Wall Foundation
- Canada Defence Engagement Grant
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- Yasmina Moukarzel and John Giordano
- National Attorneys General Training & Research Initiative

#### **\$5,000 to \$9,999**

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- Michael Finkelstein
- Glasswall Solutions
- The McNulty Leadership Program, The Wharton School
- Middle East Center, University of Pennsylvania
- Penn Global, University of Pennsylvania
- Shawn Turner

#### **\$1,000 to \$4,999**

- Tulio Albuquerque
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- Journal of International Law,  
University of Pennsylvania Law School
- Duncan MacIntosh
- Christopher Morris Fund
- Secure World Foundation
- Villanova University Ethics Program
- John and Eileen Welsh
- Brigadier General Stephen Xenakis, M.D.,  
U.S. Army (Ret.)



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