



# Information Society Project

Accomplishments

2014-2015

# Yale Information Society Project

2014-2015

## Table of Contents

<b>People .....</b>	<b>2</b>
<b>Scholarship and Academic Presentations .....</b>	<b>7</b>
<b>Conferences.....</b>	<b>21</b>
<b>Activities.....</b>	<b>57</b>
<b>Clinical Activities .....</b>	<b>79</b>
<b>Courses .....</b>	<b>86</b>



# People



# Information Society Project at Yale Law School

## 2014-2015 Directors, Staff, and Fellows



### Faculty Directors

**Jack M. Balkin**, Director, Information Society Project and Knight Professor of Constitutional Law and the First Amendment

**Valerie Belair-Gagnon**, Executive Director, Information Society Project and Research Scholar, Yale Law School

**Heather Branch**, Program and Event Coordinator

**Natasha Mendez**, Budget Manager

### Postdoctoral Resident Fellows

- Colin Agur
- BJ Ard
- Sandra S. Baron
- Rebecca Crootoff
- Nick Frisch
- Lauren Henry
- Kate Klonick
- Jonathan Manes
- Gabriel J. Michael
- Kerry Monroe
- Sofia Ranchordas
- Esteve Sanz

- Amanda Shanor
- Priscilla Smith
- Rory Van Loo

- Albert Wong
- Yilu Zuo

### **Visiting Fellows**

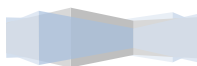
- Sam Adelsberg
- Logan Beirne
- Joshua Braun
- Kiel Brennan-Marquez
- Andrew Burt
- Irin Carmon
- Kate Darling
- Camille Francois
- Seeta Gangadharan
- Greg Goldberg
- Brad Greenberg
- Camilla Hrdy
- Zachary Kaufman
- Derek Khanna
- Dowe Korff
- Lisa Lynch

- William New
- Guy Pessach
- Bilyana Petkova
- Ri Pierce-Grove
- Tamara Piety
- David Segal
- Amy Semet
- Christopher Soghoian
- Ramesh Subramanian
- Nabiha Syed
- Xiyin Tang
- Andrew Tutt
- Jacob Victor
- Christopher Wong
- Shlomit Yanisky-Ravid



## **ISP Student Fellows**

- Adam Adler
- Omer Aziz
- Alexandra Brodsky
- Elizabeth Dervan
- Conor Clarke
- Elizabeth Deutsch
- Courtney Dixon
- Ariel Dobkin
- Vera Eidelman
- Misha Guttentag
- Matthew Halgren
- Miriam Hinman
- Jordan Hirsch
- Eliska Holubova
- Olivia Horton
- Jessica Hunter
- Jaunita John
- Sam Kleiner
- Julia Knight
- Rebecca Lee
- Amanda Lynch
- Divya Musinipally
- Erica Newland
- Nathana O'Brien
- Dayo Olopade
- Ben Picozzi
- Jessica Purcell
- Emma Roth
- Geoff Shaw
- Noah Simmons
- Julius Taranto
- Danny Townsend
- Rachel Tuschman
- Julie Veroff
- Kaitlin Welborn
- Rebecca Wexler
- Jimmy Zhuang

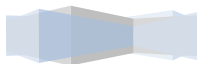


## **Knight Law and Media Scholars**

- Cory Adkins '16
- Emily Barnet '15
- John Boeglin '16
- Conor Clarke '15
- Vera Eidelman '15
- Benjamin Graham '15
- Matthew Halgren '15
- Nicholas Handler '15
- Raymond Lu '17
- Amanda Lynch '15
- Divya Musinipally '16
- Dayo Olopade '15
- Lourdes Pantin '16
- Alexandra Perloff-Giles '17
- Benjamin Picozzi '16
- Ajay Ravichandran '16
- Alexander Resar '17
- Rumela Roy '17
- Brianna van Kan '15
- Rebecca Wexler '16
- Youlin Yuan '17

## **Yale University Affiliates**

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



# Scholarship and Academic Presentations





## Highlights of Paid Resident Fellow Activities

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### Colin Agur – Knight Law and Media Fellow, Director

#### Reading Groups Taught

International Law and Intelligence Gathering  
Social Theories of the Information Society

#### Book

Greenhow C, Sonnevend J and Agur C (2016). *Education and Social Media: Toward a Digital Future*. Under contract as an edited collection of essays in the Digital Media and Learning Series by MIT Press. In Press.

#### Refereed Journal Articles

Agur C. (2015). Second Order Networks, Gambling, and Corruption on Indian Mobile Phone Networks. *Media, Culture & Society*. In press.

Belair-Gagnon V, Mishra S and Agur C. (2014). Reconstructing the Indian Public Sphere: Newswork and Social Media in the Delhi Gang Rape Case. *Journalism: Theory, Practice, Criticism*, Vol. 15, No. 8, pp. 1059-75.

#### Book Chapters

Agur C. (2016). ICTs and Education in Developing Countries: The Case Study of India. In Greenhow, Sonnevend and Agur (eds.), *Education and Social Media: Toward a Digital Future*. Cambridge, MA: MIT Press.

Belair-Gagnon V and Agur C (2015). Social Media and Changing Norms in Indian Mainstream Journalism During the 2014 Lok Sabha Elections. In Thorsen and Sreedharan (eds.), *The 2014 Indian Elections*. Bournemouth, UK: Centre for the Study of Journalism, Culture and Community at Bournemouth University.



## Report

Agur C, Subramanian R and Belair-Gagnon V (2015). Interactions and Policy-making: Civil Society Perspectives on the Multi-Stakeholder Internet Governance Process in India. Internet Policy Observatory, Center for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania.

## Media

Agur C (2015). From Bootleggers to Big Data: Wiretapping in America. [Timeline.com](https://www.timeline.com)

Agur C, Belair-Gagnon V and Subramanian R (2014). Connecting the Dots: Interactions in Internet Rights and Security in India. Center for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania.

Michael G and Agur C (2014). National Initiatives Will Strengthen Internet Rights and Principles. Canadian International Council, [OpenCanada.org](https://open.canada.org).

Agur C. (2014). Disclosure and its Discontents: Protecting Privacy in a Time of Surveillance. Center for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania.

Agur C, Belair-Gagnon V and Subramanian R (2014). Security, Internet Rights and Principles: Power Shifts and Implications for Internet Policy-Making in India. Center for Global Communication Studies, Annenberg School for Communication, University of Pennsylvania.

## Conference Papers Presented

2015. Connectivity, Mobility, and Dissent: A Comparative Study of Social Media Networks During the 2014 Hong Kong Protests. Conference on Connected Life. University of Oxford.

2014. India and Internet Governance: Interplay Between National and Global Internet Policies. International Association of Media and Communication Researchers (IAMCR) Annual Meeting. Hyderabad, India.

2014. Lines of Control: Networks of Imperialism and Independence in India. International Association of Media and Communication Researchers (IAMCR) Annual Meeting. Hyderabad, India.



2014. Reporting the Public Sphere: Social Media in the 2014 Indian Journalism. Conference on Social Media and the Transformation of Public Space. Amsterdam, Netherlands.

### **Invited Talks**

Global Censorship: Shifting Modes, Persisting Paradigms. Fifth Annual Workshop of the Access to Knowledge for Development Center (A2K4D). Cairo, Egypt. June 9, 2015.

Power and Counter-Power in the 2014 Hong Kong Protests: A Comparative Study of Social Media Networks. New York University School of Law, New York, NY. March 6, 2015.

## **Valerie Belair-Gagnon, Executive Director**

### **Book**

Belair-Gagnon, V. 2015. Social Media at BBC News: Re-Making Crisis Reporting. London and New York: Routledge.

### **Articles and book chapters**

Belair-Gagnon, V., Mishra, S. and Agur, C. 2014. Reconstructing the Indian public sphere: Newswork and social media during the Delhi gang rape case, *Journalism: Theory, Practice and Criticism*. 15(5): 1059-1075.

Belair-Gagnon, V. and Anderson C.W. 2015. Citizen media and journalism, in Mansell Robin and Ang Peng (eds.) *The International Encyclopedia of Digital Communication*, New York: Wiley.

Belair-Gagnon, V. and Agur, C. 2015. Social media and changing norms in Indian mainstream journalism: The case of the 2014 Lok Sabha elections, in Einar Thorsen and Chindu Sreedharan (eds.) *The 2014 Indian Elections*. Bournemouth, UK: Centre for the Study of Journalism, Culture and Community at Bournemouth University.

### **Book review**

Belair-Gagnon, V. 2014. On the Challenges of Qualitative Inquiries in an Inter-Connected World, Norman K. Denzin, *Symbolic Interaction*, 37(3).



## Media

Belair-Gagnon, V. 2015. Social media and the transformation of news production, Culture Digitally. URL: <http://culturedigitally.org/2015/02/book-announcement-and-excerpt-social-media-and-the-transformation-of-news-production>

Belair-Gagnon, V. 2014. Many more eyes in the sky, Nieman Journalism Lab. URL: <http://www.niemanlab.org/2014/12/many-more-eyes-in-the-sky>

Belair-Gagnon, V. 2014. Reporting disasters in a connected newsroom: The evolution of BBC News, BBC College of Journalism Blog.

URL: <http://www.bbc.co.uk/blogs/blogcollegeofjournalism/posts/Reporting-disasters-in-a-connected-newsroom-The-evolution-of-BBC-News>

## Talks

Belair-Gagnon, V. 2015. Social media at BBC News, Book talk, Emerson College of Communication, Boston, February.

Belair-Gagnon, V. and Agur, C. 2014. Reporting the public sphere: Social media in India's 2014 elections, Social media and the transformation of public space, University of Amsterdam, Netherlands.

Agur, C., Belair-Gagnon, V. and Subramanian, R. 2014. Internet governance: Interplay between national and global Internet policies, IAMCR, Hyderabad, India.

Belair-Gagnon, V. 2014. Access to Knowledge Global Academy (A2KGA): Collaborative research on A2K, Open for Change, The American University in Cairo, School of Business, Access to Knowledge for Development, Cairo, June.

## Reading groups/seminars

Topics in Media Law and Regulation, Yale Law School, Spring 2015

Social Theories of the Information Society, Yale Law School, Fall 2014



## **Lauren Henry – Knight Law and Media Fellow**

### **Articles**

Privacy as Quasi-Property, Iowa Law Review, forthcoming 2016

Information Privacy and Data Security, Cardozo Law Review de novo, forthcoming 2015

Privacy Claims and Institutional Legitimacy, Cardozo Law Review, forthcoming 2016

### **Presentations**

Four Levels of Privacy Policy Analysis, Privacy Law Scholar's Conference, June 4-5, 2015

Privacy Claims and Institutional Legitimacy, The Future of Privacy in the digital Era Seminar, June 1, 2015

### **Invited Talks**

Consumer Privacy, Yale University Women's Association, April 23, 2015

### **Manuscripts**

Four Levels of Privacy Policy Analysis

## **Kate Klonick – ISP Resident Fellow**

### **Articles**

Klonick, K. 2014. Stringrays: Not Just for Feds! Slate, Nov. 10, 2014. URL: [http://www.slate.com/articles/technology/future\\_tense/2014/11/stingrays\\_imsi\\_catchers\\_how\\_local\\_law\\_enforcement\\_uses\\_an\\_invasive\\_surveillance.html](http://www.slate.com/articles/technology/future_tense/2014/11/stingrays_imsi_catchers_how_local_law_enforcement_uses_an_invasive_surveillance.html)

Klonick, K. 2015. The Science of Blame: Why We Respond to Tragedies All Wrong. Vox, Apr. 14, 2015. URL: <http://www.vox.com/2015/4/14/8400093/germanwings-blame>

Book review

### **Media Interviews**

Klonick, K. Jury Weighs 'Blurred Lines' Trial. Voice of America. Mar. 6, 2015. URL:



<http://www.voanews.com/content/jury-weighs-blurred-lines-copying-case/2670223.html>

## **Presentations and Conferences**

Klonick, K. Public Health in the Shadow of the First Amendment. Held at Yale Law School, Oct. 2015. Participant.

Klonick, K. Works in Progress Intellectual Property held at US Patent Trade Office, Feb. 2015. Presenter: Comparing Apples to Apple Jacks: Cognitive Science Similarity Judgment in Copyright.

Klonick, K. Beyond IP 2 held at Yale Laws School, Mar. 2015. Commentator: Creative Production without IP 2 with Mike Madison and Peter Lee.

Klonick, K. Freedom of Expression Scholars Conference held at Yale Law School, May 2015. Discussant: Brian Soucek's Aesthetic Judgment in Law.

Klonick, K. Societal Implications of Robots Symposium, Brown University, May. 2015. Participant.

Klonick, K. Philosophy, law and neuroscience. Paradigms of mens rea: the voluntariness criterion in the criminal law held at European University Institute, June 2015. Participant.

## **Jonathan Manes – Abrams Clinical Fellow**

### **Talks**

Freedom of Expression Scholars Conference, Yale Law School, May 2015.

- Presented paper, *Secret Law*
- Discussant for Heidi Kitrosser, *The Special Value of Public Employee Speech*

Guest Lecture, *Reflections on litigating for marriage equality in New Jersey*, Yale College Seminar on Gay Rights, Abortion and Religious Freedom: Constitutional Rights and the Culture Wars, April 2015.

*How National Security Information Flows to the Public: The Case of Targeted Killing*, Invited Lecture, Rob Kling Center for Social Informatics Speaker Series, Indiana University



Bloomington, March 2015.

Guest Lecture, *The First Amendment and Online Threats*, for graduate seminar on Technology and the First Amendment, Indiana University School of Informatics, March 2015.

Commentator for panel regarding Access to Information at conference: *Twenty Years of South African Constitutionalism: Constitutional Rights, Judicial Independence and the Transition to Democracy* New York Law School, November 2014.

Guest Lecture, *Freedom of Information Laws and Investigative Journalism*, for undergraduate seminar on investigative journalism, Pace University Journalism Program, October 2014.

Presented at two ISP Ideas Lunches regarding ongoing work of the Media Freedom and Information Access Clinic.

### **Selected Media**

WHYY-FM (Philadelphia), *The Elonis Case and Online Harassment*, Radio Times, Dec. 4, 2014 (panelist on call-radio in show regarding Supreme Court case regarding online threats)

KQED Radio (San Francisco), *Supreme Court Considers Whether Online Speech is a 'True Threat'*, KQED Forum (San Francisco), Dec. 2, 2014 (panelist on call-radio in show regarding Supreme Court case regarding online threats).

### **Other Activities**

Co-lead organizer of 2015 Freedom of Expression Scholars Conference, co-hosted by the Abrams Institute for Freedom and Expression and the Information Society Project at Yale Law School.

Organizer of Yale MFIA FOIA Boot Camp, February 2015.

### **Clinic Activities**

Co-taught Media Freedom and Information Access Clinic seminar in Fall 2014 and Spring 2015 with David Schulz and Jack Balkin

Supervised or co-supervised MFIA clinic students on approximately 16 ongoing projects, including active litigation in the areas of free speech, freedom of information, and constitutional rights of public access, with a particular focus on law enforcement and national security activities, as well as technology and online rights. Notable efforts include



(1) successful suit seeking public access to opinions from the Foreign Intelligence Surveillance Court in lawsuits co-filed with the ACLU, (2) working with the ACLU to sue for disclosure of the rules that govern surveillance under Executive Order 12,333; (3) First Amendment challenge to a gag order that prevents internet security expert Nicholas Merrill from discussing how broadly the FBI interpreted its authority to issue National Security Letters when it issued such a letter to him in 2004; (4) pressing for disclosure of FDA clinical trial data of approved drugs, (5) working with Intellectual Property Watch in a FOIA lawsuit that seeks to obtain information regarding the intellectual property provisions of the Trans-Pacific Partnership agreement, including government communications with industry lobbyists, U.S negotiating positions, and draft texts of the agreement; (6) suing on behalf of Human Rights Watch for access to information about the conditions of confinement at highly restrictive Bureau of Prisons facilities;

## **Gabriel J. Michael – Thomson Reuters Fellow**

### **Articles and Book Chapters**

“Who’s Afraid of WikiLeaks? Missed Opportunities in Political Science Research.” Review of Policy Research, Vol. 32, No. 2, pp. 175–199. 2015

“Intellectual Property & Jewish Ethics: Scripture as a Resource for Socioeconomic Thought.” Cultures of Copyright, ed. Danielle Nicole Devoss & Martine Courant Rife. New York: Peter Lang. 2014

### **Media**

Television Interview on Net Neutrality: Fox CT, November 11, 2014.

### **Talks**

“Imitation Isn't Flattery: The Global Spread of Fair Use as a Response to Maximalist IP Policy.” International Studies Association Annual Conference, New Orleans. February 20. 2015.

## **Tamara Piety – Senior Researcher in Residence**

### **Articles**

Constitutional Commentary called "Why Personhood Matters" which is forthcoming in July 2015





June 15, 2015 Op-Ed in Truthout "Why Personhood Matters"

Paper, The First Amendment and the Corporate Civil Rights Movement

### **Talks**

March 2015, Keynote speaker at a conference called The Impact of the First Amendment on Business in March at the University of Maryland. Sponsored by the Maryland Journal of Business Law and Technology

April 2015, Yale ISP Thomson Reuters talk "The First Amendment and the Corporate Civil Rights Movement"

Spoke at the FEC," Killing the Golden Goose"

February 2015, on a panel sponsored by the BB&T Chair for the Study of Objectivism in the Philosophy Department at the University of Texas (co-panelists were Clark Neily of the Institute for Justice and David Brown of KUT Radio Austin)

Taught a class for Gerald Torres on 1st amendment for his Law & Social Movements class and a class for Emily Broad Leib for her Food Law class.

On a privacy panel for a showing of the movie "Citizen Four". Sponsored by the Oklahoma Center for the Humanities. The screening was at Circle Cinema, an independent theater in Tulsa, with a discussion that followed.

Interview to a reporter from the Washington Lawyer on commercial speech.

## **Sofia Ranchordas – ISP Resident Fellow**

### **Book**

Ranchordas, S. (2015) Constitutional Sunsets and Experimental Legislation, Northampton: Edward Elgar

Ranchordas, S. ; Waard, B.W. de, (Ed) (2015) The Judge and the Proportionate Use of Discretion, London: Routledge. In Press.

### **Articles and book chapters**

Ranchordas, S. (2015) Innovation Experimentalism: Rethinking the Visible Hand of the State' 19 (4) *Lewis & Clark Law Review* (forthcoming).



Ranchordas, S.; Waard, B.W.N. (2015) 'Proportionality Crossing Borders: Why Is It Still Difficult to Recognize Sparrows and Cannons' (with B. de Waard), in S.Ranchordás & B Waard (Ed.), *The Judge and the Proportionate Use of Discretion* (Routledge)

Ranchordas, S., Kouroutakis, A. (2015) 'Temporary De-Juridification: Sunset Clauses at Times of Crisis' *Minnesota Journal of International Law* (special issue, forthcoming)

Ranchordas, S. (2015) 'Does Sharing Mean Caring? The Regulation of Innovation in the Sharing Economy' (2015) 16 (1) *Minnesota of Journal of Law, Science and Technology*

Ranchordas, S. (2015) 'Innovation-friendly Regulation: The Sunset of Regulation, the Sunrise of Innovation' (2015) 55 (2) *Jurimetrics* (peer-reviewed, conference symposium)

Ranchordas, S. (2015) "The International Rule of Law Time After Time", *Netherlands Yearbook of International Law* (2015) (forthcoming) (peer-reviewed). (invited submission)

Ranchordas, S. (2015) 'Sunset clauses and experimental legislation: blessing or curse for legal certainty' (2015) 36 *Statute Law Review* 28 (peer-reviewed)

'De cultus van proportionaliteit' in A. Meuwese, F. Michiels, *Liber Amicorum – Boudewijn de Waard* (Boom Jur.2015) (forthcoming) [The cult of proportionality]

'Publiekrecht in beweging: sharing economy op zoek naar innovatieve regulering en rechtsvinding', J-NJV congress bundel (2014) <http://jongeniv.nl/wp-content/uploads/2014/11/Bijdrage-Ranchord%C3%A1s-Bundel-Jonge-NJV-2014.pdf><http://jongeniv.nl/wp-content/uploads/2014/11/Bijdrage-Ranchord%C3%A1s-Bundel-Jonge-NJV-2014.pdf> ['Public law in motion: sharing economy looking for innovative regulation and judicial lawmaking']

Response-Essay, 'Curbing the New Corporate Power', Boston Review, May 2015, <http://www.bostonreview.net/forum/curbing-new-corporate-power/sofia-ranchord%C3%A1s-sofia-ranchord%C3%A1s>

'Innovation State: No Country for Old Rules', Balkinization blog (March, 2015), <http://balkin.blogspot.com/2015/03/the-innovation-state-no-country-for-old.html>



## **Reading groups/seminars/teaching activities**

Teaching two courses - Fall, 2014 LLB Tilburg University, Tilburg Law School, The Netherlands (Constitutional and Administrative Law - head of the course, 550 students; Comparative Administrative Law)

Guest lecture - Fall 2014, LLM Antwerp University, Law School, Belgium: Legislation and Statutory Interpretation - guest lecture on Temporary Legislation

## **Talks**

'FTC panel on Sharing Economy' (FTC, June 2015)

'M-Health and Privacy' Yale Law School, June 2015) (with Bonnie Kaplan)

"The Affordable Care Act and the Entrenchment of the Right to Health", American Law and Society Conference, Seattle, USA (May 2015) & moderator on panel on 'Behavioral Public Law'

"Constitutional Sunsets and Sunrises", Boston University College, Workshop on Constitutional Amendments (May 2015)

"Innovation Experimentalism: Rethinking the Visible Hand of the State", Innovation Beyond IP2 Conference, Yale Law School (March 2015)

'Experimental legislation and its constitutional limits', Dutch Council of State (November 2014)

'Experimental legislation and health care legislation', Dutch Ministry of Public Health (November 2014)

'States-as-laboratories: a phoenix between unity and diversity, innovation and redistributive policies', World Congress of Constitutional Law (Oslo, Norway, June, 2014)

'The 'hard' and 'soft' ways of innovation', ECPR Standing Group for Regulatory Governance Conference, Barcelona, 25-27 June, 2014 & chairing two sessions on 'Transnational Regulation' and 'Regulatory Reforms and Institutional Change'



## Esteve Sanz - Knight Law and Media Fellow

### Articles and book chapters

Sanz, E. Forthcoming 2015. Five Algorithmic Cultures and Their Ontologies: A Performative Critique, in Seyfer, Robert and Roberge, Jonathan. *Algorithmic Cultures*. New York: Routledge.

Sanz, E. Forthcoming 2015. Of War and Peace: A European Technological Tale. *European Review*.

Sanz, E. 2015. The Creation of Value in Contemporary Television: A Grounded Approach, *International Journal of Cultural Policy*. 1-19.

Sanz, E. 2015. Copyright Indicators and the Costs of Symbolic Production: The Cultural Dimension of Telecommunications Policy, *Telecommunications Policy*. 39(3-4): 208-217

### Talks

Sanz, E. 2014. Copyright and the Nation-State: What we can learn from the harmonization efforts of the EU, Beyond IP II Conference, Yale Law School, New Haven, May.

## Priscilla Smith – Senior Research Scholar, Program for the Study of Reproductive Justice

### Paper:

Smith, Priscilla J., Contraceptive Comstockery: Reasoning from Immortality to Illness in the Twenty-First Century, *Connecticut Law Review*, May 2015, Vol. 47, No. 4

### Amicus Brief

*Oregon Prescription Drug Monitoring Program, ACLU of Oregon Inc v. US Drug Enforcement Administration*

### Research and Amicus Projects:

Working with Professors Reva Siegel and Linda Greenhouse, and a group of law students, my own research and writing efforts have focused primarily on three topics.

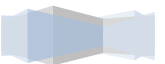
Areas of focus: 1) continued abortion law research to understand the evolving application of constitutional standards in the area; 2) understanding growing threats to contraception we



are facing 50 years after the Supreme Court's decision recognizing a constitutional right to contraception in *Griswold v. Connecticut*; and 3) research into First Amendment implications of conditions on foreign aid funding to support sexual freedom abroad. I have also worked with law students on additional research projects: 1) working with the Veterans Clinical program at Yale to supervise a project concerning access to abortions for Veterans; 2) filing an amicus brief in an ACLU case involving the privacy of medical data; 3) conducting research on ways to update the labels on medication used in medical abortions; and 4) developing proposals for a national reproductive rights organization for Ballot Measures that would protect abortion providers from discriminatory regulations unrelated to health.



# Conferences





Yale Law School



Yale School of Medicine



Yale School of Public Health

# PUBLIC HEALTH IN THE SHADOW OF THE FIRST AMENDMENT



YALE LAW SCHOOL  
THE INFORMATION SOCIETY PROJECT

GLOBAL  
HEALTH  
JUSTICE  
PARTNERSHIP



Yale Health Law & Policy Society | Samuel and Liselotte Herman Fund for the Social and Behavioral Sciences | Cecil M. Rauhhausen Fund



# Public Health in the Shadow of the First Amendment

October 17-18, 2014

*A Conference Hosted by Yale Law School, Yale Medical School, and the Yale School of Public Health*

*Sponsored by the Information Society Project (ISP), the Yale Global Health Justice Partnership (GHJP), and the Yale Health Law and Policy Society (YHeLPS), with generous support from the Samuel and Liselotte Herman Fund for the Social and Behavioral Sciences at The Yale School of Public Health, and the Oscar M. Reubhausen Fund.*

Public Health in the Shadow of the First Amendment brought together leading scholars, key policy makers, and top experts in law, public health and medicine. This conference, the first of its kind, investigated a broad range of complex constitutional issues raised at the intersection of medicine, public health, and the First Amendment.

The regulation of food, medicines, and tobacco all rely crucially today on the regulation of speech, for example through behavioral marketing, disclosures, and restrictions on certain modes of commercial promotion. First Amendment doctrine has recently changed in significant ways, bringing it into potentially deep tension with such measures. For example, commercial speech doctrine has been used to invalidate FDA restrictions on off-label marketing of drugs, to prevent graphic warnings on cigarette packages, and to challenge calorie disclosures in restaurants.

In addition, new and important questions about the limits of a legislature's ability to mandate or forbid certain physician speech are emerging. For example, should the First Amendment protect doctors from requirements that they provide patients with ultrasounds or medically unproven "information" in the abortion context, or mental health providers from restrictions on conducting reparative therapy for gay teens? In cases such as these, courts and legislatures are also increasingly required to adjudicate questions of scientific merit. Many recent examples suggest reason for concern about the results.

Neither courts nor scholars have developed a consistent and coherent approach to these different areas. Experts in First Amendment law are rarely in a position to fully articulate the health consequences of these cases, and health experts rarely have the literacy in free speech law required to navigate these issues.





This conference investigated these enormously important issues, with panels on food and drug regulation, behavioral marketing in the context of obesity, tobacco, and food policy, the regulation of professional conduct, First Amendment theory, and the intersection between science and democracy.

## **Agenda and Overview**

### **Friday, Oct. 17, 2014**

1:00 pm Registration (Room 122)

1:30 pm Introduction (Dean Robert Post) Room 127

2:00 pm **Panel 1: Food and Drug Regulation (Room 127)**

*Amy Kapczynski (moderator), Aaron Kesselheim, Chief Judge Alex Kozinski, William Schultz, David Vladeck*

The protection and promotion of health requires high quality information about the safety and efficacy of drugs, as well as truthful and non-misleading marketing of foods and supplements. In order to promote rigorous clinical trials of medicines and police product marketing, government frequently restricts certain speech. For example, the FDA's drug regulatory structure forbids pharmaceutical companies from promoting a drug for any use that has not been approved by the FDA. Recent developments in commercial speech doctrine, however, gravely threaten that regulatory structure. A federal appeals court recently concluded that the government may not prosecute pharmaceutical detailers for off-label marketing, if such prosecution is solely based on their speech. The case, *Caronia*, pointed out that the government may still prosecute companies for speech that is false or misleading, but this raises difficult questions about how courts determine the truth or sufficiency of scientific information. This same question was raised in the recent *POM Wonderful* case, where the Federal Trade Commission concluded that the marketers of pomegranate juice were misleading consumers when they suggested that the juice treats diseases, because the juice company lacked two randomized controlled trials supporting that claim. The company had scientific evidence that fell short of

that standard, and is challenging the FTC's decision on First Amendment grounds. In another recent federal court case, a pharmaceutical CEO raised First Amendment challenges to his conviction for fraud. The government has argued that the CEO misrepresented the results of a clinical trial in a press release. The CEO has argued, in response, that his statements were a protected form of First Amendment opinion. This panel will assess the threat that current developments in commercial speech doctrine pose to food and drug regulation, and consider whether existing doctrine is capable of protecting our collective interests in the accuracy and quality of health information in this context.

3:45 pm **Panel 2: Health Behaviors: Tobacco, Obesity, and Children** (Room 127)

*Abbe Gluck (moderator), Kelly Brownell, Christine Jolls, Ted Mermin, Nadia Sawicki*

Today, the First Amendment comes into potential conflict with any public health campaign that is designed to highlight particular information or risks to individuals, or to influence an individual's perception of legal products. Such programs are, however, an increasingly prominent aspect of public health efforts to combat obesity and smoking. For example, prominent campaigns have been launched recently to require the disclosure of nutritional/caloric information at restaurants, to mandate graphic warnings on cigarette cartons, to restrict the marketing of food to children, and to "put cigarettes below the counter" – and all have been subject to First Amendment challenge. Even disclosure of plainly factual information, such as caloric content, is not immune from constitutional challenge (although such challenges have so far not succeeded). More risky are strategies that seek to condense information into simple heuristics, or that deliberately invoke emotion in order to persuade the public. A prominent federal appeals court recently concluded, for example, that the FDA's proposed graphic warnings on cigarettes were unconstitutional because they strayed from the presentation of factual information to attempts to use emotion to persuade. Similarly, public health scholars have argued that laws that require women to view ultrasound photos in the context of abortion violate the First Amendment because they seek to mobilize emotion in improper ways. Finally, children are the targets of sophisticated food and cigarette marketing,



and evidence clearly shows that such marketing has significant effects on their experience and choices. This panel will address conflicts between the First Amendment and campaigns or regulations designed to reduce smoking and the consumption of unhealthy foods. It will address questions such as: How important are information campaigns to reducing the ill-health effects of obesity and smoking? How important is emotion to such campaigns, and should the use of emotion in social marketing raise constitutional concerns? Should courts consider evidence from behavioral psychology when assessing the validity of social marketing campaigns? What leeway does government have to constrain marketing to children in particular, especially given that it may be difficult to regulate marketing to children without also affecting marketing that reaches adults?

**Saturday, Oct. 18, 2014**

8:00 am Breakfast (Dining Hall)

**9:00 am Panel 3: First Amendment and Professional Conduct (Room 127)**

*John Robertson (moderator), Bill Sage, Jennifer Keighley, Shannon Minter, Dr. Nancy Stanwood*

Free and accurate information exchange between doctors and patients is critical to good medical practice. Standards of professional practice and tort law have long regulated speech in this setting in order to protect patients from harm. But legislatures in recent years have also sought, independently of medical licensing boards, to regulate what physicians must or may not say to patients. Recent examples involve legislative efforts to compel physicians to “inform” patients that abortion causes health risks such as breast cancer (though such information is scientifically unfounded), efforts to prohibit doctors from asking patients about guns in the home, and the regulation of the disclosure of incidental findings in genetic or other testing. How the First Amendment should respond to such measures is unsettled, and increasingly the subject of litigation. A recent California law forbidding mental health providers from practicing sexual orientation change therapy to under-18s, for example, was judged in violation of the First Amendment by one



federal trial court, and consistent with the First Amendment by another. This panel will address the implications of the First Amendment for the regulation of the speech and workflow of health professionals. Issues for discussion include (1) how First Amendment doctrine should approach government regulation that mandates or forbids certain statements or disclosures to patients; (2) how and whether the First Amendment protects health professionals' duties of loyalty and advocacy (e.g., contrasting *Rust v. Sullivan* with *Legal Services Corp. v. Velazquez*), (3) the implications, for the First Amendment, of the fact that medicine frequently intersects with controversial social issues, and that medical evidence can be misconstrued or inadequate in the face of such social conflict; and (4) the First Amendment implications of moving from a health care system governed by professional self-regulation (e.g., of advertising) and individual care delivery to a system more governed by direct government regulation and corporate care delivery.

**10:45 am Panel 4: First Amendment Theory (Room 127)**

*Jack Balkin (moderator), Jane Bambauer, Robert Post, Frederick Schauer, Eugene Volokh*

The expansive quality of recent First Amendment decisions, like *Sorrell v. IMS Health Inc.*, 131 S.Ct. 2653 (2011), and *United States v. Alvarez*, 132 S.Ct. 2537 (2012), have potentially put First Amendment doctrine on a collision course with the basic regulatory strategies by which the state presently seeks to advance public health and medical practice. Participants in this panel will reflect on the issues of First Amendment doctrine and theory raised by the previous panels. They will in particular explore how the regulation of professional medical practice should be understood within First Amendment doctrine, reflecting on cases about legislative mandates related to professional speech in the context of abortion, guns, and sexual orientation. They will also seek to define the limits that First Amendment rights should place on government efforts to regulate the promotion of drugs (see the *Caronia* discussion above), and the marketing of food and tobacco. Finally, whether and how the First Amendment regulates data flows has important cross-cutting implications in the health context, which this panel will also address.



12:15 pm Lunch (Dining Hall)

1:00 pm **Keynote:** *Joshua M. Sharfstein, M.D.*, Secretary of Health & Mental Hygiene for Maryland; Introduction by Professor Abbe Gluck (Dining Hall)

2:15 pm **Panel 5: Science and Democracy** (Room 127)

*Frank Pasquale (moderator), Aziza Ahmed, Dan Kahan, Wendy Wagner, Paul Starr*

Public health and medicine rely critically on scientific integrity and expert knowledge. Expert knowledge cannot be directly subject to political control and retain its independent quality. And yet, science clearly is necessarily subject to certain kinds of governmental influence, for example when government makes decisions about funding streams for science, and when agencies make decisions that rely upon scientific expertise. Today, there are repeated calls for more direct political control over the generation of scientific knowledge (for example, when Congress seeks to forbid or discourage research on issues such as gun violence), as well as increasingly acute conflicts over the analysis of science in agencies and courts (for example, in the context of legislation mandating certain disclosures to patients in the abortion context). This panel will consider these emerging conflicts, and address questions such as: How should we understand the relationship and possible tensions between science and democracy? What mechanisms exist to protect scientific integrity in the context of legislatures, agencies, and courts? Does First Amendment law give adequate attention to questions of scientific expertise?

4:00 pm **Closing Keynote:** *Peter Galison*, Joseph Pellegrino University Professor and Director, Collection of Historical Scientific Instruments at Harvard University; Introduced by Professor Jack Balkin (Room 127)



## **Public Health in the Shadow of the First Amendment PANELISTS**

### **Keynotes:**

**Peter Galison**, Joseph Pellegrino University Professor and Director, Collection of Historical Scientific Instruments, Harvard University

**Dr. Joshua Sharfstein**, Maryland Secretary of Health and Mental Hygiene

### **Speakers:**

**Aziza Ahmed**, Associate Professor of Law, Northeastern University School of Law

**Jack M. Balkin**, Knight Professor of Constitutional Law and the First Amendment, Yale Law School

**Jane Bambauer**, Associate Professor of Law, The University of Arizona James E. Rogers College of Law

**Kelly D. Brownell**, Dean, Duke Sanford School of Public Policy and Professor of Public Policy, Psychology and Neuroscience

**Christine Jolls**, Gordon Bradford Tweedy Professor of Law and Organization, Yale Law School

**Dan M. Kahan**, Elizabeth K. Dollard Professor of Law and Professor of Psychology, Yale Law School

**Amy Kapczynski**, Associate Professor of Law and Director, Global Health Justice Partnership, Yale Law School

**Jennifer M. Keighley**, Associate, Emery Celli Brinckerhoff & Abady LLP



**Aaron Kesselheim**, Assistant Professor of Medicine, Harvard Medical School and Brigham and Women's Hospital

**Chief Judge Alex Kozinski**, U.S. Court of Appeals for the Ninth Circuit

**Ted Mermin**, Executive Director, Public Good Law Center

**Shannon Minter**, National Center for Lesbian Rights Legal Director

**Frank Pasquale**, Professor of Law, University of Maryland Francis King Carey School of Law

**Robert C. Post**, Dean and Sol & Lillian Goldman Professor of Law, Yale Law School

**John Robertson**, Vinson and Elkins Chair, The University of Texas School of Law at Austin

**William M. Sage**, James R. Dougherty Chair for Faculty Excellence, University of Texas at Austin School of Law

**Nadia N. Sawicki**, Assistant Professor of Law, Loyola University Chicago, School of Law

**Frederick Schauer**, David and Mary Harrison Distinguished Professor of Law, University of Virginia School of Law

**William B. Schultz**, General Counsel, Department of Health and Human Services

**Nancy L. Stanwood**, Associate Professor of Obstetrics, Gynecology, and Reproductive Sciences and Associate Clinical Professor of Nursing; Section Chief of Family Planning, Yale School of Medicine

**Paul Starr**, Professor of Sociology and Public Affairs, and Stuart Professor of Communications and Public Affairs, Princeton University



**David C. Vladeck**, Professor of Law, Co-Director, Institute for Public Representation, Georgetown Law

**Eugene Volokh**, Gary T. Schwartz Professor of Law, UCLA School of Law

**Wendy E. Wagner**, Joe A. Worsham Centennial Professor, The University of Texas at Austin School of Law







# Net Neutrality: From Debate to Policy Decisions

Nov. 3, 2014

After several years of discussions in academia, industry, and policymaking circles, the issue of net neutrality has taken center stage in debates on U.S. media and telecommunications. In February 2014, cable providers Comcast and Time-Warner announced their intent to merge into a single company. And this spring, the FCC solicited public input on its proposed Open Internet Rules, and FCC Chairman Tom Wheeler has stated that he expects to have enforceable rules in place by the end of 2014. Under the new rules, "behavior harmful to consumers or competition by limiting the openness to the Internet will not be permitted." With these events as backdrop, the Abrams Institute at Yale Law School hosted a panel discussion at the Century Club in New York, on the topic of net neutrality.

## Speakers

- **Floyd Abrams** (moderator), Partner at Cahill, Gordon and Reindel LLP
- **Susan Crawford**, Professor of Law, Benjamin N. Cardozo School of Law, and author of *Captive Audience: The Telecom Industry and Monopoly Power in the New Gilded Age* (Yale, 2013).
- **Victor Pickard**, Assistant Professor, Annenberg School for Communication, University of Pennsylvania, and author of *America's Battle for Media Democracy* (Cambridge, 2014).
- **Jan Rybnicek**, Attorney Advisor, Federal Trade Commission
- **Matthew Del Nero**, Deputy Bureau Chief, Wireline Competition Bureau, Federal Communications Commission.

Yale Law School has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of CLE programs. One and one half (1.5) CLE credit hours in Professional Practice (corporate) will be available for this program, which is transitional and non-transitional in nature. Preregistration is required for CLE credit. Please note that New York State requires you to sign in and sign out, in order to receive a CLE Certificate of Attendance at the end of the program. ***Program reading materials were available online on the ISP's website at <http://isp.yale.edu/event/abrams-net-neutrality-debate-policy-decisions>***





## Foreign Affairs in the Internet Age

# Re-Imagining the Security State: Secrecy and Strategy in National Security

### Panelists:

**Sarah Chayes**, Senior Associate in the Democracy and Rule of Law program at the Carnegie Endowment for International Peace.

**Patrick Radden Keefe** is a Senior Fellow at the Century Foundation and a staff writer for the New Yorker.

**Bryan Lee** is the Director of Eurasia Nonproliferation at the James Martin Center for Nonproliferation Studies in Monterey, California.

**Dana Priest** is a Pulitzer-prize winning reporter and holds the Knight Chair in Public Affairs Journalism at the University of Maryland.

### Moderator:

**Noah Schachtman** is Editor-in-Chief of the Daily Beast.

### Respondant:

**Eugene Fidell** is the Florence Rogatz Visiting Lecturer in Law at Yale Law School

### Co-sponsored by:

**National Security Group**

**Tuesday, Feb 10**

**12:00 pm**

**Room 121**

**Yale Law School**

**This event is made possible by sponsorship from the  
Oscar M. Ruebhausen Fund**



**YALE LAW SCHOOL**  
**The Information Society Project**



# Re-Imagining the Security State: Secrecy and Strategy in National Security

February 10, 2015

## Overview

U.S. national security relies on secrecy, even as changes in technology have made that secrecy increasingly difficult to assure. Over the past decade, the security state has grown dramatically: a record 5 million people now hold security clearances. Meanwhile, intelligence agencies have struggled to protect classified information related to range of government activities.

This panel discuss edthe future of US national security in a period of declining secrecy. Is U.S. dependence on secrecy possible or advisable? What could take its place? And how should the U.S. consider secrecy in national security?

## Panelists

**Sarah Chayes** is a Senior Associate in the Democracy and Rule of Law program at the Carnegie Endowment for International Peace. Formerly Special Adviser to the Chairman of the Joint Chiefs of Staff, she is an expert in South Asia policy, kleptocracy and anticorruption, and civil-military relations. She studies correlations between corruption and the rise of militant extremism.

**Patrick Radden Keefe** is a Senior Fellow at the Century Foundation and a staff writer for the New Yorker. His investigative reporting has focused on secret networks, from the NSA to Chinese human smuggling gangs and Mexican drug cartels. He also served as a policy adviser to the U.S. Secretary of Defense.

**Bryan Lee** is the Director of Eurasia Nonproliferation at the James Martin Center for Nonproliferation Studies in Monterey, California. Previously, he was the director of the International Counterproliferation Program at the Defense Threat Reduction Agency (DTRA) within the Department of Defense. He has published on the use of social media in verifying nonproliferation and arms control.

**Dana Priest** is a Pulitzer-prize winning reporter and holds the Knight Chair in Public Affairs Journalism at the University of Maryland. There she focuses on global security issues in a digital world. Her investigative work exposed secret CIA overseas prisons. Her book, "Top

35



Secret America," covered the buildup of top-secret intelligence organizations in the aftermath of the Sept. 11, 2001 terrorist attacks.

### **Moderator**

**Noah Shachtman** is Executive Editor of the Daily Beast. He has spent his journalism career covering international security, intelligence, and global affairs. He co-founded the award-winning blog, Danger Room, at Wired magazine. He was previously a fellow at the Brookings Institution's Center for 21st Century Security and Intelligence.

**Eugene R. Fidell** is the Florence Rogatz Visiting Lecturer in Law at Yale Law School. He is a co-founder and former president of the National Institute of Military Justice and of counsel at Feldesman Tucker Leifer Fidell LLP, Washington, D.C. He is a Life Member of the American Law Institute and a member of the Defense Legal Policy Board of the Department of Defense and the board of directors of the International Society for Military Law and the Law of War. He has also taught at Harvard Law School and the American University Washington College of Law.





## Foreign Affairs in the Internet Age

### **Cyberwarfare and Killer Robots: How the Law of War Regulates New Technology**

10:00 - 11:15 am *Room A436; 40 Ashmun Street*

Panel 1: **Unresolved Issues in Cyberwarfare**

Kristen E. Eichensehr, Visiting Assistant Professor of Law, UCLA School of Law

Jens David Ohlin, Professor of Law, Cornell University Law School

Sean Watts, Professor of Law, Creighton University Law School

12:00 - 1:15 pm *Room 128, Yale Law School*

Panel 2: **To Ban or Not to Ban: How Best to Regulate Autonomous Weapon Systems**

Rebecca Crootof, PhD Candidate in Law, Yale Graduate School of Arts and Sciences

Kenneth Anderson, Professor of Law, American University Washington College of Law

Bonnie Docherty, Senior Clinical Instructor and Lecturer on Law, Harvard Law School & Senior Researcher, Arms Division, Human Rights Watch

Paul Scharre, Fellow and Director of the 20YY Warfare Initiative, Center for a New American Security

Co-sponsored by:  
National Security Group

**Monday, Feb 16,  
2015**

**This event is made possible by sponsorship from the  
Oscar M. Ruebhausen Fund**



**YALE LAW SCHOOL**  
**The Information Society Project**



# Cyberwarfare and Killer Robots: How the Law of War Regulates New Technology

February 16, 2015

Is law doomed to follow technological innovations? Or can it be used to channel technological development? This conference considers these questions through the lens of two controversial new types of weaponry: cyberwarfare and autonomous weapon systems. Some argue that these weapons will reduce human suffering; others that they will increase it. How can the law of war evolve to govern such technology without sacrificing its fundamental humanitarian principles?

10:00 - 11:30 am Room A436, 40 Ashmun Street

## ***Unresolved Issues in Cyberwarfare***

The Tallinn Manual on the International Law Applicable to Cyberwarfare attempts a comprehensive analysis of how the law of armed conflict governs cyberwarfare. But even within the Manual, there are differing reasonable interpretations of certain issues—and a number of crucial questions remain unanswered. This panel will highlight specific legal gaps and offer proposals on how they might best be filled.

### **Moderator**

Jack Balkin

### **Speakers**

Kristen E. Eichensehr, Visiting Assistant Professor of Law, UCLA School of Law

Jens David Ohlin, Professor of Law, Cornell University Law School

Sean Watts, Professor of Law, Creighton University Law School

12:00-1:30 pm Yale Law School Room 128

## ***To Ban or Not to Ban: How Best to Regulate Autonomous Weapon Systems***

In 2012, Human Rights Watch and the Harvard International Law Clinic kicked off a spirited debate with their publication *Losing Humanity: The Case Against Killer Robots*. Their call for a complete ban on autonomous weapon systems—weapons capable of making

38



independent decisions as to when to use lethal force—has spurred others to argue over whether and how to regulate such weaponry.

### **Moderator**

Rebecca Crootof, PhD Candidate in Law, Yale Graduate School of Arts and Sciences

### **Speakers**

Kenneth Anderson, Professor of Law, American University Washington College of Law

Bonnie Docherty, Senior Clinical Instructor and Lecturer on Law, Harvard Law School & Senior Researcher, Arms Division, Human Rights Watch

Paul Scharre, Fellow and Director of the 20YY Warfare Initiative, Center for a New American Security







## The Legal Medium

**February 28, 2015**

Leading artists and thinkers of our time will gather to engage in a series of panels, presentations, performances and an art exhibition.

This symposium examined law as an artistic medium, in and from which artists create. It focused on how artists encounter, take advantage of and seek to mold law.

This symposium was made possible by the Payson R. Wolff Lectureship in Law and Music at Yale Law School, the Yale Law School Information Society Project, the Yale Journal of Law and Humanities, and the Yale University Art Gallery.

### **Speakers:**

Amy Adler, Professor of Law, NYU

Jack Balkin, Professor of Law, Yale Law School

Tania Bruguera, Cuban installation and performance artist

Mary Ellen Carroll, conceptual artist, NYC

Joshua Decker, writer, curator, theorist, NYC

Keller Easterling, Professor of Architecture, Yale University



Liam Gillick, English conceptual artist, NYC

Tehching Hsieh, performance artist

David Joselit, Professor of Art, CUNY

Robert Post , Professor of Law and Dean, Yale Law School

Sergio Munoz Sarmiento, Lawyer and artist

Doris Sommer, Professor, Harvard University

Laura Wexler, Professor of American Studies, Yale University





YALE LAW SCHOOL

## The Information Society Project

creativity commons contracts copyright taxes grants patents incentives education regulation institutions privacy equity science immigration prizes infrastructure culture  
**innovation law**  
**beyond IP**  
**Yale ISP**

Saturday, March 28, 2015

8:30am - 6:00pm

Sunday, March 29, 2015

9:30am - 12:30pm

Registration Room 122



Ian Ayres  
Fred Block  
Dan Burk  
Kevin Collins  
Mark McKenna  
Deven Desai  
Rebecca Eisenberg  
Daniel Hemel  
Robert Heverly  
Camilla Hrdy  
Amy Kapczynski  
Kate Klonick  
Stephen LaPorte

Peter Lee  
Mark Lemley  
Orly Lobel  
Mike Madison  
Talha Syed  
Gabriel Michael  
Lisa Larrimore Ouellette  
Frank Pasquale  
Guy Pessach  
Nicholson Price  
Sofia Ranchordas  
Charles Sabel  
Esteve Sanz

Joshua Sarnoff  
Lea Shaver  
Michel Shur-Orfy  
Jorge Contreras  
Liza Vertinsky  
Yana Welinder  
Brian Wright

To Register: [isp.yale.edu/event/innovation-law-beyond-ip-2](http://isp.yale.edu/event/innovation-law-beyond-ip-2)



## Innovation Law Beyond IP 2

March 28–29, 2015

*Sponsored by Thomson Reuters and Oscar M. Reubhausen Fund*

Intellectual property law is only one of many legal institutions that can help promote, stifle, or govern knowledge production. For example, government transfers rewards to innovators through tax incentives, grants, and prizes; regulates innovation through the administrative state (the EPA, FTC, SEC, CPFB, etc.); creates legal rules and infrastructures that can help sustain or undermine commons-based production; and influences innovation through law and institutions related to immigration, tort law, education, and more. How do forms of law and governance beyond IP promote innovation, as well as values such as equity, privacy, and democracy? How should these systems be combined, both with one another and with IP law? At the national, local, and international levels, the state plays a critical role in innovation, both by acting directly to fund and support it, and by serving as a meta-institution that establishes the parameters of other approaches to innovation, whether they be market or commons-based.

What role should the state play in innovation law, and where and how does the state play that role? How do we design a state that is institutionally capable of responding to the challenge of innovating, as well as designing innovation institutions? (For example, should we aim for an “experimental” approach to innovation policy, and can we identify different kinds of innovation law or examples of state intervention that are more or less resilient vis-à-vis dynamics of capture, corruption, waste, etc.?) Are there positive or negative examples of state-led innovation that we can learn from? And what might they teach us about the kind of state that we need to facilitate innovation?



# Beyond IP 2 Agenda

## Saturday, March 28

8:30-8:55am **Breakfast and Registration** – Dining Hall

9:00-9:15 am **Welcome: Why “Beyond IP,” and Whither the State?** - Dining Hall

**Amy Kapczynski and David Grewal**

9:15-10:30 am ***What Innovation Should the State Promote?***

**Deven Desai** – The Missing Link: The State’s Role in Fostering Discovery, Invention, and Innovation and the Difference Between the Three

**Joshua Sarnoff** – The Likely Mismatch between Federal R&D Funding and Optimal Innovation

**Michal Shur-Ofry** – Access to Error

Commentators: **Brian Wright and Ian Ayres**

10:30-11:00 am **Coffee** – Room 122

11:00-12:00 pm ***Institutions and Innovation***

**Daniel Hemel & Lisa Ouellette** – Intellectual Property as Global Public Finance

**Amy Kapczynski** – Order Without Intellectual Property Law: A Case Study in Influenza

Commentator: **Talha Syed**

12:00-1:30 pm **Lunch** – Law School Dining Hall

1:30-2:45 pm **Concurrent Sessions**

*Regulation and Innovation I*

**Orly Lobel** – The Law of the Platform

**Dan Burk** – Perverse Innovation

**Sofia Ranchordas** – Innovation Law Under Uncertainty: An Experimentalist Approach

Commentator: **Charles (Chuck) Sabel**



*Creative Production Without IP*

**Kevin Collins** – Architectural Innovation Before the AWCPA

**Lea Shaver** – Publishing Without Property: Commons-Based Social Publishing and Its Implications for Educational and Book Policy

**Yana Welinder & Stephen LaPorte** – Hacking Trademark Law for Collaborative Communities

Commentators: **Mark McKenna**

2:45 – 3:15pm **Coffee Break**

3:25 –4:15 pm **Concurrent Sessions**

*Regulation and Innovation II*

**Guy Pessach** – Deregulation & Innovation Law—Piercing the Veil

**Nicholson Price** – Secrecy and Innovation

Commentator: **Mark Lemley**

*Creative Production Without IP II*

**Peter Lee** – Centralization, Fragmentation, and Replication in the Genomic Data Commons

**Mike Madison** – Governing Knowledge Commons

Commentator: **Kate Klonick**

4:15 – 4:30 pm Break Room 122

4:30-5:45 pm **Keynote Presentation - Fred Block**

7:00 pm **Dinner for Conference Presenters**

**Sunday, March 29**

9:00-9:30 am Breakfast – Room 122

9:30 – 10:45am *The State and Open Innovation*

**David Grewal** – Before Peer Production: Infrastructural Gaps and the Architecture of Openness in Synthetic Biology



**Jorge Contreras** –Consent and the Cathedral: Using Liability Rules to De-Propertize Genetic Data and Advance Precision Medicine

Commentator: **Frank Pasquale**

*Human Rights, Equality, and Innovation*

**Jessica Silbey** – Intellectual Property Reform Through the Lens of Constitutional Equality

**Esteve Sanz** – Copyright and the Nation State: What We Can Learn From the Harmonization Efforts of the EU

Commentator: **Gabriel Michael**

10:45-11:00 am **Coffee** – Room 122

11:00-12:15pm *The Entrepreneurial State*

**Camilla Hrdy** – Cluster Competition

**Liza Vertinsky** – The State as Entrepreneur: Moving from Laws that Stifle to Laws that Foster

**Robert Heverly** – Incentives and Competition in Innovation Markets: A Study of the FAA Drone Test Sites Competition

Commentator: **Becky Eisenberg**

Blog post available here: <http://balkin.blogspot.com/search/label/Beyond%20IP>

Twitter hashtag: **#BeyondIP**



## **Freedom of Expression Scholars Conference 3 (FESC3)**

May 2-3, 2015

The Information Society Project at Yale Law School hosted the third Freedom of Expression Scholars Conference (FESC) at Yale Law School on May 2-3, 2014. The FESC was co-sponsored by the [Abrams Institute for Freedom of Expression](#) and Thomson Reuters.

The conference brought scholars to discuss their works-in-progress concerning freedom of speech, expression, press, association, petition, assembly, and related issues of knowledge and information policy. Now in its third year, the FESC has become a fixture on the calendar of leading First Amendment thinkers nationwide and is the premier annual gathering of First Amendment scholars in the United States. As in past years, well over 50 leading First Amendment scholars and practitioners will be in attendance this year.

The conference offered participants an opportunity to receive substantive feedback through group discussion. Each paper is assigned a discussant, who leads a discussion and provides feedback to the author. Participants will be expected to read papers in advance, and to attend the entire conference. Workshop sessions are lively discussions between and among authors, discussants, and participants. While anyone is welcome to apply to participate in the conference, attendance is by invitation only.



## FESC 3 Agenda

The basic workshop format will be as follow: The discussant (not the author) will present the paper to the group and provide initial comments (no more than 10 minutes). The author may choose to respond at that point (no more than 5 minutes), and then the workshop will proceed into a roundtable discussion moderated by the discussant.

### **Saturday, May 2, 2015**

*Registration - Room 122*

*8:30 am - 9:00 am — Breakfast – Dining Hall*

9:00 am - 9:15 am — Welcome & Introduction – Dining Hall

9:15 am - 10:30 am — First Session (Breakout Session)

Alex Tsesis: Balancing Free Speech                      Room 120

Discussant: Step Feldman

Josh Blackman : Collective Liberty                      Room 121

Discussant: Kiel Brennen-Marquez

Renee Knake: Competition, Capture, Commercial Speech, and the Courts                      Room 128

Discussant: BJ Ard

Brian Soucek: Aesthetic Judgment in Law      Room 129

Discussant: Kate Klonick

*11:00 am - 12:15 pm — Second Session (Breakout Session)*

Sonja West “The Press” Then and Now      Room 120

Discussant: RonNell Anderson Jones



Ashutosh Bhagwat: Who's Afraid of Content Regulation Room 121

Discussant: Lauren Henry

Andrew Tutt: On the Regulation of Speech Contracts Room 128

Discussant: Ariel Bendor

Enrique Armijo: The "Ample Alternative Channels" Mistake in First Amendment Doctrine  
Room 129

Discussant: Kerry Monroe

*12:15 pm - 1:30 pm — Lunch (Dining Hall)*

*1:30 pm - 3:00 pm — Third Session (Plenary Panel)*

Rick Hasen: Money, Politics and the Decline of American Democracy Room 129

Tabatha Abu El-Haj: Having a Different Conversation about Money and Politics

Moderator: Jack Balkin

*3:30pm - 4:45pm — Fourth Session (Breakout Session)*

Malvika Maheshwari

Artistic Speech in the Indian Courts: Law and the Production of Violence Room 120

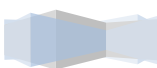
Discussant: Helen Norton

Sarah Haan Mosaic Disclosure, the Firm, and the First Amendment Room 121

Discussant: David Blankfein- Tabachnick

Caroline Corbin: Speech or Conduct? The Cake Wars Room 128

Discussant: David Han



Maggie McKinley: Lobbying and the Petition Clause

Room 129

Discussant: Heidi Kitrosser

*5:15 pm - 6:30 pm — Fifth Session (Breakout Session)*

Heidi Kitrosser: The Special Value of Public Employee Speech

Room 121

Discussant: Jonathan Manes

Step Feldman: Reimagining Free Expression in the Digital Age: A Self-Emergence Rationale  
(With an Emphasis on Net Neutrality)

Room 128

Discussant: Alex Tsesis

Stefanus Hendrianto: Hamlet with the Prince: Religious Speech as High Value Speech in the  
Culture Wars

Room 129

Discussant: Caroline Corbin

*7:30 pm - 9:30 pm — Dinner*

### **Sunday, May 3, 2015**

*8:30 am - 9:00 am — Breakfast*

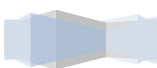
*9:00 am - 10:15 am — Sixth Session (Breakout Session)*

Michael Froomkin: Lessons Learned too Well: Anonymity in a Time of Surveillance  
Room 121

Discussant: Christina Mulligan

Tamara Piety: Killing the Golden Goose: Will Blended Advertising and Editorial Content Kill Both  
Room 128

Discussant: Roy Peled



Aleksandra Gliszczynska / Dominika Bychawska-Siniarska: Nazi Songs, Extremist Books, and Fascist Insignia on Sale: Case Study of Allegro in Poland Room 129

Discussant: Adam Lamparello

*10:45am – 12:00 pm — Seventh Session (Breakout Session)*

Vince Blasi: The Classic Arguments for Free Speech: Milton Room 121

Discussant: Thomas Healy

Greg Magarian: Speakers, Cornered: The Roberts Court in the Public Forum Room 128

Discussant: Mark Tushnet

Hannah Bloch-Wehba: Beyond Standing: How National Security Surveillance Undermines the Reporters Privilege and a Free Press Room 129

Discussant: Colin Agur

*12:15 pm - 2:00 pm — Eighth Session (Lunchtime Plenary Panel)*

Margot Kaminski: The Right to Record and How it Interferes with Information Gathering Laws Room 127

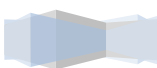
Moderator: Neil Richards

Alan Chen and Justin Marceau: Video Image Capture, Democracy and the First Amendment

Marc Blitz, Stephen Henderson, and Joseph Thai: Regulating Drones Under the First Amendment

*2:15 pm - 3:30 pm — Ninth Session (Breakout Session)*

Mark Tushnet: The Distinction Between First Amendment Coverage and First Amendment Protection, and its Significance Room 121



Discussant: Sarah Haan

BJ Ard: Zero-Rating: Toward a Purposive Approach to Network Neutrality

Discussant: Deven Desai

Jonathan Manes: Secret Law

Room 128

Discussant: Andrew Selbst

Amanda Shanor: The New Lochner

Room 129

Discussant: Vince Blasi



## FESC 3 Participants

**Floyd Abrams** Partner Cahill Gordon & Reindel LLP

**Tabatha Abu El-Haj** Associate Professor of Law Drexel University Thomas R. Kline School of Law

**Colin Agur** Resident Fellow, ISP Yale Law School

**RonNell Anderson Jones** Professor of Law BYU Law School

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

**Enrique Armijo** Assistant Professor of Law Elon University School of Law

**Jack Balkin** Knight Professor of Constitutional Law and the First Amendment Yale Law School

**Sandra Baron** Senior Fellow, Abrams Institute for Freedom of Expression Yale Law School

**Ariel Bendor** Distinguished Visiting Professor and Professor of Law University of Maryland Francis King Carey School of Law and Bar-Ilan University Faculty of Law

**Ashutosh Bhagwat** Professor of Law UC Davis School of Law

**Josh Blackman** Assistant Professor of Law South Texas College of Law

**David Blankfein-Tabachnik** Assistant Professor of Law Michigan State University College of Law

**Vince Blasi** Corliss Lamont Professor of Civil Liberties Columbia Law School

**Marc Blitz** Professor of Law Oklahoma City University School of Law

**Hannah Bloch-Wehba** Stanton Fellow Reporters Committee for Freedom of the Press

**Kiel Brennan-Marquez** Law Clerk



**Susan Buckley** Partner Cahill Gordon & Reindel LLP

**Dominika Bychawska-Siniarska** PhD Candidate Polish Academy of Sciences

**Alan Chen** William M. Beaney Memorial Research Chair and Professor University of Denver  
Sturm College of Law

**Caroline Mala Corbin** Professor of Law University of Miami School of Law

**Robert Corn-Revere** Partner Davis Wright Tremaine LLP

**Deven Desai** Associate Professor Georgia Tech Scheller College of Business

**Stephen Feldman** Jerry W. Housel / Carl F. Arnold Distinguished Professor of Law University of  
Wyoming College of Law

**Michael Fromkin** Laurie Silvers and Mitchell Rubenstein Distinguished Professor of Law  
University of Miami School of Law

**Aleksandra Gliszczynska-Grabias** Senior Researcher Poznan Human Rights Centre, Institute of  
Legal Studies, Polish Academy of Sciences

**Sarah Haan** Associate Professor of Law University of Idaho College of Law

**David Han** Associate Professor of Law Pepperdine University School of Law

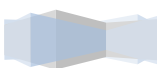
**Rick Hasen** Chancellor's Professor of Law and Political Science UC Irvine School of Law

**Thomas Healy** Professor of Law Seton Hall University School of Law

**Stephen Henderson** Professor of Law University of Oklahoma College of Law

**Stefanus Hendrianto** Visiting Lecturer in Law Santa Clara University School of Law

**Lauren Henry** Resident Fellow, ISP Yale Law School



**Margot Kaminski** Assistant Professor Ohio State University Moritz College of Law

**Heidi Kitrosser** Professor of Law University of Minnesota Law School

**Kate Klonick** Resident Fellow, ISP Yale Law School

**Renee Knake** Professor of Law and Foster Swift Professor of Legal Ethics Michigan State University College of Law

**Adam Lamparello** Assistant Professor of Law Indiana Tech Law School

**Gregory Magarian** Professor of Law Washington University School of Law

**Malvika Maheshwari** Assistant Professor of Political Science Ashoka University

**Jonathan Manes** Abrams Clinical Fellow and Clinical Lecturer in Law Yale Law School

**Justin Marceau** Associate Professor of Law University of Denver Sturm College of Law

**Maggie McKinley** Climenko Fellow and Lecturer on Law Harvard Law School

**Kerry Monroe** PhD Candidate and Resident Fellow, ISP Yale Law School

**Christina Mulligan** Assistant Professor of Law Brooklyn Law School

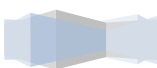
**Helen Norton** Associate Professor of Law University of Colorado Law School

**Roy Peled** JSD Candidate Tel-Aviv University Law School

**Tamara Piety** Senior Research Scholar and Phyllis Hurley Frey Professor of Law Yale Law School & University of Tulsa Law School

**Neil Richards** Professor of Law Washington University School of Law

**Dean Ringel** Partner Cahill Gordon & Reindel LLP





**David A. Schulz** Clinical Lecturer in Law and Partner Yale Law School and Levine Sullivan Koch & Schulz LLP

**Andrew Selbst** Law Clerk

**Amanda Shanor** PhD Candidate and Resident Fellow, ISP Yale Law School

**Charles S. Sims** Partner Proskauer Rose LLP

**Paul M. Smith** Partner Jenner & Block LLP

**Brian Soucek** Acting Professor of Law UC Davis School of Law

**Joseph Thai** Presidential Professor of Law University of Oklahoma College of Law

**Alexander Tsesis** Professor of Law Loyola University Chicago School of Law

**Mark Tushnet** William Nelson Cromwell Professor of Law Harvard Law School

**Andrew Tutt** Law Clerk

**Sonja West** Associate Professor of Law University of Georgia School of Law



# Activities





## Access to Knowledge (A2K)

Access to Knowledge (A2K) refers both to the right to access expressions of human inquiry, and the right to participate in the creation and manipulation of raw information, knowledge, and knowledge-embedded tools and services. The access to knowledge critical discourse revives attention to the value of openness, emphasizing the impact of knowledge policy on international development and civil liberties.

**June 9, 2015** The Access to Knowledge for Development Center (A2K4D) at The American University in Cairo School of Business hosted its fifth annual workshop - "Digital Technologies and Development: Mobilization, Censorship, Entrepreneurship and Copyright" June 9, AUC Tahrir Campus.

This year's workshop is titled "Digital Technologies and Development: Mobilization, Censorship, Entrepreneurship and Copyright." The aim of the workshop is to share outputs of A2K4D research in collaboration with academic partners within various networks and highlight our work in progress. The workshop consisted of short sessions with emphasis on lively debates. It will cover topics ranging from the role of digital technologies in civic participation, to censorship and copyright in the digital economy, and the role of entrepreneurship in development.

### **April 15, 2015 Virtual Speaker Series: Access to Knowledge on Wikipedia- Yana Welinder**

This talk will explore the role of Wikimedia and the Wikipedia Zero initiative in the global access to knowledge (A2K) movement. The Wikimedia sites not only provide free knowledge on virtually every subject to anyone who has an Internet connection, but they are also a platform for large segments of the population to play an active role in the creation of knowledge. Unfortunately, this knowledge platform is not available to everyone around the world due to barriers like poverty and limited internet connectivity. Through Wikipedia Zero, this platform becomes more accessible as it empowers people in the Global South to access the Wikimedia sites on their phones free of data charges. Wikipedia Zero is one of several initiatives in the Wikimedia community to facilitate access to Wikipedia and further the A2K movement.



## **September 24, 2014 Virtual Speaker Series : Book on Global Censorship**

A conversation with Nagla Rizk from the American University in Cairo, Carlos Affonso Pereira de Souza from the Center for Technology & Society at the Institute for Technology and Society of Rio de Janeiro and Law School of the Rio de Janeiro State University (UERJ), and Pranesh Prakash from the Center for Internet & Society in Bangalore, to discuss the upcoming release of the A2K book collaboration on Global Censorship. -





## Knight Law and Media Program

Yale Law School has long focused on the intersection of law, media and journalism. The Knight Law and Media program builds on this history and is directed toward:

- Yale Law School students who plan to be journalists, advocates for journalists, policy makers or leaders in the media industry;
- working journalists who seek a deeper understanding of law, media, and policy;
- scholars who study cutting-edge issues of law and media.

### **Speaker Series**

#### **October 8, 2014**

Erwin Chermersky, Dean and Professor of Law, UC – Irvine, “The Case against the Supreme Court”

#### **October 22, 2014**

Matt Powers, Assistant Professor, Communications, University of Washington, “Open the News Gates? Humanitarian and Human Rights NGOs in the American News Media, 1990-2010”

#### **October 28, 2014**

James Katz, Feld Professor of Emerging Media, Boston College of Communications, “Social Media President: Barak Obama and the Politics of Citizen Engagement”

#### **February 17, 2015**

David Westin, principal of Witherbee Holdings LLC, former president of ABC News, “How the News Media’s Migration to Digital Is Changing What it Means to be a Citizen”

#### **February 18, 2015**

Robert Picard, Director of Research at the Reuters Institute at the University of Oxford, “Media Pluralism: The European Union’s pursuit of Evidence and Policy”



## **Poynter Fellows:**

**December 3, 2014**

Celestine Bohlen, columnist for the International New York Times, “The Sanctions against Russia: What did the West Expect?”

**March 25, 2015**

Nasser Diallo, guest lecturer on Africa at NYU, “My Story”

## **Conference**

February 28, 2015

The Legal Medium





THOMSON REUTERS

## Thompson Reuters Initiative

**The Thomson Reuters Speaker Series** on Information Law and Information Policy hosts leading experts in the field of information law, speaking about their latest paper or projects..

### **September 9, 2014**

Patrick Burkart, Associate Professor of Communication, Texas A&M, “Pirate Politics”

### **September 16, 2014**

Emily Parker, author, “The Internet Underground and the Limits of Surveillance”

### **September 17, 2014**

Kurt Opsahl, Deputy General Consul, EFF, “Overview of the National Security Letter statutory framework”

### **October 1, 2014**

Bryan Choi, Visiting Associate Professor, New York Law School, “For Whom the Data Tolls”

### **October 7, 2014**

Danielle Citron, Professor of Law, University of Maryland School of Law, “Hate Crimes in Cyberspace”

### **November 11, 2014**

Carissima Mathen, Associate Professor of Law, University of Ottawa, “Chief Justice Roberts is a Robot”

### **February 24, 2015**



Robin Feldman, Professor of Law, UC Hastings, “Federalism, First Amendment & Patents: A Clash of Titans”

**March 4, 2015**

Jessica Silbey, Professor, Suffolk University Law School, “The Eureka Myth: Creators, Innovators and Everyday Intellectual Property”

**March 10, 2015**

Daniel Nazer, staff attorney, EFF, “Trolls and Tribulations: The Road to Patent Reform”

**April 1, 2015**

Dava Casoni, Contacts and Compliance Advisor for ICT, “Higher Education: A Legal Perspective”

**April 7, 2015**

Kate Crawford, Visiting Professor, MIT “The Partial Witness: Big Data and Bodies of Evidence”

**April 21, 2012**

Tamara Piety, Professor of Law, University of Tulsa “Commercial Speech and the Corporate Civil Rights Movement”

**Panels**

**October 1, 2014**

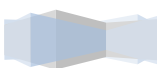
*Cryptography & Open Source Solutions*

Communications security is an increasing concern for lawyers, journalists, and citizens of our digitally connected world. The events of the past two years have shed light on many software vulnerabilities, as well as problems with our basic security assumptions.

**November 3, 2014**

*Net Neutrality: From Debate to Policy Decisions:*

After several years of discussions in academia, industry, and policymaking circles, the issue of net neutrality has taken center stage in debates on U.S. media and telecommunications. In February, cable providers Comcast and Time-Warner announced their intent to merge into a single company. And this spring, the FCC solicited public input on its proposed Open Internet Rules, and FCC Chairman Tom Wheeler has stated that he expects to have enforceable rules in





place by the end of 2014. Under the new rules, "behavior harmful to consumers or competition by limiting the openness to the Internet will not be permitted."

### **November 18, 2014**

*Net Neutrality or Net Diversity?* What is net neutrality? How does it affect you? What are the arguments on both sides? What are the implications of the FCC's proposed rules, and what alternative policies can be pursued? These issues will be discussed with several of the most important voices in this debate

### **Conferences**

#### **March 28-29, 2015**

Innovation Law Beyond IP 2

#### **May 2-3, 2015**

Freedom of Expression Scholars Conference 3



# “Ideas” Lunches

The ISP facilitates a series of ideas lunches that meet weekly. The ideas lunches consist of an informal gathering of student, fellows, faculty, and guest speaker to forge new ideas related to emerging issue in media law and technology. During this year (2014-2015), informal guest speakers led animated discourse on wide range of subjects, including:

**Jonathan Manes, Abrams Fellow, and students from the MFIA clinic,** talk about the clinic’s work

**Emily Bazelon,** Senior Research Scholar in Law, Yale Law School, discussion regarding her article “The Dawn of the Post-Clinic Abortion”

**Kevin Pomfret,** Executive Director of the Centre for Spatial Law and Policy and Principal in GeoLaw PC, What is Spatial Law and Why is it Important?

**Nathan Freed Wessler,** ACLU, Every Step You Take: Location Surveillance and the Fourth Amendment in the Digital Age

**Nikki Usher,** George Washington School of Media and Public Affairs, discussion regarding her new book, *Making News at The New York Times*

**Jamie Horsley,** China Law Center, Yale Law School, China’s Surprising and Continued Development of Freedom of Information

**Christina Peters,** Chief Privacy Officer at IBM, Privacy and Innovation in the Age of Big Data

**David Smydra,** Google, Structured Journalism

**Julie Cohen,** Prof of Law, Georgetown University Law Center, Post-Industrial Property

**Kim Mutcherson,** Professor of Law, Rutgers School of Law The New Kinship in the Old Kinship: Reimagining the Power of Biology in the Context of Assisted Reproduction

**BJ Ard,** ISP resident Fellow, Ph.D. Candidate, Zero Rating

**Brad A. Greenberg,** ISP Visiting Fellow, Black Box Copyright

**David P. Sharrow,** Partner, Gunderson Dettmer Stough Villeneuve Franklin & Hachigian LLP, UGC: Risks and Rewards for Use of User Generated Content

**Jonathan Manes,** Abrams Fellow, MFIA Clinic, discussion regarding the current MFIA cases



**Glenn Cohen**, Professor, Harvard Law School, discussion regarding sperm donors' anonymity

**Victor Pickard**, Asst Prof, Annenberg School of Communication at University of Pennsylvania, America's Battle for Media Democracy

**CW Anderson**, Asst Prof at CUNY and ISP Affiliated Fellow, Between the Unique and the Pattern: Historical Tension in our Understanding of Quantitative Journalism

**Benjamin Peters**, Asst Prof. of Communications, University of Tulsa, The Soviet Internet: How Not to Network a Nation

**Fergus Pitt**, senior fellow at The Tow Center for Digital Journalism, Sensors, Drones and Journalism: New Ways for Journalists to Do Bad (and Good)

**Taylor Owen**, Asst. Professor of Digital Media and Global Affairs, University of British Columbia, discussion on the Crisis of the State in the Digital Age

**Paul Sieminski**, General Counsel of Automattic Inc/ Wordpress.com

**Caitlin Borgmann**, CUNY School of Law, discussion on the respective roles and authority of the courts and the legislatures in protecting constitutional rights, and on the role and judicial treatment of fact-finding in constitutional rights cases.

**Amy L. Landers**, Director of the Intellectual Property Law Program , Drexel University, Private Value Determinations and the Potential Effect on the Future of Research and Development

**Jack Balkin**, Executive Director of ISP, Information Fiduciaries in the Digital Age





## FAIA: Foreign Affairs in the Internet Age

**Foreign Affairs in the Internet Age** is an initiative on how the Internet Age affects foreign affairs law, and how foreign affairs law affects the Internet. As a global entity, the Internet creates global problems and invites international regulation. The digital age changes how international law-making is conducted: it affects how we imagine accountability, secrecy, and democratic participation in treaty negotiations.

The initiative studies the ways that foreign policy affects Internet governance, and the ways that the Internet has changed how foreign policy is conducted. It represents a collaboration between the Information Society Project (ISP) and scholars of international law and politics at Yale Law School.

The Foreign Affairs in the Internet Age is led by the following Yale Law faculty members: Jack Balkin, David Grewal, Oona Hathaway, Amy Kapczynski.



## **FAIA Speaker Series:**

**November 3, 2014**

John Carlin, Assistant Attorney General, National Security, “Defending our Nation by Prosecuting State-Sponsored Cyber Theft”

**November 12, 2014**

Michael Wilner, Washington bureau chief, *The Jerusalem Post*, “Information Gaps on National Security”

**February 12, 2015**

Evan Osnos, staff writer *The New Yorker*, “China’s Age of Ambition: Politics, Fortune and Truth in the New China”

**March 31, 2015**

Matt Spence, Deputy Assistant Secretary of Defense for Middle East Policy, “Tumult in the Middle East: the View from the White House and DoD”

## **Panels:**

**February 10, 2015**

Re-Imagining the Security State: Secrecy and Strategy in National Security

**February 16, 2015**

Cyberwarefare and Killer Robots: How the Law of War Regulates New Technology





## 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 Abrams Institute fellow for 2014-2015 is Jonathan Manes.

### **Abrams Speaker Series:**

#### **September 29, 2014**

David Cole, Professor in Law, Georgetown University Law Center, "The War on Terror and Civil Society Constitutionalism"

#### **October 8, 2014**

Erwin Chemerinsky, Professor of Law, UC Irvine, "The Case against the Supreme Court"

#### **Panel:**

November 3, 2014 "Net Neutrality: From Debate to Policy Decisions"



**First Amendment Salons:**

March 9, 2015, March 30, 2015

**Conference:**

May 2-3, 2015 Freedom of Expression Scholars Conference 3





## 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.

Our goals are to:

1. Increase scholarship on reproductive rights and justice issues;
2. Encourage the academic community to broaden the narrow focus of scholarship in reproductive rights and justice from the questions of whether Roe was correctly decided, to an examination of different factors that are necessary for justice in area of reproductive health policies;
3. Provide opportunities for fresh perspectives and new ideas to enter into the policy-making arena from the ivory tower, taking advantage of the strong interest of Yale Law School faculty in reproductive rights and the breadth of YLS scholarship in the area; and
4. Enrich the YLS environment by a) introducing more students to the breadth of scholarship on reproductive rights and the perspectives of advocates in the movement; and b) providing students with opportunities to develop their own scholarship and hone their advocacy skills working in reproductive rights.

### **PSRJ Speaker Series:**

**November 4, 2014**

Maya Manian, Professor of Law, University of San Francisco School of Law, "The Consequences of Abortion Restrictions for Women's Healthcare"





## **March 11, 2015**

Caroline Corbin, Professor of Law, University of Miami School of Law, "Speech or Conduct? The Cupcake Wars"

## **April 22, 2015**

Jonathan Will, Associate Professor of Law, Mississippi College of Law, "Beyond Abortion: Pre-Embryonic Personhood and the Constitutionality of Restrictions on Contraception"

## **Panels:**

### **October 20, 2014**

The Affordable Care Act & Antidiscrimination Law

The event will feature three speakers -- Mara Youdelman, managing attorney at the National Health Law Program (NHeLP); Emily Martin, vice president/general counsel for the National Women's Law Center (NWLC); and Jessica Roberts, Professor of Law at University of Houston Law Center. The first two speakers, Mara and Emily, will discuss the history and current status of Section 1557, a far-reaching, but little discussed provision of the Affordable Care Act that incorporates a number of existing federal civil rights statutes (Title VI, Title IX, Sec. 504 of the Rehabilitation Act, and the Age Discrimination Act) and applies them to federal health care programs and private entities receiving federal funds, such as doctors, hospitals, insurance companies, and pharmacies. While the Obama Administration has yet to issue regulations interpreting this provision, both NHeLP and NWLC and other organizations have begun filing law suits and administrative complaints alleging violations of the law

The third speaker, Professor Roberts will then broaden the discussion and talk about how health status and health behaviors can be bases for discrimination, and how this can both overlap with and be different from the types of discrimination prohibited under Section 1557. We hope that Professor Roberts will talk about how the ACA helps and hurts attempts to limit this type of discrimination, and what sort of legal protections would be needed to fully address concerns of what she calls "healthism."

### **March 26, 2015**

*Griswold v. Connecticut*, 50 Years Young; How Wonder Woman Fought for Birth Control

A conversation about past and future with JILL LEPORE, the David Woods Kemper '41 Professor of American History at Harvard University and author of *The Secret History of Wonder*



Woman (Knopf, 2014) and Yale Law Professors, Reva Siegel, Linda Greenhouse, William Eskridge, Jack Balkin.



# FOIA Boot Camp

The FOIA Boot Camp offers practical strategies for requesting government records through Freedom of Information laws, with a focus on the federal Freedom of Information Act (FOIA) and Connecticut's Freedom of Information (FOI) law. The program is designed for students, journalists, and interested members of the community.

This year's speakers include David Sobel, Senior Counsel at EFF, and Lisa Siegal, Staff Attorney CT Freedom of Information Commission (FOIC)

The event is hosted by the Media Freedom & Information Access clinic and the Information Society Project at Yale Law School.



The Media Freedom and Information Access Clinic and Information Society Project  
Present:

## **FOIA** Boot Camp

Interested in:

Government Transparency?  
Researching Administrative Law?  
Getting more evidence for a clinic case?  
Supporting the role of the press in ensuring a healthy democracy?  
Knowing what records the government is holding on you?

Speakers include:

**David Sobel**  
Senior Counsel at EFF

**Lisa Fein Siegel**  
Staff Attorney

CT Freedom of Information Commission (FOIC)

Monday, Feb. 23, 2015

6:00-8:00 pm

Room 120

*Dinner will be provided*



The VLP is administered by the Law School's Information Society Project (ISP), an intellectual center addressing the implications of the Internet and new information technologies for law and society, guided by the values of democracy, development, and civil liberties. The ISP's work includes copyright, media law and policy, transparency, and privacy.

The 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, the VLP was able to produce six short films and invite a number of experts to Yale Law School during 2014-2015.

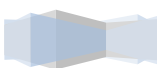
### **Production Accomplishments:**

The VLP currently has six films in production: two short films on veteran deportation; post-production and distribution of one half-hour film on immigration detention commissioned by Human Rights First (HRF); post-production and distribution of a feature on political computer hackers; post-production of a feature on reconciliation and government apologies for human rights abuses in Ireland's Magdalene Laundries; and a short film on the student demonstration that was part of the nationwide protests against the shooting of Michael Brown in Missouri and choking of Eric Garner in New York at the hands of police.

#### **1. Veteran Deportation Films**

The VLP successfully completed two production shoots of the subject, Mark Reid, a New Haven Army Reservist who is currently in a Massachusetts jail facing deportation to Jamaica for four drug convictions. It also completed an interview shoot with Professor Michael Wishnie, and a shoot to document a call with U.S. Immigration and Customs Enforcement (ICE). The team storyboarded and edited a rough cut available at: <https://vimeo.com/114519502> (password: vlp2014). The VLP also recruited a student composer in the Yale School of Music to provide a soundtrack for the film. The group is in the process of determining a distribution and outreach strategy for this film.

2. Human Rights First (HRF) – documentary on immigration detention  
The VLP fixed spelling and synching errors, and output a final high-resolution version of the film. The team waited for HRF to determine the proper distribution platform, and the team is now ready to upload the new film to VLP's website.
3. Reality Hackers  
The VLP successfully completed an original soundtrack for the feature film; increased resolution in post-production to full high definition (HD) quality images; gathered promotional materials for a website; created a poster, graphics, and titles for the film; completed color correction of the feature cut; solicited storyboarding feedback for a future broadcast version cut to 56 minutes; managed permissions and licensing for all third party images in the film; and began to submit the film to festivals.
4. Landscape of Change  
The Magdalene Laundries film charts recent social changes in Ireland through the voices and lives of Irish mothers, teachers and activists. The film examines and discusses controversial subjects such as Ireland's archaic anti-abortion legislation, and recent changes to divorce and homosexuality laws. As we follow the experiences of Louisa de Cossy, a young woman who grew up in Ireland, a story is told of a community of unknown activists who regenerated Irish society. Samples are available to view at: <https://vimeo.com/22313142> and <https://vimeo.com/16417967>.
5. The VLP conducted a shoot for the student *Die In* demonstration, which took place in New Haven on December 5, 2014. YLS students joined hands with Yale University students and members of the public in a line that stretched four city blocks, and lied silently on the ground together for four and a half minutes (the time that the body of Michael Brown, Jr. was left lying in the street after he was shot and killed by a police officer in Ferguson, Missouri). The team documented the demonstration and conducted outdoor interviews. The group plans to use this footage to edit a short piece on civil disobedience or to integrate it with the VLP's archive of materials on community policing.



### Speakers and Pedagogical Opportunities:

1. The VLP hosted Christoph Koettl, one of the leading professionals working on authentication issues for activist and witness videos with Amnesty International. Christoph came to work with and to teach VLP students about advocacy and outreach strategies for approximately two weeks in November 2014.
2. The VLP hosted a panel discussion on October 17, 2014, among Dean Post, Jack Balkin, and Peter Galison of Harvard University, on the role of new media in the academy.
3. The VLP hosted a screening of the rough cut of the hackers film for the law school community in September 2014, as part of a recruitment drive for new VLP members.
4. The group hosted former VLP alumnus Charles Vogl, co-founder of Broken English Productions LLC, in New York City, in October 2014, to speak about outreach and distribution strategy for film and activism campaigns.
5. In collaboration with the Poynter Fellowship of Journalism, the ISP and VLP hosted Nasser Diallo, a radio journalist from West Africa. Mr. Diallo spoke about freedom of speech and media production in Africa, at YLS on March 25, 2015.



# Journalism After Snowden



The Tow Center for Digital Journalism and the Information Society Project of Yale Law School partnered to present four lectures as part of the larger Journalism After Snowden project Fall 2014.

Journalism After Snowden, funded by The Tow Foundation and the John S. and James L. Knight Foundation is a yearlong series of events, research projects and writing from the Tow Center for Digital Journalism in collaboration with Columbia Journalism Review.

## **October 21, 2014**

Steve Coll, Professor of Journalism, Columbia University Graduate School of Journalism,  
“Investigative Reporting in a Time of Surveillance and Big Data”

## **November 18, 2014**

Ethan Zuckerman, Director of the Center for Civic Media, MIT, “Normalizing Surveillance”

## **Dec. 2, 2014**

James Bamford, author, investigative reporter

## **Dec. 3, 2014**

Jill Abramson, former editor of *The New York Times*



# Clinical Activities





# Media Freedom and Information Access Clinic

The Media Freedom and Information Access Clinic (MFIA) is part of the Abrams Institute for Freedom and Expression and the Information Society Project at Yale Law School. The clinic is dedicated to increasing government transparency, defending 21st-century newsgathering, and protecting freedom of expression through impact litigation, direct legal services, and policy work. The is staffed by Yale Law School students—all of whom are Knight Law and Media Fellows—who provide pro bono representation to a diverse array of clients including independent journalists, news organizations, public interest and advocacy organizations, activists, researchers, and others.

The clinic is co-directed by Jack Balkin, Knight Professor of Constitutional Law and the First Amendment, and David Schulz, Abrams Visiting Clinical Lecturer in Law. The seminar component of the clinic is co-taught by Balkin, Schulz and Jonathan Manes, Abrams Clinical Fellow. The clinic's casework is supervised by Schulz and Manes. The clinic also regularly partners with supervising attorneys outside the law school. Over the past year, clinic students have had the opportunity to work closely with the following practitioners:

- David McCraw, Assistant General Counsel, New York Times
- Jeremy Kutner, First Amendment Fellow, New York Times (and MFIA alumnus)
- Patrick Toomey, Staff Attorney, ACLU National Security Project
- Alexander Abdo, Staff Attorney, ACLU Speech, Privacy, and Technology Project
- Ashley Gorski, Nadine Strossen Fellow, ACLU National Security Project
- Jameel Jaffer, Deputy Legal Director, ACLU Center for Democracy
- Bernard J. Rhodes, Partner, Lathrop & Gage LLP
- David J. Bodney, Partner, Ballard Spahr LLP
- Chris Moeser, Of Counsel, Ballard Spahr LLP
- Daniel J. Klau, Of Counsel, McElroy, Deutsch, Mulvaney & Carpenter LLP



Over the past year, the MFIA Clinic has maintained a focus on the following four areas of litigation:

**Government Operations and Transparency:** Litigating rights of access to information that improves public understanding of government operations, including law enforcement activities, that promotes affirmative disclosure practices, or that enforces procedures intended to speed the release of information.

**Constitutional Right of Access:** Advocating for the First Amendment right of public access to official proceedings, official actions, and related records, including criminal, civil and administrative proceedings.

**National Security and Democratic Oversight:** Asserting statutory and constitutional rights of access to information and proceedings key to exercising democratic oversight of our nation's security policies and actions.

**Privacy, Infrastructure Freedom, and Free Speech:** Litigating issues surrounding privacy, surveillance, access to and control over communications infrastructure, the legal obligations of intermediaries, and protecting 21st century newsgathering.

Brief descriptions of the cases the Clinic has pursued over the past year follow:

**Government Transparency:**

- **NYPD FOIL Compliance:** The Clinic filed an amicus brief in an appeal in New York state court in a FOIL case that Yale Law School professor Issa Kohler-Haussman has brought against the NYPD. The amicus brief, written on behalf of four news organizations (the New York Times, ProPublica, the Daily News, and the Associated Press), argues that attorney's fees are crucial to the proper functioning of the Freedom of Information Law, and that allowing for possible fee awards against the NYPD is particularly important because NYPD is a repeat FOIL offender.
- **NYC Broadband Infrastructure:** The Clinic represents Susan Crawford, co-director of the Berkman Center at Harvard, in FOIL litigation and other efforts to investigate how New York City agencies have developed the broadband Internet infrastructure in the city. Clinic member Emily Barnet '15 argued in court twice this year regarding the adequacy of the NYC Department of Information Technology and Telecommunications (DoITT) response to a previous FOIL request. We have also been pursuing a fresh batch of FOIL requests against DoITT at the administrative stage. As a result of these efforts, the clinic has obtained a significant amount of policy-relevant information. The Clinic also continues to explore other advocacy strategies with local government officials to address concerns about the quality and equity of broadband



access in NYC, and the manner in which DoITT has been overseeing the private company that manages the underground conduit network that serves Manhattan and the Bronx.

- **FDA Clinical Drug Data:** The Clinic represents the Global Health Justice Partnership at Yale and the Treatment Action Group in NYC in efforts to obtain disclosure of raw clinical trial data from the FDA. Currently, raw clinical trial data is kept secret even after drugs are approved. This limits the ability of scientists, researchers, advocates and activists to independently assess drugs, to determine how the FDA is doing its job, whether there are risks or concerns with a drug that were not adequately identified or addressed by the FDA, and whether drug companies are marketing newly-approved drugs responsibly. The Clinic has pursued FOIA request on behalf of GHJP and TAG seeking disclosure of data related to new and extraordinarily costly drugs for the treatment of Hepatitis C virus.
- **Trans-Pacific Partnership IP Provisions:** The Clinic represents Intellectual Property Watch, a news organization that reports on international IP issues, in FOIA litigation seeking disclosure of information about the IP provisions of the Trans-Pacific Partnership Agreement (TPP). We are suing for disclosure of U.S. proposals for the draft text of the TPP's IP provisions, U.S. negotiating positions on those provisions and, importantly, communications between U.S. trade officials and representatives of industry who sit on trade advisory committees and have been given privileged access to the secret draft text. As a result of the lawsuit, we were able to obtain hundreds of pages of communications between U.S. trade negotiators and industry lobbyists, which has allowed IP-Watch to publish stories providing unprecedented insight into the nature of the working relationship between those parties. The Clinic continues to press for greater disclosure and completed summary judgment briefing in the spring challenging the lawfulness of the government's refusal to provide additional information.
- **Public Access to Body Camera Footage:** Clinic students in the spring semester drafted a white paper assessing the question of public access to footage from police-worn body cameras. Body cameras are increasingly being deployed as a measure to address concerns about discriminatory, excessive or otherwise unlawful uses of force by police. The white paper examines the importance of public access to such footage as a means for public accountability and oversight and also addresses the significant personal privacy concerns that may be implicated in the release of such footage.
- **NYPD Use of Mobile X-Ray Vans:** The Clinic represents ProPublica journalist Michael Grabell who is investigating the NYPD's use of unmarked vans that contain X-ray backscatter devices similar to those used to inspect vehicles at the border for contraband. The vans emit significant health and safety concerns because of potential exposure to ionizing radiation, and



also raise questions about privacy intrusions. The Clinic filed FOIL requests with the NYPD on Mr. Grabell's behalf, seeking basic information about these x-ray vans, focusing in particular on the health and privacy concerns. The Clinic filed suit to enforce the requests. The trial court ruled in our favor this year, order the NYPD to disclose most of the information we had sought. The NYPD has appealed the decision, which clinic students will brief and argue in the Fall.

- **Connecticut Ebola Quarantines:** Following the outbreak of Ebola virus in West Africa, the State of Connecticut imposed a quarantine on a number of individuals who had travelled to the affected countries. There was significant concern among public health experts that the quarantines were imposed in an overbroad and unjustified manner, with harmful consequences for both public health and civil liberties. The Clinic assisted the Global Health Justice Partnership and Legislative Advocacy Clinic – both programs of Yale Law School – in pursuing FOIA requests with various state and local agencies seeking disclosure of the policies regarding Ebola quarantines, the evidence supporting those policies, and the number of affected individuals.

#### First-Amendment Access Rights:

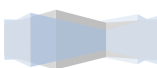
- **Lethal Injection Drug Secrecy:** The Clinic is representing a coalition of news organizations, led by the Guardian and the Associated Press, seeking the disclosure of basic information about the drugs states use to carry out executions. We are currently litigating in two states—Missouri and Arizona—and are asserting a First Amendment right of access to the records in question. In Missouri, the litigation is currently focusing on claims under the state Sunshine Act. Clinic member Benjamin Graham '15 travelled to Jefferson City to argue the motion on behalf of our clients, appearing alongside attorneys for the Reporters Committee for Freedom of the Press and the ACLU-Missouri, who filed a parallel lawsuit in Missouri before the same judge. In Arizona, the clinic is focusing on establishing a constitutional right of access to records about the methods that the State uses to carry out executions. Over the past year clinic students have conducted extensive fact development and discovery, and worked with prominent experts in anticipation of summary judgment motions in the fall.
- **Access to FISC Opinions:** The Clinic continues to litigate in the FISA Court, asserting a constitutional right of access to the court's opinions authorizing bulk collection of domestic records. The cases succeeded in prompting the FISC to order declassification and disclosure of opinions that governed bulk collection of records under Section 215 of the Patriot Act. At the end of the summer 2014, the FISC closed one of our two cases, issuing a decision that declined to decide whether the First Amendment right of access applies to the FISC, but nevertheless determining that the redactions from the FISC opinions disclosed by the Government in

response to the lawsuit would have met First Amendment standards. The second lawsuit remains pending.

- **Standards for Sealing Court Records in New York State:** The clinic is currently litigating an important appeal in the New York State Appellate Division, First Department regarding the standards for sealing court records in civil cases. The appeal arises out of FOIL litigation on behalf of Susan Crawford seeking disclosure of information about New York City internet infrastructure. In the trial court, the City obtained a patently overbroad sealing order that allowed it to file all of its submissions under seal, and obligated the clinic, too, to file its briefs under seal. The clinic is appealing in order to challenge the overbroad sealing order, and also clarify and tighten the standards that judges must apply when issuing such orders.

#### National Security, Law Enforcement & Democratic Oversight

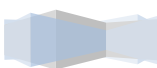
- **Transparency on NSA Surveillance.** The Clinic is co-counsel with the ACLU in FOIA litigation seeking disclosure of the rules concerning Executive Order 12,333, which governs surveillance of communications that do not touch U.S. soil. The Snowden disclosures have revealed that some of the most intrusive surveillance of even domestic communications has occurred pursuant to E.O.12,333 by sweeping up U.S.-person information as it travels between servers abroad. Various government agencies have been producing records over the semester in accordance with a production schedule we negotiated in the spring.
- **Bureau of Prisons Treatment of Inmates Linked to Terrorism Investigations:** The Clinic represent Human Rights Watch in FOIA litigation seeking disclosure of information about how the Bureau of Prisons has treated American Muslim inmates taken into custody following terrorism-related investigations. After extensive negotiations, the clinic obtained obtained many hundreds of pages of records and extensive data from BOP's internal databases. HRW issued a major report relying extensively on information that the Clinic obtained through the FOIA litigation. The Clinic continues to challenge many of the government's withholdings and has briefed summary judgment motion to that end. Clinic students Nicholas Handler '15 and Ajay Ravichandran '16 plan to argue the motion this summer.
- **Censorship of Guantanamo Military Commissions:** The Clinic represents New Yorker journalist Mattathias Schwartz with respect to FOIA requests to the CIA and Department of Defense regarding the procedures in place at the Guantanamo Bay Military Commissions. In particular, we hope to unearth information about the government's ability to censor the Commission proceedings and limit what can be disclosed to the public.



- **New York Times FOIA Re: Ex-Cuban Diplomat:** The Clinic worked with the New York Times legal department to represent journalist Sergio Florez in FOIA litigation seeking to obtain records from the CIA about Mr. Florez's father, Armando Florez, a former high-ranking Cuban diplomat who defected from the Castro government and was ultimately granted political asylum in the United States in 1968. Despite extensive evidence of CIA cooperation with and interest in Armando Florez's, the CIA refused to confirm or deny that it had any records at all about him, using a so-called "Glomar" response. Clinic students assisted the New York Times in a court challenge to the CIA's "Glomar" response. As a result of students' efforts, the CIA was forced to turn over several documents about Armando Florez. Ultimately, however, the Court allowed the CIA to continue its refusal to confirm or deny whether it had any additional records. The New York Times has appealed the decision.

#### Privacy & Free Speech:

- **National Security Gag Orders:** We filed a lawsuit on behalf of Nicholas Merrill, former owner of a small ISP, challenging a 10-year old gag order that still forbids him from talking about the kinds of information the FBI tried to order him to turn over about a client using a National Security Letter (a kind of administrative subpoena, issued without any judicial review). Nick Merrill was the plaintiff in the first-ever challenge to NSLs, *Doe v. Holder*, which the ACLU litigated. The Washington Post wrote up our lawsuit here, and our press release and complaint are available here.
- **Free Speech Right of Workers to Protest Employment Conditions:** The Clinic is defending the free speech rights of a group of livery car drivers and a community organizer in New York City who are protesting unlawful employment conditions by a former employer and in broader industry. The former employer has sued our clients for defamation, targeting their public protest and advocacy. The clinic is seeking to dismiss the lawsuit on First Amendment and anti-SLAPP grounds. Clinic student Vera Eidelman '15 argued the motion in Manhattan Supreme Court. The case is currently pending on appeal to the Appellate Division, First Department.



# Courses



# Information Society Project Courses and Reading Groups

## **Related Courses**

Fall 2014

Supreme Court Advocacy

Fall 2014, Spring 2015 Advanced Supreme Court Advocacy

Spring 2015 The Institutional Supreme Court

Linda Greenhouse

Fall 2014, Spring 2015

Media Freedom and Information Access Clinic

David Schulz, Jonathan Manes, Jack Balkin

Spring 2015 Artificial Intelligence, Robotics, and the Law

Jack Balkin

## **Reading Groups**

### **Fall 2014**

Social Theories of the Information Society

### **Spring 2015**

Media Law & Policy

Tech & Internet Law Policy

Intelligence Gathering and International Law

