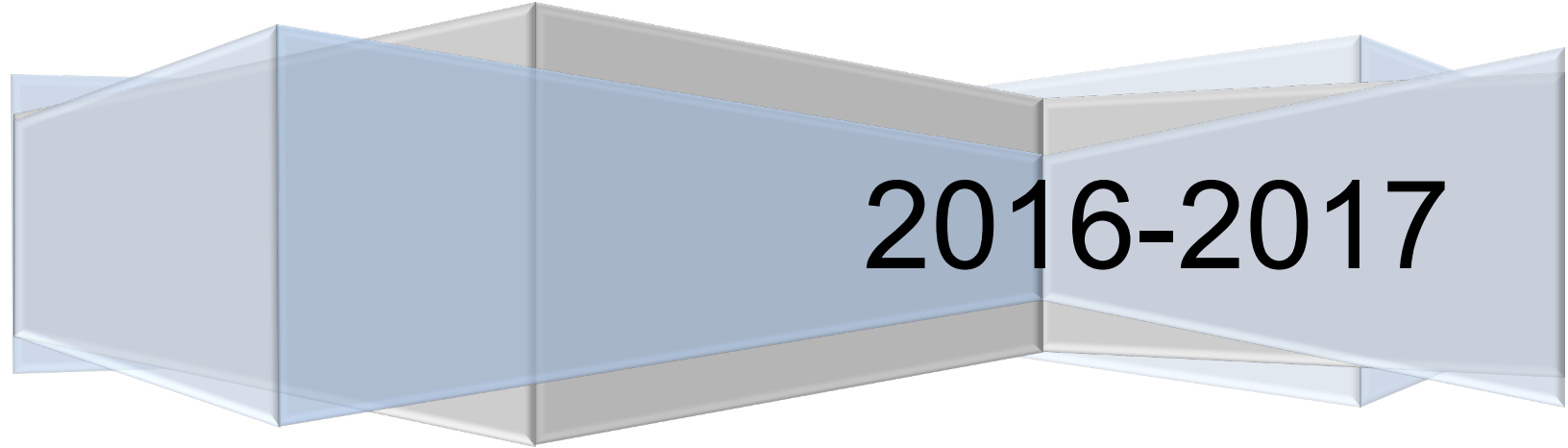


# Information Society Project Yale Law School

**2016-2017**

## **Accomplishment Book**

Compiled by Heather Branch, Rebecca Crootof, and Leah Ferentinos



**2016-2017**

# Information Society Project

2016-2017

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# People

# Information Society Project at Yale Law School

## 2016-2017 Directors, Staff, and Fellows

### Directors and Staff

- **Jack M. Balkin**, Director, Information Society Project; Knight Professor of Constitutional Law and the First Amendment
- **Rebecca Crootof**, Executive Director, Information Society Project; Research Scholar and Lecturer in Law, Yale Law School
- **Heather Branch**, Program Administrator and Event Coordinator
- **Natasha Rentas**, Program Coordinator and Business Manager

### Postdoctoral Resident Fellows

- BJ Ard
- Hannah Bloch-Webha
- Jean-Philippe Foegle
- Claudia Haupt
- Ying Hu
- Ido Kilovaty
- Alyssa King
- Kate Klonick
- John Langford
- Caitlin Petre

### Resident and Visiting Fellows

- Sandra Baron
- Maria Bastashevski
- Kiel Brennan-Marquez
- Andrew Burt
- Jonathan Cardenas
- Irin Carmon
- Ignacio Cofone
- Kate Darling
- Nick Frisch
- Samantha Godwin
- Argyro Karanasiou
- Cortelyou Kenney
- Sam Kleiner
- Adrian Kuenzler
- Asaf Lubin
- Peter Maybarduk
- Torey McMurdo
- Gabriel Michael
- Dina Mishra
- William New
- Guy Pessach
- Bilyana Petkova
- Ri Pierce-Grove
- Hector Postigo

- Sandra Ristovska
- David Robinson
- Amanda Shanor
- Priscilla Smith
- Christopher Soghoian
- Ramesh Subramanian

- Nabiha Syed
- Nafees Syed
- Gabriel Teninbaum
- Shlomit Yanisky-Ravid
- Elana Zeide

### **ISP Student Fellows**

- Omer Aziz
- Miriam Becker-Cohen
- Rebecca Chan
- Elizabeth Dervan
- Ariel Dobkin
- John Ehrett
- Kyle Elliot Fees
- Beth Mara Goldberg
- Misha Guttentag
- Olivia Horton
- Jaunita John
- Scout Katovich
- Lina Khan
- Julia Knight
- Meenu Krishnan
- Hilary Ledwell
- Aaron Levine
- Helen Li

- Marisa Lowe
- David Manners-Weber
- Laura McCready
- Yuriy Melnyk
- Nora Niedzielski-Eichner
- Alexandra Perloff-Giles
- Jessica Purcell
- Emma Roth
- Rumela Roy
- Simone Seiver
- Harrison Stark
- Stephen Stitch
- Julius Taranto
- Rachel Tuschman
- Andrew Udelsman
- Camila Vega
- Ethan Wong

## **Knights Law and Media Scholars**

- Patrick Baker
- John Brinkerhoff
- Mark Dore
- Allison Douglis
- John Ehrett
- Anna Gonzalez
- Alexandra Gutierrez
- Bethany Hill
- Meenu Krishnan
- Steve Lance
- Yuriy Melnyk
- David Murdter
- Nora Niedzielski-Eichner
- Daniela Noguera
- Lourdes Pantin
- Caitlin Petre
- Ben Picozzi
- Rumela Roy
- Brandon Sadowsky
- Stephen Stich
- Delbert Tran
- Andrew Udelsman
- David Walchak
- Beatrice Walton
- Corinne Waite
- Ethan Wong
- Jacob Zionce

## **Yale University Affiliates**

- Logan Beirne
- Jason Eiseman
- Joan Feigenbaum
- Michael Fischer
- Vali Gazula
- Susan Gibbons
- Bonnie Kaplan
- Sean O'Brien
- Limor Peer
- Thomas Pogge
- Brad Rosen
- Christina Spiesel
- Xiyin Tang
- Graham Webster
- Tina Weiner

# Resident Fellow Accomplishments<sup>1</sup>

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<sup>1</sup> This section includes only information shared with the compilers; it is not a full listing of all ISP resident fellow accomplishments for this time period.

## **BJ Ard – Resident Fellow**

### **Courses**

Technology Law, Yale Law School, Spring 2017 (with Jack Balkin and Rebecca Crootof).

### **Academic Publications**

*Librarians as Privacy Advocates*, 13 I/S: A JOURNAL OF LAW AND POLICY FOR THE INFORMATION SOCIETY 161 (2016) (invited symposium essay).

### **Presentations**

More Property-Like than Property: The Prevalence of Property Rules in IP, IP Scholars Conference, Stanford Law School, 2016.

SEALS Prospective Law Teachers Workshop, 2016. Privacy Law Disrupted, Internet Law Works-In-Progress Symposium, Santa Clara Law School, 2017.

Fair Use as Penalty Default, Works-In-Progress in IP Colloquium, Boston University School of Law, 2017.

Invited Presenter, Net Neutrality and Privacy Under Trump's FCC, Challenges of Advanced Technology and Artificial Intelligence, Information Society Project and Shalom Comparative Legal Research Institute, Yale Law School, 2017.

Discussant, *Better Together: Privacy Regulation and Innovation Policy* by Kathy Strandburg, Yafit Lev-Aretz & Grace Ha, Privacy Law Scholars Conference, Berkeley Law School, 2017.

Invited Presenter, How to Regulate a Robot?, Science on Screen Series, Real Art Ways, 2017.

Discussant, *Copyright and International Negotiations: An Engine of Free Expression in China* by Ge Chen, Fifth Freedom of Expression Scholars Conference, Yale Law School, 2017.

Panelist, Communicating Copyright Terms in Digital Transactions to Consumers, Workshop on Consumer Messaging in Connection with Online Transactions Involving Copyrighted Works, U.S. Patent & Trademark Office, 2017.

Moderator, Conversation with Travis LeBlanc, Chief of the Obama Administration's FCC Enforcement Bureau, Yale Law School, 2017.



# Hannah Bloch-Wehba – Stanton First Amendment Fellow

## Courses

Media Freedom and Information Act Clinic, Yale Law School, 2016-17 (with Jack Balkin, John Langford, and David Schultz).

## Popular Publications

*New Disclosures Reflect NSLs' Substantive First Amendment Flaws*, JUST SECURITY (Dec. 14, 2016).

*Will Trump Kill Executive War Powers?*, THE OUTLINE (June 5, 2017).

## Reports

Memorandum to Hon. Janet C. Hall re: Rules Governing Public Access to Search Warrant and Surveillance Material, Media Freedom & Information Access Clinic (2017).

## Amicus Briefs

Brief of Amicus Curiae Abrams Institute for Freedom of Expression and First Amendment Scholars, In re NSL (9th Circuit 2017) (arguing that National Security Letter statute's gag provision is an unlawful prior restraint).

## Presentations

Exposing Secret Searches: The First Amendment Right of Access to Electronic Surveillance Orders, Freedom of Expression Scholars Conference, Yale Law School, April 2017.

Moderator, Promoting Law Enforcement Accountability Through Access to Information, RebLaw, February 2017.

## MFIA Activities

### *Significant Victories & Decisions*

Crawford v. DoITT, 157002/2015 (N.Y. Sup. Ct.). New York FOIA lawsuit seeking disclosure of information about NYC high speed internet infrastructure. Court ordered disclosure.

Graeber v. New Haven Police Dep't et al. (Conn. Freedom of Information Commission). CT FOIA administrative appeal seeking disclosure of information about unsolved 1998 murder. FOIC denied appeal.

Schwartz v. DoD et al., No. 15-cv-7077 (S.D.N.Y.). FOIA lawsuit for records about censorship of audio feed from Guantanamo military commissions proceedings. Court ordered disclosure of some information, and MFIA obtained attorney's fees.

ACLU. v. NSA et al. (S.D.N.Y.). FOIA lawsuit for access to the government's interpretations of its legal authority to conduct communications surveillance abroad pursuant to Executive Order 12,333. Court granted summary judgment for the government.

In Re Access to Opinions of Foreign Intelligence Surveillance Court, No. 13-08 (FISC). Sought access to the opinions of the Foreign Intelligence Surveillance Court (FISC) concerning "bulk" communications surveillance. FISC held MFIA and ACLU lack standing to seek judicial opinions, and en banc FISC reconsidered issue.

#### *New Cases*

In Re Access to Opinions of Foreign Intelligence Surveillance Court, No. 16-01 (FISC). Filed motion seeking access to FISC opinions containing "novel or significant interpretations of law."

Privacy Int'l v. NSA et al. (D.D.C.). FOIA lawsuit for access to information about intelligence-sharing under "Five Eyes" agreement.

Nolen v. First Judicial District et al. (Pennsylvania Commonwealth Court). Filed motion seeking access to arrest reports, jury records, and search warrant affidavits in Philadelphia courts.

## Rebecca Crootof - Executive Director

### Courses

Technology Law, Yale Law School, Spring 2017 (with Jack Balkin and BJ Ard).

### Academic Publications

[\*Political Hacks: State Accountability in Cyberspace\*](#), 103 CORNELL L. REV. (forthcoming 2018).

[\*Consent is Not Enough: Respecting the Intensity Threshold in Transnational Conflict\*](#), 165 U. PA. L. REV. 1 (with Oona A. Hathaway, Daniel Hessel, Julia Shu, and Sarah Weiner) (2016).

[\*Autonomous Weapon Systems and the Limits of Analogy\*](#), in THE ETHICS OF AUTONOMOUS WEAPON SYSTEMS (Claire Finkelstein, Duncan MacIntosh & Jens David Ohlin, eds.) (forthcoming 2017).

### Popular Publications

*An Opportunity to Change the Conversation on Autonomous Weapon Systems*, LAWFARE (Jun. 15, 2017), <https://www.lawfareblog.com/opportunity-change-conversation-autonomous-weapon-systems> (with Frauke Renz).

*The DNC Hack Demonstrates the Need for Cyber-Specific Deterrents*, LAWFARE (Jan. 9, 2017), <https://lawfareblog.com/dnc-hack-demonstrates-need-cyber-specific-deterrents>.

*The Law of Consent-Based Interventions*, JUST SECURITY (Oct. 13, 2016), <https://www.justsecurity.org/33542/law-consent-based-interventions/> (with Sarah Weiner).

*Weapon, Combatant, Child, Animal: They're All Insufficient Analogies for Autonomous Weapon Systems*, JUST SECURITY (Sep. 6, 2016), <https://www.justsecurity.org/32748/weapon-combatant-child-animal-inappropriate-analogies-autonomous-weapon-systems/>.

### Presentations

The Challenges of Regulating New Technologies, Challenges of Advanced Technology and Artificial Intelligence, Information Society Project and Shalom Comparative Legal Research Institute, Yale Law School, 2017.

Invited Participant, Regulating Machine Learning, Information Society Project, Immuta and Arnold & Porter Kaye Scholer, Yale Law School, 2107.

Invited Participant, Emerging Legal, Legislative, and Liability Issues at the Intersection of Robotics and Policy, Halcyon and the American Association for the Advancement of Science, Halcyon House, 2107.

The Challenges of Regulating New Technologies, Science and Global Security Seminar Series, Woodrow Wilson School of Public & International Affairs, Princeton University, 2017.

Discussant, *The Role of the Private Sector in the Governance of Autonomous Weapon Systems: A Principle-Agent Perspective* by Sophie Charlotte-Fischer, WeRobot 2017, Yale Law School, 2017.

Getting Law and Policy Right: Regulating Autonomous Weapon Systems, Societal Implications of Robotics Conference, Humanity-Centered Robotics Initiative, Brown University, 2017.

Organizer and Participant, Fighting Fake News Workshop, Yale Law School, 2017. Minimizing Misuse of Autonomous Weapon Systems, Bad Actor Risks in Artificial Intelligence Workshop, Future of Humanity Institute, 2017.

Invited Participant, International Legal Implications of Military Space Operations, Harvard Program on the International Law of Armed Conflict, International Committee of the Red Cross and the Stockton Center, U.S. Naval War College, 2017.

Guest Lecturer, Political Hacks: State Accountability in Cyberspace, Cyberspace Law Course with Professor Andrew Chin, University of North Carolina School of Law, 2017.

Autonomous Weapon Systems and the Limits of Analogy, Stockton Seminar Series, U.S. Naval War College, 2016.

Panelist, Robots & Artificial Intelligence, Harvard Law & International Development Society symposium, Harvard Law School, 2016.

The *Charming Betsy* Canon and Non-Binding Political Commitments, Yale-Duke Roundtable on Foreign Relations Law, Yale Law School, 2016.

Which Law Governs? The Relationship Between International Human Rights Law and International Humanitarian Law, International Humanitarian Law Workshop, Center for Global Legal Challenges and International Committee of the Red Cross, Yale Law School, 2016.

Panelist, Artificial Intelligence and the Law, Wikimedia Foundation, 2016.

## **Jean-Philippe Foegle - Resident Fellow**

### **Courses**

[Transatlantic Clashes on Privacy in a Digitized World \(Reading Group\)](#), Yale Law School, Fall 2016

### **Presentations**

Organizer, [The International Law of Whistleblowers Conference](#), Yale Law School, 2017.

## **Claudia Haupt – Resident Fellow**

### **Academic Publications**

*Unprofessional Advice*, 19 U. PA. J. CONST. L. (forthcoming 2017).

*Religious Outliers: Professional Knowledge Communities, Individual Conscience Claims, and the Availability of Professional Services to the Public*, in LAW, RELIGION, AND HEALTH IN THE UNITED STATES (Holly Fernandez Lynch, I. Glenn Cohen, & Elizabeth Sepper eds., Cambridge Univ. Press, forthcoming).

*Antidiscrimination in the Legal Profession and the First Amendment: A Partial Defense of Model Rule 8.4(g)*, 19 U. PA. J. CONST. L. ONLINE (2017).

*Professional Speech and the Content-Neutrality Trap*, 127 YALE L.J. FORUM 150 (2017).

*Professional Ethics, Personal Conscience, and Public Expectations*, 27 J. CLINICAL ETHICS 233 (2016).

### **Popular Publications**

*Giving Professional Advice*, HUFFINGTON POST, Sept 3, 2016.

### **Presentations**

*Unprofessional Advice*, Faculty Workshop, University of Arizona Law School, 2016.  
*Professional Speech and the Content-Neutrality Trap*, Freedom of Expression Scholars Conference, Yale Law School, 2017.

## **Ido Kilovaty – Resident Fellow**

### **Academic Publications**

*Freedom to Hack* (in progress).

*Doxfare – Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information*, 9 HARV. NAT'L SEC. J. (forthcoming).

*World Wide Web of Exploitations: The Case of Peacetime Cyber Espionage Operations Under International Law: Towards a Contextual Approach*, 18 COLUM. SCI. & TECH. L. REV. 42 (2017).

*Virtual Violence – Disruptive Cyberspace Operations as "Attacks" under International Humanitarian Law*, 22 MICH. TELECOMM. & TECH. L. REV. 113 (2017).

*ICRC, NATO and the U.S. – Direct Participation in "Hacktivities" – Targeting Private Contractors in Cyberspace under the Law of Armed Conflict*, 15 DUKE L. & TECH. REV. 1 (2016).

### **Popular Publications**

*If It Talks Like a Government and Acts Like a Government, It Must Be a Tech Giant*, TECHCRUNCH (March 31, 2017) (with Yafit Lev-Aretz).

*Violence in Cyberspace: Are Disruptive Cyberspace Operations Legal under International Humanitarian Law?* JUST SECURITY (March 3, 2017).

*Want to Keep Hackers Out of Gadgets? Try International Law*, WIRED (February 7, 2017).

*The World is on the Verge of a Cyber War*, THE JERUSALEM POST (January 7, 2017).

*Towards a Cyber-Security Treaty*, JUST SECURITY (August 3, 2016) (with Itamar Mann).

*The Democratic National Committee Hack: Information as Interference*, JUST SECURITY (August 1, 2016).

*Will "Cyber Bonds" Mitigate Transnational Cyberspace Threats*, JUST SECURITY (June 15, 2016).

## **Presentations**

Virtual Violence – Disruptive Cyberspace Operations as “Attacks” Under International Humanitarian Law; Revisiting the Role of International Law in National Security, Cardozo Law School, 2017.

Does International Law Protect Cyberspace?, Governing Our Commons: What Matters to Us Today, Law Graduate Conference, McGill University School of Law, 2017.

Doxfare – Politically Motivated Leaks and the Future of the Norm on Non-Intervention in the Era of Weaponized Information, Fellows’ Collaborative at the Georgetown University Law Center, 2017.

Hack, Leak, and Dash – Lessons from the DNC Hack, and the Future of the Norm of Non-Intervention in the Digital Era, Mid-Atlantic S.J.D. Roundtable, American University School of Law, 2016.



## **Kate Klonick – Resident Fellow**

### **Courses**

Social Science and Institutional Design, Yale Law School, Spring 2017 (with Tom Tyler).

### **Academic Publications**

[\*Re-Shaming the Debate: Social Norms, Shame, and Regulation in an Internet Age\*](#), 75 MD. L. REV. 1029 (2016).

### **Popular Publications**

[\*Facebook, Free Expression and the Power of a Leak\*](#), N.Y. TIMES OP-ED (June 27, 2017) (with Margot Kaminski).

[\*The Most Important Lesson From the Leaked Facebook Content Moderation Documents\*](#), SLATE (Jun. 29, 2017).

[\*How Online Campaigning is Influencing Britain's Election\*](#), ECONOMIST (May 27, 2017).

[\*Here's What It Would Take for Twitter to Get Serious About Its Harassment Problem\*](#), VOX (Oct. 25, 2016).

[\*Facebook Under Pressure\*](#), SLATE (Sept. 12, 2016).

[\*You'll Never Guess This One Crazy Thing Governs Online Speech\*](#), SLATE (Aug. 24, 2016).

### **Presentations**

Presenter, Faculty Talk, University of Arizona Law School, 2017.

Participant, Robot Salon, GoogleX, 2017.

Chair, We Robot 2017, Yale Law School, 2017.

Presenter, Faculty Talk, Brown University Cognitive Science and Psychology Dept., 2017.

## **John Langford – Abrams Clinical Fellow**

### **Courses**

Media Freedom and Information Act Clinic, Yale Law School, 2016-17 (with Jack Balkin, John Langford, and David Schultz).

### **Amicus Briefs**

Brief of Amici Curiae Constitutional, Administrative, Contracts, and Health Law Scholars, *Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144 (2017). Argued that a New York statute regulating the imposition of “surcharges” for credit cards should not be subjected to heightened scrutiny under the First Amendment or, in the alternative, should be upheld under intermediate scrutiny as a valid regulation of commercial speech.

### **Presentations**

Organizer, Fifth Annual Freedom of Expression Scholars Conference, Yale Law School, 2017.

Panelist, *Leveraging Impact I: Developing and Implementing A High-Impact Agenda*, Access and Accountability Conference, Yale Law School, 2017.

### **MFIA Activities**

#### *Significant Victories & Decisions*

*Guardian News & Media LLC v. Ryan*, No. 17-17083 (9th Cir.). Argued and won summary judgment motion for access to view entirety of Arizona lethal injection executions.

*United States v. Doe*, No. 11-cr-479 (2d Cir.). Filed motion to intervene and unseal the Second Circuit’s docket in a criminal case on behalf of journalist Richard Behar and *Forbes* magazine, argued motion to special master, obtained report and recommendation that all but a handful of documents be released.

*In Re Access to Opinions of Foreign Intelligence Surveillance Court*, No. 13-08 (FISC). Sought access to the opinions of the Foreign Intelligence Surveillance Court (FISC) concerning “bulk” communications surveillance. FISC held MFIA and ACLU lack standing to seek judicial opinions, and en banc FISC reconsidered issue. *Rosenberg v. DOD (“PERSTAT”)*, No. 16-cv-2117 (D.D.C.). Negotiated the release of thousands of pages of records detailing personnel reports at Guantanamo Bay for Miami Herald journalist Carol Rosenberg.

### *New Cases*

Behar v. U.S. Department of Homeland Security, No. 17-cv-8153 (S.D.N.Y.). FOIA lawsuit on behalf of investigative reporter Richard Behar in FOIA against the U.S. Department of Homeland Security seeking Secret Service records cataloguing visitors to Candidate Donald Trump and high-level campaign officials from late 2015, when Trump first received Secret Service protection, until the inauguration in January 2017.

ACLU v. Los Angeles Police Department, No. BS 169474 (Cal. Sup. Ct.). Filed pattern and practice lawsuit that seeks to compel the Los Angeles Police Department to comply with the California Public Records Act.

In Re Access to Opinions of Foreign Intelligence Surveillance Court, No. 16-01 (FISC). Filed motion seeking access to FISC opinions containing “novel or significant interpretations of law.”

Rosenberg v. DOD (“Kelly Emails”), No. 17-cv-0437 (D.D.C.). FOIA litigation against the Department of Defense seeking email correspondence between General John F. Kelly and Lisa Monaco, the former Assistant to the President for Homeland Security and Counterterrorism.

## **Caitlin Petre - Resident Fellow**

### **Academic Publications**

[\*Gamifying the Workplace\*](#), PUBLIC BOOKS (2016).

WORD COUNT: WEB METRICS, JOURNALISM, AND THE FUTURE OF EXPERTISE IN THE BIG DATA AGE (working title) (under contract with Princeton University Press).

*Becoming Data: The Production of Web Analytics in Journalism* (abstract accepted to Digital Journalism special issue on “Measurable Journalism”).

### **Presentations**

The Interpretive Ambiguity of Cultural Metrics, International Communication Association, 2017.

Becoming Data: Web Analytics, Journalism, and the Emotional Dimensions of Rationalization, International Communication Association, 2017.

The Promises and Pitfalls of Digital Newsroom Ethnography, International Communication Association, 2017.

Managed Metrics: The Entanglement of Expertise and Analytics in the U.S. News Industry, Media Sociology ASA Pre-conference, 2016.

When Workers Play, Who Wins? Workplace Gamification in Historical Perspective, Data & Society Research Institute, 2017.

# Conferences

# Hacking the Election

September 20, 2016

In the wake of the DNC hack, there has been a flurry of discussion of how both foreign and domestic actors may use new technologies in the attempt to influence the election, ranging from releasing private information to actively hacking voting machines. This raises a host of legal and political questions regarding the relationship between advanced technologies and the integrity of political processes.

*Sponsored by the Oscar M. Ruebhausen Fund.*

## **Panel 1: The DNC Hack** ([Livestream](#))

This panel focused chiefly on the recent exposure of thousands of emails belonging to officials of the Democratic National Committee and this action's implications for national security law, international law, and foreign affairs.

Moderator: **Scott Shapiro**

Panelists: **Jack Goldsmith, Oona Hathaway, Susan Hennessey**

## **Panel 2: Hacking the Election** ([Livestream](#))

This panel explored how the presidential election could be affected by the use of different technologies, including manipulative social media algorithms, voting machines vulnerabilities, and cyberattacks or cyber-enabled disinformation campaigns.

Moderator: **Jack Balkin**

Panelists: **Paul Brewer, Michael Fischer, Heather Gerken**

# Weaponizing Information

January 24, 2017

Information warfare is the use of information to delegitimize rivals and adversaries and/or to push a state's agenda. The "Weaponizing Information" conference, co-hosted by the Center for Global Legal Challenges and the Information Society Project, brought together legal, policy, political science, and military experts to discuss the history and future trajectory of information warfare in the internet age. While foreign digital interference raises concerns about the security of our democracy, attempts to use information to delegitimize rivals and adversaries, or to push a state's agenda are not new: rather, they are modern iterations of long-standing information warfare tactics and strategies.

This conference sought to understand the roots of these practices and how today's technology adds new dimensions. In what ways does cyber conflict change – or reassert – existing information warfare norms? What are the military, legal and policy implications of this evolution? What existing precedents should inform new scholarship and policy orienting principles?

*Sponsored by the Oscar M. Ruebhausen Fund.*

## **Manipulation and Misinformation: Propaganda and False News ([Livestream](#))**

Moderator: **Michael Reisman**

Speakers: **Ellen Goodman, Jason Stanley, Patrick Tucker**

## **Information Warfare in the Cyber Era ([Livestream](#))**

Moderator: **Oona Hathaway**

Speakers: **Catherine Lotrionte, Jacquelyn Scheneider, Aaron Brantly**

# The International Law of Whistleblowers Conference

February 14, 2017

This conference brought together academics and practitioners to discuss the legal protections for whistleblowers, their role in checking executive action, and public perceptions surrounding whistleblowers and its effect on the public interest defense.

*Sponsored by the Oscar M. Ruebhausen Fund.*

## Whistleblowers' Shields: Anonymity and Asylum

Anonymity and asylum can shield whistleblowers from state retaliation but also raises technical and legal problems. The effectiveness of online anonymity depends on data security and the scope of state surveillance, and the current asylum framework was not designed to accommodate whistleblowers' unique needs.

- **Cannelle Lavite**, PhD Candidate, University of Bremen; Project Manager, Blueprint for Free Speech (moderator)
- **Susan Mc Gregor**, Assistant Director, Tow Center for Digital Journalism; Assistant Professor, Columbia Journalism School
- **Anna Myers**, Director, Whistleblowing International Network
- **Patrick Weil**, Visiting Professor of Law, Oscar M. Ruebhausen Distinguished Senior Fellow, and Senior Research Scholar in Law, Yale Law School

## Whistleblowers as a Check on the Executive

- **Bob Woodward**, Current Associate Editor, *Washington Post*; Visiting Lecturer, Yale University
- **Emily Bazelon**, Senior Research Scholar in Law, Yale Law School; Staff Writer, *New York Times Magazine*

## The Public Perception and the Public Interest Defense

Whistleblowers often face criminal prosecution. Panelists considered the pros and cons of establishing a "public interest" defense, which would shield whistleblowers from criminal liability when the public interest in the disclosed information outweighs the public interest in prosecution.

- **Jean-Philippe Foegle**, Resident Fellow, Information Society Project; PhD candidate and Lecturer in Law, Université Paris Ouest Nanterre (moderator)
- **Sandra Coliver**, Senior Legal Counsel, Open Society Justice Initiative
- **Tom Devine**, Legal Director, Government Accountability Project
- **Patrick McCurdy**, Associate Professor, Department of Communication, University of Ottawa



# Fighting Fake News Workshop

March 7, 2017

The Information Society Project at Yale Law School and the Floyd Abrams Institute for Freedom of Expression hosted a workshop intended to explore the ongoing efforts to define fake news and discuss the viability and desirability of possible solutions.

The discussion encompassed attempts to identify the particular harm associated with fake news; the many First Amendment questions that arise in any attempt to create governmental regulations on specific kinds of speech; and the pros and cons of self-regulation by those involved in the digital ecosystem.

This workshop was meant to be a first step towards encouraging interdisciplinary conversation and work on these issues. There were twenty-one participants from various disciplines, including members of academia, the practicing bar, news organizations, information intermediaries, data scientists, computer scientists, and sociologists.

*Support for this workshop was provided by the Information Society Project and the Floyd Abrams Institute for Freedom of Expression.*

# We Robot 2017

March 31-April 1, 2017

March 31, 2017

Welcome Remarks: **Jack Balkin**, Director, Information Society Project

Introductory Remarks: **Kate Klonick**, We Robot 2017 Chair

([Livestream](#))

**Karen Levy and Meg Leta Jones**, *Sporting Chances: Robot Referees and the Automation of Enforcement*

**Jack Balkin**, Discussant

([Livestream](#))

**Solon Barocas and Andrew Selbst**, *Taking Explanation Seriously in Law and Machine Learning*

**Frank Pasquale**, Discussant

([Livestream](#))

Lightning Round: Robot Criminals, Judges, and Lawyers: A Discussion of Robotics and the Justice System

**Ying Hu, Drew Simshaw, Daniel Susser, Karen Levy, Kiel Brennan-Marquez**

([Livestream](#))

**Luisa Scarcella and Michaela Georgina Lexer**, *The Effects of Artificial Intelligence on Labor Markets – A Critical Analysis of Solution Models from a Tax Law and Social Security Law Perspective*

**Brishen Rogers**, Discussant

([Livestream](#))

**Rebecca Wexler**, *Trade Secrets as Evidentiary Privilege*

**Roger Ford**, Discussant

([Livestream](#))

Lightning Round: Robots' Place in the World: A Discussion on the Intersection of Robotics and Society

**Kate Darling, Judith Donath, Hin-Yan Liu**

([Livestream](#))

**April 1, 2017**

**Kristen Thomassen**, *Feminist Perspectives on Drone Regulation*

**Madeleine Elish**, Discussant

([Livestream](#))

**Marc Canellas**, et al., *Framing Human-Automation Regulation: A New Modus Operandi from Cognitive Engineering*

**Tracy Pearl**, *Reformulating Regulation Around Driverless Cars*

**Ed Felten**, Discussant

([Livestream](#))

Demo: **Howard Chizeck**, Haptic Passwords

([Livestream](#))

**Sophie-Charlotte Fischer**, *The Role of the Private Sector in the Governance of Autonomous Weapon Systems: A Principal-Agent Perspective*

**Rebecca Crootof**, Discussant

([Livestream](#))

Lightning Round: Private Law and Public Law Answers to AI: A Discussion of Robotics and Regulation

**Lauren Henry Scholz**, **Amanda Levendowski**, **Kevin Miller**, **Matthew**

**Scherer**, **Garry Mathiason**

([Livestream](#))

**Michael Guihot**, et al., *Nudging Robots: Innovative Solutions to Regulating Artificial Intelligence*

**William Smart**, **Cindy Grimm**, **Woody Hartzog**, *An Education Theory of Fault for Autonomous Systems*

**Kate Crawford**, Discussant

([Livestream](#))

*Sponsors include the Microsoft, the Omidyar Group, the Rock Center for Corporate Governance, and the Oscar M. Ruebhausen Fund.*

# Freedom of Expression Scholars Conference (FESC) 5

April 29-30, 2017

At FESC, scholars and practitioners discuss works-in-progress on the freedoms of speech, expression, press, association, petition, and assembly as well as on related issues of knowledge and information policy. FESC has become a fixture on the calendar of leading First Amendment thinkers and scholars nationwide.

April 29, 2017

**Floyd Abrams**, Welcome Remarks

*First Session (Breakout Session)*

**Heidi Kitrosser**, *Free Speech, Higher Education and the PC Narrative*  
**Caroline Mala Corbin**, Discussant

Moot for **Justin Marceau**'s upcoming oral argument in *Animal Legal Defense Fund v. Wasden*, No. 15-35960 (9th Cir.)

**Ashley Messenger**, *Rethinking the Right of Publicity in the Context of Social Media*  
**Sandra Baron**, Discussant

*Second Session (Breakout Session)*

**Hannah Bloch-Wehba**, *Exposing Secret Searches: A First Amendment Right of Access to Electronic Surveillance Applications and Orders*  
**Jameel Jaffer**, Discussant

**David Pozen**, *Transparency's Ideological Drift*  
**John Langford**, Discussant

**Lyrissa Lidsky**, *#! [GUN EMOJI] U: Considering the Context of Online Threats*  
**Alexander Tsesis**, Discussant

**Marc Blitz**, *Intermediate Scrutiny, the Spence Test, and Other Tools for Navigating Lockean Borderlands*  
**Enrique Armijo**, Discussant

*Third Session (Plenary Panel) – Press Freedom*

**Floyd Abrams & David Schulz**, Moderators  
**Christina Koningsor**, *The De Facto Reporter's Privilege*  
**RonNell Andersen Jones & Sonja R. West**, *Press Freedom's House of Cards*  
**Lisa Sun & RonNell Andersen Jones**, *Enemy Construction and the Press*  
**D. Victoria Baranetsky**, *Press Clause and Privacy Principles*

*Fourth Session (Breakout Session)*

**Brian Soucek**, *Permitting Art*  
**Tabatha Abu El-Haj**, Discussant

**Helen Norton**, *Government Speech and the War on Terror*  
**Heidi Kitrosser**, Discussant

**Morgan N. Weiland**, *First Amendment Metaphors: From "Marketplace" to "Free Flow of Information"*  
**Alan Chen**, Discussant

**Alexander Tsesis**, *Categorizing Away Student Speech*  
**Ashutosh Bhagwat**, Discussant

*Fifth Session (Breakout Session)*

**Justin Marceau & Alan K. Chen**, *Material Benefits, Cognizable Harms, and the Scope of the Constitutional Protection for Lies*  
**Lyrissa Lidsky**, Discussant

**Vincent Blasi**, *Rights Skepticism and Majority Rule at the Birth of the Modern First Amendment*  
**Genevieve Lakier**, Discussant

**Caroline Mala Corbin**, *Depictions of Terrorists in the U.S. through a Critical Race & Propaganda Lens*  
**Maggie McKinley**, Discussant

**Ashutosh Bhagwat**, *When Speech is Not "Speech"*  
**Jack Balkin**, Discussant

**April 30, 2017**

*Sixth Session (Breakout Session)*

**Ge Chen**, *Copyright and International Negotiations: An Engine of Free Expression in China*

**BJ Ard**, Discussant

**Tabatha Abu El-Haj**, *“Live Free or Die” – Liberty and the First Amendment*

**Amanda Shanor**, Discussant

**Jonathan Manes**, *Methods & Techniques: The Problem of Secret Innovation in Law Enforcement*

**Hannah Bloch-Wehba**, Discussant

*Seventh Session (Breakout Session)*

**Roy Gutterman**, *Ballot Selfies: New Political Speech in Search of First Amendment Protection in Social Media*

**Claudia Haupt**, Discussant

**Enrique Armijo**, *Government-Provided Internet Access, Infrastructures of Free Expression, and the Role of the State*

**Andrew Tutt**, *Structural Barriers to the Transformation of the United States Into a “Democratic” Information State*

**David Schulz**, Discussant

*Eighth Session (Lunchtime Plenary Panel) – Content Regulation*

**Robert Post**, Moderator

**Genevieve Lakier**, *Reed v. Town of Gilbert, Arizona and the Rise of the Anti-Classificatory First Amendment*

**Claudia Haupt**, *Professional Speech and the Content-Neutrality Trap*

**Rachael L. Jones & Wendy Serra**, *“Neither Sheep nor Fools”: Justice Scalia and the Legacy of R.A.V. v. City of St. Paul, Minnesota*

# Commercial Speech II: Creeping Commercial Speech

June 13, 2017

This conference focused on the pursuit of a definition of “commercial speech” and provided a multi-faceted account of how the absence of a coherent definition impacts First Amendment protections with regards to the content creation community, creativity in advertising, and other areas of corporate speech.

*Planning Committee: Sandra S. Baron, Abrams Institute for Freedom of Expression, Yale Law School; Chris Beall, Fox Rothchild LLP; Scott Dailard, Cooley LLP; Bruce Johnson, Davis Wright Tremaine LLP; and Rick Kurnit, Frankfurt Kurnit Klein & Selz PC.*

*Funding for the conference was provided by: Avvo, Inc., Cooley LLP, Davis Wright Tremaine LLP, Fox Rothschild LLP, Frankfurt Kurnit Klein & Selz PC, Levine Sullivan Koch & Schulz, LLP.*

## Opening Conversation

**Jason DeLand**, Founding Partner of Anomaly, and **Shawn Flowers**, Deputy Counsel, Time Inc., considered what “commercial speech” is to those who pay to create and disseminate it and to the media that rely on it for their existence.

## The Creep and Its Impact

In the absence of a considered or even consistent definition of “commercial speech,” regulators and legislatures continue to limit speech by classifying it as commercial. Consider *Kasky v. Nike* versus *Citizens United*, *Sorrell* and *Reed*: What scrutiny is to be applied in evaluating the constitutionality of speech regulation? How are courts applying *Reed* and *Sorrell* in judicial review of statutes and regulations abridging freedom of speech?

- **Jack Balkin**, Knight Professor of Constitutional Law and the First Amendment, Yale Law School
- **Steven G. Brody**, Partner, Morgan, Lewis & Bockius LLP
- **Jonathan Donnellan**, Vice President and Deputy General Counsel, Hearst Corporation
- **David Vladeck**, A.B. Chettle, Jr. Professor of Law, Georgetown University Law Center
- Moderated by **Bruce Johnson**, Partner, Davis Wright Tremaine LLP

## **Right of Publicity**

The expansion of right of publicity claims against content classified as “commercial speech” poses a substantial chilling effect on free speech. The opportunity to punish speech through litigation costs and runaway damage awards against speech or speakers that are disfavored or unpopular is exploding. Meanwhile, increasing concerns for individual privacy are expanding claims for commercial appropriation of identity against creators of content in a variety of genres and new media. Is there a definition of “commercial speech” that might put boundaries on these claims and that the Supreme Court might adopt?

- **Jennifer Rothman**, Professor of Law and Joseph Scott Fellow, Loyola Law School (Los Angeles), Loyola Marymount University
- **Katherine Surprenant**, General Counsel, National Media & Marketing, Meredith Corporation
- **Alonzo Wickers**, Partner, Davis Wright Tremaine LLP
- Moderated by **Rick Kurnit**, Partner, Frankfurt Kurnit Klein & Selz PC

## **Beyond “Native Advertising”**

As media try to stay both economically and editorially relevant, they are creating new business models and formats both for their own content and for that of advertisers and brands. Where do these new models and formats fit within First Amendment analysis? Will the creep of commercial speech regulation inhibit or even make them untenable? And can the framework for commercial speech regulation be stretched to cover fake news?

- **Eric Goldman**, Professor, Santa Clara University School of Law
- **David Perpich**, President and General Manager of the Wirecutter
- **Tamara Piety**, Professor of Law, University of Tulsa College of Law
- Moderated by **Scott Dailard**, Partner, Cooley LLP



# Challenges of Advanced Technology and Artificial Intelligence in the 3A Era of “Dark Mirror”

June 12, 2017

**Patricia Sánchez Abril**, Associate Professor, Business Law, University of Miami School of Business Administration

**BJ Ard**, ISP Resident Fellow; PhD Candidate in Law, Yale Law School

**I. Glenn Cohen**, Faculty Director, Petrie-Flom Center for Health Law Policy, Biotechnology and Bioethics; Professor of Law, Harvard Law School

**Rebecca Crootof**, ISP Executive Director

**Camilla A. Hrdy**, ISP Affiliate Fellow, Assistant Professor, Akron Law School

**Ido Kilovaty**, ISP Resident Fellow; Cyber Fellow, Center for Global Legal Challenges

**Shlomit Yanisky Ravid**, ISP Visiting Fellow; Founder and Academic Director, Shalom Comparative Legal Research Institute, ONO Academic Law School, Israel; Visiting Professor, Fordham Law

**Christina Spiesel**, ISP Affiliated Fellow

**Ramesh Subramanian**, ISP Resident Fellow; Gabriel Ferrucci Professor of Computer Information Systems, School of Business, Quinnipiac University

**Xiyin Tang**, ISP Yale Affiliated Fellow

*This event was hosted by the Information Society Project at Yale Law School and The Shalom Comparative Legal Research Institute, OAC, I-L.*

# Activities



## Access to Knowledge (A2K)

Access to Knowledge (A2K) refers to the right to participate in the creation, distribution, and acquisition of raw information, secondary analyses of data, and knowledge-embedded tools and services. The A2K critical discourse emphasizes the value of openness and highlights the impact of knowledge policy on international development and civil liberties. It touches on a wide variety of policy issues, including those related to patents, copyright, media openness, communication technologies, access to government information, open-access scholarship, spectrum allocation, interoperability standards, and the preservation of traditional knowledge. A2K policy aims include fostering broader participation in civic, cultural, and educational affairs; expanding the benefits of scientific and technological advancement; and promoting innovation, development, and social progress around the world.

The ISP's Access to Knowledge (A2K) initiative is part of the larger Access to Knowledge Global Academy, a network of scholars at institutions in Brazil, China, Egypt, India, South Africa, and the United States dedicated to promoting academic scholarship, research, and policy analysis on access to knowledge issues for information-poor communities.

The ISP's A2K initiative has hosted workshops and published a number of reports and books, including country-specific analyses and subject-matter studies. The ISP recently published a book on global censorship and is now finalizing one on the impact of mobile technologies.

Much of the ISP's A2K work has been supported by the John D. & Catherine T. MacArthur Foundation and by individual donors.



# Knight Law and Media Program

The Knight Law and Media Program (Knight LAMP) is designed to foster a deeper understanding of the issues at the intersection of law, media, and journalism and to encourage Yale Law School students to pursue careers in media law. It is focused on providing support and programming for students who plan to be journalists, journalist advocates, and policy makers or leaders in the media industry; for working journalists who seek a deeper understanding of law, media, and policy; and for scholars who focus on media law issues. Professor [Jack Balkin](#) serves as the Program's director. Knight LAMP supports the work of ISP Resident Fellows and [Knight LAMP Student Fellows](#) (Yale Law School students with summer internships focused on media law, defending the First Amendment, or working for the protection of journalism or journalists). The Knight LAMP program also sponsors various [events](#), including conferences, academic roundtables, speakers, and writing workshops.

Knight LAMP is made possible by a generous contribution from the John S. and James L. Knight Foundation, which also enables Yale Law School to bring working journalists in for training programs and conferences.

## **Speaker Series**

**FOIA Bootcamp 2017**, February 1, 2017

**Dan Klau**, First Amendment Litigator; President, Connecticut Foundation for Open Government

**Michael Morisy**, Co-Founder, *Muckrock*

**Tech and the New Politics of Power**, February 15, 2017

**Nancy Scola**, Senior Technology Reporter, *POLITICO*

**Journalism, Technology and Gender in the Trump Era**, February 21, 2017

**Amanda Hess**, Staff Writer, *New York Times*

**The Past and Future of Trump Reporting**, February 27, 2017

**Jeff Horwitz**, DC Investigative Reporter, *AP*

**Covering the Movements Changing America**, April 25, 2017

**Amy Goodman**, Host and Journalist, *Democracy Now!*

## **Writing Workshops**

**How to Write an Op-Ed, September 23, 2016**  
**Emily Bazelon**

**Writing with Influence: A Workshop on Short- Form Content, October 24, 2016**  
**Jack Goldsmith**

**How to Write and Pitch an Op-Ed, December 1, 2016**  
**Lincoln Caplan**

# LAW & TECHNOLOGY

## Law & Tech Speaker Series

The Law & Tech Speaker Series on Information Law and Information Policy hosts leading experts, speaking about their latest papers or projects.

*This speaker series is sponsored by the Oscar M. Ruebhausen Fund. Asterisked events were co-sponsored with the Center for Global Legal Challenges.*

**Big Data Off Broadway**, September 6, 2016  
**Harry Fox Davies**, Research and Digital Associate, Privacy Production

**The Fourth Amendment in a Digital World\***, September 13, 2016  
**Laura Donohue**, Professor of Law, Georgetown Law

**Friending the Privacy Regulators**, September 27, 2016  
**William McGeeveran**, Professor of Law, University of Minnesota

**Privacy and Cybersecurity: Legal Issues in Private Practice\***, October 4, 2016  
**Vivek Mohan**, Privacy Counsel, Apple Inc.

**National Security in the Digital Age\***, October 17, 2016  
**David Sanger**, Journalist, *New York Times*

**Pharma, Freedom of Expression, and Fraud**, October 18, 2016  
**Matthew Herder**, Associate Professor, Dalhousie University

**Transatlantic Perspectives of Privacy and Cybersecurity: A Proposal**, October 25, 2016  
**Pierluigi Perri**, Associate Research Professor, University of Milan Law School  
**David Thaw**, Assistant Professor, University of Pittsburgh

**Lunch Talk with Michael Sulmeyer\***, October 31, 2016  
**Michael Sulmeyer**, Director, Cyber Security Project, Belfer Center, Harvard Kennedy School

**Lunch Talk with Richard Salgado\***, November 8, 2016  
**Richard Salgado**, Director, Information Security and Law Enforcement Matters, Google

**The Tallinn Manual Journey: Identifying the International Law Applicable to Cyber Operations\***, November 15, 2016

**Michael Schmitt**, Chairman and Professor, U.S. Naval War College Stockton Center for the Study of International Law

**Accountability for War Algorithms**, January 17, 2017

**Dustin Lewis**, Senior Researcher at Harvard Law School Program on International Law and Armed Conflict

**The Hidden Costs of Requiring Accounts Online**, January 31, 2017

**Aaron Shaw**, Assistant Professor of Communication Studies, Northwestern University

**Journalism, Technology, and Gender in the Trump Era**, February 21, 2017

**Amanda Hess**, Staff Writer, *New York Times*

**Ubiquitous DNA Forensics and Cross-Kingdom Clues: The Evisceration of Molecular Privacy**, February 28, 2017

**Christopher Mason**, Associate Professor, Weill Cornell Medicine

**Wikimedia Foundation vs. NSA: Fighting Against the Chilling Effects of Online Surveillance**, March 21, 2017

**Jim Buatti** and **Zhou Zhou**, Wikimedia Foundation Attorneys

**Rethinking Internet Freedom in the Age of Cybercontrol**, March 28, 2017

**Laura DeNardis**, Professor of Internet Architecture, American University

**General Counsel as Public Policy Advocate**, April 4, 2017

**Michal Rosenn**, General Counsel, Kickstarter

**Blockchain and the Future of Transparent Accountable Government**, April 4, 2017

**Tomica Tillemann**, Co-founder, Blockchain Trust Accelerator at New America; and **Brian Behendorf**, Executive Director, Hyperledger Project

**Talk with Dave Willner**, April 11, 2017

**Dave Willner**, Head of Community Policy, Air BnB; former Head of Content, Facebook

**It's Too Complicated: How the Internet Upends Katz, Smith, and Electronic Surveillance Law\***, April 18, 2017

**Susan Landau**, Professor of Cybersecurity and Policy and Computer Science, Tufts University

**The Attention Merchants: The Epic Scramble to Get Inside Our Heads (Book Talk)**, April 20, 2017

**Tim Wu**, Professor of Law, Science and Technology, Columbia Law School

# Ideas Lunches

The ISP facilitates a series of ideas lunches, informal weekly gatherings of students, fellows, faculty, and guest speakers to discuss new ideas related to emerging issues in media law and technology.

## **The Death of FOIA**

Beth Noveck

## **Overview of the Media Freedom and Information Access (MFIA) Clinic**

MFIA Clinic Student Directors

## **Monopoly and Antimonopoly in American Telecommunications from *Chappe* to *Comcast***

Richard R. John

## **Reproductive Freedom**

Brigitte Amiri

## **Overview and Deep Dive into the Fourth Amendment**

Kiel Brennan-Marquez

## **Legal Disruption: Case Studies in Law and Robotics**

Margot Kaminski

## **Trickle Up/Down Privacy**

Ari Ezra Waldman

## **Harm Reduction, Reproductive Justice, and Democratic Action**

Joanna Erdman

## **Against a Trade Secrets Privilege in Criminal Cases**

Rebecca Wexler

## **The End of Ownership: Personal Property in the Digital Economy**

Aaron Perzanowski

## **Lunch with Dean Post**

Robert Post

## **The Wealth of Humans**

Ryan Avent



**Use of Experts in Reproductive Justice Litigation**

Jen Keighley

**Cancer's IP**

Jake Sherkow

**The Role of Expert Evidence in Reproductive Justice Litigation**

Mai Ratakonda

**Empirical Research on Bitcoin Providers**

Iona (Hanna) Deleanu

**Designing Democratic Accountability for an Algorithmic Age**

Sabeel Rahman

**What Happens When an Acquaintance Buys Your Data?: A New Privacy Harm in the Age of Data Brokers**

Theo Rostow

**Catastrophic Risks as a Consequence of Scientific and Technical Progress: A Legitimate Governance Regime and the Impact of Public International Law**

Silja Voneky

**From Habermas to Hannity: Addressing Dysfunctional Public Discourse in the Arab World and Beyond**

Belabbes Benkredda

**A Cloud for Global Good**

Sue Glueck

**Humans as a Service**

Jeremias Prassl

**Anti-Trust Law**

Konstantinos Stylianou

**The Fetal Hosts: Ending Pregnant Women's Autonomy in End-of-Life Care**

Maya Manian



# FAIA: Foreign Affairs in the Internet Age

Foreign Affairs in the Internet Age explores the relationship between the Internet and foreign policy. The growth of the Internet has changed how international law-making is conducted. It has also affected how we understand accountability, secrecy, and democratic participation in treaty negotiations.

FAIA is led by the following Yale Law faculty members: Jack Balkin, David Grewal, Oona Hathaway, and Amy Kapczynski. Rebecca Crootof is an affiliated fellow. FAIA works collaboratively with Yale Law students, and has co-sponsored events with the Yale Law National Security Group and the Yale Journal of Law and Technology.

*This initiative is sponsored by the Oscar M. Ruebhausen Fund. Asterisked events were co-sponsored with the Center for Global Legal Challenges.*

**The Fourth Amendment in a Digital World\***, September 13, 2016  
**Laura Donohue**, Professor of Law, Georgetown Law

**Privacy and Cybersecurity: Legal Issues in Private Practice**, October 4, 2016  
**Vivek Mohan\***, Privacy Counsel, Apple Inc.

**National Security in the Digital Age\***, October 17, 2016  
**David Sanger**, Journalist, *New York Times*

**Lunch Talk with Richard Salgado\***, November 8, 2016  
**Richard Salgado**, Director, Information Security and Law Enforcement Matters, Google

**The Tallinn Manual Journey: Identifying the International Law Applicable to Cyber Operations\***, November 15, 2016  
**Michael Schmitt**, Chairman and Professor, U.S. Naval War College Stockton Center for the Study of International Law

**Rethinking Internet Freedom in the Age of Cyber Control**, March 28, 2017  
**Laura DeNardis**, Professor of Internet Architecture, American University

**Net Neutrality, Cybersecurity, and Beyond**, March 29, 2017  
**Travis LeBlanc**, former Chief, Federal Communication Enforcement Bureau  
**BJ Ard**, PhD Candidate, Yale Law School

**It's Too Complicated: How the Internet Upends *Katz*, *Smith*, and Electronic Surveillance Law\***, April 18, 2017  
**Susan Landau**, Professor of Cybersecurity and Policy and Computer Science, Tufts University



## Abrams Institute for Freedom of Expression

The Floyd Abrams Institute for Freedom of Expression at Yale Law School promotes freedom of speech, freedom of the press, and access to information as informed by the values of democracy and human freedom. The Abrams Institute is made possible by a generous gift from Floyd Abrams, one of the country's leading experts in freedom of speech and press issues, who both graduated from and has taught at Yale Law School.

The Institute's mission is both practical and scholarly. It includes a clinic for Yale Law students to engage in litigation, draft model legislation, and advise lawmakers and policy makers on issues of media freedom and informational access. It promotes scholarship and law reform on emerging questions concerning both traditional and new media. The Institute also holds scholarly conferences and events at Yale on First Amendment issues and on related issues of access to information, Internet and media law, telecommunications, privacy, and intellectual property.

The Media Freedom and Information Access Clinic (MFIA) is associated with the Abrams Institute; its activities are detailed separately below.

### **Freedom of Speech in the Founding Era, September 9, 2016**

This Salon examined freedom of speech in the founding era. The discussion featured Professor **Stephen Solomon** (Associate Professor of Journalism, NYU; Associate Director, NYU's Arthur L. Carter Journalism Institute; author of [Revolutionary Dissent](#) (2016)) and Professor **Akhil Amar** (Sterling Professor of Law, Yale Law School) and was moderated by Professor **Nadine Strossen** (John Marshall Harlan II Professor of Law, NYU Law School).

### **Brown Bag Lunch: Government Ethics Rules for Journalists and Their Lawyers, January 10, 2017**

This off-the-record session produced a free-wheeling discussion of the rules governing governmental conflicts of interest and the ethical obligations of executive branch personnel – what information would be most relevant for journalists to seek out, where to find it, and how to make sense of it. It addressed the rules governing conflicts of interest and the ethical obligations of executive branch personnel. The event fortuitously occurred the day before Mr. Trump's press conference about how he intended to address his ethical issues once in office.

- **Kathleen Clark**, Professor of Law, Washington University, St. Louis; former counsel to the Senate Judiciary Committee

- **Norman Eisen**, Fellow, Brookings Institute; Chief Ethics Counsel to President Obama, 2009-2011
- **Richard Painter**, Professor of Law, University of Minnesota Law School; Chief Ethics Counsel to President Bush, 2005-2007
- **Steven Schooner**, Professor of Law, George Washington University; former administrator in the Office of Federal Procurement Policy

#### **FOIA Bootcamp 2017**, February 1, 2017

The FOIA Bootcamp has become an annual program of the Abrams Institute and the Media Freedom and Information Access Clinic. It is open to members of the Yale community and beyond, and draws attendance from local journalists, advocates, activists, and others. The bootcamp provides a framework for understanding how FOIA can be used and practical advice about how best to use it.

- **Dan Klau**, First Amendment litigator; President, Connecticut Foundation for Open Government
- **Michael Morisy**, Co-Founder, *MuckRock*

#### **Brown Bag Lunch: Protecting Sources and Secrets**, March 16, 2017

This workshop explored the legal risks confronted by insiders who leak information to the press, the potential liabilities of journalists who encourage or facilitate those leaks, and risk minimization strategies for journalists.

- **Kathleen Clark**, Professor of Law, Washington University, St. Louis; former counsel to the Senate Judiciary Committee
- **Susan Hennessey**, Fellow, National Security in Governance Studies, Brookings Institution; former attorney, Office of General Counsel, National Security Agency
- **Susan McGregor**, Assistant Director, Tow Center for Digital Journalism; Assistant Professor, Columbia Journalism School

#### **Digital Security for Clinic Students**, March 30, 2017

This training on digital security was designed for students currently enrolled in a YLS clinic. Participants learned about the security of their electronic messages, what Signal is, how to use @ylsclinics mail, and their ethical obligations regarding client communications confidentiality.

#### **Abrams Institute First Amendment Salon: Adam Liptak and Floyd Abrams on “The Soul of the First Amendment,”** April 5, 2017

**Floyd Abrams**, a noted lawyer and award-winning legal scholar specializing in First Amendment issues, and **Adam Liptak**, the Supreme Court correspondent for *The New York Times*, discussed Abrams’ recent book, which examines the degree to which American law protects free speech more often, more intensely, and more controversially than anywhere else in the world.

### **Freedom of Expression Scholars Conference (FESC) 5, April 29 - 30, 2017**

The Freedom of Expression Scholars Conference (FESC) took place at Yale Law School on April 29-30, 2017. A full description of the event is provided in the “Conferences” section.

### **Commercial Speech and the First Amendment Conference, June 5, 2017**

This half-day conference focused on the pursuit of a definition of “commercial speech” and a multi-faceted look at how the absence of a coherent definition impacts First Amendment protections with regards to the content creation community, creativity in advertising, and other areas of corporate speech. A full description of the event is provided in the “Conferences” section.

### **Trademarks in Entertainment in Conflict, February 1, 2017**

It is not uncommon for those producing entertainment content to utilize goods or other items that are trademarked. Singles at a bar in a romantic comedy order a Budweiser. A group of men in a movie are on their way to a baseball game, dressed in team regalia. Someone in a reality program visits the Rock and Roll Hall of Fame. How are the conflicting rights of those engaged in free expression and the rights of trademark owners resolved? This panel discussed how lawyers evaluate the use of trademarked materials in content and promotional materials.

- **Stephanie Abrutyn**, Senior Vice President & Chief Counsel, Litigation, Home Box Office, Inc. (moderator)
- **Yvette Encarnacion**, Senior Vice President, Intellectual Property & Litigation, Viacom Media Networks
- **Ayala Deutsch**, Executive Vice President and Deputy General Counsel, NBA Properties, National Basketball Association
- **Alonzo Wickers**, Partner, Davis Wright Tremaine

*This panel was funded by the Payson R. Wolff Lectureship, created to honor YLS alumnus Payson R. Wolff, one of the leading entertainment lawyers of his generation.*

### **Speech, Surveillance, and Secrecy under the Trump Administration, March 20, 2017**

During the campaign, Donald Trump said he would “open up” libel law so that newspapers could more easily be sued and called for the surveillance of mosques in the United States. As president-elect, he tweeted that those who burned the flag should lose their citizenship and be jailed. After he took office, the White House barred specific news organizations from attending a press briefing. This discussion focused on the future of the First Amendment under the Trump Administration.

- **Jameel Jaffer**, founding Director, Knight First Amendment Institute, Columbia University; former Deputy Legal Director, ACLU
- **Robert Post**, Dean and Sol & Lillian Goldman Professor of Law, Yale Law School



PROGRAM FOR THE  
STUDY OF  
REPRODUCTIVE  
JUSTICE

ISP's Program for the Study of Reproductive Justice serves as a national center for academic research and development of new ideas to promote justice with respect to reproductive health issues, provide a supportive environment for young scholars interested in academic or advocacy careers focusing on reproductive rights and justice issues; and creates opportunities for communication between the academic and advocacy communities.

In the last few years, PSRJ has been more directly engaged in the advocacy world, providing front-line organizations with legal and political ammunition to be more effective, especially through our amicus practice, and acting as academic validators by testifying in Congress and providing expert legal opinion to the press. We work in coordination with national groups, facilitating access to the legal and intellectual firepower that the YLS faculty and students can provide. In the past year, this hard work has begun paying off.

### **PSRJ Speaker Series**

**Reproductive Freedom**, September 22, 2016  
**Brigitte Amiri**, Freedom Project Attorney, ACLU

**Louise Melling Lecture**, October 11, 2016  
**Louise Melling**, Deputy Legal Director, ACLU

**Harm Reduction, Reproductive Justice and Democratic Action**, October 20, 2016  
**Joanna Erdman**, Assistant Professor of Law, Dalhousie University

**Use of Experts in Reproductive Justice Litigation**, January 26, 2017  
**Jen Keighley**, Litigation & Law, Planned Parenthood Federation of America

## **Panels**

### **SCOTUS Talks Abortion: Unpacking the Supreme Court's Decision in *Whole Woman's Health*, September 28, 2016**

On June 27, 2016, the Supreme Court issued the most significant abortion rights ruling in a generation when it struck down a Texas TRAP law that would have forced more than half of the state's abortion clinics to close. [Stephanie Toti](#), the Center for Reproductive Rights plaintiffs' litigator who argued before the Court, provided an insider's view. YLS professors [Reva Siegel](#), and [Linda Greenhouse](#) discussed the implications of the case for the legal standard protecting women's rights and future advocacy for reproductive health care. The panel was moderated by [Cilla Smith](#), Director of the Program for the Study of Reproductive Justice.

*Sponsored by the Program for the Study of Reproductive Justice, Law Students for Reproductive Justice and the American Constitution Society.*

### **Accessing Abortion in a Hostile Climate, Panel Discussion with Dr. Rebecca Gomperts, Gruber Distinguished Lecture in Global Justice, February 7, 2017**

The panel examined how information and services are obtained in settings hostile to abortion, and the legal and health implications of these actions. Each panelist presented a brief outline of the legal and policy framework in her area, the conditions under which abortions are performed, the incidence and consequences of self-induced abortions, if applicable, and what these experiences can teach us about a potential post-*Roe* future.

- **Violeta Canaves**, Yale Law
- **Farah Diaz-Tello**, UC Berkeley Law
- **Prof. Joanna Erdman**, Schulich Law/Dalhousie (respondent)
- **Dr. Rebecca Gomperts** (respondent)
- **Cherisse Scott**, Sisterreach

### **Black Mamas Matter: Maternal Mortality and Racial Disparities in Maternal Care, March 1, 2017**

Black women are four times more likely to die from pregnancy-related complications than white women. Maternal mortality rates in Texas are the highest in the entire developed world, driven in part by a disproportionate number of black women dying from giving birth. This panel lunch talk with **Elizabeth Gay** and **Kwajelyn Jackson**, Steering Committee Members for Black Mama's Matter (BMM), discussed these issues.

*Sponsored by the Solomon Center for Health Law & Policy, the Program for the Study of Reproductive Justice, and the Global Health Justice Partnership.*





# Yale Law School

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## VISUAL LAW PROJECT

VLP runs a [year-long practicum](#) that trains law students in the art of visual advocacy – making effective arguments through film; explores the intersection between law and film through multidisciplinary workshops, discussions with renowned guest speakers, and hands-on production; produces intellectually stimulating and well-researched [films](#) grounded in the stories of people who live out the consequences of the law; and is part of a rising community of students, lawyers, and filmmakers invested in visual advocacy. Through the generous support of the Liebman Fund, VLP was able to produce short films and invite a number of experts to Yale Law School during 2016-2017.

### Events

**Why Visual Law? Why Now?**, September 21, 2016

**Sandra Ristovska**, Visual Law Project Advisor, Yale Law School

This lecture brought together examples about the relevance of visual media to the law and how it interacts with evidence, advocacy and analysis. The talk discussed the impact of framing and camera angles to perceptions about police coercion and jury bias.

**Photography as Agency**, October 11, 2016

**Mari Bastashevski**, World Fellow, Yale University; and **Pete Brook**, Writer and Curator  
Pete Brook discussed on his work with photographs by prisoners and guards, as well as the role of authorship and intention. Pete was in conversation with World Fellow Mari Bastashevski about the agency of image outside of photojournalism.

**Documenting Human Rights Violations: Lessons from WITNESS, Human Rights Watch, and Amnesty International**, October 12, 2016

**Sandra Ristovska**, Visual Law Project Advisor, Yale Law School

This lecture reviewed how three human rights organizations — Amnesty International, Human Rights Watch, and WITNESS — use video. The talk emphasized video advocacy for legal audiences, providing examples from screenings in front of the Office of the Prosecutor of the International Criminal Court and the UN Commission of Inquiry.

**Video Evidence, Trial Coverage, and Advocacy: International Criminal Tribunal for the former Yugoslavia**, November 2, 2016

**Sandra Ristovska**, Visual Law Project Advisor, Yale Law School

This lecture discussed how the International Criminal Tribunal for the former Yugoslavia (ICTY) uses video to provide trial coverage and evidence and to engage in advocacy. The lecture was based on a fieldwork at this Tribunal and featured video clips.

**JALANAN (Screening)**, November 2, 2016

**Daniel Ziv**, World Fellow, Yale University

VLP screened the award-winning Indonesian musical documentary *JALANAN*, hosted by *JALANAN* producer/director Daniel Ziv (Yale World Fellow 2016) who discussed the idea and messages behind the film, and its unique social and political resonance. The screening was followed by a Q&A.

**The Secret Image: The Role of Research-Based Photography in Delineating State and Corporate Secrecy**, November 16, 2016

**Mari Batashevski**, World Fellow, Yale University

Mari Bastashevski spoke about her work as an artist who investigates the commercial transactions that take place within the realm of conflict commerce — those that are usually protected by state and corporate secrecy.

**Zero Days (Screening)**, December 1, 2016

**Alex Gibney**, Documentary Filmmaker

VLP screened *Zero Days*, a documentary thriller about Stuxnet and the coming age of cyber conflict. *Zero Days* is the most comprehensive film to date on the CIA, U.S. military, and allied nations' joint effort to infiltrate Iranian nuclear facilities with cyber weapons, ushering in a new era of cyber conflict, and raising serious ethical debates over the secrecy and security of cyberattacks. A Q&A with Academy Award-winning director and Yale graduate Alex Gibney followed.

**Working with Images Workshop**, February 16, 2017

**Christina Spiesel**, Senior Research Scholar, Yale Law School

Christina Spiesel presented a shortened version of her class on legal documentaries. She worked with students in how to craft narratives about critical legal issues.

**The Law in These Parts (Screening) & Working with Videos Workshop**, February 23, 2017

**Ra'anán Alexandrowicz**, Documentary Filmmaker

VLP screened *The Law in These Parts*, along with a workshop session with award-winning filmmaker Ra'anán Alexandrowicz. The workshop included a cut-by-cut analysis of one of the film's scenes, focusing on an in-depth understanding of documentary editing processes. Walking participants through the editing process, Alexandrowicz discussed his decisions in composing a scene as well as the ethical and aesthetic dilemmas that informed his choices.

**Video Evidence & Verification Workshop**, March 2, 2017

**Kelly Matheson**, Human Rights Attorney, WITNESS, Video as Evidence Program

Thanks to the global proliferation of inexpensive mobile devices, video captured by citizens and on-the-ground human rights activists can be instrumental in drawing attention to human rights violations. But many filmmakers want their videos to do more. They have the underlying expectation that footage exposing abuse can help bring about justice and accountability. And it can. Kelly Matheson highlighted the essential role

lawyers play in moving citizen-shot video footage from capture to courtroom to secure justice and accountability. She also identified the opportunities and challenges of using video evidence through interactive exercises.

**Patent Graphics in Court**, April 13, 2017

**Greg Diskant**, Senior Litigation Partner, Patterson Belknap

Greg Diskant spoke about his experience as a patent lawyer and how to communicate complex ideas and tools in court to juries and judges. He highlighted the importance of clear and effective visual representations.

**Storytelling and the Law Workshop**, April 13, 2017

**Emily Bazelon**, Senior Research Scholar in Law, Yale Law School; Staff Writer, *New York Times Magazine*

Emily Bazelon discussed the importance of visual media in journalism.

**We Break Things (Screening)**, April 20, 2017

**Rebecca Wexler**, Co-founder, Visual Law Project

VLP screened *We Break Things* (VLP production) and a Q&A with Rebecca Wexler.

## **Projects**

**Lead Poisoning in Connecticut (Film)**. Five-minute film about lead poisoning issues in Connecticut. Planned in partnership with Connecticut Legal Services.

**The Executive Order (Film)**. Five-minute film about President Trump's disastrous Executive Order.

## **Publications**

Sandra Ristovska, *Tackling Visual Knowledge: The Story of the Yale Visual Law Project*, in 2 J. OXFORD CENTRE SOCIO-LEG. STUD. 145-50, available at

<https://joxcsls.com/2017/06/20/wire-from-the-field-tackling-visual-knowledge-the-story-of-the-yale-visual-law-project/>

## **Reading Group**

### **Visual Jurisprudence**

Sandra Ristovska, Ph.D., and Helen Li, 3L

The law has long been an institution that considers words to be the best vehicle for transporting its logic. Like many social and political institutions, the law associates words with reason, systematic thinking, and deliberation, pushing aside the value of images as tools that work differently from words. When used, the law insists that visuals need words to anchor their legal meaning. Visuals and words, however, facilitate different processes of knowledge acquisition, and now as never before visual exhibits

are important feature of the courtroom. This reading group was a broad survey of the various ways in which images intersect with the law on the level of evidence and advocacy, highlighting the critical visual skills needed to assess the legal value of a wide range of visual media. As knowing how to 'read' images is closely linked to knowing how to work with images, the reading group also included workshops on video production, such as storytelling, interviewing, shooting and editing. These workshops took place during the regularly scheduled meetings following the discussion of the readings. Throughout the semester, scholars, advocates, and filmmakers will deliver guest workshops and lectures, allowing students to interact with practitioners in the field.

# Clinical Activities

# Media Freedom and Information Access Clinic

The Media Freedom and Information Access Clinic (MFIA) provides *pro bono* legal representation to journalists, press organizations, and advocacy groups. Its dual missions are to support robust investigative journalism in the digital age and to advance the public's right of access to information needed for democracy to function. MFIA engages in impact litigation and pursues policy projects that address key issues surrounding government transparency and the protection of a vigorous press. MFIA is a program of the Floyd Abrams Institute for Freedom of Expression at Yale Law School. MFIA students are supervised by MFIA co-Director David Schulz, MFIA Fellows Hannah Bloch-Wehba and John Langford, and staff attorney Cortelyou Kenney. The clinic's docket is currently organized around six project areas:

## ***Constitutional Access***

Lawsuits designed to expand and enforce the constitutional right of access to governmental proceedings and related records. Typical matters include Section 1983 litigation to establish constitutional rights to information about state actions such as executions and federal litigation to establish a right of access to classified information filed in Guantanamo cases.

## ***Government Accountability***

Projects seeking to secure information needed for democratic oversight of government operations, law enforcement agencies, and the criminal justice system. Representative matters include lawsuits in New York and Los Angeles to obtain information needed for law enforcement accountability.

## ***National Security and the Surveillance State***

Lawsuits seeking access to information critical to oversight of our nation's security policies. Active matters include lawsuits seeking substantive opinions of the Foreign Intelligence Surveillance Court and policies by which our intelligence agencies conduct surveillance on U.S. persons abroad.

## ***Open Data***

Lawsuits seeking to compel the disclosure of information vital to ensure proper regulatory behavior and science-based decisions. Current cases seek to achieve a legal framework that ensures the integrity of medical tests used in new drug approvals and promotes access to data by academic researchers.

## ***Newsgathering and Publication***

Defending those eligible for the protections afforded by the Constitution's press clause in a world where online publishing is widespread and litigating issues that shape the ability of journalists to gather news, including prior restraints, privacy, and the use of

new technologies. Representative matters include cases asserting a right to photograph matters of public concern.

### **Clinic Personnel**

#### **Jack Balkin, Knight Professor of Constitutional Law and the First Amendment.**

Jack Balkin is the founder and director of Yale's Information Society Project. He has served as the director of the MFIA Clinic since its inception as a student-run practicum in 2009.

#### **David A. Schulz, Clinic Co-Director.**

David Schulz is a partner in the law firm Ballard Spahr LLP with a national trial and appellate practice representing news and entertainment media in defamation, privacy, newsgathering, access, intellectual property and related First Amendment matters. Mr. Schulz has been co-directing the MFIA Clinic since it was launched in 2009. Since fall 2015, Mr. Schulz has worked full time at the clinic.

#### **Hannah Bloch-Wehba, Stanton First Amendment Fellow.**

Hannah Bloch-Wehba is the inaugural Stanton First Amendment Fellow in the MFIA Clinic. She graduated from NYU School of Law. Ms. Bloch-Wehba worked as an associate at Baker Botts LLP, and served for two years as the Stanton National Security Fellow at the Reporters Committee for Freedom of the Press.

#### **John Langford, Abrams Clinical Fellow.**

John Langford is the Abrams Clinical Fellow. He graduated from Yale Law School, during which time he was an ISP student fellow, Knight Law & Media fellow, and a four-semester member of the Media Freedom and Information Access Clinic. Mr. Langford served as an associate at WilmerHale and clerked for the Hon. Robin S. Rosenbaum of the U.S. Court of Appeals for the 11th Circuit.

#### **Cortelyou Kenney, Staff Attorney.**

Cortelyou Kenney is a Research Scholar in Law, Clinical Lecturer in Law, and Staff Attorney at the Collaboration for Research Integrity and Transparency at Yale Law School. She most recently served as a Thomas C. Grey Fellow and Lecturer in Law at Stanford Law School. Prior to that, she was a fellow at the National Women's Law Center and was an associate in the Appellate & Supreme Court practice group at Wilmer Cutler Pickering Hale & Dorr in Washington, D.C. She clerked for Judge Roger L. Gregory on the United States Court of Appeals for the Fourth Circuit and Judge Miriam Goldman Cedarbaum of the United States District Court for the Southern District of New York.

#### **Allison Douglis, (Incoming) Student Director.**

Allison Douglis has been a member of the MFIA clinic for four semesters and is a student director this year.

**Meenakshi Krishnan, (Incoming) Student Director.**

Meenu Krishnan has been a member of the MFIA clinic for four semesters and is a student director this year.

**Delbert Tran, (Incoming) Student Director.**

Delbert Tran has been a member of the MFIA clinic for three semesters and is a student director this year.

Clinic students have had the opportunity to work closely with the following practitioners:

**Alexander Abdo**, Senior Staff Attorney, Knight First Amendment Institute

**Michael Berry**, Partner, Ballard Spahr LLP

**David J. Bodney**, Partner, Ballard Spahr LLP

**Jay Ward Brown**, Partner, Ballard Spahr LLP

**Ashley Gorski**, Nadine Strossen Fellow, ACLU National Security Project

**Craig Hoffman**, Partner, Ballard Spahr LLP

**Daniel J. Klau**, Of Counsel, McElroy, Deutsch, Mulvaney & Carpenter LLP

**Christina Koningisor**, First Amendment Fellow, *The New York Times* (MFIA alumnus)

**Tom Leatherbury**, Partner, Vinson & Elkins LLP

**David McCraw**, Assistant General Counsel, *The New York Times*

**Bernard J. Rhodes**, Partner, Lathrop & Gage LLP

**Patrick Toomey**, Staff Attorney, ACLU National Security Project

**Adrienna Wong**, Staff Attorney, ACLU of Southern California (MFIA co-founder)

**Significant Victories and Court Decisions**

**Guardian News & Media LLC v. Ryan, No. 17-17083 (9th Cir.)**

The clinic represents a coalition of news organizations in a First Amendment lawsuit asserting a public right of access to information about the State of Arizona's execution process, including the source and quality of the drugs used for lethal injection. The clinic obtained an order recognizing the public's right to view the injection of lethal drugs and ordering the state to install a camera in the chemical room. The clinic also defeated the state's summary judgment motion and proceeded to trial on its remaining claims.

**Crawford v. N.Y. City DOITT, 136 A.D.3d 591 (N.Y. Supp. Ct. 2016)**

The clinic represents Harvard Law Professor Susan Crawford in a case seeking data concerning New York City's broadband infrastructure for underserved neighborhoods. In the fall, the clinic defeated a motion seeking to dismiss the lawsuit on the grounds that it was barred by an adverse ruling in an earlier case. This semester, students briefed motions to decide the case on the merits and presented the oral arguments at a hearing. In May, the clinic won a clear victory, granting access to the data.

**Rosenberg v. DOD ("PERSTAT"), No. 16-cv-2117 (D.D.C.)**

The clinic represented Miami Herald reporter Carol Rosenberg in FOIA litigation against the Department of Defense seeking the personnel reports for the United States Naval Base at Guantanamo Bay dating back to 2002. After filing a complaint, the clinic



negotiated the release of thousands of pages of responsive records, comprising the bulk of the records Ms. Rosenberg sought, and dismissed the case.

**Nolen v. First Judicial Dist. of Pennsylvania, No. 216-md-2017 (P.A. Commw. Ct.)**

The clinic represents a Philadelphia reporter who seeks access to certain categories of judicial records related to Fourth Amendment rights and to the criminal justice system: affidavits from executed search warrants, probable cause affidavits for arrest warrants, and records concerning jurors who have been excluded from voir dire. The clinic filed a petition in May and is awaiting a response.

**Seife v. FDA, No. 17-cv-3960 (S.D.N.Y.)**

Working with Yale's Collaboration for Research Integrity and Transparency, the clinic represented NYU Professor Charles Seife in a FOIA lawsuit against the FDA. Professor Seife sought correspondence and other records related to FDA's controversial approval of Exondys 51 for the treatment of Duchenne Muscular Dystrophy. The clinic drafted Seife's initial request in 2016, pursued an administrative appeal in February 2017, and filed suit in May 2017. In litigation, the clinic successfully obtained a concession that Seife's request was entitled to expedited processing and negotiated the release of the records Seife requested.

**Ongoing Active Litigation**

**ACLU v. Los Angeles Police Department, No. BS 169474 (Cal. Sup. Ct.).**

The clinic represents the ACLU of Southern California, journalist Ali Winston, activist Shawn Nee, and professor Kelly Lytle Hernandez in a pattern and practice lawsuit that seeks to compel the Los Angeles Police Department to comply with the California Public Records Act. The clinic is now in negotiations with the city to implement a wholesale overhaul of its public records response system, starting with the rollout of a new electronic interface for public records act requests.

**ACLU v. National Security Agency (2d Cir.)**

The clinic is co-counsel with the ACLU in FOIA litigation regarding electronic surveillance under Executive Order 12,333. The suit seeks disclosure of the rules that govern EO 12,333 surveillance, reports of non-compliance with those rules, and related information. The district court ruled for the government on summary judgment and the clinic noticed an appeal.

**Graeber v. New Haven Police Dep't, No. FIC 2016-0865 (Conn. FOIC).**

Along with co-counsel Daniel Klau, the clinic represents Charlie Graeber, a journalist who is working on a documentary about the case of an unsolved murder of a Yale student in 1998. Last semester, the clinic filed a series of requests under Connecticut's FOIA seeking access to files pertinent to the investigation of the murder and held by a number of law enforcement agencies. In response, most of the agencies claimed their records were exempt from disclosure because releasing them might jeopardize a future law enforcement action. The clinic appealed. In April, clinic students represented our

client at a hearing before the Freedom of Information Commission, which was recorded and televised. The clinic will submit post-hearing briefs over the summer and expects to have a decision this fall. The recording is available here:

[http://www.ctn.state.ct.us/show\\_info.asp?mbID=24813](http://www.ctn.state.ct.us/show_info.asp?mbID=24813).

#### **Husayn v. Mattis, No. 06-cv-1360 (D.D.C. filed April 2016)**

The clinic is representing national security reporter Ray Bonner in an effort to unseal judicial records in the habeas proceeding filed by Guantanamo detainee Abu Zubaydah, the first detainee subjected to the CIA's harsh interrogation techniques. The clinic succeeded last year in compelling the government to disclose a great many of the court records in this action. The remaining legal issue concerns the appropriate standard the court should apply in deciding whether to unseal classified information in court records that are subject to the First Amendment right of access. The clinic filed a reply brief in the fall and is awaiting a ruling.

#### **In re Opinions & Orders of [FISC], No. 13-08 (FISC)**

The clinic has a long-pending matter seeking access to the opinions of the Foreign Intelligence Surveillance Court (FISC) concerning "bulk" communications surveillance. In January, the FISC ruled that the clinic and ACLU lack standing to seek these judicial opinions. In February, the clinic moved for reconsideration and the court ruled that it would reconsider the issue en banc, the first time the court has ever conducted such a proceeding in its history.

#### **In Re Opinions and Orders of [FISC] Containing novel or significant interpretations of Law, No. 16-01 (FISC)**

In December 2016, the clinic filed a motion with the ACLU seeking broad access to FISC opinions containing "novel or significant interpretations of law." Following the 2015 USA FREEDOM Act, opinions containing "novel or significant interpretations of law" must be released. But the government has taken the position that pre-2015 opinions containing novel or significant interpretations of the law need not be released. The clinic and the ACLU hope to obtain the pre-2015 through this motion. Briefing is complete.

#### **Intellectual Property Watch v. USTR, 134 F. Supp. 3d 726 (S.D.N.Y. 2015)**

The clinic represents IP Watch, a non-profit, independent news source on intellectual property law and policy, in its FOIA litigation against the U.S. Trade Representative ("USTR"). IP Watch seeks records of communications between USTR and business community members related to USTR's adopted positions in the Trans-Pacific Partnership negotiations. After successfully forcing disclosure of some records and partially losing summary judgment with respect to others, the clinic submitted supplemental briefing on three narrow issues in March at the court's request.

#### **Privacy International v. NSA, No. 17-cv-01324 (D.D.C.)**

The clinic is representing Privacy International (PI), a UK-based charity, in FOIA litigation against several agencies that constructively denied FOIA requests concerning the UKUSA Agreement, the so-called "Five Eyes" signals intelligence sharing agreement. Although the Agreement has likely been repeatedly amended, the latest

public version is from 1955. PI seeks implementation records which are relevant to questions about whether intelligence-sharing violates the First and Fourth Amendments. The clinic is awaiting the completion of the government's search for responsive records.

**Rosenberg v. DOD (“Kelly Emails”), No. 17-cv-0437 (D.D.C.)**

The clinic represents Miami Herald and reporter Carol Rosenberg in FOIA litigation against the Department of Defense seeking email correspondence between General John F. Kelly and Lisa Monaco, the former Assistant to the President for Homeland Security and Counterterrorism. The clinic filed suit and successfully requested an expedited production schedule. The government produced roughly 600 pages of responsive emails and reports. The parties are proceeding to summary judgment.

**Treatment Action Group v. FDA, No. 15-cv-976 (D. Conn. filed June 25, 2015)**

The clinic filed FOIA lawsuit on behalf of the Treatment Action Group and Global Health Justice Partnership seeking access to clinical trial data and related information about recently-approved Hepatitis C drugs Sovaldi and Harvoni. The FDA has sought to delay its response to the FOIA request for nearly two years, and the clinic has vigorously opposed FDA's stalling in court and sought expedited treatment.

**United States v. Doe, No. 11-cr-479 (2d Cir.)**

In March 2017, the clinic filed a motion to intervene and unseal the Second Circuit's docket in a criminal case on behalf of journalist Richard Behar and *Forbes* magazine. The sealed case concerns the federal prosecution of Felix H. Sater, who was indicted for securities fraud in 1997 but then become a cooperating witness for the government. His case was sealed for over a decade while Sater reportedly worked with the government to track down Al-Qaeda operatives and root out organized crime operations on Wall Street. During that time, Sater also became involved with a real estate firm called Bayrock Group and reportedly brought Russian oligarchs to meet with Donald Trump and secured funding from banks with ties to those oligarchs. In 2010, Sater's criminal prosecution was disclosed when an attorney obtained a copy of case records and publically filed them in support of a civil RICO action against Bayrock. The disclosure initiated a series of sealed proceedings in the Eastern District of New York and the Second Circuit. Much of the Eastern District's dockets in those proceedings were later unsealed; the clinic's motion seeks to unseal the Second Circuit's docket. The Second Circuit appointed a Special Master to make an initial determination on the clinic's motion.

**Victor v. NYC Office of Trials and Hearings, No. 100890/2015 (N.Y. Sup. Ct.)**

The clinic represents *The New York Times* as an intervenor in a civil lawsuit seeking to cut off access to Department of Corrections disciplinary hearings decisions. These hearings take place at the Office of Administrative Trials and Hearings, a public adjudicative body. Victor, a terminated DOC employee, argues that the decisions are confidential under New York's Civil Rights Law 50-a, which make "personnel records" of certain public officers confidential. The clinic is now awaiting a ruling.

## **Amicus Submissions**

### **Brief of Amici Curiae Constitutional, Administrative, Contracts, and Health Law Scholars**

*Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144 (2017)

The clinic filed an amicus brief arguing that a New York statute regulating the imposition of “surcharges” for credit cards should not be subjected to heightened scrutiny under the First Amendment or, in the alternative, should be upheld under intermediate scrutiny as a valid regulation of commercial speech. Ultimately, the Court held that the statute regulates speech and remanded to the Second Circuit for a determination of whether the statute survives intermediate scrutiny.

### **Brief of Amici Curiae Floyd Abrams Institute for Freedom of Expression and First Amendment Scholars**

*In re National Security Letter*, 863 F.3d 1110 (9th Cir. 2017)

The clinic filed an amicus brief on behalf of a group of First Amendment professors arguing that the NSL statute’s gag provision, even as amended, creates an unconstitutional prior restraint. Ultimately, the panel concluded that the NSL statute’s gag provision does not constitute an unconstitutional prior restraint.

### **Brief of Amici Curiae The New York Times et al.**

*NYCLU v. NYPD*, 50 N.Y.S.3d 365 (N.Y. App. Div. 2017)

The clinic submitted an amicus brief on behalf of ten news organizations in an appeal by the New York Civil Liberties Union asserting a right of access to disciplinary decisions of the NYPD. Ultimately, the Appellate Division – First Department ruled that the police commissioner’s decisions implementing rulings of the Civilian Complaint Review Board constituted “personnel records” and could not be disclosed under New York law.

## **Other Advocacy**

### **Sealed Cases Research & Advocacy Project (D. Conn.)**

Clinic students conducted a six-month study to determine if the sealing practices of Connecticut federal courts adequately enforce the public’s right of access to court records. They interviewed court clerks and local prosecutors and researched courthouse records. Their investigation revealed practices that permit widespread, indefinite sealing of applications and orders for search warrants, pen registers/trap and traces, and electronic surveillance in contravention of public access rights. The students submitted a report of their findings to the Chief Judge of the District of Connecticut, along with specific recommendations for changes to the local rules to protect the public access right. The Chief Judge distributed the report to each magistrate and district judge and asked the Criminal Local Rules Advisory Committee to address the report’s issues expeditiously.

This issue is of broad interest, and litigation concerning this issue is ongoing in the District of Columbia and Northern District of California. The clinic has shared its report with Selina MacLaren at the Reporters Committee for Freedom of the Press, Patrick Kabat's clinic at Case Western, and Heidi Kitrosser's practicum at Minnesota. This report is a first step in remedying the widespread secrecy that accompanies searches and seizures; hopefully, it will provide a legal and analytical blueprint for ongoing and future challenges to this problem.

### **Arnsdorf Travel Ban FOIAs**

The clinic assisted former POLITICO reporter Isaac Arnsdorf in preparing FOIA requests about the government's enforcement of President Trump's initial travel ban executive order. The clinic drafted five FOIA requests to four agencies – two requests to U.S. Customs and Border Protection, and one request each to Immigration and Customs Enforcement, the U.S. State Department, and the Department of Homeland Security – concerning the agencies' initial enforcement efforts. The clinic currently awaits responses.

### **Anti-Censorship Infrastructure Project**

In collaboration with the University of Colorado's Samuelson Tech Law & Policy Clinic, clinic students drafted a white paper on the legality of a new anti-censorship technology. This technology adopts a new method of routing Internet traffic to enable users in foreign nations that censor the Internet to circumvent those firewalls and other roadblocks, facilitating access to a free and uncensored Internet without the cumbersome aspects of proxy servers and the Tor Browser. The clinic's contribution concerns the Computer Fraud & Abuse Act, which contains myriad provisions that criminalize "unauthorized access" to computers. This collaboration allowed both clinics to tackle a project that would otherwise have been too large in scope for either to handle.

## **Events**

### **FOIA Bootcamp 2017**, February 1, 2017

A full description of the FOIA bootcamp is above, in the Abrams Institute section.

### **Buzzfeed Meeting**, April 15, 2017

Students in the clinic, together with David Schulz, Hannah Bloch-Wehba, and John Langford, traveled to *Buzzfeed's* headquarters in New York City to meet with Nabiha Syed, the chief newsroom lawyer at *BuzzFeed*, as well as reporters, investigators, and others directly involved in reporting and producing the news at Buzzfeed. The trip allowed MFIA students to meet with and learn from a practicing media lawyer, reporters, and news producers, and to get an inside look at how a news organization functions and the role of lawyers in that context.

### **“Brown Bag Lunch” Series**

A grant from the Stanton Foundation allowed the clinic to launch a new series of “brown bag lunches,” providing an informal forum for journalists and lawyers to discuss current issues concerning government accountability and newsgathering. To date, the clinic has convened two luncheons, described above in the Abrams Institute section.

# Courses

# ISP Courses and Reading Groups

## ISP Courses

**Advanced Supreme Court Clinic**, Fall 2016-Spring 2017  
Linda Greenhouse

**Media Freedom and Information Access Clinic**, Fall 2016-Spring 2017  
David Schulz, John Langford, Hannah Bloch-Wehba, Jack Balkin

**The Institutional Supreme Court**, Spring 2017  
Linda Greenhouse

## ISP-Sponsored Reading Groups

**Artificial Intelligence, Robotics and Law**, Spring 2017  
Israeli-ISP Partnership

**Citizen FOSS: What Snowden Knew**, Spring 2017  
Sean O'Brien

**Discrimination, Algorithms, and Privacy**, Spring 2017  
Jack Balkin and Ignacio Cofone

**Transatlantic Clashes on Privacy in a Digitalized World**, Fall 2016  
Jean-Philippe-Foegle

**Visual Jurisprudence**, Spring 2017  
Sandra Ristovska and Helen Li