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**BRIEF**

**|** **Session on Press Freedom**

**| *Institute of Engaged Leadership* in Washington, D.C.**

**| Thursday 19 March 2020**

**Freedom of the press and the national security state**

As stated by the American Civil Liberties Union (ACLU): “The freedom of the press, protected by the First Amendment [of the United States’ Constitution], is critical to a democracy in which the government is accountable to the people. A free media functions as a watchdog that can investigate and report on government wrongdoing. It is also a vibrant marketplace of ideas, a vehicle for ordinary citizens to express themselves and gain exposure to a wide range of information and opinions”[[1]](#footnote-1).

“The rise of the national security state and the proliferation of new surveillance technologies have created new challenges to media freedom. The government has launched an unprecedented crackdown on whistleblowers, targeting journalists in order to find their sources. Whistleblowers (Edward Snowden, for instance) face prosecution under the World War One-era Espionage Act for leaks to the press in the public interest. In the face of a growing surveillance apparatus, journalists must go to new lengths to protect sources and, by extension, the public’s right to know.”[[2]](#footnote-2)

“Although virtually every state (40 states and the District of Columbia) has a law protecting reporters from having to disclose to law enforcement sensitive information about their reporting, including the identity of confidential sources, Congress and the federal courts have refused to recognize such a privilege. As a result, reporters have been subpoenaed by prosecutors to disclose confidential sources, and they face jail time if they refuse. In 2014, for instance, a federal court ruled that James Risen, a Pulitzer Prize-winning investigative reporter, had to testify in the trial of Jeffrey Sterling, a CIA whistleblower accused of revealing a botched CIA operation to hinder Iran’s nuclear weapons research. Risen, like many reporters before him, flatly refused to divulge his source and said he would go to jail for contempt before testifying.”[[3]](#footnote-3)

According to the ACLU, “The media, especially in these national security cases, serves as an essential check against government malfeasance and can function only when it can guarantee the safety and anonymity of sources. Federal legislation is desperately needed to finally include these protections in law. The ACLU has been a staunch supporter of these federal “media shield” laws”[[4]](#footnote-4), even though most federal courts have recognized, to a certain extent, that journalists have the right not to be compelled to testify or to disclose sources and information in court”[[5]](#footnote-5).

Apart from the protection of the press’ sources and materials, obstacles to the freedom of the press include content restrictions, including government efforts to ban the publication of certain information; government agencies’ denial or unjustifiable delays to access to information requests; government retaliation for perceived negative coverage; and “government orders that prohibit journalists and news organizations from publishing information that they already have”[[6]](#footnote-6).

**Reporters Committee for Freedom of the Press (RCFP)**

“The Reporters Committee for Freedom of the Press provides pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms (press freedom, freedom of information) and the newsgathering rights of journalists. The Reporters Committee serves news organizations, reporters, editors, documentary filmmakers, media lawyers, and many more who use our online resources. […] Known for building broad coalitions of major news and transparency organizations, the Reporters Committee is a voice for the right to freely gather and disseminate information in the public interest.”[[7]](#footnote-7)

“The Reporters Committee for Freedom of the Press was created in 1970 at a time when the nation’s news media faced a wave of government subpoenas asking reporters to name confidential sources. […] In the last four decades the Reporters Committee has played a role in virtually every significant press freedom case that has come before the Supreme Court, as well as in hundreds of cases in federal and state courts that affect press rights.”[[8]](#footnote-8)

**Questions**

1. What are the proper limits to the freedom of the press, notably in matters of national security?
2. How have journalists changed the way they protect their sources in the context of new surveillance technologies and the “national security state”?
3. What are the press freedom implications in the case of the US government’s accusations against Edward Snowden, “the world’s most famous whistleblower” who disclosed to the press top-secret documents that revealed the extent of the global surveillance programmes run by American and British spy agencies?[[9]](#footnote-9)
4. Does the US government’s charges against Julian Assange, WikiLeaks founder, have implications for press freedom?
5. How may journalistic rights be redefined in the age of new technologies? How do we define journalism in the digital age?

**Facilitator**

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Linda Moon focuses on free press, national security and surveillance policy issues. Prior to joining the Reporters Committee, Linda clerked for the Honorable Peggy Kuo in the U.S. District Court for the Eastern District of New York and was a legal fellow with the American Civil Liberties Union’s Racial Justice Program.

1. <https://www.aclu.org/issues/free-speech/freedom-press> [↑](#footnote-ref-1)
2. *Idem* [↑](#footnote-ref-2)
3. <https://www.aclu.org/issues/free-speech/freedom-press/media-protection-laws> [↑](#footnote-ref-3)
4. *Idem* [↑](#footnote-ref-4)
5. <https://www.rcfp.org/category/protecting-sources-and-materials/> [↑](#footnote-ref-5)
6. <https://www.rcfp.org/category/content-restrictions/>; <https://www.rcfp.org/category/freedom-of-information/>; <https://www.rcfp.org/category/prior-restraint/>. [↑](#footnote-ref-6)
7. https://www.rcfp.org/what-we-do/ [↑](#footnote-ref-7)
8. https://www.rcfp.org/our-history/ [↑](#footnote-ref-8)
9. <https://www.theguardian.com/us-news/ng-interactive/2019/sep/13/edward-snowden-interview-whistleblowing-russia-ai-permanent-record> [↑](#footnote-ref-9)