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## *FOREWORD*

### THE SNOWDEN EFFECT: THE IMPACT OF SPILLING NATIONAL SECRETS A SYMPOSIUM SNAPSHOT

*Lauren A. Mullins\**

On Friday, January 30, 2015, the Lincoln Memorial University Duncan School of Law hosted the biennial Law Review Symposium in honor of Professor Sandra C. Ruffin.<sup>1</sup> Members of the Lincoln Memorial University Law Review, faculty, staff, speakers, and members of the legal community gathered in the Duncan School of Law Courtroom to discuss the implications of the national security disclosures by former government contractor Edward Snowden.

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<sup>1</sup> See *LMU Law Review to Present Symposium on National Security and Digital Surveillance*, DSOL NEWS/EVENTS (Dec. 31, 2014), <http://law.lmunet.edu/2014/12/31/lmu-law-review-to-present-symposium-on-national-security-and-digital-surveillance-in-the-us/>.

The Symposium speakers, who traveled to Knoxville from all over the United States, are a fascinating group of experts that offered a wide range of valuable perspectives:

Mr. James Bamford is a leading National Security Agency expert, journalist, and bestselling author of *The Shadow Factory: The Ultra-Secret NSA From 9/11 to The Eavesdropping on America*. We were fortunate to have Mr. Bamford's unique viewpoint, as he shared some of his rare personal access to Edward Snowden--three days in Moscow conducting an interview for a *Wired* magazine cover story.<sup>2</sup> Later in this volume, we have provided an edited transcript of Mr. Bamford's presentation.

Mr. Brett Max Kaufman is a Teaching Fellow at New York University School of Law. Formerly a national security fellow with the American Civil Liberties Union (ACLU), Mr. Kaufman brought a pro-privacy perspective with his lecture regarding the governments "collect it all" philosophy concerning intelligence information.

Professor J. Richard Broughton is an Associate Professor of Law at University of Detroit Mercy School of Law. Professor Broughton's lecture focused on the Treason Clause of the Constitution and the required mental state for its application. He argued that electronic communications that reach the enemy do not constitute treason in the absence of a specific intent to betray America. Professor Broughton graciously followed up his presentation with an article written for this volume dedicated to the Symposium.

Professor Melanie Reid is an Associate Professor of Law at LMU Duncan School of Law and former Assistant U.S. Attorney in the Southern District of Florida. Professor Reid has conducted extensive research into the constitutionality of the use of intelligence information in criminal investigations, called "parallel construction." Professor Reid deserves special recognition for her integral role in this Symposium. She developed the Symposium theme, assisted in planning for and securing a well-rounded selection of speakers, provided a presentation to accompany her recently published article *NSA and DEA Intelligence Sharing: Why It Is Legal and Why Reuters*

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<sup>2</sup> See James Bamford, *The Most Wanted Man in the World*, WIRED, Aug. 13, 2014, <http://www.wired.com/2014/08/edward-snowden/>.

*and the Good Wife Got It Wrong*,<sup>3</sup> and submitted additional work tailored to this publication. Thank you, Professor Reid, for your hard work and dedication.

Mr. Chris Inglis is a former Deputy Director and 28-year veteran of the NSA holding a number of senior leadership positions in the organization. Mr. Inglis' presentation, "National Security in the Age of Cyberspace - Can Convergence, Security, Privacy, and Transparency Co-exist?" offered valuable insight from inside the government agency. His lecture covered the framework and provided real-world examples of U.S. efforts to achieve the reconciliation of the various aims embodied in the Constitution and principles that both establish and constrain the work of the federal government. An edited transcript of this presentation is published in this volume.

Ms. Elisabeth Cook is a member of the Privacy and Civil Liberties Oversight Board (PCLOB), an independent, bipartisan agency within the executive branch. Ms. Cook is a practicing attorney, formerly with the U.S. Department of Justice, and brought a wealth of knowledge on a wide range of issues involving the balancing of government transparency and the interests of national security. Her presentation focused on the legal and policy-oriented history that informs the current debate surrounding the government's need to protect classified information. Again, an edited transcript of Ms. Cook's presentation is published in this volume.

Special Agent Beth O'Brien is with the FBI and Counterintelligence Strategic Partnership. Special Agent O'Brien's presentation focused on the definition of an "insider threat" and the FBI's development of indicators and profiles of potential insider threats.

Finally, Mr. Mark Jaycox is a Legislative Analyst for the Electronic Frontier Foundation (EFF). His focused research includes issues with consumer privacy, civil liberties, surveillance law, and cybersecurity and he has completed extensive work on legislative efforts to reform the National Security Agency and update surveillance law. Mr. Jaycox

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<sup>3</sup> See Melanie Reid, *NSA and DEA Intelligence Sharing: Why It Is Legal and Why Reuters and the Good Wife Got It Wrong*, 68 SMU L. REV. 427, 468 (2015).

presented the key items needed for reform, current proposals in Congress, and the potential outcomes.

In addition to the work and transcripts published by the Symposium participants in this volume, the following articles are included:

Professor Jason Zenor's article examines the existing legal framework and modern competing needs of national security, the defense industry, and the public interest. In examining legal protections for sources of "leaked" information, including historical examples, he suggests a new policy which favors the free flow of information and promotes whistleblowing and government transparency.

Dr. Daniel Alati's article examines the effect that Edward Snowden's national security disclosures have had thus far on the security establishments in Canada and the U.K., noting a lack of intelligence activities oversight in both countries. The article provides insight to the dearth of legislative outcomes that have occurred as a result of the U.S. leaks and suggests recommendations to prevent reoccurrence of the situation.

Many people graciously contributed to the success of this Symposium. We would like to give special thanks to: Kathy Baughman, Kate Reagan, Andrew McCree, Laura Hash, Keri Stophel, David Harmon, Robert Smith-Yanez, Union Avenue Books, Miller & Miller Court Reporters, and Dead End BBQ for their invaluable assistance and participation.