AMERICAN BAR ASSOCIATION
STANDING COMMITTEE ON LAW AND NATIONAL SECURITY

27TH ANNUAL REVIEW OF THE FIELD OF NATIONAL SECURITY LAW

NOVEMBER 16, 2017-NOVEMBER 17, 2017
THE CAPITAL HILTON
1001 16TH STREET, NW, WASHINGTON, DC

CONFERENCE PROGRAM
THURSDAY, NOVEMBER 16, 2017

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<tr>
<td>8:00 a.m.</td>
<td>Registration, CLE sign-in and Continental Breakfast</td>
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<tr>
<td>8:30 – 8:45 a.m.</td>
<td>Conference Overview and Welcome</td>
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<td>8:45 – 10:15 a.m.</td>
<td>Panel I – National Security Law in Private Practice</td>
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**Description**
This panel will discuss the practice of national security law in the private sector. The panelists will educate lawyers on topics including national security litigation, national security investigations, economic sanctions, export control, CFIUS, responding to government requests for information from law enforcement or the intelligence community (e.g., under FISA, Stored Communications Act, ECPA, Title III; national security letters); the challenges of encryption and the privacy vs. security debate; cybersecurity; and classified contracts. In addition, panelists will share their experiences, as applicable, in moving between government and private practice in the national security field, and address the challenges of building a national security practice to address legal concerns faced by corporate clients.

**Moderator**
Caroline Krass  
Partner  
Gibson, Dunn & Crutcher

**Discussants**
Ambassador Robert Kimmitt  
Senior International Counsel  
WilmerHale

Amy Jeffress  
Partner  
Arnold & Porter Kaye Scholer
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<td>10:15 – 10:30 a.m.</td>
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| 10:30 – 12:00 p.m. | **Panel II – Artificial Intelligence: Issues of Technology, Ethics, and Law** | **Ingrid Price** | **Gregory Neal Akers**  
Senior Vice President of Advanced Security Initiatives  
Cisco Security and Trust Organization  
**Lt. Col. Alan Schuller, USMC**  
Associate Director  
Stockton Center for the Study of International Law  
U.S. Naval War College  
**David Vladeck**  
A.B. Chettle Chair in Civil Procedure  
Georgetown Law |
|               | **Description**  
We stand on the cusp of a revolution as the world rushes toward the development and deployment of   
artificial intelligence (AI). This panel will take a look at the legal issues posed by AI. More than   
computing programs, new AI applications use "deep machine learning" to understand and react to   
abstract and complex concepts in ways that mimic human behavior. As such these AI programs are no   
longer entirely predictable -- much as humans are not. AI will have applications in an ever-growing list   
of contexts -- and the laws that address them -- it will power autonomous weapons and driverless cars;   
it will conduct medical diagnostics and predict market futures. Panelists will review the latest   
technological developments and laws; ask questions about the ethical use of AI; explore the relationship   
of AI to the laws of armed conflict; and examine the commercial use and legal liability issues that may   
occur. | **Lala Qadir**  
Associate  
Covington & Burling |
|               | **Moderator**  
**Lala Qadir**  
Associate  
Covington & Burling |
|               | **Discussants**  
**Gregory Neal Akers**  
Senior Vice President of Advanced Security Initiatives  
Cisco Security and Trust Organization  
**Lt. Col. Alan Schuller, USMC**  
Associate Director  
Stockton Center for the Study of International Law  
U.S. Naval War College  
**David Vladeck**  
A.B. Chettle Chair in Civil Procedure  
Georgetown Law |
| 12:00 – 1:00 p.m. | **Luncheon Break – Non CLE**                                                |                  |                                                                            |
| 1:00 – 1:45 p.m. | **Panel III – National Security Law and Policy, from the Privacy and Civil Liberties Oversight Board to the Department of Justice** |                  |                                                                            |
|               | **Description**  
This panel will discuss the legal and policy issues that national security lawyers face in balancing   
national security and civil liberty. Panelist Rachel Brand, Associate Attorney General at the   
Department of Justice and former Member of the Privacy and Civil Liberties Oversight Board, will   
discuss the laws protecting national security and privacy and Raj De, partner at the law firm of Mayer   
Brown and former General Counsel of the NSA will join her in discussing the laws surrounding U.S.   
legal counterterrorism strategies that must balance both privacy and civil liberties, such as the First and   
Fourth Amendments, the Foreign Intelligence Surveillance Act, the USA FREEDOM Act, and the role |
of the Foreign Intelligence Surveillance Court. The audience will learn from both a practitioner and a
government attorney with a focus on the nexus between national security law, privacy and technology,
presenting a legal perspective on the core national security legal issues facing the nation.

**Discussants**
The Honorable Rachel Brand  
Associate Attorney General  
U.S. Department of Justice  

Raj De  
Partner  
Mayer Brown  

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<tr>
<td>2:00 – 3:30 p.m.</td>
<td>Panel IV – Cyber Operations and the Law of Armed Conflict</td>
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**Description**  
This Panel will focus on the principal legal issues associated with attempting to apply current
customary and codified Law of Armed Conflict (LOAC) to certain cyber operations. Topics will
include whether LOAC principles applicable to kinetic operations may effectively be applied to cyber
activities. Topics will include: What constitutes a cyber “armed attack”? What constitutes a
“proportionate”, self-defense, response to such an attack? Is it possible to accurately attribute cyber
operations to an “attacking” source in a timely manner? In order to address these issues, the Panel will
examine the jus ad bellum consideration of the types of cyber activities that constitute a “cyber attack”
an attack to which a State might respond by engaging in a self-defense use of force and to which the
LOAC would apply. Additionally, many cyber activities conducted in the current international
environment, while cyber intrusions, fall below the threshold of what might be viewed as a “cyber
attack.” The Panel will address the legal issues that arise in this context and how the Law of Armed
Conflict is applied.

**Moderator**  
Col. David E. Graham, USA (ret.)  
Associate Director for Programs  
Center for National Security Law  
University of Virginia School of Law  

**Discussants**  
Col. Gary Brown, USAF (ret.)  
Senior Legal Advisor  
U.S. Department of Defense  

Rebecca Crootof  
Executive Director of the Information Society Project  
Research Scholar and Law Lecturer  
Yale University Law School  

Maj. Gen. Charles Dunlap Jr., USAF (ret.)  
Professor of the Practice of Law  
Executive Director, Center on Law, Ethics and National Security  
Duke University Law School  

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<td>3:45 – 4:45 p.m.</td>
<td>Panel V – Legal Ethics and Leaking by Government Attorneys</td>
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**Description**
The panel will address The ABA Model Rules of Professional Conduct: Rules 1.6(a)-(b); 1.8(a)-(b); 1.9(c)(1)-(2); 1.13(b)-(c); 1.6 (a-b) in discussing ethical restrictions on attorneys who may wish to disclose information that they have received in government positions (e.g., leaking details of an investigation, and possible policy issues). The panel will also address client confidences and the handling of confidential information. This ethics session will address challenges facing national security lawyers, and how one addresses these challenges in the context of “whistleblowing” activities, and what role should ethics, professionalism, and the Model Rules play? This Legal Ethics Session will also role play in certain instances, including a discussion of civility, who the client is for national security lawyers and will address professionalism, obligations of a subordinate attorney and diversity, among other topics.

**Discussants**

**F. Scott Kieff**  
Fred C. Stevenson Research Professor of Law  
George Washington University Law School

**Susan Gibson**  
Inspector General  
National Reconnaissance Office

### FRIDAY, NOVEMBER 17, 2017

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<td>Welcome and Opening Remarks</td>
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<td>8:45 a.m. – 10:15 a.m.</td>
<td>Panel VI – The Foreign Intelligence Surveillance Act (FISA)</td>
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**Description**  
The session will focus on the legal issues raised by the Foreign Intelligence Surveillance Act (FISA) and in particular, Section 702. The panelists will discuss the definition of foreign intelligence in a legal context, unmasking, transparency, and FISA court reform. The panel will specifically discuss the legal issues raised by FISA as it affects privacy, citizenship and legal standards.

**Moderator**  
**Robert Litt**  
Counsel  
Morrison & Foerster

**Discussants:**  
**Laura Donohue**  
Professor of Law  
Director, Center on National Security and the Law  
Georgetown Law

**Elizabeth Goitein**  
Co-Director, Liberty & National Security Program
Panel VII – The Arctic: National Security and Oceans Law for the New Maritime Frontier

Description
This panel will discuss the application of oceans law and national security law and policy in the emerging maritime frontier of the Arctic. As we observe dramatic changes in the Arctic environment as sea ice in the Arctic Ocean continues to recede, it opens vast new areas of navigable waters. These dynamic changes are bringing new legal challenges as states seek opportunities and advantage. With increasing state competition of access to energy and natural resources comes the risk of potential conflict. Topics will include exploring existing and developing legal regimes and governance mechanisms for the Arctic and activity there, including the UN Convention on the Law of the Sea, and the Polar Code, and governance mechanisms such as the Arctic Council and International Maritime Organization. Panelists will share legal and policy expertise and application of legal regimes in an operational context.

Moderator
RADM Kevin E. Lunday, USCG

Discussants
Julie Gascon
Assistant Commissioner
Central and Arctic Region
Canadian Coast Guard

Julia Gourley
U.S. Senior Arctic Official
Office of Ocean and Polar Affairs
U.S. State Department

John Norton Moore
Walter L. Brown Professor of Law and Director
Center for Oceans Law & Policy
Center for National Security Law
University of Virginia School of Law

Panel VIII – Current Events in National Security Law and Policy

Description
The panel will address national security law priorities including North Korea.
Syria and Iran. Discussion will focus on the use of force, the War Powers Act as well as the law as it applies to military operations.

**Discussants**

**Judge James E. Baker**  
Chair  
ABA Standing Committee on Law and National Security

**General Paul J. Selva**  
Vice Chairman  
Joint Chiefs of Staff

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| 2:00 p.m. – 3:30 p.m. | **Panel IX – Looking Forward: National Security Law Beyond 2020**  
  
  **Description**  
  A discussion of how we move beyond thinking about today and tomorrow to assess future threats and identify appropriate laws and processes. While some threats might be anticipated, few could imagine five to ten years ago the national security legal issues that we are confronting today. This panel will build on existing laws and focus on future law. The session will address current events such as the increase in tensions with North Korea and the rise of a nuclear threat; physical security, such as vans crashing into public locations or a lone wolf firing on an unsuspecting crowd; and cyber, such as the rise of the Internet of Things and connected cars. The session will advance to future threats and how best the national security legal community works to pre-empt these operating in the current legal framework. Panelists include lawyers with legal expertise in the public and private sectors, as well as academia.  
  
  **Moderator**  
  **Jill Rhodes**  
  Vice President & Chief Information Security Officer  
  Option Care Enterprises  
  
  **Discussants**  
  **Carrie Cordero**  
  Counsel  
  ZwillGen PLLC  
  **Michael Davis**  
  Chief Technology Officer  
  CounterTack  
  **Orde Kittrie**  
  Professor of Law  
  Sandra Day O’Connor College of Law  
  Arizona State University  
  **Jim McJunkin**  
  Chief Information Security Officer  
  Discover Financial Services

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| 4:00 p.m. – 5:00 p.m. | **Panel X – The Model Rules in the National Security Context**  
  
  **Description**  
  |
The ethics session will address challenges facing national security lawyers, and how one addresses these challenges, including the role ethics, professionalism, and the Model Rules should play. The session will also address the duty of the national security lawyer, based on the model rules. In addition to the Preamble in A Lawyers Responsibilities, the following Model Rules of Professional Conduct will be addressed and discussed: 1.1: Competence; 1.2: Scope of Representation and Allocation of Authority between Client and Lawyer; 1.3: Diligence; 1.4: Communication; 2.1: Advisor; 3.3: 3.5: Impartiality and Decorum of the Tribunal; Candor Toward the Tribunal; 5.2: Responsibilities of a Subordinate Lawyer.

**Discussants**

**Judge James E. Baker**  
Chair  
ABA Standing Committee on Law and National Security

**Harvey Rishikof**  
Chair  
Advisory Committee of ABA Standing Committee on Law and National Security

| 5:00 p.m. | CLE Sign Out |
MCLE

The ABA directly applies for and ordinarily receives CLE credit for ABA programs in AK, AL, AR, AZ, CA, CO, CT, DE, GA, GU, HI, IA, IL, IN, KS, KY, LA, ME, MN, MS, MO, MP, MT, NH, NJ, NM, NV, NY, NC, ND, OH, OK, OR, PA, SC, TN, TX, UT, VT, VA, VI, WA, WI, and WV. These states sometimes do not approve a program for credit before the program occurs.

This course is expected to qualify for 12.5 CLE credit hours in 60-minute states, including 2.0 ethics credits and 15 CLE credit hours in 50-minute states, including 2.4 ethics credits. This transitional program is approved for both newly admitted and experienced attorneys in NY. Attorneys may be eligible to receive CLE credit through reciprocity or attorney self-submission in other states. For more information about CLE accreditation in your state, visit https://www.americanbar.org/cle/mandatory_cle.html

Scholarships

Scholarships to defray tuition expense for the ABA Standing Committee on Law and National Security programs are available upon application on a program-by-program, case-by-case basis. Preference will be given to public interest lawyers, government lawyers, full-time law professors, solo or small firm practitioners of limited means, and unemployed attorneys. A minimum fee may be charged on all approved scholarship applications to defray expenses. For programs with tuition costs over $500, qualifying attorneys will receive at least a 50% reduction in the course fee(s).