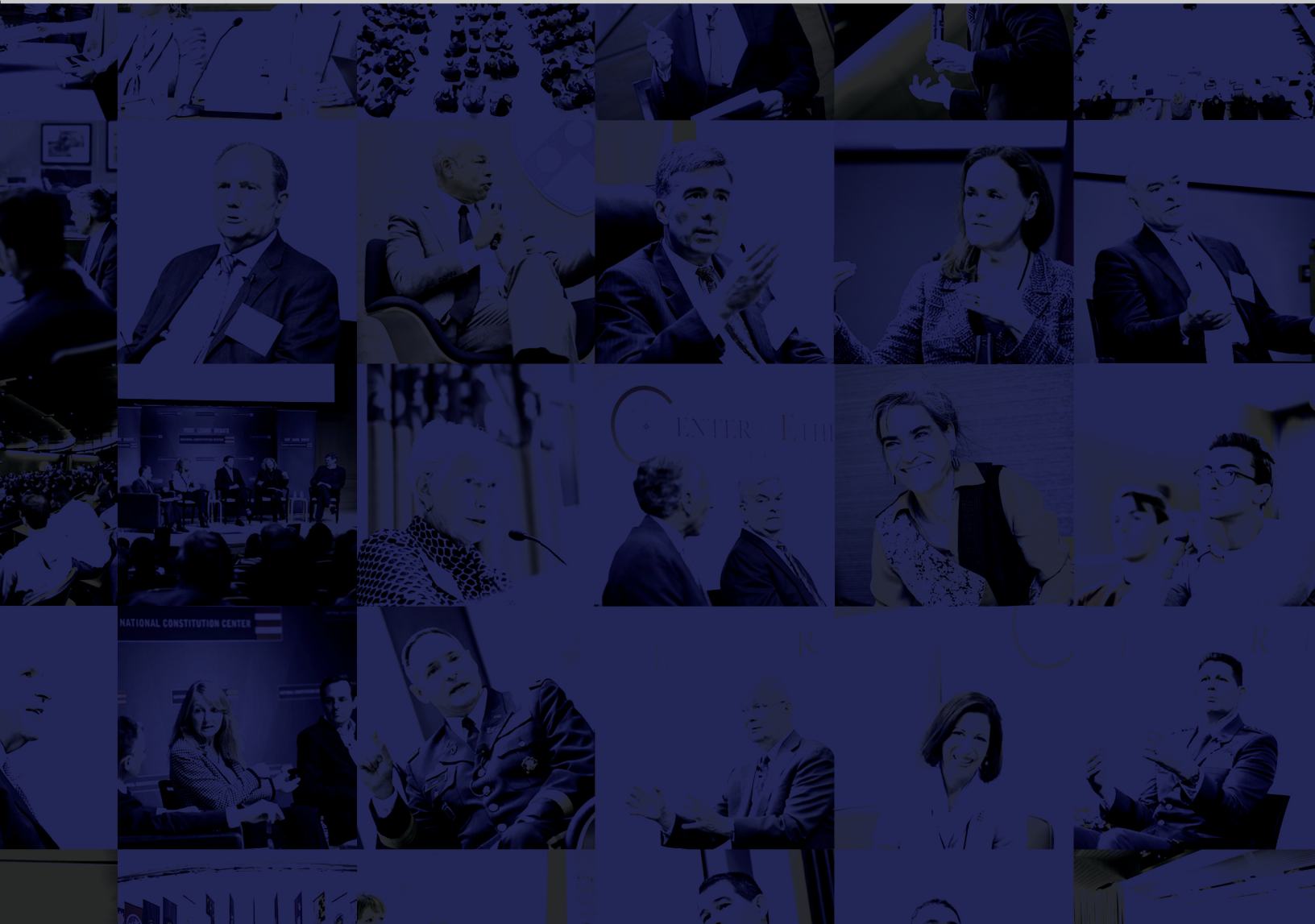


Center for Ethics  
and the Rule of Law  

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UNIVERSITY of PENNSYLVANIA



**Annual Report 2021-2022**  
*Celebrating 10 Years*

















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Front cover: Photos of CERL over the years with thanks to an excellent team of photographers, including Fotobuddy Photography and Kyle Cassidy.  
April 2023



## ABOUT CERL

CERL is a non-partisan, interdisciplinary institute dedicated to preserving and promoting ethics and the rule of law in national security, warfare, and democratic governance. Affiliated with the Annenberg Public Policy Center at Penn, CERL draws from the study of law, philosophy, and ethics and unites scholars, policymakers, and legal practitioners to answer the difficult questions that arise in times of national dilemmas and conflict.

CERL's conferences and symposia focus on some of the most daunting issues facing our country and the world. Academics, legal experts, intelligence officials, journalists, public servants, and private sector professionals convene to engage in discussion and analysis, produce papers, identify needed policies and actions, and issue recommendations. CERL enjoys a particularly constructive partnership with the armed services and collaborates with the private sector's defense industry. It also partners with renowned public interest organizations and academic centers.

CERL also conducts ethics and policy briefings; drafts and disseminates policy papers; publishes volumes as part of an ethics, national security, and rule of law book series; presents book talks with high-profile authors; participates in podcasts; and engages with national and international media. CERL's summer internship program focuses on fostering the next generation of national security professionals through research, writing, and conference planning to help ensure their future perspectives and decisions are ethical and grounded in the rule of law.

Since 2012, CERL has been raising public consciousness and influencing policy through varied activities that tackle serious and often complex threats to or violations of the rule of law. CERL does this to help academia, government, and the public cultivate a clearer understanding of the rule of law and play a role in the preservation of our country's democratic principles and institutions.



*Kathleen Hall Jamieson, Elizabeth Ware Packard Professor of Communication and Director of the Annenberg Public Policy Center at the University of Pennsylvania, welcomes participants of a two-day conference entitled “The Future of Guantánamo Bay: Recovering the Rule of Law in the Detention Facility and the Military Commissions,” held from November 11-12, 2021.*





## LETTER FROM THE FACULTY DIRECTOR

January 2023

Dear Friends of CERL,

August 2022 marked the ten-year anniversary of the founding of the *Center for Ethics and the Rule of Law*. Now in its eleventh year in operation, we are proud to celebrate the center's many accomplishments and milestones over the past decade. Since its inception in 2012, CERL has been at the cutting edge of efforts to analyze U.S. national security practices for their fidelity to rule of law values and their protection of democratic norms. By contributing to the thoughtful, interdisciplinary exploration of foundational questions in national security, CERL has become a highly respected voice in academic and policy circles alike.

In the past decade, CERL has hosted over 74 public events and 22 multi-day conferences on issues of critical importance in the national security field. The center has published 11 edited volumes as part of an ongoing collaboration between Oxford University Press and CERL designed to address abiding questions at the intersection of national security, moral and political philosophy, and practical ethics. Our blog, launched in 2015 to house the kind of robust conversations we are proud to facilitate, has over 95 posts to date. We are especially proud to report that over 100 students have participated in the CERL Summer Internship Program or in other CERL internship opportunities since the center's founding.

CERL owes its success to the energy and dedication of its people—to our program participants, researchers, partners, and staff who have worked together over the past 10 years to continue CERL's mission of preserving and promoting the rule of law in national security, warfare, and democratic governance. We have been fortunate to attract dedicated individuals to our Executive Board, Affiliated Faculty, and Advisory Council, as well as to continue to draw a wide array of interdisciplinary scholars and practitioners to our conferences and other events.

As we celebrate our accomplishments, we must also acknowledge the challenges facing our country and the global community. Democratic governance is under assault from both internal and external pressures. Here in the United States, trust in longstanding institutions of democracy has diminished as the partisan politics that divide us have intensified. Abroad, it is now nearly a year since Russia's invasion of Ukraine, which is the most significant military conflict on the European continent since the Second World War. The Ukraine conflict has killed thousands, displaced millions of refugees across Europe, and exposed evidence of the commission of Russian war crimes on a massive scale. With the United States still struggling with its own ignominious chapter of torture in the war on terror, there is a critical need to preserve and promote rule of law values in transnational conflict and to bring greater international attention to the law of armed conflict.

In the spring of 2021, CERL formed a Working Group to consider the thorny legal and ethical challenges arising from the continued detention of individuals held at Guantánamo in the War on Terror. Amid renewed attempts to shutter the GTMO detention facility, the Working Group developed a 13-point package of recommendations for closing the prison and addressing the legal complications relating to the continued detention of suspected terrorists and efforts to bring those detained to justice. Ahead of a Dec. 2021 Senate Judiciary Committee hearing on GTMO, CERL submitted a statement for the record that contained these 13 recommendations for Congress and the Biden administration.

CERL's 2021-2022 calendar of events featured several programs on issues related to restoring the rule of law in the wake of America's 20-year war on terror. The center opened the academic year with a two-day conference entitled "The Future of Guantánamo Bay: Recovering the Rule of Law in the Detention Facility and the Military Commissions" focused on assessing and refining the draft report produced by the GTMO Working Group. The center hosted several follow-on events—including a public panel featuring the voices of former GTMO detainees and a public program at the Georgetown Law Center on the costs and consequences of the post-9/11 torture program—to build on the momentum and ideas presented during the conference.

CERL also held three book talks with prominent authors, as well as two roundtable discussions and one public panel on the ongoing war in Ukraine. In our virtual-only public panel, CERL's experts in national security and international law discussed the moral, legal, and tactical issues arising from Russia's invasion of Ukraine and the brutal attacks on civilians and civilian infrastructure.

This past summer, CERL was delighted to resume its in-person summer internship program after two years of virtual programming. As part of CERL's commitment to equipping the next generation of national security professionals with an ethics and rule of law foundation, the center welcomed students from a diverse set of fields and universities for a nine-week program focused on four distinct projects: domestic violent extremism and the threat to U.S. national security; war crime trials, humane interrogation, and application of the Méndez Principles; the ethical and legal significance of super soldiers; and Ukraine war crime accountability.

We express our sincerest thanks to the Annenberg Public Policy Center of the University of Pennsylvania for its generous operational, administrative, and financial support, as well as to the donors and Executive Board members that help sustain the important work of the center.

CERL is honored that so many of you have joined our efforts over the past decade to protect and preserve the rule of law, and we hope you will continue to engage with and support us in the coming years. With excitement and gratitude, we look ahead to another 10 years of educating students, professionals, and the general public about what it means for a society to be governed by ethical principles and the rule of law.

Sincerely,

Claire O. Finkelstein  
CERL Faculty Director  
Algernon Biddle Professor of Law and Professor of Philosophy  
University of Pennsylvania



## LETTER FROM THE BOARD CHAIR

January 2023

Dear Friends,

As my 20 years as a senior employee of the Open Society Foundation was coming to an end, I was honored to be invited by the Executive Board of CERL and its faculty director, Professor Claire Finkelstein, to serve as chair of the board. I eagerly accepted the challenge. My entire career from university professor to senior government official to working with civil society organizations and think tanks has been devoted to defending the rule of law. CERL was an exciting next challenge.

I am struck by how the threats to democracy have intensified in the new millennium. Here at home and around the world, we have seen a surge in populist far-right political parties and leaders. Voters are electing strongmen who chip away at the bedrock of democratic systems by sowing distrust, promoting misinformation, and embracing nativist rhetoric. The refusal of a sizable number of individuals, including members of Congress, to accept the results of the 2020 election is part of this same worrying trend. These attempts to undermine democracy and the rule of law must be resisted.

Ukraine is now at the frontline of another battle to protect democracy and freedom against authoritarianism—the unlawful use of military force and the monstrous violations of the laws of war. Those guilty of these atrocities must be held to account. Putin’s existential threat to detonate a nuclear device if NATO intervened in the conflict has demonstrated the urgency of strengthening the 75-year norm against nuclear use.

Public and private efforts to preserve and promote the rule of law in national security as well as in democratic governance are of critical importance at the present moment in time. I am pleased to chair the board of an organization that is dedicated to this very mission and that has a proven track record of success in these efforts. Over the past 10 years, CERL has grappled with thorny national security issues through a nonpartisan and interdisciplinary lens. The center has produced reports on such issues as the Department of Justice and the rule of law under the tenure of Attorney General William Barr and the closure of the Guantánamo Bay detention facility, as well as hosted timely workshops on such topics as federal election reform, foreign interference, and the legal and ethical boundaries of nuclear policy and strategy.

I am pleased to play a leadership role in CERL’s continuation of this important work, deepening both expert and public awareness of ethical and rule of law values in national security, warfare, and democratic governance.

I hope you will continue to stay engaged with the center’s work and help us conduct the kinds of robust, interdisciplinary projects that are at the heart of a society grounded in ethics and the rule of law. We are grateful for your support.

Sincerely,

Morton H. Halperin  
Chair  
Executive Board  
CERL



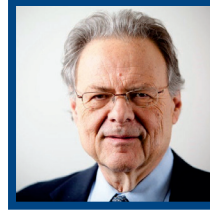
## EXECUTIVE BOARD

The Executive Board, Affiliated Faculty, Advisory Council, and CERL Team pages reflect current membership and staffing and do not necessarily reflect the membership and staffing from the 2021-2022 academic year.



**CLAIRE FINKELSTEIN**

*Algernon Biddle Professor  
of Law and Professor of  
Philosophy and Faculty  
Director of CERL*



**MORTON HALPERIN**

*CERL Board Chair; Board  
Member, J Street Education  
Fund and the  
ONE Campaign*



**JOHN BAKER**

*Brigadier General (Ret.),  
U.S. Marine Corps; Federal  
Public Defender,  
Western North Carolina*



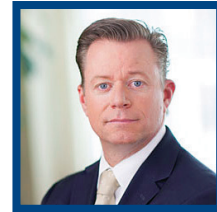
**HON. HAROLD BERGER**

*Of Counsel and Managing  
Shareholder Emeritus,  
Berger Montague*



**VIVIAN BERGER**

*Professor Emerita,  
Columbia Law School;  
Mediator and Arbitrator*



**SEAN CARTER**

*Member, Cozen O'Connor*



**WILLIAM CRAVEN**

*CERL Founding Executive  
Board Chair;  
Chair of Federal Systems  
(retired)*



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*Partner, Schnader Harrison  
Segal & Lewis LLP*



**STUART GERSON**

*Member of the Firm, Epstein  
Becker Green; Former Acting  
Attorney General of the United  
States; Founding Member,  
Checks & Balances*



**KEVIN GOVERN**

*Professor of Law, Ave Maria  
School of Law*



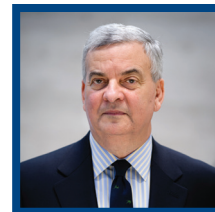
**ROBERT KELNER**

*Partner, Covington  
& Burling LLP*



**DUNCAN MACINTOSH**

*Professor of Philosophy,  
Dalhousie University*



**ALBERTO MORA**

*Immediate past  
Associate Executive Director  
for Global Programs,  
American Bar Association*



**CHRISTOPHER MORRIS**

*Professor Emeritus  
of Philosophy, University of  
Maryland*



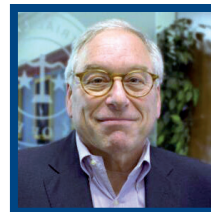
**JENS DAVID OHLIN**

*Allan R. Tessler Dean and  
Professor of Law, Cornell  
Law School*



**ELIZABETH RINDSKOPF  
PARKER**

*Dean Emerita, McGeorge School of  
Law; former General Counsel, CIA and  
NSA; Senior Adviser, Center for Strategic  
and International Studies, Defending  
Democratic Institutions Project*



**HARVEY RISHIKOF**

*Visiting Professor of Law,  
Temple University Beasley School of  
Law; Former Director of Military  
Commissions and Convening  
Authority at DoD; former Dean of  
National War College*



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*Professor of National Security  
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State University; CNN  
National Security Analyst*



**JOSEPH VOTEL**

*General, U.S. Army (Ret.);  
President & CEO, Business  
Executives for National  
Security (BENS)*



**PAUL WELSH**

*Vice President,  
Analytical Graphics, Inc.*



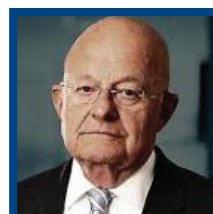
**STEPHEN XENAKIS, M.D.**

*Brigadier General (Ret.), U.S. Army;  
Advisor for Physicians for Human  
Rights and Center for Victims of  
Torture; Adjunct Professor, Uniformed  
Services University of Health Sciences*



**JULES ZACHER**

*Attorney, Jules Zacher, P.C.;  
Board Chair, Council for  
a Livable World; Board  
Member, Lawyers Committee  
on Nuclear Policy*



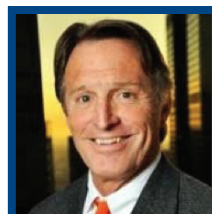
**JAMES CLAPPER  
EXECUTIVE BOARD  
EMERITUS**

*former Director of  
National Intelligence*



**DELL DAILEY  
EXECUTIVE BOARD EMERITUS**

*President, Dell Dailey  
and Family; former  
Ambassador-at-Large,  
Department of State*



**PAUL HAAGA, JR.  
EXECUTIVE BOARD  
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*former Chair, Capital Research  
and Management Company*



## AFFILIATED FACULTY



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**MITCHELL BERMAN**

*Leon Meltzer Professor of Law and Professor of Philosophy, University of Pennsylvania*



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*Professor of Law, University of Pennsylvania Carey Law School*



**RANGITA DE SILVA DE ALWIS**

*Senior Adjunct Professor of Global Leadership, University of Pennsylvania Carey Law School*



**STUART DIAMOND**

*Emeritus Practice Professor of Legal Studies and Business Ethics, The Wharton School, University of Pennsylvania*



**WILLIAM EWALD**

*Professor of Law and Professor of Philosophy, University of Pennsylvania*



**ERIC FELDMAN**

*Professor of Law; Professor of Medical Ethics & Health Policy, University of Pennsylvania*



**MICHAEL HOROWITZ**

*Director of Perry World House and Richard Perry Professor [On Service Leave], University of Pennsylvania*



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*Walter H. Annenberg Professor of History, University of Pennsylvania*



**KIMBERLY KESSLER FERZAN**

*Earle Hepburn Professor of Law and Professor of Philosophy, University of Pennsylvania*



**DANIEL KODITSCHKEK**

*Alfred Fitler Moore Professor, University of Pennsylvania School of Engineering and Applied Science*



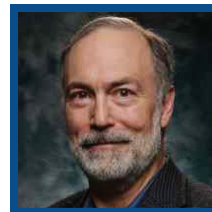
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*Penn Integrates Knowledge (PIK) Professor, Department of Anthropology, School of Arts & Sciences, Penn Museum, and Weitzman School of Design, University of Pennsylvania*



**JONATHAN MORENO**

*David and Lyn Silfen University Professor; Professor of Medical Ethics and Health Policy and of History and Sociology of Science, University of Pennsylvania*



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**KERMIT ROOSEVELT**

*David Berger Professor for the Administration of Justice, University of Pennsylvania Carey Law School*



**BETH SIMMONS**

*Andrea Mitchell University Professor in Law, Political Science and Business Ethics, University of Pennsylvania*



**ROGERS SMITH**

*Professor Emeritus, University of Pennsylvania*

## ADVISORY COUNCIL



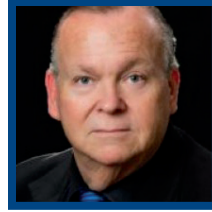
**GEOFFREY CORN**

*George R. Killam Jr. Chair  
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University School of Law*



**GEORGE CRONER**

*Senior Fellow, Foreign Policy  
Research Institute*



**MARK FALLON**

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



**ROBERT FULLER, JR.**

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



**DAVID GAUTHIER**

*Professor Emeritus, Philosophy  
Department, University of  
Pittsburgh*



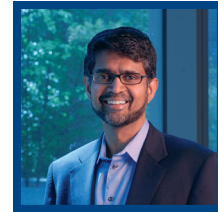
**DEREK GILLMAN**

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



**DAVID JONAS**

*Partner, Fluet Huber &  
Hoang PLLC*



**VIJAY KUMAR**

*Nemirovsky Family Dean of  
Penn Engineering, University  
of Pennsylvania*



**MARTIN LEDERMAN**

*Professor from Practice,  
Georgetown University Law  
Center*



**SHARON LLOYD**

*Professor of Philosophy,  
Law, and Political Science,  
University of Southern  
California*



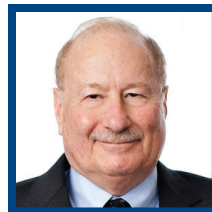
**JEFF MCMAHAN**

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



**MARY ELLEN  
O'CONNELL**

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



**STEPHEN SHELLER**

*Founding Partner, Sheller P.C.*



# THE CERL TEAM

## Leadership



**CLAIRE FINKELSTEIN**

*Algernon Biddle Professor  
of Law and Professor of  
Philosophy and Faculty  
Director of CERL*



**DAVID JOANSON**

*Executive Director*



**JENNIFER COHEN**

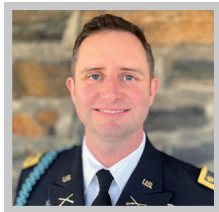
*Director of Engagement*

## Fellows



**ILYA RUDYAK**

*Senior Fellow*



**KYLE BROWN**

*Visiting Fellow  
Major, U.S. Army  
University of Pennsylvania  
Philosophy Department (M.A. '24)*



**KATHRYN STELLATO**

*Center Coordinator*

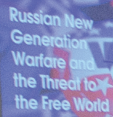
## Student Staff



**JOE DANGTRAN**

*University of Pennsylvania  
Carey Law School (J.D. '24)*





Russian New Generation Warfare and the Threat to the Free World

Thursday, November 1, 2018  
4:30 - 6:00 PM

Lieutenant General H. R. McMaster

Penn Law

Penn Law

CENTER for ETHICS and the RULE of LAW  
UNIVERSITY of PENNSYLVANIA



# IMPACT BY THE NUMBERS

- 100+ Student Internship Participants
- 90+ Blog Posts
- 70+ Public Events
- 22 Multi-Day Conferences
- 11 Reports & Policy Papers
- 10+ Briefings
- 11 Oxford University Press Volumes
- 8 Filings



Center for Ethics  
and the Rule of Law  
UNIVERSITY of PENNSYLVANIA



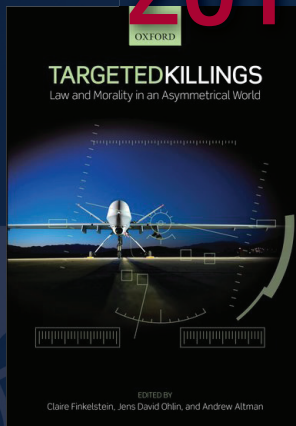
# 2011



On April 14-16, 2011, over 30 experts gathered for a conference entitled "Using Targeted Killing to Fight the War on Terror." Co-sponsored by the University of Pennsylvania Law School and the Jean Beer Blumenfeld Center for Ethics of Georgia State, the conference addressed such questions as: What is targeted killing in a military context, and what is the theory under which such killings may be permissible? The discussions set into motion the development of CERL as a hub for interdisciplinary conversations on the ethical dimensions of national security policy.

**Pictured:** Prof. Kevin Govern, member of the CERL Executive Board, engages in discussion with conference participants

# 2012



In 2012, *Targeted Killings: Law and Morality in an Asymmetrical World* became the first in a collaborative series of edited volumes between Oxford University Press and CERL designed to address abiding questions at the intersection of national security, moral and political philosophy, and practical ethics. The volume, which problematizes the legal and moral basis for the use of targeted killings, was edited by Claire Finkelstein, Jens David Ohlin, and Andrew Altman. The title has sold over 1,100 copies since its publication and continues to receive regular usage online. In 2021, the digital version was accessed at a rate of 70% above the average for other law monographs on OUP's online platform.



On July 1, 2012, with the generous support of William and Pamela Craven and then-Law School Dean Michael Fitts, Professor Claire Finkelstein founded CERL at the University of Pennsylvania Law School.

**Pictured (from left):** Mr. William Craven, Prof. Claire Finkelstein, and Mrs. Pamela Craven

# 2013



CERL launched its inaugural summer internship program in 2013, hosting two talented students from the Ave Maria School of Law. Interns worked under the supervision of CERL leadership to research issues critical to national security law and policy. Since its inception, CERL has hosted over 100 student interns thanks to generous sponsors including CERL Executive Board Member Jules Zacher and the Cozen O'Connor Foundation.

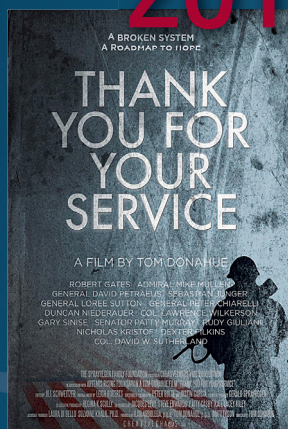
**Pictured:** Intern Laurenne Babayan ('17) presents at CERL's annual summer soiree



Mr. John "Chris" Inglis, former Deputy Director of the National Security Agency, joined CERL's conference, "On the Very Idea of Secret Laws: Transparency and Publicity in Deliberative Democracy," from November 22-23, 2013, considering the topic of private laws against the backdrop of Edward Snowden's NSA leak. A member of the ACLU team at the forefront of litigation relating to NSA surveillance was also in attendance, contributing to the kind of robust interdisciplinary exchange CERL is proud to facilitate.



# 2016



CERL partnered with film producer Carla Solomon and Law School Board of Overseers member Nino Magliocco, to bring a film about combat trauma and moral injury called Thank You for Your Service to Penn Law on April 20, 2016. Following the screening, Director Tom Donahue joined a panel discussion and Q&A.

# 2017



In the spring of 2017, CERL and the Penn Museum hosted a conference entitled “The Preservation of Art and Culture in Times of War: New Frontiers in the Protection of Cultural Heritage.” In conjunction with this gathering, a 50-object exhibit opened at the Penn Museum focused on what is at stake when cultural heritage is destroyed in war-torn areas and what can be done to prevent further loss of cultural identities in the Middle East. Then Director-General of UNESCO Irina Bokova noted in a letter to Professor Claire Finkelstein that their fruitful discussions would “help to pave the way for additional attempts to solidify the moral and legal basis for protecting cultural heritage against deliberate destruction, and for bringing perpetrators to justice.”

**Pictured (from left):** CERL’s Professor Claire Finkelstein and Irina Bokova, then Director-General of UNESCO

# 2014



From November 21-22, 2014, CERL brought together distinguished scholars and practitioners from the academy, civil society, government service, and the military to engage in two days of constructive discussion and exploration of the moral and legal challenges posed by Autonomous Weapons Systems.

**Pictured:** CERL’s Prof. Claire Finkelstein introduces the keynote panel, “Should ‘Killer Robots’ Be Banned?”

# 2015



CERL’s conference on December 3-5, 2015, “Preventing and Treating the Invisible Wounds of War: Combat Trauma and Psychological Injury,” brought a wide array of mental health professionals, military lawyers, veterans, and veteran’s service providers to campus to discuss the unacknowledged costs of PTSD as a cost of war.



On November 3, 2017, CERL held its first briefing session with staff of a U.S. senator. Professor Claire Finkelstein, CERL Executive Board Member Stephen Xenakis, CERL Executive Board Emeritus Paul G. Haaga, Jr., and former CERL Research Director Carlton Haelig briefed members of Senator Angus King (ME)’s national security staff on the intersection of combat trauma and the opioid crisis, the need to revise or replace the Authorization for the Use of Military Force (AUMF), and the current state of military commissions.



On November 8, 2017, CERL hosted the first in a series of public programs featuring the authors of books that address pressing issues related to ethics, the rule of law, and national security. Conceptualized by former CERL Executive Director David Sadoff, CERL’s book talk series has grown to include over 20 authors, among them *Washington Post* reporter Craig Whitlock, former DNI Director James Clapper (pictured), and Vice President and Deputy General Counsel at *The New York Times* David McCraw.



# Celebrating

## 2018



On November 1, 2018, CERL welcomed former National Security Advisor and retired U.S. Army Lieutenant General H.R. McMaster, United States Army. H.R. McMaster delivered the 2018 Paul G. Haaga, Jr. Lecture in Law, Government, and Public Policy on the threat Russian new generation warfare poses to the free world and met with student members of the National Security Society, Veteran's Law Project, and Penn Law Vets (pictured).



### Dark money vs. the FEC: The battle for democratic independence

by Talya Djemal, Christopher Umanson,  
and Calvin Warner  
The Rule of Law Post

May 25, 18

CERL launched its blog, *The Rule of Law Post*, in November 2018, with a first contribution by Talya Djemal, Christopher Umanson, and Calvin Warner entitled "Dark money vs. the FEC: The battle for democratic independence." What started as the idea of several CERL summer interns evolved into a growing platform for timely analysis on national security, warfare, and U.S. governance topics.

## 2019



CERL's 15 summer interns conducted projects around such areas as technology and the rise of autocracy, ethical challenges of new weaponry, women in national security, and climate change in the Arctic, benefitting from 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.

**Pictured:** CERL's 2019 Summer Internship class with guest speaker Brig. General John Baker, then-U.S.M.C. Chief Defense Counsel for U.S. Military Commissions, Guantánamo Bay

## 2020



Michèle Flournoy, former U.S. Under Secretary of Defense for Policy (2009-2012), presented the 2019-2020 Haaga Lecture on February 11, 2020. In a "fireside chat" with Professor Claire Finkelstein, she discussed her experience devising front-line U.S. defense policy, her leadership in security strategy, and her role in developing new U.S. policy in line with domestic and international women, peace, and security efforts.



On March 12, 2020, the Annenberg Public Policy Center (APPC) and CERL announced their alliance to promote and strengthen the rule of law in democratic institutions. CERL transitioned its offices from the University of Pennsylvania Carey Law School to APPC, where the center



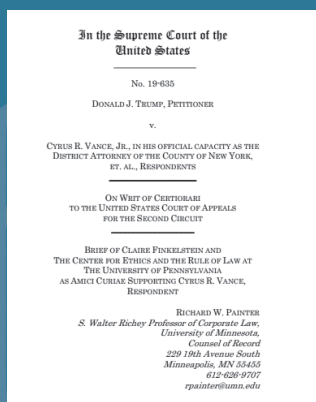
# 10 Years

 Center for Ethics  
and the Rule of Law  
UNIVERSITY of PENNSYLVANIA

2022

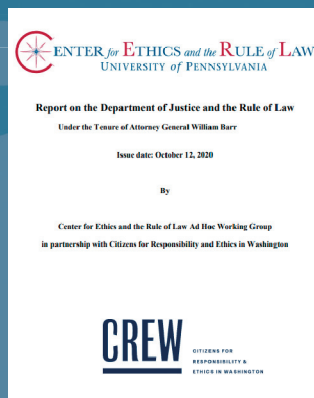
is based today and benefits from the great expertise and generous support of Professor Kathleen Hall Jamieson, her fellow researchers, and the APPC staff.

**Pictured:** APPC Director Kathleen Hall Jamieson and CERL's Prof. Claire Finkelstein at a 2019 CERL book talk on Dr. Jamieson's *Cyberwar: How Russian Hackers and Trolls Helped Elect a President*



Professor Claire Finkelstein and CERL, with Professor Richard Painter, S. Walter Richey Professor of Corporate Law at the University of Minnesota Law School, filed an amicus brief in the U.S. Supreme Court in support of the New York state attorney general, the appellee in *Trump v. Vance*. On July 9, 2020, the Court found in favor of the New York state attorney general, ruling that a president is in fact subject to criminal investigation and cannot assert executive privilege to block a subpoena issued by a grand jury.

In partnership with Citizens for Responsibility and Ethics in Washington



(CREW), CERL released on October 12, 2020, its "Report on the Department of Justice and the Rule of Law under the Tenure of Attorney General William Barr," a 267-page comprehensive report based on an extensive study of Barr's and DOJ practices and policies since Barr's confirmation in 2019. The report garnered significant attention among media and policy circles.

2021



The 2021 CERL Working Group on Guantánamo Bay submitted a statement to the U.S. Senate Judiciary Committee for its hearing, "Closing Guantanamo: Ending 20 Years of Injustice," on December 7, 2021. The statement outlined the working group's primary findings, including a set of 13 implementable steps that Congress and the Biden administration can take to close the Guantánamo Bay detention facility.



In partnership with APPC, CERL published its report, "Beyond Guantánamo: Restoring the Rule of Law to the Law of War," presenting a path toward restoring the rule of law that advances U.S. national security goals in the wake of the twenty-year war on terror. Members of the working group met with the Senate and House Judiciary Committees to present their findings ahead of a press conference at the National Press Club in Washington, D.C.

**Pictured:** Mr. Harvey Rishikof, co-chair of the report and member of the CERL Executive Board, at the National Press Club in Washington, D.C.



On September 28, 2022, CERL hosted the Hon. Jeh Johnson, former Secretary of the Department of Homeland Security, for a keynote address entitled "Is Violent Extremism a Threat to Democracy? Reflections on Current Challenges in U.S. National Security" as part of CERL's closed-door conference on the threat of domestic violent extremism. Secretary Johnson met with students of Penn Law Vets and Professor Claire Finkelstein's law class.

## TEN QUESTIONS FOR CERL'S FACULTY DIRECTOR AT YEAR 10

### Q: What inspired you to start CERL 10 years ago?

I had been at a conference at West Point that I was invited to as a criminal law scholar. I found it fascinating to talk to the Army JAG officers, who were present at the conference, about issues that were closely related to the criminal law questions I had been writing and thinking about; but this time from the standpoint of the Law of Armed Conflict—topics such as targeted killing and the concept of national self-defense, looking at how it might be the same or different from personal self-defense in a civilian context. I realized that academics, especially theoretically inclined academics like myself, had an awful lot to learn from military lawyers who thought about many of the same concepts but through a different lens. I also realized how important it was for academics to connect with practitioners around subjects of common interest to help guide the academic research that we were doing, and hopefully we could provide some assistance in clarifying concepts that military lawyers were dealing with, where academics might add some rigor from the standpoint of theory and logic.

I found that this cross-fertilization between academics and practitioners generalized. CERL's very first conference was on the topic of targeted killing. Over the course of the two days of conference meetings, I found that the academics, philosophers, legal theorists, and political scientists were learning a lot about the real-world issues that the military lawyers and other military personnel were dealing with, but that the reverse was also true. Even the seating of the participants became more integrated and less segmented by the end of the second day. I realized that we were helping to form alliances that were going to continue into the future and that we were forming collaborative relationships that were quite new, unusual, and even in some cases pathbreaking.

The theory behind the center was also that the world was struggling with profound ethical issues and dilemmas in the wake of Sept. 11th. The Rendition, Detention and Interrogation program had left a lot of ethical doubt both on the academic and the practitioner side. The revelation that U.S. officials had participated in any respect in atrocities was shocking to many individuals, especially those like myself, who had worked on topics like torture from a purely theoretical standpoint but who never thought we would see it in the United States in practice. I had been teaching about ticking-time-bomb cases my whole career but had never confronted an actual use of torture. I felt that a lot of the lawyers on the national security side were shaken to the core by what had happened in their environment and were wanting to talk about it as well as wanting to understand their own potential moral responsibility and the responsibility of those around them.



*Prof. Finkelstein moderates a 2018 keynote with H.R. McMaster, former National Security Advisor of the United States*

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*"I realized that we were helping to form alliances that were going to continue into the future and that we were forming collaborative relationships that were quite new, unusual, and even in some cases pathbreaking."*



For the first time in my experience, I saw academics looking for a way to get involved—to go beyond the ivory tower, have impact in the real world, and start to turn their energies toward something that could produce tangible good in the world. We started doing conferences, producing volumes, and producing other written work, like briefing papers, that were targeting issues in the real world rather than [organizing] conferences of a purely theoretical nature, such as those I had been used to in academia up to that point. I found that there was an enormous receptivity to it.

The third leg of the stool was introducing students in my classes to this sort of work and witnessing the excitement they felt in learning the concepts through contact with the real world—whether it was in criminal law, national security or professional responsibility for lawyers—the excitement they felt meeting national security professionals and being able to ask them questions about the concepts they were learning that most of their professors probably were not that well suited to answer. I started bringing groups of students down to the Pentagon to do briefings with the Army JAG Corps.

I also started collaborating with other sectors of the military. We did a conference on the law of outer space, which was a collaboration with the Air Force JAG Corps. Such collaborations proved highly useful outside the military area as well. When we were studying the risk to cultural heritage in times of war, as motivated by the enormous losses in cultural artefacts in Iraq and Afghanistan during the War on Terror, I found a fruitful partnership with the Penn Museum. In that interdisciplinary environment, we proposed mounting an exhibit to run in conjunction with an academic conference, and eventually produced a volume in our Oxford University Press (OUP) series. Students involved in that effort had an extraordinary experience, and one of them has continued to work in the area of cultural heritage preservation and international law and eventually was able to do an internship at the Penn Museum based on her exposure to the topic through CERL.

On the academic side, I learned that these cross-disciplinary partnerships with practitioners made my own work and the work of the center more meaningful. But I also found that it made my teaching more meaningful, because I was able to bring cutting-edge work in promoting rule of law values in various fields home to the students in a new way.

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*“On the academic side, I learned that these cross-disciplinary partnerships with practitioners made my own work and the work of the center more meaningful. But I also found that it made my teaching more meaningful, because I was able to bring cutting-edge work in promoting rule of law values in various fields home to the students in a new way.”*

**Q: In seeking to preserve and promote the rule of law, CERL has grappled with a number of timely issues impacting a diverse set of actors. Could you speak about the individuals or communities CERL has served over the years?**

In addition to the various JAG Corps with whom we worked, CERL also started to develop relationships with other national security practitioners, both inside and outside the Pentagon. Some of the issues around the ethics of procurement we were examining led naturally to a project we did with Lockheed Martin Corporation,

which was a real eye-opener for me, and I think for them as well. We also did a project with the NSA, connecting them with the ACLU under circumstances in which the two were in litigation surrounding the metadata program.

We have worked with media organizations, such as *The New York Times*, to engage in FOIA litigation around national security matters to enhance transparency. We have worked with the Knight First Amendment Institute that works on First Amendment issues. We have worked with Citizens for Responsibility and Ethics in Washington (CREW) to produce a first-rate report that came out of a working group of academics and professionals to address rule of law concerns in the Justice Department. In each of these cases, there is a common theme, which is the three legs of the triangle—the academics, on the one hand, the national security professionals, on the other, and students, on the third.

Students benefit enormously, not just from interacting with both the academics and the national security professionals but from observing the interaction between them. I think that is a particularly exciting kind of learning experience for the students, as well as involving them in producing documents and conferences and other outputs that are real-world and potentially impactful. In the CERL Summer Internship, the students also hear regularly from national security practitioners at the highest level who speak to them not only about their work but also about how to build careers in national security. We are now launching a project to enhance the number of underrepresented minorities and women in national security, which is an area that has lagged behind the increasing diversity of other fields. We believe this is critical not only for equal opportunities for Penn students, but also for the excellence of the national security sector and how the United States responds to a host of highly sensitive questions both at home and abroad.

At some point in 2017, CERL began to broaden its mandate from looking at national security and ethics issues more narrowly conceived to looking at democratic governance, election security, domestic violent extremism, and executive authority as included within the national security questions we were studying. And indeed, the threat to democracy is now the most significant national security threat the world currently faces. It is particularly worrisome to observe the lack of commitment to democracy among young people, the disinformation designed to weaken democracy, and the lack of understanding of important concepts like the peaceful transition of power and the integrity of elections. It is clear that we could not continue to operate a national security and rule of law organization without looking at the specific threats to democracy.

The work that we have done in that area, I believe, has been some of the most impactful the center has addressed. Our two major reports—the report on the Justice Department under Bill Barr and the report on closing Guantánamo—have both had some real-world consequences. With Bill Barr, we know that soon after we filed our report, he did step down and at least Donald Trump believes there was a causal between the two, because he said so in one of his rallies. Maybe we helped to strengthen Bill Barr’s commitment himself to the peaceful transition of power and his willingness to stand up to Donald Trump when he came under pressure to support Donald Trump’s claims to have won the 2020 election. Amazingly, it turned out to be a lot easier to put pressure on Donald Trump’s attorney general to resign than it is to close Guantánamo. CERL’s report entitled *Beyond Guantánamo: Restoring the Rule of Law to the Law of War*, which we undertook with the Annenberg Public Policy Center (APPC), is one of the hardest projects CERL has ever addressed. We know that members of the administration are paying attention to this work, and we are proud of the contribution we have been able to make, in partnership with APPC, to the complex conversation about whether, and if so how, to close the detention facility.



*Prof. Finkelstein participates in CERL’s 2016 conference entitled “Producing Leaders of Character and Integrity.”*

**Q: There are differing conceptions of the rule of law. How do you define it?**

The most defining feature of the rule of law is that every person is subject to the law. It is this core idea that CERL highlighted in its *amicus* brief to the Supreme Court in the 2020 case *Trump v. Vance*. Chief Justice Roberts began his opinion in that case by saying that “In our judicial system, ‘the public has a right to every man’s evidence.’” And he closed it by saying that “no citizen, not even the President, is categorically above the common duty to produce evidence when called upon in a criminal proceeding.” That decision was a resounding affirmation of the rule of law. As the legal philosopher H.L.A. Hart emphasized, however, the idea that public officials are subject to the law is not enough to ensure a robust rule of law society. Public officials must also regard themselves as bound by the law, meaning that they must view themselves as ethically constrained by the values the law protects, core values such as equality and fair process. Officials should not treat the law as something to be avoided or circumvented. The point goes for lawyers too, whether in the public or private sector. Public officials, lawyers, and all those in a position of public trust should support a culture of respect for law and a normative commitment to its values.

How do we relate the concept of law to the concept of that internal commitment? That is through the notion of ethics. Ethics, in a sense, provides the mortar between the bricks of law so that we do not treat law as just a kind of formal requirement that we grit our teeth and bear, but we see it as instantiating a set of values.

It is the commitment to those values that we are trying to teach the students who come, say, through our summer internship program. We want them to understand that one’s commitment to the rule of law is partly a stance that one takes. It is not just about avoiding getting caught. It is about a true commitment to a set of ethical and legal principles that support our democracy and help to ensure that we live in a society guided by our values.

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*“Students benefit enormously, not just from interacting with both the academics and the national security professionals but from observing the interaction between them.”*

**Q: What makes CERL unique?**

CERL is unique because of the combination of academics with practitioners, where the practitioners are integrated into university life, as we hold our conferences and write our volumes. It is unique because of its distinguished Executive Board that does the hard work of creating and working with CERL staff to carry out our programs and advance our



mission of defending the rule of law. The Board is not just a funding source, as it is with many charitable organizations. CERL is also unique because it brings people of very different political orientations, different backgrounds, and different experiences together around a common ideal—the ideal of the rule of law. In addition, CERL is different from other national security centers because it looks at national security and democratic governance through a normative rather than through a descriptive lens. We are not, for the most part, attempting to predict national security policy; we are interested in guiding it. Finally, CERL is unique because of the incredible experience that our students have and the way that it tends to shape their careers and their future prospects. We find that again and again, with the 100 or so students that have come through our programs, it really does change their lives.

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*“Ethics, in a sense, provides the mortar between the bricks of law so that we do not treat law as just a kind of formal requirement that we grit our teeth and bear, but we see it as instantiating a set of values.”*

**Q: What are you proudest of in this 10-year span?**

If I had to pick just one thing, I would say I am proudest of the impact CERL has had on student lives. When I see people who have changed their life trajectories because of our programs and because of our work—and when I see that their civic commitments and own sense of value in their work are deepened, their sense of inspiration is heightened, and they feel they have a purpose to the work that they do—I feel we have done some good both for those students and for the country. I feel proud of the young lawyers or other student graduates that we have helped to launch in their careers—careers that are overwhelmingly oriented towards the public sector.

I also feel extremely proud of the collaborations that we have been able to foster—of the connections between professionals and academics as well as the working groups that we have been able to form that are truly interdisciplinary and look at things in a unique way. Finally, I am extremely proud of our OUP publication series. We have a unique interdisciplinary line of publications, and the volumes that we have produced are very highly regarded, both by academics and by national security professionals.

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*“We have a lot more work to do in trying to reach people for reasoned, civil, and engaged dialogue around democracy and its preservation as well as around national security topics where the heat is often greater than the light that those conversations shed. I think we are good at doing the reverse: shedding more light and reducing the heat.”*

to do that with our public programming. But the lack of real reasoned argument, the lack of civility, and the political strife in the country right now have grown considerably since I first formed the center 10 years ago, which tells me that we have a lot more work to do in trying to reach people for reasoned, civil, and engaged dialogue around democracy and its preservation as well as around national security topics where the heat is often greater than the light that those conversations shed. I think we are good at doing the reverse: shedding more light and reducing the heat. I want to continue to do that.

**Q: What caught you by surprise in leading the efforts of the center?**

It caught me by surprise how many people came to us, learned about the work, and called us wanting to be involved, and how spontaneous that was, especially in the beginning of the Trump administration.

On the downside, it has caught me by surprise how the values that are so foundational for the center and its work are not sufficiently widely shared across society and thus, how badly needed the work of educating the public is. We will continue

**Q: Talk about a conference, meeting, or conversation organized under the auspices of CERL that either changed or shaped your understanding of a critical issue.**

All of them have. I have learned so much about so many topics, from space law to PTSD to robotics and AI to preserving art and culture in times of war.

One that really stands out for me is the conference around intelligence practices with Chris Ingles, then the second command of the NSA. It struck me how much of a gap there was between the NSA and the ACLU and their true inability to understand the concerns and the motivations of each other. The NSA was focused on trying to keep America safe and felt that it was doing the only thing it could do to accomplish that: to detect foreign terrorists who might be, for example, in touch with Americans. The ACLU could not possibly understand how the NSA could be well-motivated in its conduct. I think, at the end of the second day of the conference, each side did understand better the perspective of the other one, and that was incredibly striking to me. I learned a lot about how important it is to dialogue around hot-button political and legal issues.



*From left: General Michael Hayden, former CIA and NSA Director, and Prof. Claire Finkelstein (2017)*

**Q: You dedicate so much time to CERL. What does it mean to you today?**

I am working to make CERL a permanent center, one that seems both a necessity for the university and for any university and one whose existence is just assumed, whether I am there or not. My biggest concern is that when I am no longer with CERL, for whatever reason, the center is still able to carry on and that it is less dependent on me. I am working to make myself irrelevant, but to make the ideas that CERL stands for and that it works on more permanent.

We also have to work on self-definition a bit because we handle an awful lot of different issues, and we have different types of projects. We need to work on clarifying what counts as a success in the work that we do and to prioritize projects so that we are clear on what we are aiming for and what our impact is. When you are working to close Guantánamo Bay, for example, you cannot treat actually closing that facility as the only measure of success. The prison camp

has now survived four administrations, despite a broad array of voices across the political spectrum, from the families of survivors to human rights groups, calling for its closure. It is difficult for any one report or center to find the definitive key to closing it. I also note that as the problems in the world have grown sharper, that has taken a toll on our operations and our focus, because there are so many things that demand our attention. There is so much in the space in which we work, so we need to continue to work on self-definition as we go forward and the center grows.

**Q: Where do you see CERL going in the next 10 years? Which collaborations would you like to explore in the coming years?**

I would like to see much more faculty engagement across the university. Ideally, CERL would be run not by one faculty member but by multiple faculty members involved with different stakeholders so that the collaboration between academics and national security professionals grows beyond the center. I would like to see it include a broad umbrella of different faculty members across the university who can see their own goals and their own work advanced by the national security professionals that they encounter. I would also like to see CERL's programming, or something similar to CERL's programming, better integrated into the University's teaching mission. In effect, CERL is teaching civics at a very high level to law students, graduate students, and some undergraduates. I would like to see civics education broadened across the board, but especially for law students for whom understanding civics is a critical part of their future professions.

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*"The threat to democracy is now the most significant national security threat the world currently faces."*

**Q: Which national security issues will define the next decade?**

The struggle to defend democracy is the abiding national security struggle that we face right now. You can see that not only at home with January 6, but in the conflict in Ukraine. Because Ukraine is a democratic nation that has been invaded by an autocratic nation, it is the proving ground for the survival of democracy in the face of very powerful autocratic forces. It is a hot war in Ukraine but a cold war everywhere else. Can democracy survive in the face of increasingly powerful autocratic forces? I think that is the number one national security issue that the world is going to face.



## REFLECTIONS FROM CLAYTON KEIR

### CERL Alum

Clayton Keir is a national security and foreign affairs professional who has worked in the Departments of Defense and State. His experiences in the field have taken him to job opportunities in the Middle East, Central Asia, and East Asia. Clayton received his bachelor's from Georgetown's School of Foreign Service and a master's degree from Georgetown's Security Studies Program before obtaining a law degree from the University of Pennsylvania. At the University of Pennsylvania, he specialized in national security, immigration, and election law. He externed at the U.S. Space Force before working as an associate specializing in election law at Ballard Spahr in Philadelphia. His next journey will take him to Japan as a Navy JAG.

**This interview was conducted on November 4, 2022.**

**Q: How did the experiences or skills you gained through CERL aid in your professional pursuits?**

Studying the law of armed conflict in Professor Finkelstein's class was essential for everything I did at Space Force and, in general, for looking into national security law. Getting the experience of submitting an amicus brief through CERL was great, both in terms of [putting it] on my resume and [having] the experience of submitting something to the Supreme Court.

Knowing what that process is, as well as what goes into an amicus brief, will be helpful for me in my career. The Supreme Court handles a number of cases in election law, so that is certainly something that will come in use for me as more election challenges go up to the higher appellate courts and the Supreme Court.

**Q: What advice do you have for other students engaged with CERL?**

I would encourage students to be engaged with CERL and to take [National Security Law]. Professor Finkelstein's network is surreal. The people are so high up, so impressive, and all very helpful too. [When] she had Michèle Flournoy, [former Under Secretary of Defense for Policy], come to put on an event, I spoke with her for a bit. It is not immediately apparent when you are at Penn Law that that network exists, so I would encourage people to fully immerse themselves in that network and do as many things [as possible to gain] exposure to these high-up luminaries in the U.S. government. It is an amazing set of opportunities to network that CERL and Professor Finkelstein make available.



## CONFERENCES AND SYMPOSIA



### **The Future of Guantánamo Bay: Recovering the Rule of Law in the Detention Facility and the Military Commissions**

November 11-12, 2021

## **The Future of Guantánamo Bay: Recovering the Rule of Law in the Detention Facility and the Military Commissions**

**November 11-12, 2021, Hybrid**

In partnership with the Annenberg Public Policy Center and the Middle East Center of the University of Pennsylvania, CERL convened academics, members of the military, and experts in national security, intelligence, human rights, and public policy to discuss a legal blueprint for shuttering the Guantánamo Bay detention facility. Among the participants were members of a working group convened by CERL in the summer of 2021 to consider the challenges posed by continuing operation of the U.S. prison in Cuba. Over the course of a two-day, closed-door conference, members of the working group engaged participants in debate and discussion around their core findings, which were later distilled into a package of policy recommendations for the Senate Judiciary Committee hearing on closing the prison, held on Dec. 7, 2021, and into a report that was published in September 2022. Due to COVID-19, the conference was held in a hybrid format with a combination of in-person and virtual participants.

### **KEYNOTE DISCUSSION**

Pulitzer Prize-winning journalist Spencer Ackerman joined CERL's Professor Claire Finkelstein for a conversation on his book *Reign of Terror: How the 9/11 Era Destabilized America and Produced Trump*.

### **CO-SPONSORS**



*CERL's Professor Claire Finkelstein delivers introductory remarks at Penn's Perry World House*





*Conference participant Mr. Stuart Gerson, Member of Epstein Becker Green and the CERL Executive Board*



*Conference participants Ms. Jennifer Elsea, Legislative Attorney at Congressional Research Service, in conversation with Mr. Benjamin Farley, former law-of-war counsel at the U.S. Department of Defense, Military Commissions Defense Organization*



*Conference participant Gregg Bloche, M.D., Carmack Waterhouse Professor of Health Law, Policy, and Ethics at Georgetown University Law Center*



*From left: Former CERL Summer Interns Claris Park, Isabelle Terranova, and Ashley Fuchs with student volunteer Brian Herskowitz (Penn Law, J.D.'23)*

Photo credit: Kyle Cassidy/  
University of Pennsylvania



## Moral, Legal, and Tactical Issues in the War in Ukraine

March 10, 2022

### Moral, Legal, and Tactical Issues in the War in Ukraine

March 10, 2022, Online

Russia launched its invasion of Ukraine in the early morning of February 24, 2022, with missile and artillery attacks across major cities including Kiev. Russian missile and rocket attacks in the days that followed led to mounting civilian casualties, destruction of civilian infrastructure, and a humanitarian crisis with an exodus of Ukrainian refugees seeking safety in Poland and surrounding countries. In an online-only event, CERL's experts in national security and the law of armed conflict discussed the latest developments in the war in Ukraine. CERL's Prof. Claire Finkelstein moderated.

#### Panelists



**General Joseph L. Votel**, General (Ret.), U.S. Army; President & CEO, Business Executives for National Security (BENS); member of the CERL Executive Board



**Colonel Yevgeny Vindman**, U.S. Army Colonel who served previously as the deputy legal adviser on the White House National Security Council



**Mary Ellen O'Connell**, Robert and Marion Short Professor of Law; Research Professor of International Dispute Resolution University of Notre Dame Law School; member of the CERL Advisory Council



**Moderator:**  
**Claire Finkelstein**, Algernon Biddle Professor of Law and Professor of Philosophy, University of Pennsylvania; CERL Faculty Director



**Harvey Rishikof**, Visiting Professor of Law, Temple University Beasley School of Law; member of the CERL Executive Board





*Prof. Mary Ellen O'Connell*



*Col. Yevgeny Vindman*



*Gen. Joseph Votel*



## The Legacies of Guantánamo: Twenty Years After Military Commission Order No. 1

March 23, 2022

### The Legacies of Guantánamo: Twenty Years after Military Commission Order No. 1

March 23, 2022, Hybrid

On the 20th anniversary of the issuance of Military Commission Order No. 1, promulgated by Donald Rumsfeld on March 21, 2002, CERL convened a panel on the failed military commissions process at Guantánamo Bay (GTMO). Panelists included Mark Fallon, then Interim Executive Director of CERL and former Deputy Commander of the Criminal Investigation Task Force (CITF) whose mandate was to probe the al-Qaeda terrorist network and bring suspected terrorists to trial, and three former GTMO detainees who each have detailed their experiences in searing memoirs—Mansoor Adayfi, Moazzam Begg, and Mohamedou Ould Slahi. The talk was hosted as part of Professor Claire Finkelstein's National Security Law Class and moderated by CERL Executive Board Member Brig. Gen. (Ret.) Stephen N. Xenakis, M.D., who served as a psychiatric and medical expert in numerous cases involving detainees at GTMO.



*Prof. Claire Finkelstein's National Security Class and members of the public engage with the in-person and virtual panelists*





*CERL Executive Board Member Brig. Gen. (Ret.) Stephen Xenakis, M.D., moderates the discussion*



*(Top row from left): Mohamedou Ould Slahi, author, writer in residence of NNT/Club Guy & Roni, and former GTMO detainee; Mansoor Adayfi, writer and former GTMO detainee; (Bottom row) Moazzam Begg, author, outreach director for CAGE, and former GTMO detainee*



*Mark Fallon, then Interim Executive Director of CERL, former Naval Criminal Investigative Service, Deputy Assistant Director and Chief Investigator for the Guantánamo Military Commissions*

Photo credit: Kyle Cassidy/University of Pennsylvania



## Reclaiming the Rule of Law: Guantánamo's Forever Prisoners and the Fate of Liberal Democracy

April 27, 2022

### Reclaiming the Rule of Law: Guantánamo's Forever Prisoners and the Fate of Liberal Democracy

April 27, 2022, Hybrid

The legacy of the post-9/11 torture program has corroded the credibility and international standing of the United States. At a time when the rule of law is under global assault, the United States ought to be its champion. CERL and Georgetown University Law Center held an event in Washington, D.C. to offer a bipartisan roadmap for closing one of the country's most ignominious chapters, as well as to consider lessons learned against the backdrop of Ukraine's efforts to investigate mass-scale war crimes.

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*From left: Elisa Massimino, Executive Director Human Rights Institute, Georgetown University Law Center; Colleen Kelly, September Eleventh Families for Peaceful Tomorrows; Jack Cloonan, Former FBI special agent – Bin Laden Unit; Panelists not pictured: Gregg Bloche, M.D., Carmack Waterhouse Professor of Health Law, Policy, and Ethics, Georgetown University Law Center; Charles A. Morgan, M.D. (Former Intel Officer – CIA Behavioral Science Staff); Susan Brandon, Former Research PM – High-Value Detainee Interrogation Group*

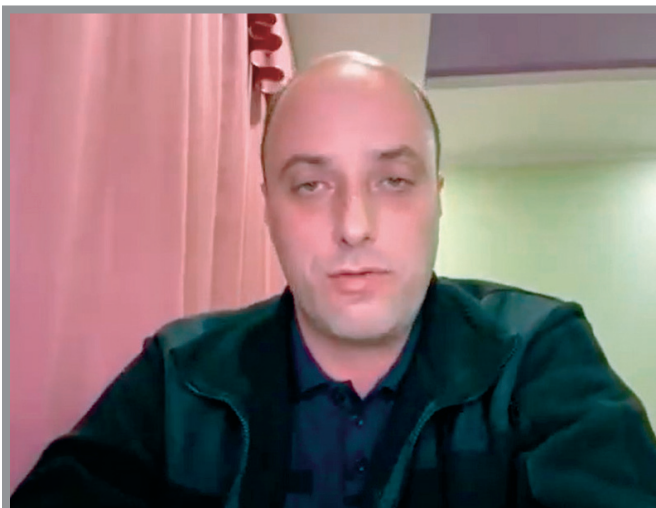




*Gregg Bloche, M.D., Carmack Waterhouse Professor of Health Law, Policy, and Ethics at Georgetown University Law Center*



*From left: Cathy Scott-Clark, author of *The Forever Prisoner* (Grove Atlantic, 2022), producer of *The Forever Prisoner* (HBO, 2021); Mark Fallon, then Interim Executive Director of CERL and former NCIS Deputy Assistant Director, Chief Investigator, Guantánamo Military Commissions*



*(On Zoom) Yuriy Belousov, Head of Department, Counterreaction to Human Rights Violations, Office of the Prosecutor General, Ukraine – Méndez Principles Advisory Council*



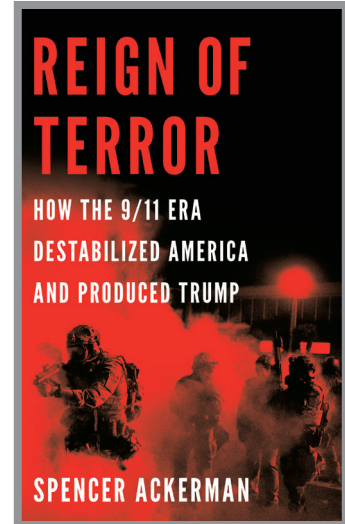
*CERL Executive Board Member Alberto Mora, then Associate Executive Director for Global Programs, American Bar Association and Director, ABA Rule-of-Law Initiative and former U.S. Navy General Counsel*

## BOOK TALKS

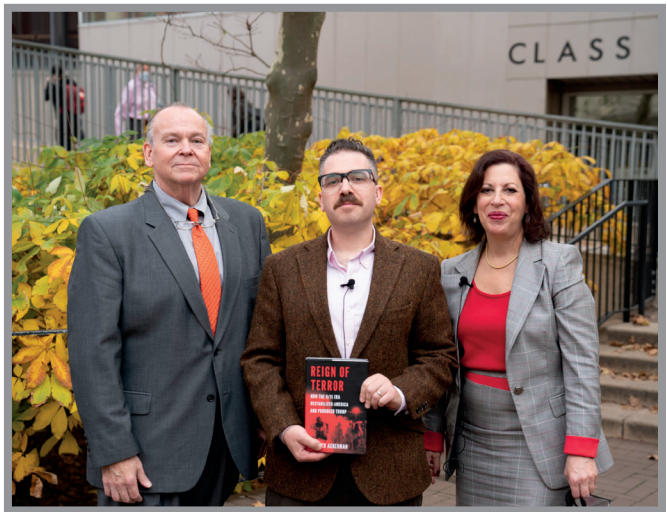
**November 11, 2021**

***REIGN OF TERROR: HOW THE 9/11 ERA DESTABILIZED  
AMERICA AND PRODUCED TRUMP***  
by **Spencer Ackerman**

In this discussion with CERL's Professor Claire Finkelstein, Pulitzer Prize-winning journalist Spencer Ackerman discussed how the forces, personalities, and interests displayed during the Trump administration were present during and accelerated after the 9/11 era. Ackerman explains how the transformation of American intelligence into industrial-scale surveillance and the pioneering use of drone strikes, indefinite detention, and torture weakened the rule of law and fueled a nativist sentiment. He argues that what began as the persecution of Muslims and immigrants has become a feature of American politics—a cultural and then tribal struggle at home and abroad from which Donald Trump drew his political strength.



*Spencer Ackerman, national security correspondent for outlets like The New Republic, WIRED, The Guardian, and The Daily Beast*



*From left: Mark Fallon, Spencer Ackerman, and Professor Claire Finkelstein*

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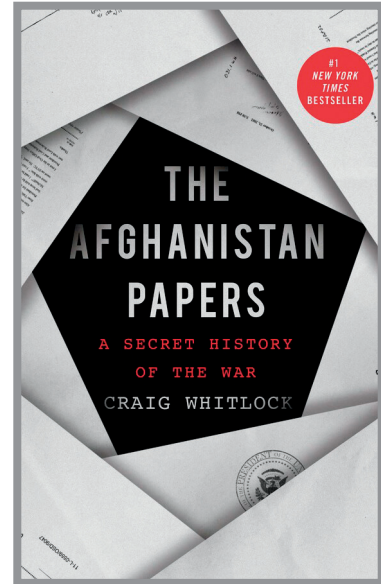
Photo credit: Kyle Cassidy/University of Pennsylvania



**March 16, 2022**

***THE AFGHANISTAN PAPERS: A SECRET HISTORY OF THE WAR***  
**by Craig Whitlock**

In a one-on-one discussion with then-Interim Executive Director of CERL Mark Fallon, *Washington Post* reporter and three-time Pulitzer Prize finalist Craig Whitlock discussed his #1 *New York Times* bestselling investigative story about the deceit and blunders of America's highest-ranking leadership over the course of the twenty-year war in Afghanistan. Whitlock's reporting includes revelation after revelation from the front lines of the conflict, showing the failure of the nation-building project, the inadequacies of U.S. government strategies, and the distortion of facts on the ground.



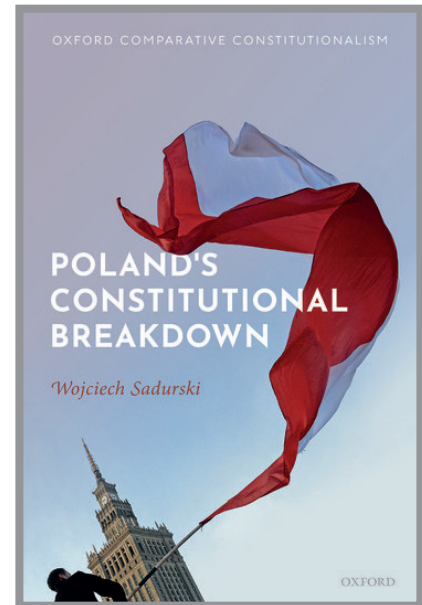
*From left: Mark Fallon and Craig Whitlock in conversation*



*Craig Whitlock, Washington Post reporter and three-time Pulitzer Prize finalist*

**April 1, 2022**  
**POLAND'S CONSTITUTIONAL BREAKDOWN**  
**by Wojciech Sadurski**

Together with the Department of Russian and East European Studies of Penn Arts and Sciences, CERL hosted a conversation with Wojciech Sadurski, Challis Professor of Jurisprudence at the University of Sydney, about the dismantling of checks and balances in Poland after the 2015 presidential and parliamentary elections. In his book, Prof. Sadurski details the speed and depth of anti-democratic changes in Poland against the backdrop of global trends toward populism and authoritarianism. CERL's Professor Claire Finkelstein moderated the discussion with commentary by R. Daniel Kelemen, Professor of Political Science and Law and Jean Monnet Chair in European Union Politics at Rutgers University, and introductory remarks by Mitchell Orenstein, Professor and Chair of Russian and East European Studies at the University of Pennsylvania.



*Prof. Wojciech Sadurski presents on his book*



*From left: Profs. Kelemen, Finkelstein, and Sadurski*

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Photo credit: Kyle Cassidy/University of Pennsylvania



## CERL'S IMPACT

### FILINGS AND ENGAGEMENT

#### A BLUEPRINT FOR CLOSING THE GUANTÁNAMO BAY DETENTION FACILITY

On January 11, 2022, the 20th anniversary of the arrival of detainees to the Guantánamo Bay (GTMO) detention facility, CERL released a package of 13 policy recommendations aimed at shuttering the U.S. prison in Cuba. These recommendations offer a set of actionable steps that Congress and the Biden administration can take to not only close GTMO, but also to repair the damage that continued operation of the detention facility has done to the real and perceived commitment of the United States to rule of law values. Of the 13 recommendations, nine call for action from the executive branch and four from Congress.

The CERL Working Group that produced these recommendations—and the 197-page report, “Beyond Guantánamo: Restoring the Rule of Law to the Law of War,” from which they were drawn—assembled in 2021 to consider the complex legal and policy challenges posed by continuing operation of the detention facility, developing their ideas in part at a November 2021 conference held against the backdrop of the U.S. withdrawal from Afghanistan.

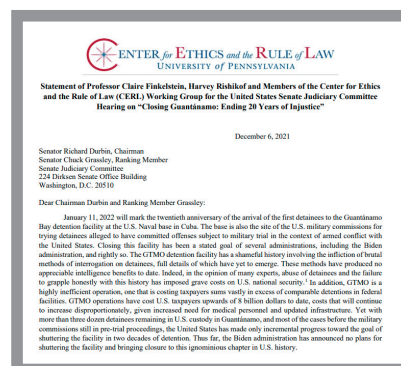
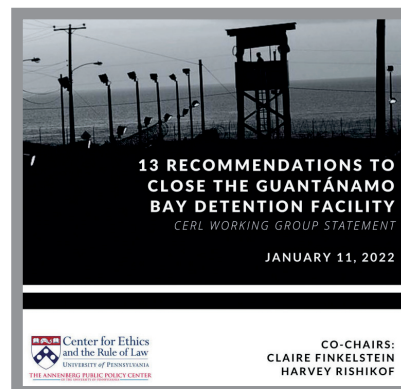
The interdisciplinary group comprised over 30 national security and counterterrorism experts, including GTMO prosecutors and defense lawyers, retired military officers, lawyers, former Department of Justice officials, psychologists, psychiatrists, academics, ethicists, and experts in the law of war.

Co-chairs Claire Finkelstein and Harvey Rishikof, former convening authority for the commissions and a visiting professor of national security law at Temple University, led efforts to distill the diverse analysis of individual contributors into a consensus product that is comprehensive in scope and nonpartisan in nature.

Ahead of the U.S. Senate Judiciary Committee on “Closing Guantánamo: Ending 20 Years of Injustice,” held on December 7, 2021, Profs. Claire Finkelstein and Harvey Rishikof, along with 12 members of the 2021 CERL Working Group on Guantánamo Bay, submitted a statement for the record containing these 13 recommendations, among other key findings. Then-Interim Executive Director of CERL Mark Fallon also submitted a personal statement for the record to the Senate Judiciary Committee hearing on GTMO.

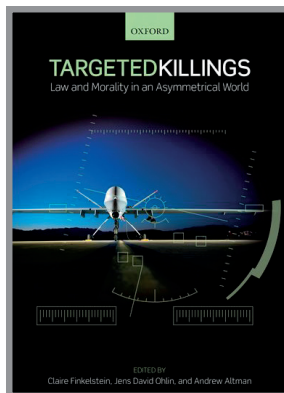
#### PENTAGON BRIEFING

On April 22, 2022, CERL held its first Pentagon briefing for U.S. Navy Judge Advocate General attorneys. In past years, CERL leadership and national security students prepared and delivered briefings to the U.S. Army Judge Advocate General attorneys on such topics as targeted killing of non-state actors, outer space policy under international law, and presidential emergency powers. The subject of this year’s briefing was the conflict in Ukraine, namely issues relating to co-belligerency, the risk of nuclear escalation, and war crimes. CERL is grateful for the support and guidance of Executive Board Member Jules Zacher, who helped coach the students, and Colonel Yevgeny Vindman, who attended the presentations.



## CERL'S IMPACT PUBLICATIONS

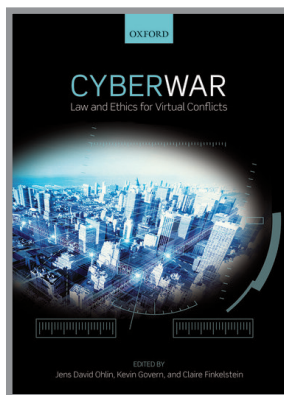
CERL is proud to partner with Oxford University Press in producing its series, *Ethics, National Security, and the Rule of Law*, which is designed to address abiding questions at the intersection of national security, moral and political philosophy, and practical ethics. Eleven volumes have been published in this series to date. With additional volumes on the horizon, CERL continues to broaden its reach to provide valuable resources for academics and policymakers alike.



### **TARGETED KILLINGS: LAW AND MORALITY IN AN ASYMMETRICAL WORLD**

Edited by Claire Finkelstein, Jens David Ohlin, and Andrew Altman

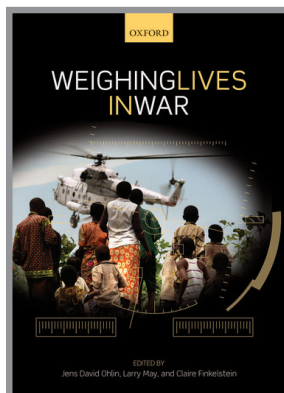
Oxford University Press, 2012



### **CYBER WAR: LAW AND ETHICS FOR VIRTUAL CONFLICTS**

Edited by Jens David Ohlin, Kevin Govern, and Claire Finkelstein

Oxford University Press, 2015



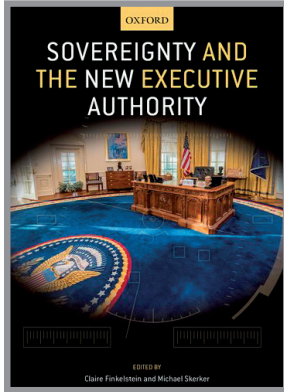
### **WEIGHING LIVES IN WAR**

Edited by Jens David Ohlin, Larry May, and Claire Finkelstein

Oxford University Press, 2017



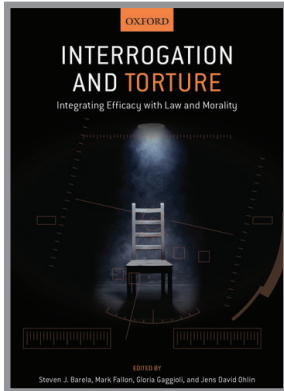
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### ***SOVEREIGNTY AND THE NEW EXECUTIVE AUTHORITY***

Edited by Claire Finkelstein and Michael Skerker

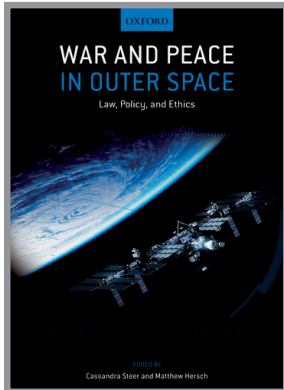
Oxford University Press, 2018



### ***INTERROGATION AND TORTURE: INTEGRATING EFFICACY WITH LAW AND MORALITY***

Edited by Steven J. Barela, Mark Fallon, Gloria Gaggioli, and Jens David Ohlin

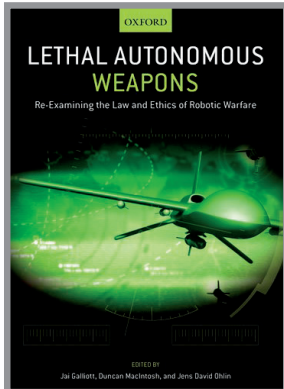
Oxford University Press, 2020



### ***WAR AND PEACE IN OUTER SPACE: LAW, POLICY, AND ETHICS***

Edited by Cassandra Steer and Matthew Hersch

Oxford University Press, 2021



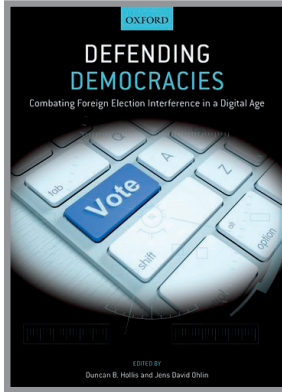
### ***LETHAL AUTONOMOUS WEAPONS: RE-EXAMINING THE LAW AND ETHICS OF ROBOTIC WARFARE***

Edited by Jai Galliot, Duncan MacIntosh, and Jens David Ohlin

Oxford University Press, 2021

## **CERL'S IMPACT**

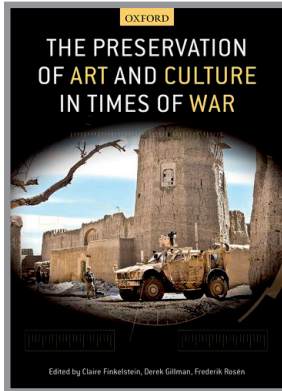
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#### ***DEFENDING DEMOCRACIES: COMBATING FOREIGN ELECTION INTERFERENCE IN A DIGITAL AGE***

Edited by Jens David Ohlin and Duncan B. Hollis

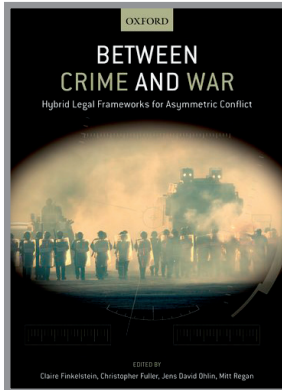
Oxford University Press, 2021



#### ***THE PRESERVATION OF ART AND CULTURE IN TIMES OF WAR***

Edited by Claire Finkelstein, Derek Gillman, and Frederik Rosén

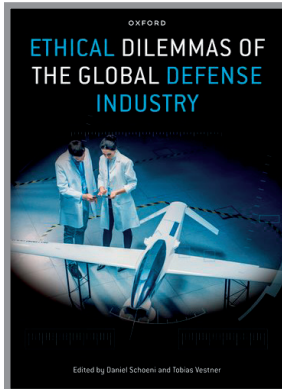
Oxford University Press, 2022



#### ***BETWEEN CRIME AND WAR: HYBRID LEGAL FRAMEWORKS FOR ASYMMETRIC CONFLICT***

Edited by Claire Finkelstein, Christopher J. Fuller, Jens David Ohlin, and Mitt Regan

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## CERL'S IMPACT

### BLOG POSTS



CERL's blog, *The Rule of Law Post*, showcases articles written by policy experts, members of the military, lawyers, academics, and CERL fellows and interns who put forth thoughtful analysis, conclusions, and recommendations on current and often urgent ethics and rule of law issues in national security, warfare, and democratic governance.

"Congress must exclude the provision banning transfers from GTMO to the U.S. from the 2022 NDAA," by Ashley Fuchs, Natalie Heller, Gloria Lyu, and Anya Tullman, Dec. 10, 2021

"The human toll of Guantánamo necessitates its closure: Reflections on an interview with a GTMO guard," by Mihir Mulloth, Gloria Lyu, and Mark Williams, Jan. 24, 2022

"Eulogy for Ian Fishback," by Jeff McMahan, Feb. 23, 2022

"Remembering Ian Fishback," by Nancy Sherman, Mar. 18, 2022

"The Ian Fishback we knew and the nation failed," by Stephen N. Xenakis with observations by Nancy Sherman, Mar. 28, 2022

"Putin's terror state and the not so new world order," by Geoffrey S. Corn and Gary P. Corn, Apr. 13, 2022

"The Assange case shows that a 'public interest' defense to unauthorized disclosures of classified information is neither wise nor workable," by George W. Croner, Apr. 29, 2022

"New Statistics Confirm the Continuing Decline in the Use of National Surveillance Authorities," by George Croner, May 25, 2022 [This post first appeared on *Lawfare*.]

"State Secrets and the Blinding of Justice," by Mark Fallon, May 31, 2022 [This opinion was originally published on *SpyTalk*.]

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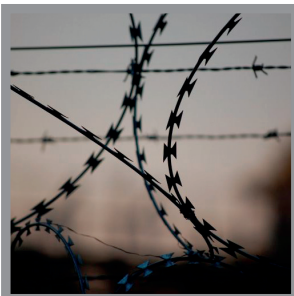
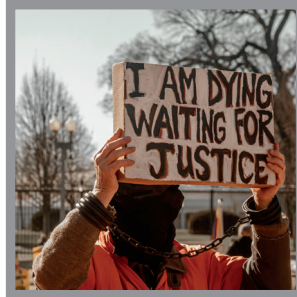
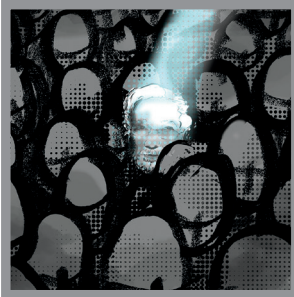
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“How the State Secrets Doctrine Undermines Democracy,” by Claire Finkelstein, May 31, 2022 [This opinion was originally published on *Bloomberg Law*.]

“A reply in defense of the state secrets privilege,” by George Croner, May 31, 2022

“A Damage Assessment of Trump’s ‘Declassification Defense,’” by George Croner, August 31, 2022 [This post first appeared on *Just Security*.]

“Vladimir Putin’s ‘Orthodoxy, Autocracy, and Nationality,’” by Carlo J.V. Caro, August 31, 2022





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Laurence H. Tribe and Executive Board Member Stuart M. Gerson, "Trump adviser Steve Bannon's indictment and arrest are a win for the rule of law," *NBC News*, November 15, 2021

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Executive Board Emeritus James Clapper interviewed on, “James Clapper on ‘chain of custody’ issues with Mar-a-Lago documents,” *CNN*, August 29, 2022

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## **MEDIA COVERAGE OF CERL’S 13 RECOMMENDATIONS TO CLOSE GTMO DETENTION FACILITY**

“Cuba Slams 20 Years of U.S. ‘Occupation,’ ‘Abuses’ at Guantánamo Bay, U.N. Calls for Closure,” *Newsweek*, January 11, 2022

Then-Interim Executive Director Mark Fallon interviewed on, “20 Years On: What Will It Take to Close Guantanamo Bay?” *The Newsmakers*, January 11, 2022

“How to close the Guantánamo Bay detention facility,” *Penn Today*, January 13, 2022

Then-Interim Executive Director Mark Fallon interviewed on, “What kinds of interrogative techniques were used at Guantanamo?” *TRT World Now*, Jan 13, 2022

“Guantánamo’s Forever Elusive Endgame: Will We ‘Celebrate’ Its 30th Anniversary?” *Tom Dispatch*, Jan. 20, 2022

“State Secrets and the Blinding of Justice,” Mark Fallon, *SpyTalk*, March 24, 2022



## PUBLIC PRESENTATIONS

Executive Board Member Connie Rosati, “The Objectivity of Law,” Keynote Address, The Bridge Between Metaethics and Jurisprudence, University of Lisbon School of Law, Lisbon, Portugal, March 4, 2022

Executive Board Member Kevin Govern, Lecturer, Lecture on “Law, Ethics and Religion in America,” Center for Criminal Justice, Law & Ethics, Franciscan University of Steubenville, March 25, 2022

Executive Board Member Kevin Govern, Lecturer, Lectures on “Globalization and National Security,” CACI, May 16-17, 2022

## OTHER CONTRIBUTIONS

Executive Board Member Stuart Gerson and other Department of Justice Officials were signatories on Amicus Brief for the United States Court of Appeals for the District of Columbia Circuit Supporting Appellees, Donald J. Trump v. Bennie G. Thompson, (No. 21-5254), November 22, 2021

Executive Board Member Alberto Mora appeared in, “The Forever Prisoner,” Alex Gibney, *HBO*, December 6, 2021

Advisory Council Member David Jonas, “A Nuclear Nonproliferation Primer,” *Lawfire*, March 13, 2022

Faculty Director Claire Finkelstein and former Advisory Council Member Richard Painter, “Restoring the Rule of Law through Department of Justice Reform,” Chapter in *Overcoming Trumpery*, Brookings Institution Press, March 22, 2022

Faculty Director Claire Finkelstein and former Advisory Council Member Richard W. Painter, *Presidential Accountability and the Rule of Law: Can the President Claim Immunity if He Shoots Someone on Fifth Avenue?*, 24 U. Pa. J. Const. L. 93 (2022)

Executive Board Member Kevin Govern, *Licit War Trophies as a Means of Preserving Art and Culture in Times of War*, 20 AVE MARIA L. REV. 16 (2022)

Advisory Council Member David Jonas, “A Sheep in Wolf’s Clothing: Assessing the Dangerous, Hidden, and Increasing Defects of the Iran Nuclear Agreement Review Act,” *Cardozo International and Comparative Law Review* Vol. 5:3 (2022)

Executive Board Member Stuart Gerson and other former federal prosecutors and state and federal government officials were signatories on Amicus Brief for the United States District Court Southern District of Florida West Palm Beach Division Opposing Former President Trump’s Motion for Judicial Oversight and Additional Relief, (No. 22-81294-CIV-CANNON), August 30, 2022

## 2022 SUMMER INTERNSHIP PROGRAM

CERL was thrilled to resume its in-person summer internship program after two years of virtual programming. The Summer Internship Program prepares professional, graduate, and undergraduate level students interested in the national security field by providing an ethics and rule of law foundation so that their future perspectives, leadership, and decision-making are always rooted in the rule of law. Our interns help further CERL's mission through research, writing, and conference planning, and gain valuable insights through conversations with national security experts on the critical issues facing our nation today.

This year, nine students—six from graduate programs, including Penn Law, and three from undergraduate programs, including Penn Undergrad—participated in the nine-week program. Led by CERL's former interim executive director, Mark Fallon, and with the generous support of the Annenberg Public Policy Center, the program comprised a mix of virtual talks, in-person seminars, work-from-home research, and off-site excursions. Students benefited from learning opportunities at the U.S. Naval Academy and Philadelphia's own historic Old City.

### THE PROJECTS

Interns worked in teams under CERL's leadership on four distinct projects: (i) Domestic Violent Extremism and the Threat to U.S. National Security, (ii) War Crime Trials, Humane Interrogation, and Application of the Méndez Principles, (iii) Super Soldiers, and (iv) Ukraine War Crime Accountability. Each team produced a briefing paper and at least one post for CERL's blog, *The Rule of Law Post*. CERL is immensely grateful to Dr. Susan Brandon, Dr. Nicholas Evans, Dr. Blake Hereth, and Rebecca Shaeffer for serving as program mentors.

### DIALOGUE WITH INDUSTRY EXPERTS

Interns had the unique opportunity to hear from leading authorities in national security. The “Breakfast with the Board” series connected students with members of the CERL Executive Board for discussion around relevant topics. At the end of the program, internship teams provided synopses of their research to members of the CERL Executive Board, Affiliated Faculty, and Advisory Council, as well as to other special guests.

### The 2022 CERL Summer Internship Class



*From left: Joe Dangtran, David Glinbizzi, Marcus Ellinas, Kalyn Mizelle McDaniel, Jennifer Frank, Melissa Toman, Jeffrey Polidor, and Joshua Ovadia | Not pictured: Justin DiCarlo*





*Guest speaker Rebecca Shaeffer, legal director (Americas) at Fair Trials and CERL Summer Internship Program mentor*



*CERL Executive Board Member General Votel speaks with CERL's summer internship class via Zoom as part of the "Breakfast with the Board" series*



*CERL's 2022 summer interns visit the U.S. Naval Academy in Annapolis, Maryland*



*Interns Joshua Ovadia and Justin DiCarlo role-play a scenario in Professor Michael Skerker's seminar at the U.S. Naval Academy*





*Intern Jennifer Frank presents her team's report at CERL's annual summer intern soiree*



*Ilya Rudyak, CERL Senior Fellow and CERL Summer Internship Program mentor*



*From left: Blake Hereth, postdoctoral research fellow at University of Massachusetts Lowell, introduces interns Jeffrey Polidor and Joshua Ovadia*



*From left: Interns Joe Dangtran, Marcus Ellinas, and David Glinbizzi*





*From left: Interns Kalyn Mizelle McDaniel and Melissa Toman*



*From left: Soiree guest John Ghazvinian, Executive Director of Penn's Middle East Center, and intern Jennifer Frank*



*From left: CERL's then-Interim Executive Director Mark Fallon and Faculty Director Claire Finkelstein*



*From left: Former CERL intern ('21) Luke Elegant and intern Jeffrey Polidor*

## GUEST SPEAKER SERIES

CERL thanks its guest speakers for their valuable contributions to CERL's 2022 Summer Internship Program.

**Stephen Bennett**, Director of *Eminent Monsters: A Manual for Modern Torture* (2020) (Virtual)

**Susan Brandon, Ph.D.**, former Research Program Manager for the U.S. government's High-Value Detainee Interrogation Group (HIG) (Virtual)

**Glenn Carle**, former CIA Clandestine Services Officer and Deputy National Security Intelligence Officer, author of *The Interrogator* (2011) (In person)

**Patrick G. Eddington**, Senior Fellow, CATO Institute, former military analyst at the CIA National Photographic Interpretation Center (Virtual)

**John Goetz**, Director of *In Search of Monsters* (2021) (Virtual)

**Blake Hereth, Ph.D.**, Postdoctoral Research Associate, University of Massachusetts Lowell (In person)

**Bruce Hoffman**, Shelby Cullom and Kathryn W. Davis Senior Fellow for Counterterrorism and Homeland Security, Council on Foreign Relations (Virtual)

**Charlton T. Howard III**, Maryland State Prosecutor, former NCIS senior executive, retired USNR Captain, former USMC intelligence officer (In person)

**James LaPorta**, Investigative Reporter, The Associated Press (Virtual)

**Christian Meissner, Ph.D.**, Professor of Psychology, Iowa State University (Virtual)

**Juan E. Méndez**, former UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (2010-2016) (Virtual)

**Michel Paradis**, Lecturer in Law, Columbia Law School (Virtual)

**Tom Parker**, Author of *Avoiding the Terrorist Trap: Why Respect for Human Rights is the Key to Defeating Terrorism* (2019) (Virtual)

**Alka Pradhan**, Adjunct Professor of Law, University of Pennsylvania Carey Law School and Human Rights Counsel at the Guantánamo Bay Military Commissions (Virtual)

**Rebecca Shaeffer**, Legal Director (Americas) at Fair Trials and Méndez Principles Steering Committee (In person)

**Michael Skerker, Ph.D.**, Associate Professor, Leadership, Ethics, and Law, U.S. Naval Academy (Annapolis, MD) (In person)

**Nelson Thayer**, First Assistant U.S. Attorney, Eastern District of Pennsylvania, U.S. Department of Justice (In person)

**MAJ Jason Wright**, Assistant Professor, U.S. Military Academy at West Point and former Guantánamo defense counsel (Virtual)

## BREAKFAST WITH THE BOARD

**Lt. Gen. (Ret.) James Clapper**, former U.S. Director of National Intelligence, CERL Executive Board member (Virtual)

**Arlene Fickler, Esq.**, Schnader Harrison Segal & Lewis LLP, CERL Executive Board member (In person)

**Morton Halperin, Ph.D.**, Chair of the CERL Executive Board and Board Member, J Street Education Fund and the ONE Campaign (Virtual)

**Shawn Turner**, Professor of Practice, Michigan State University, CERL Executive Board member (Virtual)

**General Joseph L. Votel**, U.S. Army (Ret.), President & CEO, Business Executives for National Security (BENS), CERL Executive Board member (Virtual)

**Brig. Gen. (Ret.) Stephen N. Xenakis, M.D.**, Advisor for Physicians for Human Rights and Center for Victims of Torture; Adjunct Professor, Uniformed Services University of Health Sciences, CERL Executive Board member (Virtual)

**Jules Zacher, Esq.**, Jules Zacher, P.C.; Board Chair, Council for a Livable World, CERL Executive Board member (In person)



## THE 2022 INTERN CLASS



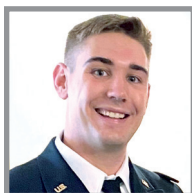
**Joe Dangtran**

*University of Pennsylvania Carey  
Law School  
Academic Program: J.D.*



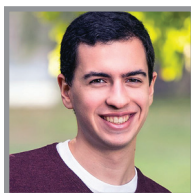
**Kalyn Mizelle McDaniel**

*University of Texas School of Law  
Academic Program: J.D.*



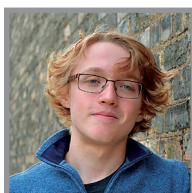
**Justin DiCarlo**

*University of Pennsylvania Carey  
Law School  
Academic Program: J.D.*



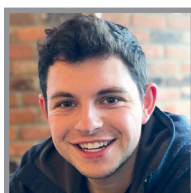
**Joshua Ovadia**

*Swarthmore College  
Academic Program: B.A.*



**Marcus Ellinas**

*The University of Chicago  
Academic Program: B.A.*



**Jeffrey Polidor**

*The Fletcher School at Tufts University  
Academic Program: M.A.L.D.*



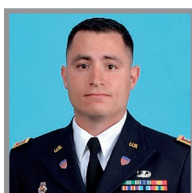
**Jennifer Frank**

*University of Pennsylvania  
Academic Program: B.A.*



**Melissa Toman**

*Columbia University School of  
International and Public Affairs  
Academic Program: M.P.A.*



**David Glinbizzi**

*University of Pennsylvania  
Academic Program: M.A.*

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

“Through this internship, I learned both a) quite a bit of substantive information about a topic of interest in national security, which will benefit me greatly in future research, and b) quite a bit about myself—the types of career paths I might want to follow, what sorts of issues I find most engaging. I can’t ask for much more out of [an] internship than that.”

—**Marcus Ellinas**, *The University of Chicago, B.A. program*

“Interning at CERL was an incredible experience, as it gave me the opportunity to research pressing national security issues and assess pathways to implement meaningful reform. I greatly enjoyed learning from experts who provided insight on their first-hand experiences working on international war crime tribunals, Guantánamo Bay, extremism, and international human rights.”

—**Jennifer Frank**, *University of Pennsylvania School of Arts & Sciences, B.A. program*

“During my internship with CERL, I had the opportunity to work as a part of an interdisciplinary team of students that worked to solve some of the most pressing questions in the field of national security. The different backgrounds and experiences of the other students created an environment of collaborative creativity that was vital to our success.”

—**David Glinbizzi**, *University of Pennsylvania, M.A. program*

“During my time at CERL, I had the opportunity to research important national security issues and speak with subject-matter experts. I am very glad I participated in this experience, because I know the skills, knowledge, and connections I gained will be invaluable down the road.”

—**Joshua Ovadia**, *Swarthmore College, B.A. program*

“Throughout my summer at CERL, I have been able to interact with experts, colleagues, and topics which will all be pivotal to my career. Each intern had opportunities to work on topics that are at the forefront of national security policy while learning from and speaking to leading figures in the field. I will look back at this internship with great appreciation.”

—**Jeff Polidor**, *The Fletcher School at Tufts University, M.A.L.D. program*

“Interning at CERL was a truly enriching experience that gave me the opportunity to apply my education and skillset to relevant national security-related research topics under the guidance of esteemed professionals. I am incredibly grateful for the opportunity to utilize and hone my critical thinking skills to assess timely issues, concepts, and topics that I had not previously examined. It was particularly valuable to gain more knowledge about the interaction of ethics and laws in decision-making.”

—**Melissa Toman**, *Columbia University School of International and Public Affairs, M.P.A. program*



*CERL intern Joe Dangtran presents his team's report*



## INTERVIEW WITH ASHLEY FUCHS

### Former CERL Intern and Student Editor

Ashley Fuchs graduated summa cum laude from the University of Pennsylvania in 2022 with double majors in political science and classical studies. Originally from Long Island, New York, Ashley spent three and a half years working for CERL as a legal research assistant, editor of *The Rule of Law Post*, and summer intern. A Benjamin Franklin Scholar and Phi Beta Kappa member, she received the Philo Bennett Prize for her political science honors thesis, “Prison Museums on Trial: The Politics of Remembrance and Reform at Eastern State Penitentiary, Sing Sing Prison Museum, and Angola Museum,” the College Alumni Society Prize in Classical Studies, and the Best Screenplay Award from the cinema studies department as well as co-curated an exhibition at the University of Pennsylvania Museum of Archaeology and Anthropology titled “Heritage in Our Hands: UNESCO 50 Years Later.”



This interview was conducted by Emilia Onuonga (University of Pennsylvania, B.A.'23) prior to Ashley's graduation from the University of Pennsylvania and edited during the summer of 2022.

#### **Q: What is your current position at CERL?**

During my three and a half years with CERL, I worked as a legal research assistant, editor of *The Rule of Law Post*, and summer intern in 2020 and 2021.

#### **Q: What activities are you engaged with at the University of Pennsylvania?**

While CERL has defined a considerable part of my intellectual and academic experience at Penn, I also had the privilege of interning at the Penn Museum where I co-curated an exhibition titled “Heritage in Our Hands: UNESCO 50 Years Later.” Available to the general public until February 2023, the exhibition uses the fiftieth anniversary of the 1972 UNESCO World Heritage Convention to explore the complementary and competing dynamics between international organizations, national governments, and local communities at four world heritage sites. I was also a resident advisor in Harrison College House.

#### **Q: What inspired you to join CERL?**

Coming from a public high school, I did not realize the breadth of opportunities Penn had to offer until I walked into a CERL event during my freshman fall. Professor Finkelstein was interviewing General Michael Hayden about the responsibilities of and challenges facing the intelligence community. While sitting in the audience and listening to such accomplished individuals discuss ethics, legal values, history, and politics, I immediately knew I wanted to get involved with this organization. After attending every CERL event that semester, I volunteered as a research assistant in the spring. That was the beginning of over three years of research projects and incredible conversations at CERL.

#### **Q: You talked a lot about your responsibilities. What has made you feel a part of the CERL community?**

I have felt the CERL community in a number of ways, whether that was going out to dinner with speakers, attending conferences and weekly team meetings, co-authoring articles, or collaborating with students and experts during the summer internship program. Although the COVID-19 pandemic prevented in-person gatherings, the virtual format allowed me to work with national security experts and legal professionals across the United States and the world. These intensive discussions where individuals with diverse backgrounds, experiences, and political beliefs delved into the complexities of the national security landscape were the most memorable and impactful part of my time at CERL.

#### **Q: What skills or knowledge did you learn during the program that you find most useful?**

When I first started working at CERL, I could never have imagined the knowledge and skills I would gain on such a vast range of topics, including domestic and international law, human rights, cultural heritage, intelligence gathering, military operations, and the Global War on Terror. Most importantly, however, I learned how to effectively collaborate

with academics and practitioners, drawing from individual strengths and subject matter expertise to produce policy papers, investigative reports, and recommendations that can effect positive change. Through the internship program, I also had the opportunity to deliver briefings and publish articles, which made clear the importance of both thorough research and clear communication skills.

**Q: What has proven to be the most helpful things you learned during your time at CERL?**

I learned how to critically and effectively examine issues that are massive in scale and complexity. Particularly during the Guantánamo Bay and Department of Justice investigative reports, I saw firsthand how to form working groups, develop projects, achieve consensus, uphold non-partisan values, think through problems, and produce actionable results. Restoring the rule of law, depoliticizing the Justice Department, and closing Guantánamo Bay are broad mandates that may seem impossible to achieve. At CERL, I learned how to narrow these issues, dive into the specific legal principles, and communicate results in ways that can meaningfully influence the political discourse.

**Q: How do you envision life after Penn and after CERL?**

Given that I am currently uncertain about my future career path, I have decided to dedicate time to one of my greatest passions in life—backpacking. In fact, I am currently thru-hiking the Appalachian Trail! After this approximately 2,200-mile trek, I hope to participate in a program abroad and later attend graduate school.

**Q: Is there anything else you wish to share?**

I want to express my deepest thanks to everyone on the CERL team for their mentorship and support.



*Ashley Fuchs in conversation with CERL's guest speaker Michèle Flournoy, former U.S. Under Secretary of Defense for Policy (2009-2012)*

## MORE ON ASHLEY FUCHS

*Prison Museums on Trial: The Politics of Remembrance and Reform at Eastern State Penitentiary, Sing Sing Prison Museum, and Angola Museum*, Written by Ashley Fuchs: <https://repository.upenn.edu/curej/261/>

*Congress must exclude the provision banning transfers from GTMO to the U.S. from the 2022 NDAA*, Written by Ashley Fuchs, Natalie Heller, Gloria Lyu, and Anya Tullman: <https://www.penncerl.org/the-rule-of-law-post/congress-must-exclude-the-provision-banning-transfers-from-gtmo-to-the-u-s-from-the-2022-ndaa/>

*Proceed with caution: Why curtailing Section 230 immunity is not the solution to social media regulation*, Written by Ashley Fuchs: <https://www.penncerl.org/the-rule-of-law-post/proceed-with-caution-why-curtailing-section-230/>

*Ballots are secure, knowledge on vote-by-mail is not*, Written by Ashley Fuchs, Alana Sheppard, and Robert Stoffa: <https://www.penncerl.org/the-rule-of-law-post/ballots-are-secure-knowledge-on-vote-by-mail-is/>

*Would COVID-19 digital contact tracing programs violate the Fourth Amendment?* Written by Ashley Fuchs and Ryan Bender: <https://www.penncerl.org/the-rule-of-law-post/would-covid-19-digital-contact-tracing-programs/>

“Heritage in Our Hands: UNESCO 50 Years Later,” Penn Museum exhibit by Ashley Fuchs, Cindy Srnka, and Jackson Clark: <https://www.penn.museum/on-view/galleries-exhibitions/heritage-in-our-hands>



*Ashley Fuchs shakes hands with Lt. Gen. (Ret.) James Clapper, CERL Executive Board Emeritus and former U.S. Director of National Intelligence*



## 2022-2023 EVENT CALENDAR

### **Report Launch – September 12, 2022**

Beyond Guantánamo: Restoring the Rule of Law to the Law of War

Co-sponsored by the Annenberg Public Policy Center

### **Hybrid Keynote – September 28, 2022**

Is Violent Extremism a Threat to Democracy? Reflections on Current Challenges in U.S. National Security

Hon. Jeh Charles Johnson, Former Secretary, U.S. Department of Homeland Security

Co-sponsored by the Annenberg Public Policy Center and Perry World House

### **Hybrid Keynote Panel – September 29, 2022**

Perspectives on Domestic Violent Extremism

Co-sponsored by the Annenberg Public Policy Center and Perry World House

### **Conference – September 28-30, 2022**

Domestic Violent Extremism and the Threat to U.S. National Security

Co-sponsored by the Annenberg Public Policy Center and Perry World House

### **Book Talk – October 13, 2022**

*The Preservation of Art and Culture in Times of War*

Edited by Claire Finkelstein, Derek Gillman, and Frederik Rosén

### **Workshop – November 16, 2022**

Is The West/NATO Sleepwalking into a Nuclear War with Russia in Ukraine?

### **Book Talk – January 26, 2023**

*The Betrayal: How Mitch McConnell and the Senate Republicans Abandoned America*

By Ira Shapiro

### **Book Talk – February 2, 2023**

*Alpha: Eddie Gallagher and the War for the Soul of the Navy SEALs*

By David Philipps

### **Workshop - February 23, 2023**

Next Steps in Forestalling the Use of Nuclear Weapons in Ukraine with Russia and the West

### **Book Talk – March 30, 2023**

*The President Who Would Not Be King: Executive Power under the Constitution*

By Michael W. McConnell

### **Conference – April 13-15, 2023**

The Ethical and Legal Significance of Super Soldiers

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