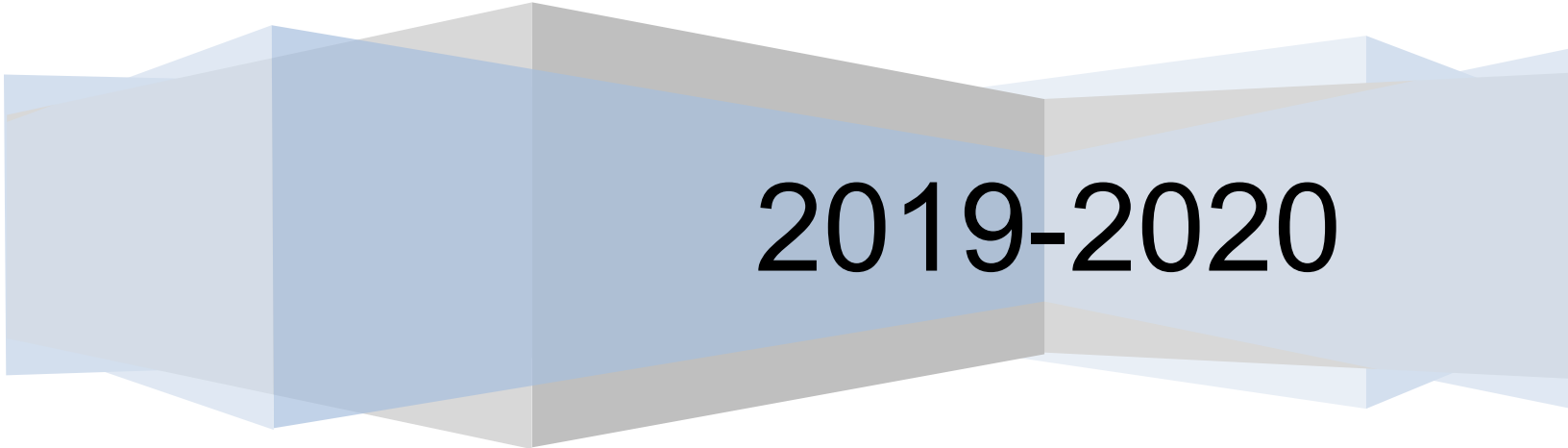


Information Society Project Yale Law School

2019-2020 Accomplishment Book

Compiled by Nikolas Guggenberger, Jisu Kim, Rafael Bezerra Nunes,
Sam Heavenrich, and Gina Markov



2019-2020

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Information Society Project at Yale Law School

2019-2020 Directors, Staff, and Fellows

Directors and Staff

- **Jack M. Balkin**, Director, Information Society Project; Knight Professor of Constitutional Law and the First Amendment, Yale Law School
- **Nikolas Guggenberger**, 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

Resident Fellows

- Chinmayi Arun
- Sandy Baron
- Ximena Benavides
- Jennifer Borg
- Charlie Crain
- Leah Ferentinos
- Nick Frisch
- Samantha Godwin
- Yu Tang (Avross) Hsiao
- Thomas Kadri
- Michael Karanicolas
- Jisu Kim
- Anat Lior
- Chris Morton
- Rafael Bezerra Nunes
- Przemek Palka
- Francesca Procaccini
- Sari Mazzurco
- Charles/Chuck Sims
- Faren Tang
- Laurin Weissinger
- Maren Woebbecking
- Jennifer Pinsof

Visiting Fellows

- Belabbes Benkredda
- Andrew Burt
- Mala Chatterjee
- Cortelyou Kenney
- Mike Kwet
- Matt Laponte
- Carlos Augusto Liguori Filho
- Asaf Lubin
- Mason Marks
- Christoph Busch
- Artur Pericles Lima
- Tiffany Li
- William New
- Sean O'Brien
- Baljeet Sandhu
- Andrew Selbst
- Ramesh Subramanian
- Nabiha Syed
- Nafees Syed
- Gabriel Teninbaum
- Lorianne Updike Toler
- Patricia Vargas Leon
- Shlomit Yanisky-Ravid

ISP Student Fellows

- Emmett Chen-Ran
- Allison Durkin
- Mailynd Fidler
- Sam Heavenrich
- Will Horvath
- Genevieve Liu
- Shlomo Klapper
- Brandon Levin
- Nathan Leys
- Will Marks
- Luis Leon Medina
- Drew Medway
- Omar Motala
- Geng Ngarmboonanant
- Liana Van Nostrand
- Bryan Owens
- Alice Park
- Michael Pizzi
- Lisa Quian
- Varsha Raghavan
- Morgane Richer La Fleche
- Juan Carlos Salamanca
- Viktoria Shvydshenko
- Dan Stein
- Shunhe Wang

Knight Law and Media Scholars

- Simon Brewer
- Rachel Cheong
- Sasha Dudding
- Jeff Guo
- Ned Levin
- Sarah Levine
- Abby McCourt
- Shannon Price
- George Wang
- Anna Windemuth

Yale University Affiliates

- Louisa deCossy
- Jason Eiseman
- Joan Feigenbaum
- Michael Fischer
- Vali Gazula
- Susan Gibbons
- Bonnie Kaplan
- Limor Peer
- Thomas Pogge
- Stefan Simon
- Christina Spiesel
- Jason Stanley
- Xiyin Tang

Resident Fellow Accomplishments¹

¹ 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.

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Michael Karanicolas, *Subverting Democracy to Save Democracy: Canada's Extra-Constitutional Approaches to Battling 'Fake News,'* 17 CAN. J. L. & TECH. 2 (2019).

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Anat Lior, *The Applicability of the "Prevention of Committing Crimes Through Publishing on the Internet (Content Removal)" Bill on Cyberbullying*, 13 HOKIM 153 (2020).

Anat Lior, *The Line Between Cyberbullying and Freedom of Speech – Do We Have A Constitutional Right to Bully?*, 23 BUS. & L. 283 (2020).

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Chinmayi Arun, AI and the Rule of Law, A Global Perspective, Stanford University (2020) (guest lecture).

Chinmayi Arun, Dangerous Speech: Should “Hate Speech” Be Protected?, Freedom of Expression in the Digital Age, Blavatnik School of Government, Oxford University (2020) (guest lecture).

Chinmayi Arun, The Future of Content Governance and Platform Power, Conversation with Jillian York Moderated by Vera Franz, Open Society Foundation (2020) (guest lecture).

Chinmayi Arun, Fireside Chat with Brad Smith, RightsCon Online (2020).

Chinmayi Arun, Surveillance Capitalism in The Fierce Urgency of Now, Carr Center for Human Rights Policy at Harvard Kennedy School (2020) (panel participant).

Chinmayi Arun, Canadian Broadcasting Corp.’s Massey Lectures (2020) (invited commentator).

Chinmayi Arun, Re-imagining the Algorithmic Society, Ahmedabad University (2020) (co-panelist with Sheila Jasanoff and Kanta Dihal).

Joseph Avery, Using Artificial Intelligence to Improve the Fairness and Equity of Government Decision Making, National Academy of Public Administration’s Joint Panel Session between the Standing Panel on Social Equity in Governance and the Standing Panel on Technology Leadership (2020) (invited talk).

Joseph Avery, Criminal Stereotypes: Unpacking the Race-Crime Congruency Effect, Society of Woodrow Wilson Fellows, Princeton University (2020) (invited talk).

Joseph Avery, Imagining and Sorting Criminal Subtypes, 2020 American Psychology-Law Society Annual Conference, New Orleans (2020) (invited talk).

Ximena Benavides, Corrupt Health Care, Mayo Clinic KER Unit (2020).

Ximena Benavides, Sustainable Development in Health Care SDG#3, Peru Sostenible 2021 (2020).

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Bonnie Kaplan, *Rethinking Health Data Privacy*, American Medical Informatics Association Annual Symposium (2019).

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Michael Karanicolas, *Secrecy Costs and Openness Pays – The Economic Impacts of Open Contracting*, Yale Day of Data (2019) (panelist).

Michael Kwet, *Digital Colonialism in the Western Media*, *Frontiers in African Digital Research*, Bayreuth University (2020) (invited speaker).

Michael Kwet, *Digital Self-Defense in the Digital Age: A Workshop*, Sinan Wren Foundation (2019) (invited speaker).

Michael Kwet, *Digital Colonialism: Beware of People Bearing Gifts*, Sinan Wren Foundation (2019) (invited speaker).

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Christina Spiesel, Visual Persuasion, The Defender Lab, Office of Chief Public Defender, Connecticut (2019) (lecturer).

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Nikolas Guggenberger, *KI Und Recht: Neue Methodik, billige Entscheidungen und Ergebnisvorgaben [AI and Law: New Methods, Cheap Decisions, and Quotas]* 22 MMR 777 (2019), <https://www.beck.de/cms/?toc=mmr.30&docid=423984>.

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Shlomit Yanisky Ravid, *The Good and Evil of Street Corner Smart Cameras: The Social Reform in China*, DE-MARKER (2020).

Clinical Activities

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Francesca Procaccini, Complaint and Memorandum of Law in Support of Opposition to Defendant's Motion to Dismiss, *BH Media Group, Inc. v. Clarke*, No. 3:19-cv-00692-REP (E.D.V.A. 2019).

Conferences

Access and Accountability Conference: Accountability in the Trump Era

October 4-5, 2019

The Media Freedom and Information Access Clinic and the Abrams Institute for Freedom of Expression annually bring together transparency advocates of all stripes to identify current impediments to government openness and to develop strategies for addressing them. Law school clinicians from around the country, together with investigative journalists, academics, practicing lawyers, and law students, explore some of the most urgent transparency issues in the areas of law enforcement, national security and surveillance, government data and personal privacy, and newsgathering rights. The conference is designed to facilitate the development of ongoing relationships, cooperation, and collaboration among practitioners, journalists, and law school faculties to promote governmental accountability and transparency.

Funding for this conference was provided by the generous support of the Democracy Fund, the John S. and James L. Knight Foundation, and the Legal Clinics Fund.

Friday, October 4, 2019

Newsgathering

This panel discusses laws, policies and actions that obstruct the ability of journalists and others to ferret out the news, and potential litigation strategies and legislative responses to protect the right to gather the news. This panel tackles the impact on newsgathering from the extraordinary growth of non-disclosure agreements in the private and public sectors, the growing use of text messaging and other ephemeral forms of communication, the expansion of the government's pre-publication censorship regime, recent efforts to criminalize routine newsgathering techniques, and investigative limitations imposed by computer abuse laws.

- **Lee Levine**, Senior Counsel, Ballard Spahr (moderator)
- **Alex Abdo**, Litigation Director, Knight First Amendment Institute, Columbia University
- **RonNell Anderson Jones**, Professor of Law, The S.J. Quinney College of Law, University of Utah
- **Ellen Gabler**, Investigative Reporter, *The New York Times*
- **Alan Chen**, Professor of Law, Sturm College of Law, University of Denver
- **James McLaughlin**, Deputy General Counsel and Director of Government Affairs, *The Washington Post*

Law Enforcement Accountability

This panel discusses the primary impediments to public oversight of local law enforcement agencies and the surveillance technologies they deploy and strategies to improve transparency. Topics to be taken up include proactive technology information disclosure, theories to compel access to CBP detention centers and other law enforcement sites, the

sharing of photos among law enforcement agencies for facial recognition databases, public access to body cam footage, disclosure of surveillance applications and orders, and increased transparency for police disciplinary proceedings.

- **Jonathan Manes**, Assistant Clinical Professor and Director of Civil Liberties and Transparency Clinic, School of Law, SUNY BUffalo (moderator)
- **Catherine Crump**, Clinical Professor of Law, School of Law, University of California, Berkeley
- **Craig Futterman**, Clinical Professor of Law, The University of Chicago Law School
- **Rachel Harmon**, Professor of Law, School of Law, University of Virginia
- **Wes Lowery**, Journalist, *The Washington Post*

FOIA—Boon or a Bane?

It is widely recognized that the Freedom of Information Act is broken. Congress has repeatedly amended FOIA to improve its operation, but the problems only seem to multiply as time moves on. This panel engages the questions of whether FOIA is achieving its intended transparency goal, whether a FOIA fix is possible, and what is the best path forward to promote government transparency and accountability.

- **David McCraw**, Deputy General Counsel, *The New York Times* (moderator)
- **Seth Kreimer**, Kenneth W. Gemmill Professor, School of Law, University of Pennsylvania
- **Margaret Kwoka**, Associate Professor of Law, Sturm College of Law, University of Denver
- **Jason Leopold**, Senior Investigative Reporter, *Buzzfeed*
- **David Pozen**, Charles Keller Beekman Professor of Law, Columbia Law School

National Security and the Surveillance State

This panel takes up the consequences for transparency of the ongoing application of the Espionage Act to whistleblowers who provide information to the press, and concerns raised by the Act's imminent application to Julian Assange. It also addresses strategies to address accountability concerns presented by surveillance methods and technologies used on reporters and their sources, and litigation and legislative strategies to improve public access to the types of national security information needed for proper democratic oversight.

- **Jameel Jaffer**, Executive Director, Knight First Amendment Institute, Columbia University (moderator)
- **Oona Hathaway**, Gerard C. and Bernice Latrobe Smith Professor of International Law, Yale Law School
- **Heidi Kitrosser**, Robins Kaplan Professor of Law, University of Minnesota Law School
- **Robert Litt**, Of counsel, Morrison & Foerster
- **Betsy Reed**, Editor-in-Chief, *The Intercept*
- **Charlie Savage**, Washington correspondent, *The New York Times*

Algorithmic Transparency

Government decision-making is increasingly automated at both the federal and state level in such high stakes domains as criminal justice, law enforcement, housing, health care, employment, education, and elections. Algorithmic technologies influence individuals, populations, and national agendas, but most are obtained and operated with little oversight, limited accountability mechanisms, and minimal research into their impact. This panel explores key issues contributing to the lack of accountability and transparency of algorithms used in government decision-making, and assess potential legal strategies to achieve the level of algorithmic access required for meaningful democratic oversight

- **Jennifer Pinsof**, Clinical Lecturer in Law and Abrams Clinical Fellow, Media Freedom and Information Access Clinic, Yale Law School (moderator)
- **Vera Eidelman**, William J. Brennan Fellow, ACLU Speech, Privacy, and Technology Project
- **Lauren Kirchner**, Investigative Reporter, *The Markup*
- **Jason Schultz**, Professor of Clinical Law, NYU Law School
- **Rebecca Wexler**, Assistant Professor of Law, School of Law, University of California, Berkeley

Checks, Balances and the Trump Administration

The current Administration has been criticized for using executive orders and administrative actions to dismantle regulatory regimes without apparent regard for existing law or established fact, and doing so in ways that dodge the checks and balances of congressional and judicial oversight. This panel assesses how constitutional structures and historic practices intended to promote Executive Branch accountability are performing in an era of expansive executive power, fake news, and the Trump management style. It explores the role of the courts, Congress, and the press in promoting Executive Branch accountability—how they are performing, where reform is needed, and what it takes to achieve meaningful progress.

- **Ian Bassin**, Co-Founder and Executive Director, Protect Democracy (moderator)
- **Rebecca Bratspies**, Professor of Law, CUNY School of Law
- **Norman Orenstein**, Resident Scholar, American Enterprise Institute
- **John Podesta**, Chair, Center For American Progress

Saturday, October 5

Keynote Address: “The Grim Impact of Judicial Secrecy”

In this opening conversation, **Dan Levine**, a correspondent at Reuters, discusses a report on the findings of a yearlong Reuters’ investigation into the practices of sealing records and

issuing protective orders in the federal courts and the impact of these practices on public health and safety.

Action Steps to Improve Judicial Records Access: Clinic Litigation Projects (Break Out Session I)

This session features a nuts and bolts discussion of strategies that can be pursued by law school clinics to bring First Amendment considerations into the calculus for sealing discovery in civil litigation, improve procedures for sealing court files, and enforce the constitutional right of access to court records.

- **Dustin Benham**, Professor of Law, School of Law, Texas Tech University
- **Cort Kenney**, Visiting Assistant Clinical Professor, Cornell Law School
- **Francesca Procaccini**, Clinical Lecturer in Law, Media Freedom and Information Access Clinic, Yale Law School
- **Jennifer Nelson**, Senior Staff Attorney, Reporters Committee for Freedom of the Press
- **Riana Pfefferkorn**, Associate Director of Surveillance and Cybersecurity, Center for Internet and Society, Stanford Law School

Action Steps to Improve Judicial Records Access: Research, Legislative and Policy Projects for the Non-Clinician (Break Out Session II)

This session develops a practicum, writing policy papers, amicus opportunities, and other means for non-clinical faculty to improve judicial transparency and accountability.

- **Hannah Bloch-Wehba**, Assistant Professor of Law, Kline School of Law, Drexel University
- **Alan Chen**, Professor of Law, Sturm College of Law, University of Denver
- **Patrick Kabat**, Adjunct Professor, Cleveland-Marshall College of Law
- **Heidi Kitrosser**, Robins Kaplan Professor of Law, University of Minnesota Law School

Fixing FOIA

Deep dive into what effective FOIA reform might look like and role clinics might play in achieving it. Discussion includes litigation strategies, fact development, and legislative solutions to bring about meaningful reform and improved government transparency.

- **John Langford**, Counsel, Protect Democracy (moderator)
- **Grace Cheng**, Senior Legal Editor, *Thomson Reuters*
- **Meenu Krishnan**, Legal Fellow, Knight First Amendment Institute, Columbia University
- **Adam Marshall**, Senior Staff Attorney, Reporters Committee for Freedom of the Press
- **Michael Morisy**, Chief Executive, MuckRock

- **Anne Weismann**, Chief Counsel, Citizens for Responsibility and Ethics in Washington

Success Stories

Students and faculty from law school clinics present matters in which they succeeded in promoting accountability using theories or strategies that warrant replication or address widespread problems that would benefit from broader attention.

- **Charlie Crain**, Clinical Lecturer in Law and Stanton First Amendment Fellow, Media Freedom and Information Access Clinic, Yale Law School (moderator)
- **Kendra Albert**, Clinical Instructor, Cyberlaw Clinic, Harvard Law School
- **Chris Morten**, Deputy Director, Technology Law and Policy Clinic, NYU Law School
- **Laura Kokotailo** and **Ramis Wadood**, J.D. Candidate, Yale Law School
- **Nicolas Riley**, Senior Counsel, Institute for Constitutional Advocacy and Protection, Georgetown University Law Center
- **Susan Seager**, Adjunct Professor of Law, School of Law, University of California, Irvine

Local Journalism and the Free Expression Law Network (FELN)

The moderators presented the launch of Free Expression Legal Network, its current activities and steps to promote the services of this national network to local journalists and news organizations without access to legal resources.

- **Bruce Brown**, Executive Director, Reporters Committee for Freedom of the Press
- **Josh Moore**, Strategic Initiatives Manager, Reporters Committee for Freedom of the Press
- **Dave Schulz**, Co-director, Media Freedom and Information Access Clinic, Yale Law School

Commercial Speech and the First Amendment Conference V

June 3, 2019

This conference considered the appropriate definition of “commercial speech” and provided 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.

Funding for this conference was provided by the Abrams Institute for Freedom of Expression, Patterson Belknap Webb & Tyler LLP, Ballard Spahr LLP, Baron Davis Healey Davis Wright Tremaine LLP, and Charles Koch Institute.

Opening Remarks: Welcome by Sandra Baron and Introduction by Floyd Abrams

The Supreme Court’s Framework for Commercial Speech: Shifting? Unmoored?

- **Robert Post**, Sterling Professor of Law, Yale Law School
- **Beth Brinkmannr**, Partner, Covington
- **Genevieve Lakier**, Assistant Professor of Law, Herbert and Marjorie Fried Teaching Scholar, University of Chicago Law School
- **Amanda Shanor**, Partner, Cahill Gordon & Reindel LLP (moderator)

Regulating Political Advertising Online: Is Disclosure Still the Key?

In the wake of the 2016 election, states are getting more aggressive in regulating online political advertising, including by trying to shift some of the disclosure and record-keeping burdens onto the media platforms that host political ads, as opposed to just the advertisers themselves. The Fourth Circuit recently held that Maryland’s attempt to do so was unconstitutional. What are the boundaries of the state’s power to require disclosures under the First Amendment?

- **Richard H. Pildes**, Sudler Family Professor of Constitutional Law, NYU Law School
- **Daniel I. Weiner**, Deputy Director, Election Reform Program, Brennan Center for Justice
- **Allen Dickerson**, Legal Director, Institute For Free Speech
- **Paul Safier**, Of Counsel, Ballard Spahr LLP (moderator)

From Across the Atlantic: A Heads-Up on What EU Influence to Anticipate on the U.S. Internet Law, Policy and Practice

- **Remy Chavannes**, Partner, Brinkhof

Where Algorithms Meet the First Amendment

Digital platforms such as Facebook, Twitter, and Google are increasingly crucial spaces for public discourse. But they are also the sites of great conflict over election interference, misinformation, discriminatory and false advertising, and the future of free speech values.

The platforms shape the discourse they host through rules on “content moderation” and through black-box algorithms that invisibly decide what users will see and in what order.

Should free speech values inform the ways in which platforms moderate the speech they host? If so, which, and how should the platforms resolve conflicts between competing free speech values or between free speech values and other democratic ideals? Is regulation desirable, and if so, what kind? Would the First Amendment permit this kind of regulation?

- **Jack Balkin**, Knight Professor of Constitutional Law and the First Amendment, Yale Law School
- **Daphne Keller**, Director, Program on Platform Regulation, Cyber Policy Center, Stanford Law School
- **Nathaniel Persily**, James B. McClatchy Professor of Law, Stanford Law School
- **Alex Abdo**, Litigation Director, Knight First Amendment Institute at Columbia University (moderator)

Milk from Nuts. Burgers from Soybeans. Can the States Regulate What You Call Them?

As alternative food products have grown in popularity, states have passed laws limiting what such products can be named. These laws’ proponents view them as promoting truth in labeling, but opponents see a violation of First Amendment rights.

- **Sarah Roller**, Partner, Kelley Drye and Chair of Food and Drug Law practice
- **Justin Pearson**, Florida Office Managing Attorney, Institute for Justice
- **Claudia Haupt**, Associate Professor of Law and Political Science, Northeastern University School of Law
- **Brendan Healey**, Partner, Baron Harris Healey (moderator)
- **Jonah Knobler**, Partner, Patterson Belknap Webb & Tyler (moderator)

Everything You Need to Know About Section 230 in 5 Hours: A Five-Day Lunch Series

Should free speech values inform the ways in which platforms moderate the speech they host? If so, which, and how should the platforms resolve conflicts between competing free speech values or between free speech values and other democratic ideas?

In the last few years, but especially the last few weeks, Section 230 of the Communications Decency Act has been a frequent topic in the news and political debate. From Donald Trump's Executive Order on Preventing Online Censorship to Sen. Josh Hawley's and Presidential Candidate Joe Biden's recent calls to revoke 230, it is clear that "the law that created the internet" means different things to different people for different reasons.

This series aims to bring much needed clarity to this conversation from the experts who know best precisely what 230 stands for, what it meant, what it means now, and what a world will look like with or without it. The experts in these panels are lawyers and not; have worked inside tech companies and brought litigation against them; fought for reform of 230 and railed against it; are conservative and liberal; from government agencies and activist groups. Their diverse and knowledgeable discussion of these issues aims to serve as a reference point for lawmakers, journalists, agencies, and the public going forward.

Panels were moderated by Kate Klonick, Assistant Professor of Law at St. John's University Law School and Affiliate Fellow at the Yale Information Society Project, livestreamed, and recorded for later reference.

The History of 230

- **Jeff Kosseff**, Assistant Professor of Cybersecurity Law at the United States Naval Academy
- **Eric Goldman**, Professor of Law at Santa Clara University School of Law
- **Mary Anne Franks**, Professor of Law at Miami Law School

What 230 Meant for Telecom and Agencies

- **Blake Reid**, Clinical Professor at University of Colorado Law School
- **Olivier Sylvain**, Professor of Law at Fordham University Law School
- **Tejas Narechania**, Assistant Professor of Law at Berkeley Law School

What 230 Meant for Platforms

- **Alexander MacGillivray**, General Counsel at Twitter, 2009-2013
- **Dave Willner**, Head of Content Policy at Facebook 2008-2013

Why 230 and Why Now?

- **Carrie Goldberg**, attorney and founding partner C.A. Goldberg PLLC

- **David French**, attorney and Senior Editor at The Dispatch
- **Cathy Gellis**, attorney and technology policy outside counsel

Imagining a World Without 230

- **Cory Doctorow**, technologist, activist, journalist, science fiction novelist
- **Daphne Keller**, Director of the Program on Platform Regulation at **Stanford's Cyber Policy Center**
- **Kendra Albert**, lawyer at Harvard Law School's Cyberlaw Clinic
- **Lorelei Lee**, writer, sex work advocate

Activities



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 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

Book Talk: *Between Truth and Power*, September 27, 2019

- **Julie E. Cohen**, Mark Claster Mamolen Professor of Law and Technology, Georgetown Law Center

Book Talk: *Democracy and Dysfunction*, November 6, 2019

- **Jack M. Balkin**, Knight Professor of Constitutional Law and the First Amendment, Yale Law School
- **Sanford Levinson**, W. St. John Garwood and W. St. John Garwood, Jr. Centennial Chair, University of Texas School of Law
- Co-sponsored with the Lillian Goldman Law Library

What's Broken About Social Media and Tech Companies, and What Can Be Done To Fix Them?, November 13, 2019

- **Mike Godwin**, Internet Law and Policy Expert
- Co-sponsored with the Justice Collaboratory

Perspectives from the Hill, December 6, 2019

- **Sunmin Kim**, aide to Sen. Schatz
- **Sam Mulopulos**, aide to Sen. Portman
- **The Scientist and the Spy: The FBI and the US-China Technological Battle**, February 26, 2020
- **Mara Hvistendahl**, Investigative Reporter, *The Intercept*

Emergent Medical Data: Health Information Inferred by Artificial Intelligence, March 26, 2020

- **Mason Marks**, Assistant Professor, School of Law, Gonzaga University

LAW & TECHNOLOGY

Law & Tech Speaker Series

The Law & Tech Speaker Series on Information Law and Information Policy hosts leading experts in the field of information law, speaking about their latest papers or projects. Sponsored by the Oscar M. Ruebhausen Fund.

Can Law Keep Up?, August 27, 2019

- **Joshua Fairfield**, William Donald Bain Family Professor of Law, Washington and Lee School of Law

Facebook Under Investigation, September 3, 2019

- **Adrian Kuenzler**, Assistant Professor of Law, University of Zürich, Switzerland

Rethinking Health Data Governance, September 10, 2019

- **Keith Porcaro**, co-founder of Digital Public

Adapting to Cybersecurity Threats: The Demand for Combined Capabilities, September 17, 2019

- **Jesse Sowell**, Assistant Professor, Texas A&M University

Election Interference on Facebook: How Beijing Targeted Taiwan in 2018, September 23, 2019

- **Paul Huang**, Journalist and Defense Analyst

Who Shapes Public Opinion? Social Media and Social Movements in Asia and the United States, September 24, 2019

- **Jyoti Thottam**, Opinion Editor, The New York Times

Is There Life after the End of Privacy? Reflections on the Coverage of Tyler Clementi's Suicide, October 1, 2019

- **Richard Miller**, Professor of English, Rutgers University

Coerced Sterilization of Mexican-American Women: The Story of Madrigal v. Quilligan, October 8, 2019

- **Maya Manian**, PhD Candidate, University of California, San Francisco
- Co-sponsored with the Program for the Study of Reproductive Justice

The US-China Battle for Cyberspace: How Washington and Beijing are Using Tech, Diplomacy, and Trade to Shape Cyberspace, October 15, 2019

- **Adam Segal**, Director, Digital Policy Program, Council on Foreign Relations (CFR)
- Co-sponsored with the Center for Global Legal Challenges at Yale Law School

Journalism, Ethics, and Trust in a Time of Misinformation, October 22, 2019

- **Craig Newmark**, Founder of craigslist and Craig Newmark Philanthropies

Move Slow and Mend Things: Digital Transformation in a Public Sector Institution, November 5, 2019

- **Luke Swarthout**, Director of Policy, New York Public Library Digital Team

Addressing the Emerging School Cybersecurity Crisis: Why It Matters and What We Can Do About It, November 12, 2019

- **Douglas A. Levin**, president and founder of EdTech Strategies, LLC
- Co-Sponsored with the Center for Global Legal Challenges at Yale Law School

Grassroots Privacy Advocacy at Your Local Library, November 19, 2019

- **Alison Macrina**, Director of the Library Freedom Project

Internet Shutdowns - Breaching International Law and Violating Human Rights, December 3, 2019

- **Brett Solomon**, Executive Director, Access Now

To Unsafe Harbors: How the New EU Copyright Directive will Change the Web, January 14, 2020

- **Julia Reda**, Research Fellow, Berkman Klein Center for Internet & Society, Harvard University

Privacy and Trust: An Illusion or an Achievable Reality in Digital Societies, January 21, 2020

- **Merike Kaeo**, CEO and Founder, Double Shot Security
- Co-sponsored with the Center for Global Legal Challenges at Yale Law School

What My Phone & Computer Do When No One is Looking, January 28, 2020

- **April Lorenzen**, Chief Data Scientist, Zetalytics
- Co-sponsored with the Center for Global Legal Challenges at Yale Law School

Moral Outrage in the Digital Age, February 4, 2020

- **Molly Crockett**, Assistant Professor of Psychology, Yale University

The Internet and International Jurisdiction - Harmony or Discord?, February 11, 2020

- **Jacob Rogers**, Senior Legal Counsel, Wikimedia Foundation
- Co-sponsored with the ISP/Wikimedia Initiative on Intermediaries and Information

Regulating Speech Online: A Comparative Constitutional Perspective Panel, February 18, 2020

- **Hannah Bloch-Wehba**, Assistant Professor of Law, Drexel University
- **Claudia Haupt**, Associate Professor of Law and Political Science, Northeastern University

What Happens When IP and Free Culture Don't Play Well Together, February 25, 2020

- **Chuck Roslof**, Legal Counsel, Wikimedia Foundation
- Co-sponsored with the ISP/Wikimedia Initiative on Intermediaries and Information and the Yale Law & Technology Society (TechSoc)

Catalyzing Privacy Law, March 3, 2020

- **Margot Kaminski**, Associate Professor, University of Colorado Law

Ideas Lunches

The ISP facilitates a series of ideas lunches that meet weekly. The ideas lunches consist of an informal gathering of students, fellows, faculty, and guest speakers to forge new ideas related to emerging issues in media law and technology.

During this year (2019-2020), informal guest speakers (listed below) led animated discourse on wide range of subjects, including:

The Rise of Fringe Tech: Are Early-Wage Programs Payday Lending In Disguise?, August 29, 2019

- **Nakita Cuttino**, Visiting Assistant Professor, School of Law, Duke University

Program for the Study of Reproductive Justice's Agenda, September 5, 2019

- **Priscilla Smith**, Director of the ISP's Program for the Study of Reproductive Justice

Silicon Valley's Speech, September 12, 2019

- **Alan Z. Rozenshtein**, Assistant Professor, University of Minnesota Law School

Copyright As Legal Process: The Transformation of American Copyright Law, September 19, 2019

- **Shyam Balganesh**, Professor of Law, University of Pennsylvania

The Economics of Social Data, September 26, 2019

- **Dirk Bergemann**, Douglass and Marion Campbell Professor of Economics and Professor of Computer Science, Yale University

Automation in Moderation, October 3, 2019

- **Hannah Bloch-Wehba**, Assistant Professor of Law, Drexel University

Fighting Secrecy in the Courts, October 10, 2019

- **Media Freedom and Information Access Clinic**, Yale Law School

The Case for Safety-Critical Software Professionals, October 17, 2019

- **Bryan H. Choi**, Assistant Professor of Law, Moritz College of Law, The Ohio State University

The New Gatekeepers, October 24, 2019

- **Rory Van Loo**, Associate Professor of Law, School of Law, Boston University

The General Knowledge, Skill, and Experience Paradox, October 31, 2019

- **Camilla A. Hrdy**, Associate Professor of Law, School of Law, The University of Akron

The Constitutional Case Against Defining Infertility, November 7, 2018

- **Faren Tang**, Reproductive Justice Fellow, Yale Law School

Competition Enforcement and Digital Platforms, November 14, 2019

- **Fiona M. Scott Morton**, Theodore Nierenberg Professor of Economics, Yale University School of Management

Digital Advertising and Negative Externalities in the Attention Economy: Reducing Financial Incentives for Disinformation, Misogyny, and Hate; November 21, 2019

- **Joshua Braun**, Associate Professor, University of Massachusetts Amherst

Progressive Punitivism: Notes on the Use of Punitive Social Control to Advance Social Justice Ends, December 5, 2019

- **Hadar Aviram**, Professor of Law University of California, Hastings

Who Controls Online Privacy? On the Global Regulation of Online Services, January 16, 2020

- **Jens Frankenreiter**, Postdoctoral Fellow, Columbia Law School

For Dirt Roads and Main Streets: A National Rural Broadband Plan, January 23, 2020

- **Christopher Ali**, Associate Professor of Media Studies, University of Virginia

Advances in Reproductive Technologies, January 30, 2020

- **Katherine Kraschel**, Executive Director, Solomon Center for Health Law & Policy, Yale Law School

Who Tracks the Trackers?, February 6, 2020

- **Sean O'Brien**, ISP Visiting Fellow and Director, ISP Privacy Lab
- **Laurin Weissinger**, ISP Resident Fellow and Cyber Fellow, CGLC

The Problem of Fake News, February 13, 2020

- **Marshall Van Alstyne**, Questrom Professor at Boston University & Digital Fellow, MIT Initiative on the Digital Economy

Can We Build Social Media That's Good for Society?, February 20, 2020

- **Evelyn Douek**, S.J.D. Candidate, Harvard Law School

Buy Local Abortions: Municipal Reproductive Health Care and Abortion Sanctuary Cities, February 27, 2020

- **Erin Bernstein**, Senior Deputy City Attorney, Community Lawyering and Civil Rights Unit, Oakland City Attorney's Office
- **Abigail Burman**, 3L, University of California, Berkley School of Law

Fake News: Is There a Market and Data Driven Answer to the Scourge of Online Disinformation?, March 5, 2020

- **Andy Lerner**, CEO, Trust Metrics
- **Jesse Kanzler**, COO, Trust Metrics

Virtual Cyber Policy

Why Fairness Cannot Be Automated: Bridging the Gap Between EU Non-Discrimination Law and AI, April 17, 2020

- **Sandra Wachter**, Associate Professor and Senior Research Fellow, University of Oxford & Visiting Professor at Harvard Law School

A Public Option for Financial Inclusion, April 24, 2020

- **Mehrsa Baradaran**, Professor of Law, UC UC Irvine School of Law

Growing Market Power and Exclusionary Conduct by Dominant Platforms, May 1, 2020

- **Jonathan Baker**, Research Professor of Law at American University Washington College of Law

Privacy as Privilege: The Stored Communications Act and Internet Evidence, May 8, 2020

- **Rebecca Wexler**, Assistant Professor of Law, University of California, Berkeley, School of Law

The Internet in Everything: Freedom and Security in a World with No Off-Switch, May 15, 2020

- **Laura DeNardis**, Professor and Interim Dean of the School of Communication, American University

Bugs In the Program: Why Our Data Is Chronically Insecure, May 22, 2020

- **Andrew Burt**, Managing Partner at bnh.ai and Chief Legal Officer at Immuta

Encrypted- and Geo- Propaganda: The Changing Face of Digital Political Manipulation, May 29, 2020

- **Samuel Woolley**, Assistant Professor, School of Journalism and the School of Information (by courtesy), University of Texas at Austin

Artificially Intelligent Persons, June 5, 2020

- **Nadia Banteka**, Visiting Assistant Professor of Law at the Villanova University Charles Widger School of Law

Speech is Circular: Twitter, Trump and the Public Interest, June 12, 2020

- **Elettra Bietti**, Doctoral Candidate, Harvard Law School; Kennedy Sinclair Scholar; and Affiliate, Berkman Klein Center

Copyright's Techno-Pessimist Creep, June 19, 2020

- **Xiyin Tang**, Assistant Professor of Law at UCLA School of Law



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. It is administered by the Information Society Project, directed by Professor Jack Balkin.

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.

Access and Accountability Conference: A Conference for Transparency Advocates, October 4-5, 2019

This conference brought together transparency advocates of all stripes to identify current impediments to government openness and to develop strategies for addressing them. Law school clinicians from around the country, together with investigative journalists, academics, practicing lawyers and law students, explored some of the most urgent transparency issues in the areas of law enforcement, national security and surveillance, government data and personal privacy, and newsgathering rights. The conference was designed to facilitate the development of ongoing relationships, cooperation, and collaboration among practitioners, journalists, and law school faculties to promote accountability and transparency in government.

Funding for this conference was provided by the Democracy Fund, the John S. and James L. Knight Foundation, and the Legal Clinics Fund.

Commercial Speech and the First Amendment Conference V, June 3, 2020

This conference focused on the pursuit of a definition of “commercial speech” and served as 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 above, in the “Conferences” section.

Brown Bag Lunch: Law for Journalists Lunches.

These off-the-record sessions bring together a panel of experts to discuss current legal issues facing journalists and their lawyers. Earlier luncheons have addressed the meaning of the emoluments clause and methods for journalists to investigate financial conflicts among executive branch personnel; espionage act issues, secured communications, and other legal issues surrounding the use of confidential sources; and best practices for protecting information on laptops and cellphones. The luncheon series connects locations in New Haven, New York and Washington, D.C. through videoconferencing and has been made possible by a grant from the Stanton Foundation.

Expungement and the Press: Should an Enforceable Right to be Forgotten Apply to the Reporting of Past Entanglements with Law Enforcement? February 25, 2020

- Moderated by **Jacob Goldstein**, Associate General Counsel, Dow Jones & Company
- **Jonathan Donnellan**, Vice President and Co-General Counsel, Hearst Corporation
- **Kate Klonick**, Assistant Professor, St. John’s University Law School
- **Brian Murray**, Associate Professor, Seton Hall Law School
- **Chris Quinn**, Editor, Cleveland.com

This lunch considered the complex issues presented by the easy access as a result of internet search to past media reporting and government records on arrests where no charges are brought, prosecutions where no guilt is found, and convictions of defendants who have long since paid their debt to society. With a new public focus on the impact of mass incarceration, some states—including New York—are looking to expand the scope of their expungement statutes as a means of preventing past entanglements with law enforcement from unfairly depriving citizens of opportunities for employment, housing and social engagement. These statutes would work to prevent public access to those records through government sources for current reporting. But at least some legislatures today seem open to seeking legislative fixes beyond blocking easy access from the government to blocking distribution of past reports online, and courts are being urged to grant injunctive relief or impose penalties on news organizations that continue to disseminate expunged information. These developments present important questions for news organizations and their lawyers. What should be the posture of the media with respect to expungement legislation? Are there potential “technology fixes” for the privacy concerns that news organizations should embrace? To what extent will privacy concerns limit First Amendment protections for online content? This Brown Bag lunch was co-viewed in New Haven, NYC, and D.C.

Due to the coronavirus, MFIA had to cancel its Freedom of Information Act Bootcamp that was organized and scheduled to be held on March 18, 2020.



PROGRAM FOR THE
STUDY OF
REPRODUCTIVE
JUSTICE

The 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 provide 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 and now often at the request of the 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.

Speaker Series

Coerced Sterilization of Mexican-American Women: The Story of *Madrigal v. Quilligan*, October 8, 2019

- **Maya Manian**, Ph.D. Candidate in medical sociology at University of California, San Francisco

The Constitutional Case Against Defining Infertility, November 7, 2019

- **Faren Tang**, Reproductive Justice Fellow, Program for the Study of Reproductive Justice at Yale

Book Talk & Discussion: *Reproductive Rights and Justice Stories*, November 1, 2019

- **Emily Bazelon**, Staff Writer, New York Times Magazine and Truman Capote Fellow, Yale Law School

- **Linda Greenhouse**, Knight Distinguished Journalist in Residence and Joseph Goldstein Lecturer in Law, Yale Law School
- **Melissa Murray**, Frederick I. and Grace Stokes Professor of Law, New York University School of Law
- **Douglas NeJaime**, Anne Urowsky Professor of Law, Yale Law School
- **Katherine Shaw**, Professor of Law, Benjamin N. Cardozo School of Law, Yeshiva University
- **Reva Siegel**, Nicholas deB. Katzenbach Professor of Law, Yale Law School

Reproductive Due Process, February 19, 2020

- **Megan Boone**, Assistant Professor, University of Alabama Law School

PRIVACY LAB

Yale Privacy Lab explores the connection between privacy, security, and anonymity through hands-on software and hardware implementation, such as cybersecurity workshops. As the technical arm of the Information Society Project, we are quickly becoming an intellectual resource for projects around campus, strengthening the networks between technologists, lawyers, students, and researchers.

The Yale community is increasingly concerned about digital privacy and security, an arena that requires interdisciplinary collaboration. Yale Privacy Lab is a nexus for training and discussions about these contemporary issues, as well as a resource for cryptographic and anonymity tools. Yale Law School, and the YLS Clinics in particular, need a central resource to consult for technological expertise in the swiftly-changing digital privacy landscape.

We provide informal cybersecurity advice and recommendations, as well as detailed trainings in the use of Free and Open Source Software (FOSS). Yale Privacy Lab is committed to fostering software, hardware, and spectrum freedom: digital freedom is essential for the creation, implementation, and improvement of secure and privacy-respecting technology. Transparency in the design, development, and operation of technology is a requirement for users of that technology to preserve and expand their digital freedom. This is perhaps nowhere more relevant than in the realm of cybersecurity. Yale Privacy Lab is currently a volunteer effort driven by lead technologist Sean O'Brien. The Information Society Project provides support and resources.

Events

Copyright, Privacy, Surveillance, and Fundamental Rights, October 29, 2019

- **Marcia Wilbur**, Lead Debian Developer, Libre Respin

Grassroots Privacy Advocacy at Your Local Library, November 19, 2019

- **Alison Macrina**, Director, Library Freedom Project

Who Tracks The Trackers?, February 6, 2020

- **Sean O'Brien**, Privacy Lab Director and **Laurin Weissinger**, ISP Visiting Fellows

Day Of Action: Ban Facial Surveillance, March 2, 2020

- **Sean O'Brien**, Privacy Lab Director with Fight For the Future (On-Campus Rally)

Conference Presentations

Digital Self-Defense During COVID-19, March 23, 2020

- **Sean O'Brien**, Privacy Lab Director (Remote Conference “Stay At Home Fest”)

Better Operational Security on Zoom, April 4, 2020

- **Sean O'Brien**, Privacy Lab Director (Remote Conference “Flatten The Curve Summit”)



The Wikimedia/Yale Law School Initiative on Intermediaries and Information (WIII) is a research initiative that aims to raise awareness of threats to an open internet, especially those affecting online intermediaries and their users, and to make creative policy suggestions that protect and promote internet-facilitated access to information. WIII grew out of an ongoing academic affiliation and collaboration between Yale Law School's Information Society Project and the Wikimedia Foundation, and is made possible by a generous gift from the Wikimedia Foundation, in support of Wikimedia's mission to build a world in which everyone can freely share in knowledge.

The Wikimedia Foundation is a nonprofit charitable organization dedicated to encouraging the growth, development and distribution of free, multilingual, educational content, and to providing the full content of these wiki-based projects to the public free of charge. The Wikimedia Foundation supports some of the largest collaboratively edited reference projects in the world, including Wikipedia.

Events

Silicon Valley's Speech, September 12, 2019

- **Alan Z. Rozenshtein**, Associate Professor, University of Minnesota Law School

Digital Advertising and Negative Externalities in the Attention Economy: Reducing Financial Incentives for Disinformation, Misogyny, and Hate, November 21, 2019

- **Josh Braun**, Associate Professor, University of Massachusetts Amherst

Internet Shutdowns - Breaching International Law and Violating Human Rights, December 3, 2019

- **Brett Solomon**, Executive Director, AccessNow

The Internet and International Jurisdiction: Harmony or Discord?, February 11, 2020

- **Charles Roslof**, Senior Legal Counsel, Wikimedia Foundation

What Happens When IP and Free Culture Don't Play Well Together, February 25, 2020

- **Jacob Rogers**, Legal Counsel, Wikimedia Foundation

The Santa Clara Principles: What's Next, April 2, 2020

- **Liz Woolery**, Deputy Director, Free Expression Project at the Center for Democracy and Technology

Panel Discussion

Moderate Globally, Impact Locally, Panel Session at RightsCon, July 30, 2020

- **Agustina del Campo**, Director, Center for Studies on Freedom of Expression and Access to Information, Universidad de Palermo
- **Farieha Aziz**, Director, BoloBhi, Pakistan
- **Nilay Erdem**, Stakeholder Engagement Manager, Facebook

Facial Challenges: Networking Global Responses to the Spread of Facial Recognition Technology, Strategy Session at RightsCon, July 30, 2020

- **Dorothy Mukasa**, Executive Director, Unwanted Witness Uganda
- **Nathan Sheard**, Associate Director of Community Organizing, Electronic Frontiers Foundation
- **Ruslan Dairbekov**, Founder, Eurasian Digital Foundation
- **Sarkis Darbinyan**, Lawyer, Roskomsvoboda
- **Isedua Oribhabor**, U.S. Policy Analyst, AccessNow

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 Charles Crain, Michael Linhorst, and Stephen Stich 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.

Cases Initiated this Year:

Constitutional Access Project

BH Media Group d/b/a/ Richmond Times-Dispatch, et al v. Harold W. Clarke (E.D.Va.). The Clinic has prepared an action to be filed shortly on behalf of four news organizations, asserting a § 1983 claim that provisions of Virginia's execution protocol violate the public's First Amendment right of access to executions. Virginia's protocol bars witnesses from viewing the execution chamber until after the condemned inmate has been secured into the gurney and intravenous lines have been placed. The lawsuit challenges those provision of Virginia's regulation that inhibit witnesses from fully viewing executions—from the moment the condemned prison enters the chamber until after the point of death.

Doe v. Mattis (D.C. Cir.). The Clinic moved on behalf of national security reporter Charlie Savage to unseal redacted portions of the D.C. Circuit's decision in *Doe v. Mattis*, 889 F.3d 745 (D.C. Cir. May 7, 2018). In 2017, the public learned that the U.S. military had detained a U.S. citizen ("Doe") in Iraq for several months. Doe was captured in Syrian territory controlled by ISIL and designated an enemy combatant for ISIL. In late 2017, the ACLU filed a habeas petition seeking Doe's release. While that petition was pending, the government sought to transfer Doe to another country. The ACLU obtained an order directing the government to provide 72 hours' notice before transferring Doe to another country; after the government gave notice, the ACLU obtained a second order preventing transfer. The government appealed, but in May 2018, a divided D.C. Circuit panel upheld the district court's orders. Several key passages from both the majority opinion and dissent were redacted. The Clinic has moved in the Circuit Court to unseal the redactions, and the government has been instructed to file a response.

Wessler v. U.S. Coast Guard (E.D.N.Y.). The Clinic represents investigative reporter Seth Wessler in a lawsuit asserting a constitutional right to contemporaneous information concerning all arrests. The Coast Guard has routinely interdicts small vessels in international waters, arresting their occupants, and holding them incommunicado. Many of these individuals are eventually transported to the United States for criminal prosecution weeks or months later. Wessler's reporting has highlighted the extent to which the Coast Guard's use of this practice has grown, to the point where the Coast Guard has contemplated the possibility of creating a "floating Guantanamo" to house individuals arrested at sea. The Clinic's complaint seeks to establish that secret arrests are not

permitted—the names of the people arrested, the dates, and times of their arrest must be contemporaneously disclosed. Read more here.

Government Accountability

In Petition of Jill Lepore (D. Mass). The Clinic represents Harvard historian Jill Lepore in her effort to unseal the records of a Boston grand jury convened in 1971 to investigate Daniel Ellsberg's disclosure of the Pentagon Papers. No charges were brought against Ellsberg or others as a result of these proceedings, and the records have remained sealed for more than 45 years. Professor Lepore seeks access to those records to assist her research for a book; other historians have underlined the importance of the grand jury records to a full understanding of the Pentagon Papers episode. Last semester the MFIA team conducted legal and factual research, collected declarations from people drawn into the grand jury's investigation (including Daniel Ellsberg), and submitted a petition and supporting memorandum of law asking the District of Massachusetts to unseal the records. MFIA is awaiting the government's response.

National Security & Surveillance

Raymond Bonner and Alex Gibney v. CIA (S.D.N.Y.). The Clinic is representing Bonner and noted documentarian Alex Gibney in litigation against the CIA. Bonner and Gibney are making a documentary about Guantanamo detainee Abu Zubaydah and his treatment while in American custody. For that documentary they have interviewed former FBI Special Agent Ali Soufan who initially interrogated Zubaydah before the CIA became involved. Soufan wrote a book called *The Black Banner* about his experiences in the FBI, including his role in Abu Zubaydah's interrogation. As part of the government's pre-publication review of Soufan's manuscript, the CIA claimed that significant portions of the text would have to be redacted to prevent the release of classified information. Soufan contends that the redactions are actually designed to prevent the disclosure of negative, but not properly classified, facts. He has stated publicly that CIA officials have been distorting the truth to portray the CIA's harsh interrogation as producing useful information that actually was obtained earlier by the FBI. Soufan is unwilling to discuss the redacted information during his interview, even though he believes it is not properly classified. The Clinic filed a complaint asserting that the CIA is improperly restraining Soufan's freedom to speak, which in turn violates Bonner and Gibney's First Amendment right to receive information.

Open Data

Seife and Lurie v. U.S. Department of Health and Human Services, et al. (D.Conn.). Section 801 of the Food and Drug Administration Amendments Act of 2007 mandates that the results of certain clinical trials of drugs and medical devices must be posted on a website called ClinicalTrials.gov. Many sponsors and investigators covered by the Act, however, are not complying with this requirement. The Department of Health and Human Services (HHS), the National Institutes of Health (NIH), and the Food and Drug Administration (FDA) share

responsibility for enforcing the reporting requirements, but they have never taken enforcement actions against delinquent researchers. The Clinic filed an Administrative Procedures Act lawsuit on behalf of NYU Professor of Journalism Charles Seife and Dr. Peter Lurie, the President of the Center on Science in the Public Interest, seeking an injunction compelling HHS, NIH, and FDA to comply with their legal obligations to notify the public of researchers' failure to report clinical trial results on ClinicalTrials.gov. Cross-motions for summary judgment are currently being briefed. Read more [about this case here](#) and [here](#) and [here](#).

Newsgathering

Marc D'Amelio v. City of Norwalk and Nancy Chapman (State of Connecticut Superior Court Judicial District of Stamford). The Clinic successfully defended journalist Nancy Chapman, who started and runs NancyOnNorwalk.com, against claims that her reporting on a candidate for state office constituted false light invasion of privacy and infliction of emotional distress. In October 2019, Nancy ran a story on then-Republican State Senate candidate Marc D'Amelio's 2014 DUI arrest. Records of the arrest and charges were ultimately expunged in March 2016 after D'Amelio completed a diversionary program. After Nancy published her article in October (and after D'Amelio lost his election), D'Amelio sued for false light invasion of privacy and infliction of emotional distress. After the Clinic prepared a special motion to dismiss the complaint under Connecticut's new Anti-SLAPP statute, D'Amelio agreed to withdraw the case. [Read more about this case here](#).

National Press Photographers Association, et al. v. Steven McGraw, et al (W.D. Texas). In 2013, Texas enacted the Texas Privacy Act, which strictly regulates the use of drones. Though the law is designed to protect individual privacy, it appears equally motivated by a desire to protect corporate interests and prevent recording of sites of pollution and protest. It preemptively limits the ability to take aerial photographs of huge areas of the state, even in the absence of any acute necessity. The Clinic is preparing to file a complaint on behalf of several journalists and news organizations to challenge the constitutionality of the Texas Privacy Act. In its complaint, the Clinic asserts that the law chills protected speech and newsgathering activity by preventing journalists, activists, and others from using drones to investigate misconduct.

Pen America Center, Inc. v. Donald J. Trump (S.D.N.Y.). The Clinic, along with Protect Democracy and Davis Wright Tremaine LLP, represents PEN America, Inc. in a lawsuit asserting that President Trump violates the First Amendment by using his official powers to retaliate against media organizations and journalists whose reporting he dislikes. Briefing on Trump's motion to dismiss is complete, and MFIA is awaiting a ruling from the court. Read more about this case in [the Washington Post here](#), [in Fortune here](#), [The Guardian here](#) and [in PBS here](#).

Significant Victories and Court Decisions

The Clinic had several noteworthy victories this year. Among others, it compelled the release of documents revealing that access to oil reserves was central to the decision to shrink Bears Ears Monument, contrary to claims by the Interior Secretary; an order disclosing the completely sealed court file of an earlier civil dispute in Arizona over a failed Trump real estate project; an order unsealing appellate court records relating to the criminal prosecution of Felix Sater; an order affirming the standing of transparency advocates to seek access to records of the Foreign Intelligence Surveillance Court; an order affirming the public's right of access to findings in disciplinary proceedings against correction officers in New York City; and, an order unsealing Alabama's confidential protocol used to execute individuals by lethal injection. The Clinic is also in the final stages of negotiating an important settlement of a pattern and practice lawsuit over the Los Angeles Police Department's failure to satisfy its disclosure obligations under the state's open records law.

Amicus Submissions

Rucho v. Common Cause and *Lamone v. Benisek*. MFIA submitted an amicus brief on behalf of the Floyd Abrams Institute for Freedom of Expression in two partisan gerrymandering cases before the Supreme Court this term. The cases presented the question of when, if ever, state officials violate the Constitution by drawing district lines to favor one political party at another's expense. The Clinic's brief presented a pure First Amendment theory for striking down partisan gerrymandering, arguing that the First Amendment forbids state legislatures from discriminating via redistricting against voters "with disfavored views." The brief contends that voting is political speech, for when citizens cast their ballots, they are sending a message to candidates, public officials, and about their policy views. It then argues that partisan gerrymandering attempts to limit that speech in violation of the First Amendment. [Read more here.](#)

Colorado Independent v. Superior Court. The Clinic submitted an amicus brief in support of *The Colorado Independent's* petition to the U.S. Supreme Court seeking review of a unanimous ruling by the Colorado Supreme Court holding that the public has no constitutional right to inspect court records in Colorado criminal prosecutions. The issue arose when the newspaper sought access to sealed records on a motion alleging prosecutorial misconduct in capital murder case. [Read more about this case here.](#)

FMI v. Argus Leader. The Clinic filed an amicus brief in the Supreme Court on behalf of several academics and NGOs in a case concerning the extent to which confidential commercial information can be withheld from public disclosure under FOIA Exemption 4. The brief argued that only information whose disclosure would cause significant competitive injury can properly be withheld under Exemption 4. [Read more about this case here.](#)

In re Avandia Marketing, Sales Practices & Products Liability Litigation ("In re Avandia Marketing"), Case No. 18-2259 (3d Cir.). MFIA helped to draft an amicus brief on behalf of the Collaboration for Research Integrity and Transparency (CRIT) and Public Justice explaining how the district court confused the standards for protecting unfiled discovery and for sealing court records, urging that the public interest in certain unfiled discovery

documents concerning public health and safety justified their disclosure notwithstanding a party's confidentiality designation. Read more about [this case here and here.](#)

NYCLU v. NYPD (N.Y. Ct. Appeals). The Clinic filed 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 New York Police Department. 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

The *Algorithmic Transparency Project* investigates legal theories to ensure transparency of government algorithmic decision-making. Our federal and state governments use increasingly-automated algorithmic decision-making technologies to make determinations and predictions in high stakes domains such as criminal justice, law enforcement, housing, hiring, education, and elections. This scoping project seeks to better understand these technologies and their potential impact on fundamental civil rights and liberties. This team is considering potential strategic litigation and policy initiatives to promote algorithmic transparency and accountability and accomplish structural reform.

The *Sealed Cases Research and Accountability Project (SCRAP)* team focuses on vindicating and expanding the public's right of access to judicial proceedings and records. For many years there has been a nationwide trend among district courts to invoke Federal Rule of Civil Procedure 26's authorization of protective orders liberally and to seal important information filed with the court routinely. But ubiquitous and broad secrecy orders operate to hide important information learned through the discovery process from the public. This year the SCRAP team conducted research and prepare white papers addressing the over-use of routine sealing orders and protective orders in civil litigation, and developing strategies to redress the secrecy imposed on important health and safety information that is developed in civil litigation. The team explored both litigation options and rules changes to effect needed reform. MFIA hosted a working for other clinicians on March 25 to develop a strategy for joint action to promote access to court records. The workshop considered the major impediments that prevent public access to important health and safety information generated in civil litigation and identified strategies to potentially overcome them that can be pursued by law school clinics, individually or through collective action. Thirty-eight individuals participated in this invitation-only event, including representatives from a dozen legal clinics along with a number of academics, current and former court officials, and journalists.

Health System Data/Patient Engagement and Privacy Initiative. Currently, there are a large number of organizations working to aggregate and analyze patient and health system data for both commercial and public health purposes. For example, in exchange for access to health data, Flatiron Health is providing oncology quality of care information to outpatient practices and hospitals, but at the same time they have commercialized access to this data to provide real-world insights on medical product use for pharmaceutical and other health

product technology companies. The Clinic is working with Yale's Collaboration for Research Integrity and Transparency (CRIT) to host a one-day workshop in June to discuss the responsible aggregation and analysis of patient health and behavior data in today's healthcare environment, including practices to support scientific research, public health surveillance, patient engagement, and the protection of patients' genetic information and privacy. The workshop will address both legal avenues to impose fiduciary obligations on organizations, the potential value of state or federal regulatory action, as well as the development of a set of best practices that reflect real-world use.

The *DocProject* was launched in 2018 to address an unmet need: while society today increasingly obtains its news and information through visual images, video journalism, and independent filmmakers, these journalists have limited access to legal assistance. Under the guidance of experienced media lawyers, including Sandra Baron, MFIA students provide filmmakers with *pro bono* legal research and advice from the earliest stages of their projects through rough-cuts. The project's mission is twofold: to assist documentary filmmakers who would not otherwise have access to legal resources and to train the next generation of media lawyers. DocProject lawyers and law students work with independent filmmakers from different backgrounds and with varying degrees of experience in developing strategies to increase access to information and to reduce potential liability from newsgathering activities, including source protection, trespass, intrusion, and other privacy concerns. In its launch, the DocProject worked closely with Doc Society, Inc. to identify candidates for the project, in order to see if providing legal services in this manner was a viable model. It has proven to be highly successful, and MFIA is hoping to sustain and expand the project.

Events

MFIA Access and Accountability Conference: A Conference for Transparency Advocates, October 12 - 13, 2018

This conference brought together transparency advocates of all stripes to identify current impediments to government openness and to develop strategies for addressing them. Law school clinicians from around the country, together with investigative journalists, academics, practicing lawyers and law students, explored some of the most urgent transparency issues in the areas of law enforcement, national security and surveillance, government data and personal privacy, and newsgathering rights. The conference was designed to facilitate the development of ongoing relationships, cooperation, and collaboration among practitioners, journalists, and law school faculties to promote accountability and transparency in government.

Funding for this conference was provided by the Democracy Fund, the John S. and James L. Knight Foundation, the Lodestar Foundation, and the Oscar M. Ruebhausen Fund at Yale Law School.

FOIA Bootcamp 2018, February 20, 2018

As government transparency faces an uncertain future, the Media Freedom and Information Access Clinic (MFIA) at Yale Law School provided an overview of the legal tools you can use to keep federal, state, and local governments open and accountable. Topics included how to effectively obtain information through the Freedom of Information Act (FOIA)—how to draft requests, where to send them, what language to use and how to work with agencies to avoid going to court. This workshop was led by an experienced practitioner in the field of media law, open government, and right-of-access issues and an award-winning investigative reporter who has used documents obtained through FOIA in his work.

Unmasking “Dark Money” – The Tangled Relationship between Compelled Donor Disclosure, Anonymous Speech, and the Reporters’ Privilege, February 22, 2019

- Moderated by **Floyd Abrams**, Senior Counsel, Cahill, Gordon & Reindel, LLP
- **Allen Dickerson**, Legal Director, Institute for Free Speech
- **Paul Ryan**, Vice President of Policy & Litigation, Common Cause
- **David Schulz**, Co-Director, MFIA Clinic and Senior Counsel, Ballard Spahr, LLP

This event explored the potential implications for journalists and their confidential sources of ongoing efforts to compel the disclosure of sources of so-called “dark money” in candidate and issue campaigns. Is the push to unmask dark money a threat to anonymous speech in other contexts, and how might the legal standards developed in that context impact the relationships between reporters and their confidential sources? This Brown Bag lunch was co-viewed in New Haven, NYC, and D.C.

Workshop on Court Records Access, March 25, 2019

- Media Freedom and Information Access Clinic
- A full description of the event is provided above, in the “Conferences” section.

Truth in Our Times: Inside the Fight for Press Freedom in the Age of Alternative Facts, March 28, 2019

- **David McCraw**, Deputy General Counsel, New York Times
- **Emily Bazelon**, Journalist, New York Times Magazine; Lecture and Senior Research Scholar in Law, Yale Law School

Research Grants and Funding

2015: Knight Foundation and Stanton Foundation

The Knight Foundation and the Stanton Foundation together provided a significant five-year grant to the Media Freedom and Information Access Clinic in order to support the clinic’s director, to fund ongoing litigation expenses, to provide funding for marketing and outreach activities, and for other purposes.

2016: Stanton Foundation

The Stanton Foundation has awarded a separate grant to fund a Stanton First Amendment Fellow to work on litigation matters in the Media Freedom and Information Access Clinic.

2016: Arnold Foundation, Collaboration for Research Integrity and Transparency

Worked as an integral part of an interdisciplinary team from the Yale Law School's Global Health Justice Partnership, Media Freedom and Information Access Clinic, Yale School of Medicine, and Yale School of Public Health to obtain significant funding for multi-year project to enhance the quality and transparency of the research base for medical products. The funding will support five new positions: program director, staff attorney, two fellows, and program administrator. Certain activities of the MFIA clinic, including ongoing litigation against the Food and Drug Administration to open up access to clinical trial data, will come within scope of the new Collaboration.

2017-2019: Government Accountability Project

Multiple sources, including the Ruttenberg, Mosley, and Gunn families have funded this project. The Clinic's push to understand and expose executive branch conflicts of interest is the primary responsibility of Charles S. Sims, J.D. '76, a seasoned litigator with experience handling First Amendment, copyright, and complex federal litigation, who was hired earlier this year as a MFIA staff attorney to develop and oversee the government accountability project. Working with Clinic Director David Schulz, Sims and the YLS students enrolled in the Clinic have been providing pro bono legal assistance to investigative journalists who do not have access to the legal resources needed to compel access to records filed away in courts and government agencies. They have been assisting four journalists investigating executive branch conflicts.

Clinic Personnel

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 with Professor Jack Balkin since it was launched in 2009. Since fall 2015, Mr. Schulz has worked full time at the Clinic.

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 also directs the Abrams Institute for Freedom of Expression and the Knight Law and Media Program at

Yale. He has served as the director of the MFIA Clinic since its inception as a student-run practicum in 2009.

Sandra Baron, Visiting Clinical Lecturer and Senior Research Scholar

Sandy previously served as the Executive Director of the Media Law Resource Center, Senior Managing Attorney at the National Broadcasting Company, Inc., Associate General Counsel of the Educational Broadcasting Company in New York, and as the counsel for Public Broadcasting's American Playhouse. She received her B.A. from Brandeis University and her J.D. from Columbia University School of Law.

Jennifer Borg, Visiting Lecturer in Law

Jennifer Borg is a Visiting Lecturer in Law at Yale Law School and Of Counsel at Pashman Stein Walder Hayden in Hackensack, New Jersey. Her practice areas include media law and litigation. Formerly, she was General Counsel, Vice President, and Corporate Secretary of North Jersey Media Group Inc. As head of the legal department there, Borg handled all First Amendment issues and right-of-access claims, and all the company's litigation and transactional matters. Borg is President of the Foundation of Northern New Jersey f/k/a North Jersey Media Group Foundation, which she founded in 2002 to assist those who suffered losses as a result of the events of September 11.

Charles Crain, Stanton First Amendment Fellow

Charles Crain is a Clinical Lecturer in Law; Associate Research Scholar in Law; and Stanton First Amendment Fellow, Information Society Project, at Yale Law School. Prior to his legal career, Crain covered the war in Iraq as a freelance journalist. He received his J.D. from University of California, Berkeley, where he was a member of the Samuelson Law, Technology & Public Policy Clinic. He received an M.S. in Journalism from Northwestern University and a B.A. in political science from University of Chicago.

Leah Ferentinos, Communications Director

Leah Ferentinos is the Communications Director for the MFIA Clinic, Communications Fellow, Information Society Project; Associate Research Scholar at Yale Law School. She holds Master's from both Penn Law and the Annenberg School for Communication at the University of Pennsylvania, and a Bachelor's from Binghamton University. Leah was a Research Coordinator at the Annenberg Public Policy Center at the University of Pennsylvania, where she worked on grants analyzing political news. Her research interests focus on issues of campaign finance in political elections, public trust in government, and discourses around money in politics in the United States.

John Langford, Abrams Clinical Fellow

John Langford is the Abrams Clinical Fellow, assuming that role in July 2016. He graduated from Yale Law School in 2014, 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.

Jennifer Pinsof, Abrams Clinical Fellow

Jennifer Pinsof is a Clinical Lecturer in Law, an Associate Research Scholar in Law, and the Abrams Clinical Fellow for the Information Society Project's Media Freedom and Information Access Clinic at Yale Law School. Most recently, she worked as a litigation associate at Kirkland and Ellis. She was previously a PILI Fellow at the American Civil Liberties Union of Illinois. Jennifer received her J.D. from the University of Michigan Law School, and holds a B.A. from Cornell University.

Francesca Procaccini, Ruttenberg Fellow

Francesca Procaccini is a Clinical Lecturer in Law at Yale Law School. She holds degrees from Barnard College and Harvard Law School. Most recently, she was an attorney in the Civil Rights Division, Appellate Section, of the Department of Justice. She clerked for Judge Jerome Farris on the U.S. Court of Appeals for the Ninth Circuit. During law school, she served as Articles Editor for the *Harvard Civil Rights-Civil Liberties Law Review*, and was the Executive Technical Editor for the *Harvard Law & Policy Review*.

Students Directors: Catherine Martinez, Paulina Perkins

Courses

ISP Courses and Reading Groups

ISP-Related Courses

Fall 2019

Constitutional Law

Jack Balkin

Advanced Media Freedom and Information Access Clinic

David Schulz, Jack Balkin, Sandy Baron, Jennifer Pinsof, Charlie Crain, Nikolas Guggenberger, Francesca Procaccini, Jennifer Borg

Media Freedom and Information Access Clinic

David Schulz, Jack Balkin, Sandy Baron, Jennifer Pinsof, Charlie Crain, Nikolas Guggenberger, Francesca Procaccini, Jennifer Borg

Fall 2019, Spring 2020

Reproductive Rights and Justice Project: Seminar

Priscilla Smith, Katherine Kraschel

Reproductive Rights and Justice Project: Fieldwork

Priscilla Smith, Katherine Kraschel

Advanced Reproductive Rights and Justice Project: Seminar

Priscilla Smith, Katherine Kraschel

Advanced Reproductive Rights and Justice Project: Fieldwork

Priscilla Smith, Katherine Kraschel

Spring 2020

[The] Information Society

Jack Balkin

Advanced Media Freedom and Information Access Clinic

David Schulz, Jack Balkin, Scott Shapiro, Sandy Baron, Jennifer Pinsof, Charlie Crain, Nikolas Guggenberger, Francesca Procaccini, Jennifer Borg

Media Freedom and Information Access Clinic

David Schulz, Jack Balkin, Scott Shapiro, Sandy Baron, Jennifer Pinsof, Charlie Crain, Nikolas Guggenberger, Francesca Procaccini, Jennifer Borg

ISP-Sponsored Reading Groups

Spring 2020

Antitrust and Big Tech

Data Analytics for Law Students

Social Media Platform and Public Policy

Regulation of the Internet