



# Information Society Project

Accomplishments

2015-2016

# Yale Information Society Project

2015-2016

## Table of Contents

<b>People .....</b>	<b>2</b>
<b>Scholarship and Academic Presentations .....</b>	<b>7</b>
<b>Conferences.....</b>	<b>26</b>
<b>Activities.....</b>	<b>89</b>
<b>Clinical Activities .....</b>	<b>112</b>
<b>Courses .....</b>	<b>122</b>



# People



# Information Society Project at Yale Law School

## 2015-2016 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 Crotoft
- Gerardo Condiaz
- Nicholas Frisch
- Kate Klonick
- Adrian Kuenzler
- Alyssa King
- Asaf Lubin
- Jonathan Manes
- Tory McMurdo

- Kerry Monroe
- Caitlin Petre
- Sofia Ranchordas
- Lauren Henry Scholz
- Amanda Shanor
- Priscilla Smith
- Rory Van Loo

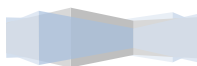
### **Visiting Fellows**

- Sam Adelsberg
- Adam Adler
- Logan Beirne
- Kiel Brennan-Marquez
- Andrew Burt
- Jonathan Cardenas
- Irin Carmon
- Kate Darling
- Nassear Diallo
- Seeta Gangadharan
- Brad Greenberg
- Camilla Hrdy
- Zachary Kaufman
- Sam Kleiner
- Seth Lewis
- Lisa Lynch
- Peter Maybaruk
- Gabriel Michael
- Dina Mishra
- William New
- Guy Pessach
- Bilyana Petkova
- Ri Pierce-Grove
- Hector Postigo
- Amy Semet
- Christopher Soghoian
- Hernandez Stroud
- Ramesh Subramanian
- Nabiha Syed
- Xiyin Tang
- Andrew Tutt
- Jacob Victor
- Christopher Wong
- Shlomit Yanisky-Ravid



## **ISP Student Fellows**

- Omer Aziz
- Alexandra Brodsky
- Elizabeth Dervan
- Elizabeth Deutsch
- Josh Divine
- Ariel Dobkin
- John Ehrett
- Misha Guttentag
- Beth Mara Goldberg
- Jordan Hirsch
- Eliska Holubova
- Olivia Horton
- Jaunita John
- Scout Katovich
- Lina Khan
- Julia Knight
- Meenu Krishnan
- Rebecca Lee
- Aaron Levine
- Amanda Lynch
- David Manners-Weber
- Divya Musinipally
- Daniela Nogueira
- Alexandra Perloff-Giles
- Ben Picozzi
- Jessica Purcell
- Emma Roth
- Rumela Roy
- Avisha Samarth
- Geoff Shaw
- Harrison Stark
- Stephen Stitch
- Julius Taranto
- Rachel Tuschman
- Andrew Udelsman
- Corinne Waite
- Alice Wang
- Rebecca Wexler
- Ethan Wong
- Jimmy Zhuang

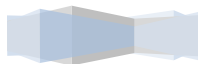


## **Knight Law and Media Scholars**

- Cory Adkins, 2016
- Colin Agur
- John Boeglin, 2016
- Valerie Belair-Gagnon
- Allison Douglass, 2018
- John Ehrett, 2017
- Anna Gonzalez, 2018
- Alexandra Gutierrez, 2018
- Lauren Henry
- Meenu Krishnan, 2018
- Steve Lance, 2018
- Rebecca Lee, 2016
- Amanda Lynch, 2016
- Yuriy Melnyk, 2017
- Divya Musinapally, 2016
- Nora Niedzielski-Eichner, 2018
- Daniela Noguera, 2017
- Lourdes Pantin, 2016
- Caitlin Petre
- Ben Picozzi, 2017
- Ajay Ravichandran, 2016
- Rumela Roy, 2017
- Stephen Stich, 2017
- Andrew Udelsman, 2017
- Corinne Waite, 2017
- Rebecca Wexler, 2016
- Ethan Wong, 2017
- Beatrice Walton, 2018
- Jacob Zionce, 2018

## **Yale University Affiliates**

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



# Scholarship and Academic Presentations





## Highlights of Paid Resident Fellow Activities

---

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

#### Reading Groups Taught

Big Data and Global Media (Seminar Leader)

Telecommunications Law and Policy (Seminar Leader)

#### PEER-REVIEWED JOURNAL ARTICLE

**Agur C** (2015). Second Order Networks, Gambling, and Corruption on Indian Mobile Phone Networks. *Media, Culture & Society*, 32(5): 768-83.

#### BOOK

Greenhow C, Sonnevend J and **Agur C**, editors (2016). *Education and Social Media: Toward a Digital Future*. Cambridge, MA: MIT Press.

#### BOOK CHAPTERS

**Agur C** (2016). Betting Across Borders: Mobile Networks and the Future of Gambling. *The Good Life in Asia's Digital 21<sup>st</sup> Century*. Hong Kong: Digital Asia Hub. Harvard University: Berkman Center for Internet and Society.

One of three winners of the 2015 Essay Writing Competition at the Berkman Center for Internet and Society at Harvard Law School.

**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.

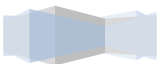
#### REPORT

**Agur C**, Belair-Gagnon V and Frisch N (forthcoming in 2016). Meeting in Digital Spaces: American News Organizations Using Chat Apps to Cover Political Unrest. Tow Center for Digital Journalism, Columbia University Graduate School of Journalism.



## CONFERENCE PAPERS

2016. Social Media in News Coverage of the Umbrella Movement in Hong Kong. International Association of Media and Communication Researchers (IAMCR) Annual Meeting. Leicester, UK. Co-presenter: Belair-Gagnon V.
2016. The Bully Pulpit, Social Media and Public Opinion: A Big Data Approach. International Communication Association (ICA) Annual Meeting. Fukuoka, Japan. Co-presenter: Michael G.
2016. Communication Technology, Illicit Flows of Capital, and State-Society Tensions. InterAsian Connections V: Genealogies of Financialization Workshop. Seoul National University, Korea.
2016. The Good, the Bad and the Ugly: A Roadmap for Mobile Technology and Digital Journalism. International Journalism Festival. Perugia, Italy. Co-presenters: Belair-Gagnon V and Perri P.
2016. China's Taming of the Hong Kong Media. Conference on Media Capture: Technology, Economics, and Policy. Columbia University School of International and Public Affairs (SIPA). New York, NY. Co-presenters: Belair-Gagnon V and Frisch N.
2015. Comparative Global Censorship: Persisting Modes and Shifting Paradigms. Global Congress on Intellectual Property and the Public Interest. Delhi, India.
2015. Re-Imagining the Indian State: Three Phases in Telecom Policy, 1947-present. Society for the History of Technology (SHOT) Annual Meeting. Albuquerque, NM.
2015. Power and Counter-Power in the 2014 Hong Kong Protests: A Comparative Study of Social Media Networks. American Political Science Association (APSA) Annual Meeting. San Francisco, CA. Co-presenter: Frisch N.
2015. Big Data, Social Media and Public Opinion: The Net Neutrality Debates. American Political Science Association (APSA) Annual Meeting. San Francisco, CA. Co-presenter: Michael G.



## **PUBLIC LECTURES**

2016. Meeting in Public Spaces: American News Organizations Using Chat Apps to Cover Political Unrest. Columbia University Graduate School of Journalism, Tow Center for Digital Journalism. New York, NY.

2016. Mobile Communication, Gambling, and Policymaking in India and Beyond. Central European University, School of Public Policy. Budapest, Hungary.

2016. Second-Order Networks and Unanticipated Consequences of Mobile Telephony. Nanyang Technological University, Wee Kim Wee School of Communication and Information. Singapore.

2016. A History of American Law, Surveillance and Governance: Communication technologies, Norms and Power. University of Minnesota, School of Journalism and Mass Communication. Minneapolis, MN.

2015. Mobile Phones: Transparency, Surveillance and Censorship. Fifth Annual Workshop of the Access to Knowledge for Development Center (A2K4D). Cairo, Egypt.

## **RESEARCH GRANT ACTIVITY**

2016. Tow Center for Digital Journalism, Columbia University. Grant for fieldwork in China and Hong Kong for a report on the role of chat apps in crisis journalism. \$13 000.

2015. Oscar M. Ruebhausen Fund, Yale Law School. Grant for data acquisition, research assistance, and conference organization for a research project on net neutrality and Internet activism. Value: \$24 000.



## Valerie Belair-Gagnon, Executive Director

### ARTICLES, ESSAYS, & BOOK CHAPTERS

Belair-Gagnon, V. 2016 - forthcoming. **Interaction and Training: Social Media at the BBC**, in Christine Greenhow, Julia Sonnevend and Colin Agur (eds.) *Social Media and Education: Toward a Digital Future*. Cambridge, MA: MIT Press.

Belair-Gagnon, V. and Agur, C. 2015. **#Verdict2014: Social Media and Changes in Indian Legacy Media During the 2014 Lok Sabha Election**, in Einar Thorsen and Chindu Sreedharan (eds.) *India Elections 2014: First Reflections*. Bournemouth, UK: Centre for the Study of Journalism, Culture and Community.

### REPORTS

Belair-Gagnon, V., Agur, C., and Frisch, N. 2016 - forthcoming. **Meeting in Digital Spaces: American News Organizations Using Chat Apps to Cover Political Unrest**. Tow Center for Digital Journalism, Columbia University.

Picard, R. G., Belair-Gagnon, V. and Ranchordas, S. 2016. **The Impact of Regulation on Not-For-Profit News Organizations**. Reuters Institute for the Study of Journalism, University of Oxford.

### BOOK REVIEW

Belair-Gagnon, V. 2015. **Journalism and Eyewitness Images: Digital Media, Participation, and Conflict** by Mette Mortensen, *Media, War & Conflict*, 8(3).

### CONFERENCE PRESENTATIONS

Belair-Gagnon, Valerie and Agur, Colin. 2016. **Social Media in News Coverage of the Umbrella Movement in Hong Kong**, IAMCR, Leicester, UK, August.

Belair-Gagnon, Valerie, Nielsen, Rasmus, Ananny, Carlson, Matt, Mike, Lewis, Seth, Crawford, Kate, and Fink, Kate. 2016. **Algorithm, Power, and Accountability in Journalism**, Journalism Studies Division, International Communication Association annual meeting, Fukuoka, Japan.

Belair-Gagnon, V., Agur, C. and Perri, P. 2016. **The Good, the Bad and the Ugly: A Roadmap to Mobile Technology and Digital Journalism** panel. International Journalism Festival, Perugia, Italy, April.



Frisch, N., Belair-Gagnon, V., and Agur, C. 2016. **China's Taming of the Hong Kong Media**. Media Capture: Technology, Economics, Policy, Columbia University's School of International and Public Affairs, New York, April.

Belair-Gagnon, V. 2015. **Comparative Global Censorship: Persisting Modes, Shifting Paradigms** panel. Global Congress on Intellectual Property and the Public Interest, Delhi, India, December.

Belair-Gagnon, V. 2015. **Civilian Drone Journalism Practices**. Online News Association annual conference, Los Angeles, September.

### INVITED TALKS

Belair-Gagnon, V., Agur, C., and Frisch, N. 2016. **American News Organizations Using Chat Apps to Cover Political Unrest: Concepts and Methods**. Tow Center for Digital Journalism, Columbia University, March.

Belair-Gagnon, V. 2016. **Re-imagining Norms and Practices in News Production: Social Media at BBC News**. School of Journalism and Mass Communication, University of Minnesota. Minneapolis, February.

Belair-Gagnon, V. 2016. **Re-imagining Norms and Practices in Global News Production: Social Media at BBC News**. Department of Communication. Georgia State University, Atlanta, February.

Belair-Gagnon, V. 2016. **Problematizing Google**. In: Geopolitics of the Internet seminar (Professor Shawn Powers), Department of Communication. Georgia State University, Atlanta, February.

Belair-Gagnon, V. 2015. **BBC's Approach to Social Media and User-Generated Content**. Media, Technology, and Culture course (Professor Josh Braun), University of Massachusetts—Amherst, November.

Belair-Gagnon, V. 2015. **Digital Explanatory Journalism: Opportunities and Challenges**. Concordia University Graduate Seminar, Montreal, September.

Belair-Gagnon, V. 2015. **BBC and the Re-Making of Crisis Reporting**. Concordia University and McGill University, Montreal, September.



## WEB ARTICLES

Belair-Gagnon, V. 2016. **Capturing Journalistic Practices and Norms in the Digital Age**, Tow Center for Digital Journalism, Columbia University. (co-written with Colin Agur)

Belair-Gagnon, V. 2016. **Studying Chat Apps Usage by American News Organizations**, Tow Center for Digital Journalism, Columbia University. (co-written with Nicholas Frisch and Colin Agur)

Belair-Gagnon, V. 2015. **The Multiple Faces of Witnessing**, Nieman Journalism Lab. (co-written with Taylor Owen)

Belair-Gagnon, V. 2015. **Social Media and the Transformation of News Production**, Culture Digitally.

## RESEARCH GRANTS & FUNDING

**2016: Principal Investigator, Columbia University Graduate School of Journalism, Tow Center for the Study of Digital Journalism, Spaces of Meeting: News Organizations Uses of Chat Apps during Political Unrest.** Conducted comprehensive review on journalistic practices and chat apps, including interviews with foreign correspondents in Baltimore and Hong Kong, for a report examining the role of chat apps in news organizations during political unrest. Designed a panel and a workshop focused on best practices for journalism and uses of new media technologies, with a focus on political unrest (Awarded \$13,275 with Nick Frisch and Colin Agur)

**2015: Columbia University Graduate School of Journalism, Tow Center for the Study of Digital Journalism, Project on the History of the US Reporters' Privilege.** Conducted review of the literature and history on the reporters' privilege in the US, and co-wrote a chapter in the book titled *Journalism After Snowden* (Awarded \$3,000 with David Schulz).



## Jonathan Manes – Abrams Clinical Fellow

### ARTICLES, ESSAYS, & BOOK CHAPTERS

Manes, J. 2016. **Online Service Providers and Surveillance Law Transparency**, 125 Yale Law Journal Forum 343.

### REPORTS

Media Freedom & Information Access Clinic, 2016. **Police Body Cam Footage: Just Another Public Record**. Abrams Institute for Freedom of Expression, Information Society Project, Yale Law School.

### AMICUS SUBMISSIONS

**Brief of Amicus Curiae Yale Law School Information Society Project and Affiliated Scholars of Intellectual Property and Free Expression Law, *Flo & Eddie Inc. v. Pandora Media, Inc.***, No. 15-55287 (9th Cir. Sept. 9, 2015) (co-authored with ISP Resident Fellow BJ Ard) (arguing that First Amendment limits foreclose certain interpretations of state copyright law)

**Brief of Amicus Curiae Abrams Institute for Freedom of Expression, *Animal Legal Defense Fund v. Otter*** (9th Circuit forthcoming) (arguing that First Amendment right to record is violated by Idaho “Ag-Gag” law that forbids unauthorized video of agricultural production facilities)

### ACTIVITIES RELATED TO MEDIA FREEDOM AND INFORMATION ACCESS CLINIC:

Significant victories and court decisions:

**Nicholas Merrill v. Loretta Lynch**, 2015 WL 9450650, \_\_ F. Supp. 3d \_\_ (S.D.N.Y. Aug. 28, 2015) (First Amendment challenge to gag order on National Security Letter recipient. The Court invalidated the gag order in full, the first time a court has done so.)

**SUK, Inc. v. Flushing Workers Center**, No. 155192/2013 (N.Y. Sup. Ct. N.Y. County 2016) (Obtained voluntary dismissal of defamation lawsuit that was filed against a group of car-service drivers by their former employer in retaliation for the workers’ public protests and advocacy against the employer’s practices.)



**Intellectual Property Watch v. United States Trade Representative**, 134 F. Supp. 3d 726 (S.D.N.Y. 2015) (FOIA lawsuit for access to information about negotiations over IP provisions of Trans-Pacific Partnership. Court has upheld withholding of draft texts, but cast doubt on secrecy of USTR communications with industry advisors)

**Human Rights Watch v. Federal Bureau of Prisons**, No. 13-cv-7360, 2015 WL 5459713 (S.D.N.Y. Sept. 16, 2015) (FOIA lawsuit for records about potentially abusive and discriminatory treatment of individuals in federal custody on terrorism-related charges. Court ordered disclosure of some information, and will conduct its own page-by-page review of other materials that may be improperly withheld)

**Guardian News & Media LLC, et al. v. Missouri Department of Corrections**, No. 14AC-CC0251 (Missouri Circuit Court 2016) (Obtained judgment requiring the State of Missouri to disclose information about the source and quality of the drugs it uses to conduct executions by lethal injection, as well as the qualifications of those involved in procuring, testing, and administering the drugs).

**Crawford v. New York City Department of Information Technology and Telecommunications**, 136 A.D.3d 591 (2016) (Appeal challenging sealing order in FOIL lawsuit seeking disclosure of information about NYC high speed internet infrastructure. Court upheld the sealing order.)

**Grabell v. New York Police Department**, 2016 WL 2636688 (N.Y. App. Div. 1st Dep't May 10, 2016) (FOIL lawsuit seeking disclosure of health, safety, and privacy-related information about NYPD's use of unmarked x-ray vans. Appellate Court upheld order requiring disclosure of health/safety information, but reversed trial court's order requiring disclosure of policies, procedures, cost information, and other material.)

New matters:

**Treatment Action Group v. Food and Drug Administration**, No. 15-cv-976 (D. Conn. filed June 25, 2015) (FOIA lawsuit seeking access to clinical trial data and related information about recently-approved Hepatitis C drugs Sovaldi and Harvoni)

**Crawford v. New York City Department of Information Technology and Telecommunications**, No. 15700/2015 (N.Y. Sup. Ct. N.Y. County filed July 10, 2015) (Second FOIL lawsuit on behalf of Prof. Susan Crawford seeking disclosure of information about NYC high speed internet infrastructure)



**Mattathias Schwartz v. Department of Defense**, No. 15-cv-7077 (E.D.NY. filed December 11, 2015) (FOIA lawsuit seeking information about how public access to the Guantanamo military commissions proceedings is censored)

**Motion to Intervene on behalf of Raymond Bonner, Husayn v. Gates**, No. 06-cv-1360 (D.D.C. filed April 2016) (motion to unseal and declassify court filings in habeas petition of Guantanamo detainee Abu Zubaydah, the most prominent victim of waterboarding and other CIA interrogation methods)

**ACLU Foreign Intelligence Surveillance Court FOIA** (filed May 2016) (FOIA request seeking to determine whether the government is regularly publishing decisions of the Foreign Intelligence Surveillance Court decisions, as required by the USA FREEDOM Act of 2015)

**Motion to Intervene on behalf of New York Times, Victor v. NYC Office of Trials and Hearings**, No. 100890/2015 (N.Y. Sup. Ct. N.Y. County) (lawsuit seeking to maintain public access to disciplinary hearings of prison guards conducted in New York City administrative tribunals)

## CONFERENCE PRESENTATIONS

Manes, J. 2016. **Once More Unto the Breach: The Law & Policy of Data Breaches**, American Association of Law School Annual Conference, New York, NY (moderator/discussant).

Manes, J. 2016. **Freedom of Expression Scholars Conference**, Abrams Institute for Freedom of Expression, Yale Law School (discussant and lead organizer).

Manes J. 2016. **Research in Big Data**, Unlocking the Black Box, Information Society Project, Yale Law School (moderator/discussant).

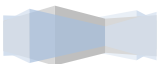
Manes, J. 2015. **Human Rights Enforcement**, Workshop on Human Rights and New Technologies, University of Connecticut, Storrs, CT (moderator/discussant).

## RESEARCH GRANTS & FUNDING

**2016: Arnold Foundation, Collaboration for Research Integrity and Transparency.** Worked as integral part of interdisciplinary team from the Yale Law School's Global Health Justice Partnership, Media Freedom and Information Access Clinic, Yale School of Medicine, and Yale School of Public Health to obtain significant funding for multi-year project to enhance the quality and



transparency of the research base for medical products. The funding will support five new positions: program director, staff attorney, two fellows, and program administrator. Certain activities of the MFIA clinic, including ongoing litigation against the Food and Drug Administration to open up access to clinical trial data, will come within scope of the new Collaboration.



## Caitlin Petre – ISP Resident Fellow

### BOOK REVIEW

Petre, C. Forthcoming. **Pax Technica: How the Internet of Things May Set Us Free or Lock Us Up** by Philip N. Howard. *Contemporary Sociology*.

### CONFERENCE PRESENTATIONS

Petre, C. and Keller, M. 2015. **Moving the Needle: What's Your Impact?** Online News Association Annual Conference, Los Angeles, September.

Petre, C. 2016. **Managed Metrics: Synergy Between Journalistic Expertise and Analytics in the U.S. News Industry.** American Sociological Association Media Sociology Preconference, Seattle, August.

### INVITED TALKS

Petre, C. and Pasquale, F. 2016. **Opening Remarks.** Yale ISP Unlocking the Black Box Conference, New Haven, April.

Petre, C. 2015. **The Traffic Factories: Metrics at Chartbeat, The New York Times, and Gawker Media.** Sciences Po New Practices in Journalism Conference, Paris, December.

Petre, C. 2015. **Managing Metrics: The Containment, Disclosure, and Sanctioning of Audience Data at the *New York Times*.** Annenberg School (UPenn) Media Industries and Public Policy Working Group, Philadelphia (via Skype), November.

Petre, C, Bowditch, S, Franz, J, and Scheld, T. 2015. **Metrics, Metrics Everywhere!** Fordham Future of Journalism Conference, NYC, November.

Petre, C and Havlak, H. 2015. **How Analytics Inform Newsrooms and the News.** Professional Journalists in NY Meet-Up Group, NYC, October.

Petre, C. and Mintz, D. 2015. **Seeing Inside Your Audience's Head: How Upworthy Cracked the Code on Which Meaningful Stories Actually Change Minds.** Techweek, NYC, October.



## Sofia Ranchordás – ISP Resident Fellow

### ARTICLES, ESSAYS, & BOOK CHAPTERS

Ranchordás, S. 2017 – forthcoming. **Citizen Narratives, Consultations and the Better Regulation Agenda**, (1) *European Journal of Legal Reform* (peer-reviewed journal)

Ranchordás, S. 2017 – forthcoming. **Digital Agoras**, (2) *Theory and Practice of Legislation* (peer-reviewed journal, special issue on crowdsourcing legislation)

Ranchordás, S. 2017 – forthcoming. **MHealth for Alzheimer's Disease: Regulation, Consent, and Privacy Concerns**, in Shlomit Yaninsky-Ravid (ed.), *Beyond IP: The Future Of Privacy* (New York, NY: Fordham University Press, 2017) (with Bonnie Kaplan)

Ranchordás, S. 2017 – forthcoming. **Regulation and Public Policy Implications of Sharing Economy**, in Pia Albinsson & B. Yasanthi Perera (eds.) *The Sharing Economy: Possibilities, Challenges, And The Way Forward* (New York, NY: Praeger Publishing)

Ranchordás, S. 2017- – forthcoming. **Constitutional Sunrise** in Richard Albert, Xenophon Contiades & Alkmene Fotiadou (eds), in *The Foundations and Traditions of Constitutional Amendment* (London: Hart (Bloomsbury), 2017)

Ranchordás, S. 2016 – forthcoming. **Sharing and the City**, *Vanderbilt Journal of Transnational Law* (with M. Finck).

Ranchordás, S. 2016. *Innovation Experimentalism in the Age of Sharing Economy*, 19 LEWIS & CLARK L. REV. (2016)

Ranchordás, S. 2016. *Snoozing Democracy: Sunset Clauses, De-juridification, and Emergencies* 25 MINN. J. INTL. L. (2016) (with Antonios Kouroutakis);

### REPORT

Picard, R. G., Belair-Gagnon, V. and Ranchordás, S. 2016. **The Impact of Regulation on Not-For-Profit News Organizations**. Reuters Institute for the Study of Journalism, University of Oxford.

### CONFERENCE PRESENTATIONS

Ranchordás, S. 2016. **The Sharing Economy and City Regulations**, ECPR Conference, Tilburg, The Netherlands, July.



Ranchordás, S. 2015. **How Laws Become Entrenched**. Loyola Constitutional Law Colloquium, Loyola Chicago Law School, Chicago, IL. November

Ranchordás, S. 2015. **The International Rule of Law Time After Time**. I-CON conference, NYU, July

## INVITED TALKS

Ranchordás, S. 2016. **Hearing: The Future of Digital Labor**, European Commission, Brussels, Belgium, May.

Ranchordás, S., 2016. **Law and the Sharing Economy**, Albany Law School, Albany, NY. April

Ranchordás, S., 2016. **Innovation vs Law: The Case of Uber**. International Section of the American Bar Association Meeting, New York City, April

Ranchordás, S., 2016. **Panel on the Sharing Economy**, Consumer Federation of America National Congress, Washington, D.C., March

Ranchordás, S., 2016. **“Does Quebec Need a Written Constitution?”**, Yale Comparative Constitutional Law Workshop, March

Ranchordás, S., 2016. **Innovation and Law: New Ideas**. CESP Ideas Lab, Brussels, Belgium, February

Ranchordás, S., 2016. **Panel Presentation "Competition for the market: Public restrictions and EU internal market law,"** Brussels School of Competition, Brussels, Belgium, February

Ranchordás, S., 2015. **The Platform Deal**. Hub Conference: Plug Into the Digital Future, Berlin, Germany, December

Ranchordás, S., 2015. **One Foot in the Door: How Laws Become Entrenched**, Faculty Workshop, Cornell Law School, Ithaca, NY. November

Ranchordás, S., 2015. **Sharing and the City**, Platform Cooperativism, The New School, November



Ranchordás, S., 2015. **Sharing Economy Panel**, AARP National Council, Washington, DC, October

Ranchordás, S., 2015. **Sharing Economy – Policy and Regulation**. Federal Trade Commission, June

Ranchordás, S., 2015. **mHealth: Beyond Privacy**. Workshop *The Future of Digital Privacy*, Yale Law School, June

## **ESSAYS**

Ranchordas, S. 2015. **Time, Timing, and Experimental Legislation**, 3 (2) Theory and Practice of Legislation 1 (2015) (editorial, special issue on temporary legislation)

Ranchordas, S. 2016 – forthcoming. **The Regulation of the Collaborative Economy**, IESE Insight (IESE Business School).

(in Dutch)

Ranchordas, S. 2016. **Regels voor de digitale economie oftewel Uber-regulering'** 2 Regelmaat [Rules for the digital economy or Uber-regulation]

Ranchordas, S. 2015. **Obamacare na Obama**, 3 Regelmaat 231 (2015) [Obamacare after Obama]



## Lauren Henry Scholz– Knight Law and Media Fellow

### ARTICLES, ESSAYS, & BOOK CHAPTERS

Scholz, Lauren Henry. 2017 - forthcoming. **Algorithmic Contracts and Algorithmic Accountability**. Stanford Technology Law Review.

Scholz, Lauren Henry. 2017 – forthcoming. **Comparing American and German Privacy Federalisms**. Jus Politicum.

Scholz, Lauren Henry. February 2016. **Privacy Claims and Institutional Legitimacy**. Cardozo Law Review.

Scholz, Lauren Henry. March 2016. **Privacy as Quasi-Property**. Iowa Law Review.

### CONFERENCE PRESENTATIONS

Scholz, Lauren Henry. October 2015. **Administering Privacy Claims**. Privacy Law Scholars Conference. University of Amsterdam.

Scholz, Lauren Henry. October 2015. **Comparing American and German Privacy Federalisms**. Federalism(s) and Fundamental Rights. Yale Law School.

Scholz, Lauren Henry. October 2015. **Administering Privacy Claims**. Mid-Atlantic Law & Society Conference. John Jay College of Criminal Justice.

Scholz, Lauren Henry. March 2016. **Algorithmic Contracts**. Internet Law Works-in-Progress. New York Law School.

Scholz, Lauren Henry. April 2016. **Algorithmic Contracts**. Unlocking the Black Box Conference. Yale Law School.

Scholz, Lauren Henry. May 2016. **Algorithmic Contracts**. Yale ISP and The Shalom Comparative Legal Research Institute.

### INVITED TALKS

Scholz, Lauren Henry. June 2016. **Engineering Humans with Contracts. Commenter**. George Washington Law School. Washington, DC.

Scholz, Lauren Henry. May 2016. **The Right to Be Forgotten in the United States. Commenter**. Freedom of Expression Conference. Yale Law School. New Haven, CT.



Scholz, Lauren Henry. May 2016. **Global Social Media and Privacy**. Symposium on International Relations on the Effect of Social Media on Elections and Civic Engagement. MacMillan Center for International and Area Studies at Yale University. New Haven, CT.

## WEB ARTICLES

Scholz, Lauren Henry. 2015. **Big Privacy Hits the Mainstream**, Nieman Journalism Lab.

## QUOTED IN

Kerry Flynn, May 2015. **Facebook And The First Amendment: Legal Challenges To Trending Controversy May Prove Difficult**, International Business Times.

Forthcoming Connecticut Magazine article on privacy





## **Priscilla (Cilla) Smith – Senior Research Scholar, Director, Program for the Study of Reproductive Justice**

Brief of Amicus Curiae Information Society Project, *A Woman's Friend Pregnancy Resource Center v. Harris*, No. 15-17517 (9<sup>th</sup> Cir. Feb. 24, 2016)

Brief of Amicus Curiae Information Society Project, *First Resort v. Herrera*, 15-15434 (9<sup>th</sup> Cir. Nov. 24, 2015)

Brief of Amicus Curiae Information Society Project, *NIFLA v. Harris*, No. 16-55249 (9<sup>th</sup> Cir. Apr. 21, 2016)

Brief of Amicus Curiae Information Society Project, *Whole Woman's Health v. Cole*, 15-274 (U.S. Jan. 4, 2016)

Testimony of Priscilla J. Smith as Sole Minority Witness, *Planned Parenthood Exposed: Examining the Horrific Abortion Practices at the Nation's Largest Abortion Provider*, U.S. House of Representatives Committee on the Judiciary, Washington, DC (Sept. 9, 2015), <http://www.c-span.org/video/?c4550327/planned-parenthood-hearing>

Moderator, *Clinic Closings: Abortion Goes to the Supreme Court Again*, Yale Law School, New Haven, CT (Oct. 2015)

Introduction, *Lecture by Irin Carmon*, MSNBC Journalist and former writer for Salon, speaking about her book *NOTORIOUS RBG*, Yale Law School, New Haven, CT (Nov. 2015).

Lecture, *A Reproductive Rights Constitutional Law Primer*, Yale Law School, New Haven, CT (Nov. 2015)

Presenter, *"What's at Stake in This Supreme Court Term?"* Center for American Progress, Washington, D.C. (Jan. 7, 2016).

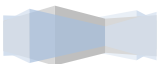
Moderator, *Living in the Crosshairs: A Discussion of Harassment of Abortion Providers in the United States, Why They Continue to Provide Care, and Possible Legal Responses*, Yale Law School, New Haven, CT (Feb. 2016)

Moderator, *Stigmas and Storytelling on Abortion and Sexuality: Does Telling it to the Judge Influence Courts*, Yale Law School, New Haven, CT (Apr. 2016)

Presenter, Judge Koppelman's Opinion, *What Obergefell Should Have Said*, Yale Law School, New Haven, CT (Apr. 2016)



Presenter, *What Remains of a Woman's Right to Choose?* New York Women's Bar Ass'n,  
New York, NY (May 2016)



# Conferences





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

*Payson R. Wolff Lectureship*  
*presents*

***Evolution And Revolution in  
Copyright: The Digital Music Wars***



**Tues., February 2  
at 12:00 pm  
Room 120,  
Yale Law School**

A panel discussion with leading experts:

**Wade Leak:** Sr. VP, Deputy General Counsel, Sony Music Entertainment

**Kevin Montler:** Director, Legal, Global Music at Google

**Jacqueline Charlesworth:** General Counsel and Associate Register of Copyrights, US Copyright Office

*Moderated by* **Kenneth J. Steinthal**, Partner, King & Spalding LLP

**YESLA**

**YALE ENTERTAINMENT AND  
SPORTS LAW ASSOCIATION**



# Evolution and Revolution in Copyright: The Digital Music Wars

February 2, 2016

This panel explored: Is it technology that is driving the seemingly endless legal controversies around music...or is it the historical complexity of the outdated U.S. music rights licensing system? What are the ins and outs of the rights issues confronting companies that want to bring music to the consumer? What are the most recent developments in this space, and what are the possibly seismic changes on the horizon in the music field?

Panelists:

Kenneth J. Steinthal, Partner, King & Spalding LLP

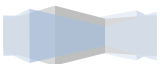
Wade Leak, Senior Vice President, Deputy General Counsel, Sony Music Entertainment

Kevin Montler, Director, Legal, Global Music at Google

Jacqueline Charlesworth, General Counsel and Associate Register of Copyrights, U.S. Copyright Office

Sponsored by the **PAYSON R WOLFF LECTURESHIP**

Organized by Sandra S. Baron



# PSRJ

*Program for the Study of Reproductive Justice*

**WEDNESDAY,  
March 9  
12:10 pm  
Room 122**



## **LIVING IN THE CROSSHAIRS:** A Discussion of Harassment of Abortion Providers in the United States, Why They Continue to Provide Care, and Possible Legal Responses

**Panelists:**

**Dr. Nancy Stanwood, MD, MPH, Yale School of Medicine**

**David S. Cohen, Professor of Law, Drexel University  
School of Law**

**Moderator:**

**Priscilla Smith, Director of the Program for the Study of  
Reproductive Justice at Yale Law School's Information Society  
Project**

Lunch and presentation followed by discussion



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



# ***Living in the Crosshairs: A Discussion of Harassment of Abortion Providers in the United States, Why They Continue to Provide Care, and Possible Legal Responses***

March 9, 2016

*Moderator:*

**Priscilla Smith** is an Associate Research Scholar in Law and Senior Fellow in the Information Society Project at Yale Law School, where she directs the Program for the Study of Reproductive Justice. Prior to joining Yale Law School, Smith was the U.S. Legal Program Director at the Center for Reproductive Rights. Smith argued *Gonzales v. Carhart*, 127 S. Ct. 1610 (2007), and *Ferguson v. City of Charleston*, 532 U.S. 67 (2001), and recently testified before Congress concerning threats of defunding Planned Parenthood.

*Panelists:*

**Dr. Nancy Stanwood, MD, MPH** is Associate Professor of Obstetrics and Gynecology and Section Chief of Family Planning at Yale School of Medicine. She is also the Associate Medical Director of Planned Parenthood of Southern New England, and Chair of the Board of *Physicians for Reproductive Health*. *Physicians* filed an amicus brief in *Whole Woman's Health*, sharing personal stories from several doctors and illustrating their many reasons for providing abortion care.

**David S. Cohen** is Professor of Law at Drexel University School of Law. His scholarship explores the intersection of constitutional law and gender, emphasizing sex segregation, masculinity, and violence against abortion providers. He also researches voting anomalies in the Supreme Court. Professor Cohen is co-author of *Living in the Crosshairs: The Untold Stories of Anti-Abortion Terrorism*, published by Oxford University Press in 2015. The book examines how abortion providers are

individually targeted by anti-abortion extremists and how law can better respond to this type of harassment.

Organized by Priscilla Smith







Information Society Project  
Yale Law School

PRESENTS:

# Unlocking the Black Box:

**The Promise and Limits  
of Algorithmic Accountability  
in the Professions**

Saturday, April 2, 2016  
8:30 am – 5:30 pm

32





# Unlocking the Black Box: The Promise and Limits of Algorithmic Accountability in the Professions

April 2, 2016

## Summary

The increasing power of big data and algorithmic decision-making—in commercial, government, and even non-profit contexts—has raised concerns among academics, activists, journalists and legal experts. Three characteristics of algorithmic ordering have made the problem particularly difficult to address: the data used may be inaccurate or inappropriate, algorithmic modeling may be biased or limited, and the uses of algorithms are still opaque in many critical sectors.

No single academic field can address all the new problems created by algorithmic decision-making. Collaboration among experts in different fields is starting to yield important responses. Researchers are going beyond the analysis of extant data, and joining coalitions of watchdogs, archivists, open data activists, and public interest attorneys, to assure a more balanced set of “raw materials” for analysis, synthesis, and critique. As an ongoing, intergenerational project, social science must commit to assuring the representativeness and relevance of what is documented—lest the most powerful “pull the strings” in comfortable obscurity, while scholars’ agendas are dictated by the information that, by happenstance or design, is readily available. What would similar directions for legal scholars and journalists look like? This conference will aim to answer that question, setting forth algorithmic accountability as a paradigm of what Kenneth Gergen has called “future-forming” research.

Algorithmic accountability calls for the development of a legal-academic community, developed inter-disciplinarily among theorists and empiricists, practitioners and scholars, journalists and activists. This conference will explore early achievements among those working for algorithmic accountability, and will help chart the future



development of an academic community devoted to accountability as a principle of research, investigation, and action.

**Co-sponsored by the Oscar M. Ruebhausen Fund , GHJP, Law and Tech Society and YJOLT.**

**Organized by Frank Pasquale, Caitlin Petre and Valerie Belair-Gagnon**

## **AGENDA:** UNLOCKING THE BLACK BOX

Twitter hashtag: #BlackBox

### **Friday, April 1**

**6:30-9:00 pm** Dinner for Panelists

### **Saturday, April 2**

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

Registration - Room 122

**9:00-9:15 am** Welcome: Why Unlocking the Black Box? – Dining Hall

**Frank Pasquale**, University of Maryland Carey School of Law

**Caitlin Petre**, Yale Law School Information Society Project

**9:15-10:30 am** Concurrent Sessions

### ***Journalism & News Production***

Panelists:



**Matt Carlson**, Saint Louis University – Automating Authority? Algorithmic Practices, Knowledge, and Journalistic Professionalism

**Rasmus Kleis Nielsen**, Oxford University – Dealing with Digital Intermediaries

**Brad Greenberg**, U.S. Copyright Office – Algorithmic Media Bias

Commentator: **Seth Lewis**, University of Minnesota/University of Oregon

### ***Health & Data***

Panelists:

**W. Nicholson Price II** and **Roger Ford**, University of New Hampshire School of Law – Privacy and Accountability in Black-Box Medicine

**Joseph Ross**, Yale School of Medicine – Advancing Open Science through the YODA (Yale Open Data Access) Project

**Thomas Marciniak** – Analyzing Drug Trials: Lessons from the FDA Trenches

**Deborah Zarin**, National Institute of Health (NIH) – Status Report on the Clinical Trial Reporting System

Commentator: **Amy Kapczynski**, Yale Law School

**10:30-10:45 am** Coffee – Room 122

**10:45-12:00 pm** Concurrent Sessions

### ***Politics & Power Room***

Panelists:



**Samuel Woolley**, University of Washington and **Philip N. Howard**, University of Washington – Campaign Bots and Law (paper coauthored with Ryan Calo and Lisa Manheim, University of Washington)

**David Karpf**, George Washington University – Making Peace with Political Microtargeting

**Margaret Hu**, Washington and Lee University School of Law – Big Data Constitution

Commentator: **Jack Balkin**, Yale Law School

### ***Uses & Practices Room***

Panelists:

**Bilyana Petkova**, European University Institute – Reining in the Big Promise of Big Data: Transparency, Inequality, and New Regulatory Frontiers (Paper co-authored with Philipp Hacker, Humboldt University)

**Joshua A. Kroll**, Princeton University and CloudFlare, Inc. – Accountable Algorithms (paper co-authored with Joanna Huey, Solon Barocas, Edward W. Felten, Joel R. Reidenberg, David G. Robinson, and Harlan Yu, Princeton University)

**Ahmed Ghappour**, UC Hastings College of the Law – Machine Generated Culpability

Commentator: **Tarleton Gillespie**, Microsoft Research

**12:00-1:30 pm** Lunch – Keynote address by **Jonathan Zittrain**, Harvard Law School

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



## ***Organizations, Finance & Innovation***

Panelists:

**Rory Van Loo**, Yale Law School – The Corporation as Courthouse

**Mikella Hurley**, Georgetown University Law Center, and **Julius Adebayo**, MIT – Credit Scoring in the Era of Big Data

**Lauren Scholz**, Yale Law School – Algorithmic Contracts

Commentator: **Frank Pasquale**, University of Maryland Carey School of Law

## ***Transparency & Accountability***

Panelists:

**Mike Ananny**, University of Southern California & **Kate Crawford**, Microsoft Research – Beyond the Black Box: The Failures of Algorithmic Transparency

**David Levine**, Princeton Center for Information Technology Policy – Confidentiality Creep and Dual Use Secrecy

**Taylor Owen**, The University of British Columbia – Kill Decisions: How Automated Violence Challenges Accountability in War

**Kate Fink**, Pace University – Algorithmic Transparency Under the Freedom of Information Act

Commentator: **C.W. Anderson**, CUNY – Staten Island

**2:45-3:00 pm** Coffee – Room 122

**3:00-4:15 pm** Concurrent Sessions





## ***Research in Big Data***

Panelists:

**Andrew Tutt**, U.S. Department of Justice – Proposal for a New Agency Regulating Algorithmic Safety

**Balázs Bodó**, University of Amsterdam – Putting the Canaries in the Data Mine: Some Suggestions for the Practical, Ethical and Legal Challenges of Researching the ‘Black Box’ (paper co-authored Natali Helberger and Judith Möller, University of Amsterdam)

**Karen Levy**, Data & Society Research Institute/ New York University – The Black Box as Prop: Surveillance, Performance, and the Destabilization of Authority

Commentator: **Jonathan Manes**, Associate Research Scholar in Law; Abrams Clinical Fellow, Information Society Project; and Clinical Lecturer in Law

## ***Discrimination & Data***

Panelists:

**Divya Musinipally**, Yale Law School – Regulating Predictive Policing Algorithms

**Ifeoma Ajunwa**, University of the District of Columbia School of Law and **Sorelle Friedler**, Haverford College – Predicting and Preventing Disparate Impact in Algorithmic Decisions (paper co-authored with Carlos Scheidegger, University of Arizona; and Suresh Venkatasubramanian, University of Utah)

**Michael Carl Tschantz**, International Computer Science Institute – Discrimination in Online Personalization: A Multidisciplinary Inquiry (paper co-authored with Amit Datta, Anupam Datta, Carnegie Mellon; Cynthia Dwork, Microsoft Research; and Deirdre Mulligan University of California, Berkeley)





Commentator: **Solon Barocas**, Princeton University

**4:15-4:30 pm** Coffee – Room 122

**4:30-5:30 pm** Keynote Panel – Room 127

Panelists:

**Ben Peters**, University of Tulsa – In Defense of Black Boxes: Toward a Critical Revision of the Concept

**Elena Esposito**, University of Modena-Reggio Emilia – Who is Accountable When Algorithms Decide?

Commentator: **Frank Pasquale**, University of Maryland Carey Law

**6:00-9:00 pm** Informal dinner for Panelists



## **Participants:**

### **Julius Adebayo (MIT)**

Julius Adebayo is a graduate student in computer science and technology policy at MIT. His research involves applying techniques from machine learning to problems and questions in policy. For his masters thesis, he is currently developing an open source toolbox for analysts and non-machine learning experts to audit black-box predictive models. Julius has a bachelors degree in engineering, and has previously worked as a quantitative analyst at New England complex systems institute, a complex systems think tank.

### **Ifeoma Ajunwa (University of the District of Columbia)**

Professor Ajunwa is an Assistant Professor of Law, hired to teach Contracts, Health Law, and Intellectual Property Law. Prior to joining the UDC faculty in Fall 2014, Professor Ajunwa was a Fellow at Columbia Law School and she was a Visiting Teaching Fellow at Case Western Reserve University School of Law. She completed her undergraduate education at UC Davis, where she was a McNair Scholar, and earned her law degree from the University of San Francisco, where she received the AAUW Selected Professions Fellowship and served as an editor with the *Intellectual Property Law Bulletin* and *the Journal of Law and Social Challenges*. She is a Ph.D. Candidate at Columbia University in the Sociology Department (concentration in Organizational Studies and Law and Society).

### **Mike Ananny (University of Southern California)**

Mike Ananny is an Assistant Professor at USC Annenberg, where he researches the public significance of systems for networked journalism. Specifically, he studies how institutional, social, technological, and normative forces both shape and reflect the design of the online press and a public right to hear. He is also a Faculty Associate with Harvard's Berkman Center for Internet & Society, holds a Ph.D. from Stanford University's Department of Communication (advised by Theodore Glasser), a Masters from the MIT Media Laboratory (Gesture & Narrative Language and



Tangible Media groups), and a Bachelors from the University of Toronto (double major in Computer Science and Human Biology).

### **C.W. Anderson (CUNY-State Island)**

C. W. Anderson is an Associate Professor at the College of Staten Island (CUNY). He is the author of *Rebuilding the News: Metropolitan Journalism in the Digital Age* (Temple University Press) and the forthcoming *Journalism: What Everyone Needs to Know* (Oxford University Press) (with Len Downie and Michael Schudson.) He has edited the forthcoming SAGE *Handbook of Digital Journalism* (with Tamara Witschge, David Domingo, and Alfred Hermida) and *Remaking the News* (with Pablo Boczkowski) (MIT Press). He is currently at work on a historical and ethnographic manuscript tentatively titled *Journalistic Cultures of Truth: Data in the Digital Age* (Oxford) which examines the relationship between material evidence, computational processes, and notions of “context” from 1910 until the present.

### **Jack Balkin (Yale University)**

Jack M. Balkin is Knight Professor of Constitutional Law and the First Amendment at Yale Law School and the founder and director of Yale's Information Society Project, an interdisciplinary center that studies law and new information technologies. He is also the director of the Knight Law and Media Program and the Abrams Institute for Free Expression at Yale. Professor Balkin received his Ph.D in philosophy from Cambridge University, and his A.B. and J.D. degrees from Harvard University.

### **Solon Barocas (Princeton University)**

Solon Barocas is a Postdoctoral Research Associate at the Center for Information Technology Policy at Princeton University. His research explores issues of fairness in machine learning, methods for bringing accountability to automated decisions, the privacy implications of inference, and the role that privacy plays in mitigating economic inequality. Solon completed his doctorate in the department of Media, Culture, and Communication at New York University, where he remains an affiliate of the Information Law Institute. He also works with the Data & Society Research



Institute and serves on the National Science Foundation-sponsored Council for Big Data, Ethics, and Society.

### **Valerie Belair-Gagnon (Yale University)**

Valerie Belair-Gagnon is Executive Director and Research Scholar at the Yale Information Society Project. Her first monograph, Social Media at BBC News: The Re-Making of Crisis Reporting, was published by Routledge in 2015. Previously she was a postdoctoral fellow and Knight Law and Media Program Director at the ISP. She earned a BA in sociology from McGill University, an MSc in sociology from Université de Montréal, and a PhD in sociology from City University London. Her areas of interest include: media sociology, social media, news production, global media, and media institutions.

### **Balázs Bodo (University of Amsterdam)**

Balázs Bodó, PhD (1975), is a socio-legal research scientist at the Institute for Information Law (IViR) at the University of Amsterdam. He is a two time Fulbright Scholar (Stanford University's Center for Internet and Society in 2006/7, Harvard University's Berkman Center for Internet and Society in 2012). In 2013-15 he was a Marie Curie Fellow at the Institute for Information Law (IViR) at the University of Amsterdam. Balázs is an internationally renowned expert in cultural black markets, piracy, and the digital underground. He has given lectures at top US universities (U. Penn, American University, Harvard), and he is regularly invited to talk at leading European academic and industry events. He is a regular contributor to scholarly and popular discussions on copyright, enforcement, piracy and digital freedoms.

### **Matt Carlson (Saint Louis University)**

Matt Carlson is Associate Professor of Communication at Saint Louis University where he teaches and researches in the area of media and journalism studies. His work examines public discourse about journalism, with an interest in the cultural construction of journalistic norms and practices. He is author of the forthcoming book *Journalistic Authority* (Columbia University Press), as well as *On the Condition*



of *Anonymity* (University of Illinois Press), editor of two volumes, and author of numerous journal articles and book chapters.

### **Kate Crawford (Microsoft Research)**

Kate Crawford is a Principal Researcher at Microsoft Research New York City, a Visiting Professor at MIT's Center for Civic Media, and a Senior Fellow at NYU's Information Law Institute. Her research addresses the social impacts of big data, and she's currently writing a new book on data and power with Yale University Press.

She is on the advisory boards of the Information Program at George Soros' Open Society Foundation, The New Museum's art and technology incubator NEW INC, and several academic journals including *Big Data and Society*. In 2013, she was a Rockefeller Foundation Bellagio fellow, where she worked on issues to do with big data, ethics and communities. She is also a member of the World Economic Forum's Global Agenda Council on Data for Development, and a co-director of the Council for Big Data, Ethics & Society. Apart from the academic stuff, Kate has also written for *The Atlantic*, *The New York Times* and *The New Inquiry*.

### **Elena Esposito (University of Modena-Reggio Emilia)**

Elena Esposito teaches Sociology of Communication at the University of Modena-Reggio Emilia (I). She works with the theory of social systems especially on issues related with the social management of time, including memory and forgetting, fashion and transience, probability calculus, fiction and the use the time in finance. Her current research projects focus on the possibility and forms of forgetting on the web, on a sociology of algorithms and on the proliferation of rankings and ratings for the management of information.

She published many works on the theory of social systems, media theory, memory theory and sociology of financial markets. Among them *The Future of Futures: The Time of Money in Financing and Society*, 2011; *Die Fiktion der wahrscheinlichen Realität*, 2007; *Die Verbindlichkeit des Vorübergehenden: Paradoxien der Mode*,



2004; *Soziales Vergessen: Formen und Medien des Gedächtnisses der Gesellschaft*, 2002.

### **Kate Fink (Pace University)**

Kate Fink is an Assistant Professor in the Department of Media, Communications, and Visual Arts at Pace University. In 2013-2014, Kate was a fellow at the Brown Institute for Media Innovation, based at Columbia University's Graduate School of Journalism, where she also earned her Ph.D. in Communications. Kate has also worked as a journalist at NPR station WDUQ in Pittsburgh and CBS radio affiliate WINA in Charlottesville, Virginia.

Kate's research interests include news reporting technologies, public records laws, media economics and journalism ethics. Her dissertation focused on how journalists used digital search tools to find and evaluate potential sources.

### **Roger Ford**

Roger Ford is Assistant Professor of Law at the University of New Hampshire School of Law and Faculty Fellow at the Franklin Pierce Center for Intellectual Property. He teaches and writes about intellectual property, information privacy, and other areas at the intersection of law and technology. His work studies how laws interact as complex systems, identifying structural flaws in those interactions and examining the effects of new technologies on them. Before coming to New Hampshire, he practiced IP and privacy law at Covington & Burling LLP, was a fellow at the University of Chicago and New York University, and served as a law clerk to Chief Judge Frank H. Easterbrook of the United States Court of Appeals for the Seventh Circuit. He received his law degree from Chicago and a bachelor of science in chemistry from MIT.

### **Sorelle Friedler (Haverford College)**

Sorelle Friedler is an Assistant Professor of Computer Science at Haverford College and a 2015-2016 Fellow at the Data & Society Research Institute for her work on



preventing discrimination in machine learning. Her current research projects include ensuring fair decisions under the legal disparate impact standard, exploring mathematical definitions of fairness, and developing methods for auditing black-box models. Before Haverford, Sorelle was a software engineer at Google, where she worked in the Google [x] lab and in search infrastructure. She holds a Ph.D. in computer science from the University of Maryland, College Park.

### **Ahmed Ghappour (UC Hastings)**

Professor Ahmed Ghappour joined UC Hastings College of the Law in 2014. He directs the Liberty, Security and Technology Clinic, where his casework addresses on constitutional issues that arise in espionage, counterterrorism, and computer hacking cases. Professor Ghappour's research focuses on the interplay between emerging technologies, law enforcement and national security—particularly in the context of the modern surveillance state and cybersecurity.

Before coming to UC Hastings, Professor Ghappour was at the University of Texas Law School, where he taught the National Security Clinic, the Civil Rights Clinic and directed the National Security Defense Project, an access to justice initiative that monitored national security and cybersecurity prosecutions in the United States. Prior to that, Professor Ghappour worked with Lt. Cmd. Charles Swift (*Hamdan v. Rumsfeld*), taking numerous national security cases to trial, and was a Staff Attorney at Reprieve UK, where he represented Guantanamo detainees in their habeas corpus proceedings. He began his legal career as a patent litigator at Orrick Herrington and Sutcliffe LLP. Formerly, Ghappour was a computer engineer focused on design automation, diagnostics, distributed systems architecture and high performance computing.

### **Tarleton Gillespie (Microsoft Research)**

Tarleton Gillespie is Principal Researcher at Microsoft Research New England and an Adjunct Associate Professor in the Department of Communication and the Department of Information Science at Cornell University. His book, *Wired Shut: Copyright and the Shape of Digital Culture*, was published by MIT Press in 2007. He



is the co-editor (with Pablo Boczkowski and Kirsten Foot) of *Media Technologies: Essays on Communication, Materiality, and Society* (MIT, 2014). He is also the co-founder of the blog Culture Digitally. His current work examines the sociological implications of social media platforms and algorithms; his next book (Yale University Press, forthcoming 2016) examines how the content guidelines imposed by social media platforms set the terms for what counts as 'appropriate,' and ask how this private governance of cultural values has broader implications for freedom of expression and the character of public discourse.

### **Brad Greenberg (Yale Law School ISP)**

Brad Greenberg is a scholar of intellectual property and information law. He writes primarily about laws that encourage, restrict, or regulate speech and technological development, with an emphasis on legal questions raised by new technologies; it at times draws on his previous career as a newspaper reporter. His recent publications include Rethinking Technology Neutrality, 100 Minn. L. Rev. (forthcoming 2016); DOMA's Ghost and Copyright Reversionary Interests, 108 Nw. U. L. Rev. 391 (2014); and The Federal Media Shield Folly, 91 Wash. U. L. Rev. 437 (2013). He is involved with the ISP in his personal capacity, and his scholarship does not reflect the views of his employer, the U.S. Copyright Office, nor address matters before it.

### **Philip N. Howard**

Philip N. Howard is a professor and writer. He has written numerous empirical research articles, published in a number of disciplines, on the use of digital media for social control in both democracies and authoritarian regimes. He holds faculty appointments at the University of Washington and Oxford University, and is a fellow at Columbia University's Tow Center for Digital Journalism. From 2013-15 he worked at Central European University in Budapest, where he helped found a new School of Public Policy and was Director of the Center for Media, Data and Society. He is the recipient of an ERC Consolidator award for his study of algorithms and public life. He investigates the impact of digital media on political life around the world, and he is a frequent commentator on global media and political affairs. His projects on social media bots, digital activism, global information access, and





political Islam have been supported by the European Research Council, National Science Foundation, US Institutes of Peace, and Intel's People and Practices Group. He has published eight books and over 100 academic articles, book chapters, conference papers, and commentary essays. His research spans several disciplines, and he is among a small number of scholars who have won awards from all three major academic associations for his work in political science, sociology, and communication. He is the author, most recently, of Pax Technica: How the Internet of Things May Set Us Free or Lock Us Up. His BA is in political science from Innis College at the University of Toronto, his MSc is in economics from the London School of Economics, and his PhD is in sociology from Northwestern University. He has held senior academic posts at Stanford, Princeton, and Columbia Universities. His website is [philhoward.org](http://philhoward.org), and he tweets from [@pnhoward](https://twitter.com/pnhoward).

### **Margaret Hu (Washington and Lee University)**

Margaret Hu is an Assistant Professor of Law at Washington and Lee University School of Law. Her research interests include the intersection of immigration policy, national security, cybersurveillance, and civil rights. She has published several works on dataveillance and cybersurveillance, including, *Biometric ID Cybersurveillance*; *Small Data Surveillance v. Big Data Cybersurveillance*; *Big Data Blacklisting*; and *Taxonomy of the Snowden Disclosures*. She is currently a member of the Advisory Board of the Future of Privacy Forum, a non-profit think tank in Washington, D.C., that promotes responsible data privacy policies; and a member of the Foreign Intelligence Surveillance Act Reform Project, a project of the ABA Standing Committee on National Security. Previously, she served as senior policy advisor for the White House Initiative on Asian Americans and Pacific Islanders, and also served as special policy counsel in the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice, in Washington, D.C. Professor Hu holds a B.A. from the University of Kansas and a J.D. from Duke Law School. She is a Truman Scholar and a Foreign Language Area Studies Scholar. She clerked for Judge Rosemary Barkett on U.S. Court of Appeals for the Eleventh Circuit, and subsequently joined the U.S. Department of Justice through the Attorney General's Honors Program.



### **Mikella Hurley (DC)**

Mikella Hurley is a Law Clerk to the Honorable Roy W. McLeese III at the D.C. Court of Appeals. Prior to her clerkship, Mikella served as a legal intern in the chambers of the Honorable James E. Boasberg at the U.S. District Court for the District of Columbia. Mikella obtained her J.D. from Georgetown University Law Center, where she graduated *magna cum laude*. She also holds a Masters in International Law from the Graduate Institute of International and Development Studies in Geneva. Prior to completing her legal training, Mikella worked in the field of international development, serving at UNICEF as well as at the GAVI Alliance in Geneva, Switzerland, where she managed programs aimed at ensuring the responsible use of funds by developing countries. She obtained her Bachelors from Macalester College.

### **Amy Kapczynski (Yale University)**

Amy Kapczynski is a Professor of Law at Yale Law School and faculty director of the Global Health Justice Partnership. Her areas of research including information policy, intellectual property law, international law, and global health.

### **Dave Karpf (George Washington University)**

David Karpf is an Assistant Professor in the School of Media and Public Affairs at George Washington University. His work focuses on strategic communication practices of political associations in America, with a particular interest in Internet-related strategies.

### **Joshua Kroll (Princeton University and CloudFlare, Inc.)**

Joshua A. Kroll is a Systems Engineer working on cryptography and Internet security at the web performance and security company CloudFlare. He is also an affiliate of the Center for Information Technology Policy at Princeton University, where he studies the relationship between computer systems and human governance of those systems, with a special focus on accountability. His previous work spans



cryptography, software security, formal methods, Bitcoin, and cybersecurity policy. He holds a PhD in Computer Science from Princeton University, where he received the National Science Foundation Graduate Research Fellowship in 2011.

### **David Levine (Elon University)**

David S. Levine is an Associate Professor of Law at Elon University School of Law and an Affiliate Scholar at the Center for Internet and Society at Stanford Law School (CIS). He is a 2014-2015 Visiting Research Collaborator at Princeton University's Center for Information Technology Policy (CITP). He is also the founder and host of Hearsay Culture on KZSU-FM (Stanford University), an information policy, intellectual property law and technology talk show for which he has recorded over 200 interviews since May 2006.

### **Karen Levy (Data & Society Institute/New York University)**

Karen Levy is a postdoctoral fellow at New York University School of Law's Information Law Institute, NYU's Department of Media, Culture, and Communication, and the Data and Society Research Institute. She researches how law and technology interact to regulate behavior, with emphasis on legal, organizational, and social aspects of surveillance and monitoring. In fall 2016, she will be joining the faculty of the Department of Information Science at Cornell University, and will be associated faculty at Cornell Law School.

### **Seth Lewis (University of Minnesota/University of Oregon)**

Seth C. Lewis is Associate Professor in the School of Journalism and Mass Communication at the University of Minnesota, Visiting Fellow with the Information Society Project at Yale Law School, and, in Fall 2016, will be the inaugural Shirley Papé Chair in Electronic and Emerging Media in the School of Journalism and Communication at the University of Oregon. His research explores the digital transformation of journalism, with a focus on conceptualizing human–technology interactions and media innovation processes in connection with data, code, analytics, social media, and related phenomena. He is co-editor of *Boundaries of*



*Journalism: Professionalism, Practices, and Participation* (Routledge, 2015), and editor of *Journalism in an Era of Big Data: Cases, Concepts, and Critiques* (Taylor & Francis, forthcoming). He is on the editorial boards of *New Media & Society*, *Social Media + Society*, and *Digital Journalism*, among other journals. He received his PhD from the School of Journalism at the University of Texas at Austin.

### **Jonathan Manes (Yale Law School)**

Jonathan Manes is a Research Scholar in Law; Abrams Clinical Fellow, Information Society Project; and Clinical Lecturer in Law at Yale Law School. Most recently, he served as a John J. Gibbons Fellow in Public Interest and Constitutional Law at Gibbons P.C. in Newark, New Jersey. He previously served as a legal fellow for the American Civil Liberties Union, National Security Project, and as a law clerk to the Honorable Morris J. Fish of the Supreme Court of Canada. He holds a J.D. from Yale Law School, where he was an Articles and Essays Editor for the Yale Law Journal. He also holds a B.A. in Biochemistry and Philosophy of Science from Columbia University and an M.Sc. in Philosophy of the Social Sciences from the London School of Economics.

### **Thomas Marciniak**

Dr. Marciniak was a Medical Team Leader and Clinical Reviewer for 13 years in the Cardiovascular and Renal Products Division of the FDA. At the FDA he performed more hands-on analyses of complete data from cardiovascular outcomes trials than any other reviewer. Overall he has forty years of experience in clinical research, epidemiology, and Federal regulation of medical products (at the FDA, NIH, and the Centers for Medicare and Medicaid Services) and a bibliography of more than 50 professional publications. His educational background is a board-certified internist trained at Northwestern University and the Mayo Clinic.

### **Divya Musinipally (Yale University)**

Divya Musinipally is a J.D. Candidate in the Class of 2016. She is interested in civil liberties, privacy, and criminal justice issues. During her 1L summer she worked at



the Electronic Frontier Foundation to challenge NSA mass data collection. At Yale, Divya works as a Student Director of the Media Freedom and Information Access clinic to litigate cases on law enforcement transparency. She is also an Articles Editor on the Yale Journal of Law and Technology, has litigated consumer protection cases in the San Francisco Affirmative Litigation Project clinic, and helps clients with housing and employment disputes in the New Haven Legal Assistance Criminal Reentry clinic. Prior to law school she worked as a paralegal at the Department of Justice Antitrust Division and as a Fellow at the American Constitution Society. She received her B.A. in Political Science and Rhetoric from UC Berkeley.

### **Rasmus Kleis Nielsen (University of Oxford)**

Rasmus Kleis Nielsen is Director of Research at the Reuters Institute for the Study of Journalism and serves as editor-in-chief of the *International Journal of Press/Politics*. His work focuses on changes in the news media, on political communication, and the role of digital technologies in both. He has done extensive research on journalism, American politics, and various forms of activism, and a significant amount of comparative work in Western Europe and beyond. Recent books include *The Changing Business of Journalism and its Implications for Democracy* (2010, edited with David Levy), *Ground Wars: Personalized Communication in Political Campaigns* (2012), and *Political Journalism in Transition: Western Europe in a Comparative Perspective* (2014, edited with Raymond Kuhn).

### **Taylor Owen (University of British Columbia)**

Taylor Owen is Assistant Professor of Digital Media and Global Affairs at the University of British Columbia, a Senior Fellow at the Columbia Journalism School and the founder and Editor of [OpenCanada.org](http://OpenCanada.org). He was previously the Research Director of the Tow Center for Digital Journalism at Columbia University where he designed and led a program studying the impact of digital technology on the practice of journalism, and has held research positions at Yale University, The London School of Economics and The International Peace Research Institute, Oslo where his work focuses on the intersection between information technology and international affairs. His Doctorate is from the University of Oxford where he



was a Trudeau Scholar. He has held Banting Postdoctoral and Action Canada Fellowships and currently serves on the Board of Directors of the Center for International Governance Innovation (CIGI). He is the author, most recently, of *Disruptive Power: The Crisis of the State in the Digital Age* (Oxford University Press, 2015) and the co-editor of *The World Won't Wait: Why Canada Needs to Rethink its Foreign Policies* (University of Toronto Press, 2015, with Roland Paris) and of the forthcoming *Journalism After Snowden* (Columbia University Press, 2016, with Emily Bell). His work can be found at [www.taylorowen.com](http://www.taylorowen.com) and @taylor\_owen.

### **Frank Pasquale (University of Maryland)**

Frank Pasquale's research addresses the challenges posed to information law by rapidly changing technology, particularly in the health care, internet, and finance industries. He is a member of the NSF-funded Council for Big Data, Ethics, and Society, and an Affiliate Fellow of Yale Law School's Information Society Project. He frequently presents on the ethical, legal, and social implications of information technology for attorneys, physicians, and other health professionals. His book *The Black Box Society: The Secret Algorithms that Control Money and Information* (Harvard University Press, 2015) develops a social theory of reputation, search, and finance.

### **Ben Peters (University of Tulsa)**

Ben Peters is an Assistant Professor in the Department of Communication at the University of Tulsa and an affiliated fellow at the Information Society Project at Yale Law School. During 2014-2015, he was a faculty associate at the Berkman Center for Internet and Society at Harvard University. He received his PhD in Communications from Columbia University, and has also served as a postdoctoral fellow at Hebrew University.

### **Bilyana Petkova (Max Weber Postdoctoral Fellow, Department of Law, European University Institute, Florence)**



Bilyana Petkova conducted her PhD project in International Relations at the University of Kent (Brussels campus) from 2009 until 2013, after which she did a MA degree in Studies of Law at the Yale Law School. While at Yale, she was a research assistant for the Global Constitutionalism Seminar and taught courses at the Yale Young Global Scholars summer program. In 2014-2015 she completed a postdoctoral fellowship at the Jean Monnet Center of New York University. At NYU she started to research data privacy as a case study of federalism in the United States and the European Union, focusing on the impact of regulatory experimentation and horizontal adaptation in the public and private sectors.

Her research at the European University Institute continues this project; the first results were presented at the 8th Annual Privacy Research Scholars Conference at Berkeley Law where her paper was in the top three that won a Young Scholars Award. In October 2015, she co-organized a conference on 'Federalism and Fundamental Rights: Europe and the United States Compared' at the Yale Law School, where she is currently affiliated as a Visiting Fellow of the Information Society Project.

### **Caitlin Petre (Yale University)**

Caitlin Petre is a postdoctoral associate and resident fellow at the Information Society Project at Yale Law School. Her research examines the social dimensions of analytics, with a focus on the production, interpretation, and use of metrics in the news industry. Her research report on the role of metrics in digital media, *The Traffic Factories*, was published by Columbia University's Tow Center for Digital Journalism, where she served as a research fellow. Her writing has appeared in *Newsweek*, *Newsday*, the *Albuquerque Journal*, and on the blog of Eli Pariser's bestselling book *The Filter Bubble*, which she helped research. She holds a Ph.D. and M.A. in Sociology from New York University and B.A. in philosophy from Wesleyan University.

### **W. Nicholson Price II (University of New Hampshire)**





W. Nicholson Price is an Assistant Professor at the University of New Hampshire School of Law, where he researches and teaches intellectual property, innovation policy, health law, and the life sciences. In his time as an academic fellow at the Petrie-Flom Center at Harvard University, Nicholson studied innovation in the pharmaceutical industry, personalized medicine, and the issues surrounding secondary findings in genomic research. His work has been published in *Science*, the *Harvard Journal of Law and Technology*, *Nature Biotechnology*, the *Boston College Law Review*, and the *Hastings Center Report*, among others.

### **Joseph Solomon Ross (Yale University)**

Joseph S. Ross, MD, MHS, is an Associate Professor of Medicine (General Medicine) and of Public Health (Health Policy and Management), a member of the Center for Outcomes Research and Evaluation at the Yale-New Haven Hospital, and an Assistant Director of the Robert Wood Johnson Foundation's Clinical Scholars program at Yale. He completed his undergraduate degrees in biological science: neuroscience and psychology at the University of Rochester and his medical degree at the Albert Einstein College of Medicine, Bronx, NY. After completing his post-graduate training in primary care internal medicine at Montefiore Medical Center in Bronx, NY, Dr. Ross was a fellow in the Robert Wood Johnson Foundation Clinical Scholars program at Yale University, earning a Master's degree in health sciences research. Using health services research methods, Dr. Ross's research focuses on examining factors which affect the use or delivery of recommended ambulatory care services for older adults and other vulnerable populations, evaluating the impact of state and federal policies on the delivery of appropriate and higher quality care, and issues related to pharmaceutical and medical device evidence development, postmarket surveillance, and practice adoption/de-adoption. In addition, he collaborates with a multi-disciplinary team of investigators under contract for the Centers for Medicare and Medicaid Services to develop statistical models that are used to measure and publicly report hospital and ambulatory care clinical outcomes using administrative data. Dr. Ross is currently an Associate Editor at JAMA Internal Medicine.

### **Lauren Henry Scholz (Yale University)**





Lauren Henry Scholz is a Postdoctoral Associate in Law and a Knight Law and Media Scholar, Information Society Project, at Yale Law School. She holds degrees from Yale College and from Harvard Law School, where she served as an editor of the *Journal of Law and Technology*, as a law clerk at the Berkman Center for Internet and Society, and as a teaching fellow for courses on copyright and online privacy.

### **Michael Carl Tschantz (International Computer Science Institute)**

Michael Carl Tschantz received an ScB from Brown University in 2005 and a PhD from Carnegie Mellon University in 2012, both in computer science. Before becoming a researcher at ICSI in 2014, he did two years of postdoctoral research at UC Berkeley. He uses the models of artificial intelligence and statistics to solve the problems of privacy and security. His interests also include experimental design, formal methods, and logics. His current research includes automating information flow experiments, circumventing censorship, and securing machine learning. His dissertation formalized and operationalized what it means to use information for a purpose.

### **Andrew Tutt (U.S. Department of Justice)**

Andrew Tutt is an Attorney-Adviser at the Office of Legal Counsel at U.S. Department of Justice, and was until recently a Visiting Fellow at the Yale Information Society Project. His research and writing focuses on the implications of emerging technology for the future of free expression. Andrew received his J.D. from Yale Law School where he served on the *Yale Law Journal*. He transferred to Yale from Columbia Law School where he was a Harlan Fiske Stone Scholar.

### **Rory Van Loo (Yale University)**

Rory Van Loo is a Resident Fellow at ISP and a Ph.D. in Law candidate at Yale. His research draws on commercial law, financial regulation, bankruptcy, and dispute resolution, with a focus on how regulatory and corporate institutional design intersect with consumer decision making.



### **Samuel Woolley (University of Washington)**

Samuel Woolley is a PhD candidate in the Department of Communication at the University of Washington. He is broadly interested in communication practices in the spheres of politics and technology, especially when examined in empirically informed interpretive contexts. His sub-interests are in tech and society, automation/AI, state interference in digital networks, internet governance, policy and digital activism. Sam is the project manager for several projects focused on the intersection of automation and politics: the Political Bots Project at the University of Washington, the Computational Propaganda Research Project at the Oxford Internet Institute, and COSEED at Pacific Social.

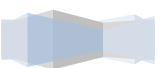
### **Deborah Zarin (NIH)**

Deborah A. Zarin, M.D. is the Director of ClinicalTrials.gov. In this capacity, she oversees the development and operation of an international registry and results reporting system for clinical trials, and the corresponding implementation of legal and other trial reporting policies. Dr. Zarin is also the Assistant Director for Clinical Research Projects at the National Library of Medicine Lister Hill National Center for Biomedical Communications. Dr. Zarin graduated from Stanford University and received her doctorate in medicine from Harvard Medical School. She completed a clinical decision making fellowship, a pediatric internship, and is board certified in general psychiatry, as well as in child and adolescent psychiatry.

### **Jonathan Zittrain (Harvard University)**

Jonathan Zittrain is the George Bemis Professor of International Law at Harvard Law School and the Harvard Kennedy School of Government, Professor of Computer Science at the Harvard School of Engineering and Applied Sciences, Vice Dean for Library and Information Resources at the Harvard Law School Library, and co-founder of the Berkman Center for Internet & Society. His research interests include battles for control of digital property and content, cryptography, electronic privacy, the roles of intermediaries within Internet architecture, human computing, and the useful and unobtrusive deployment of technology in education.





# WHAT OBERGEFELL

v.

# HODGES

SHOULD HAVE SAID

Friday, April 15, 2016

12:30 - 6:25 pm

Helen Alvare

Jack Balkin

William Eskridge

Katherine Franke

Robert George

Sherif Girgis

Linda Greenhouse

John Harrison

Andrew Koppelman

Doug NeJaime

Reva Siegel

Priscilla Smith

Jeremy Waldron



Oscar M. Ruebhausen Fund



Information Society Project  
Yale Law School



59



## What *Obergefell v. Hodges* Should Have Said

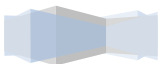
April 15, 2016

Legal scholars present their versions of how the U.S. Supreme Court should have written the *Obergefell* opinion, which held that the Constitution requires states to recognize same-sex marriage.

This conference is co-sponsored by the Program for the Study of Reproductive Justice, the American Constitution Society, and the Federalist Society; and is supported by a grant from the Oscar M. Ruebhausen Fund.

### SCHEDULE:

12:30pm-1:30pm	Lecture by William Eskridge on the history of same-sex marriage litigation  (Lunch will be served)
1:30pm-1:45pm	Break
1:45pm-2:00pm	Introduction: Jack Balkin
2:00pm-3:15pm	Panel One Jack Balkin, Sherif Girgis & Robert George (presented by Sherif Girgis), Andrew Koppelman (presented by Priscilla Smith)  Moderator: Linda Greenhouse
3:15pm-3:30pm	Break
3:30pm-4:50pm	Panel Two Jeremy Waldron, Reva Siegel & Doug NeJaime, Helen Alvare  Moderator: Jack Balkin
4:50pm-5:05pm	Break
5:05pm-6:25pm	Panel Three Katherine Franke, John Harrison, William Eskridge  Moderator: Reva Siegel







**Helen Avare**

**Professor of Law at George Mason University School of Law**

Helen Alvaré is a Professor of Law at George Mason University School of Law, where she teaches Family Law, Law and Religion, and Property Law. She publishes on matters concerning marriage, parenting, non-marital households, and the First Amendment religion clauses. She is faculty advisor to the law school's Civil Rights Law Journal, and the Latino/a Law Student Association, a consultant for the Pontifical Council of the Laity (Vatican City), an advisor to the U.S. Conference of Catholic Bishops (Washington, D.C.), founder of WomenSpeakforThemselves.com, and an ABC news consultant. She cooperates with the Permanent Observer Mission of the Holy See to the United Nations as a speaker and a delegate to various United Nations conferences concerning women and the family.



**Jack Balkin**

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

Jack M. Balkin is Knight Professor of Constitutional Law and the First Amendment at Yale Law School and the founder and director of Yale's Information Society Project, an interdisciplinary center that studies law and new information technologies, as well as the director of the Knight Law and Media Program and the Abrams Institute for Free Expression at Yale..





## **William Eskridge, Jr.**

### **John A. Garver Professor of Jurisprudence at Yale Law School**

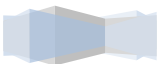
Professor William N. Eskridge, Jr. is the John A. Garver Professor of Jurisprudence at Yale Law School. His primary legal academic interest has been statutory interpretation. Together with Professor Philip Frickey, he developed an innovative casebook on Legislation. In 1990-95, Professor Eskridge represented a gay couple suing for recognition of their same-sex marriage. Since then, he has published a field-establishing casebook, three monographs, and dozens of law review articles articulating a legal and political framework for proper state treatment of sexual and gender minorities.



## **Katherine M. Franke**

Isidor and Seville Sulzbacher Professor of Law; Director, Center for Gender and Sexuality Law, Columbia Law School

Katherine Franke is the Isidor and Seville Sulzbacher Professor of Law at Columbia Law School, where she directs the Center for Gender and Sexuality Law. She was





awarded a 2011 Guggenheim Fellowship, and is among the nation's leading scholars in the area of feminism, sexuality and race. In addition to her scholarly writing on sexual harassment, gender equality, sexual rights, and racial history, she writes regularly for a more popular audience in the Gender and Sexuality Law Blog.



## **Robert George**

### **McCormick Professor of Jurisprudence, Princeton University**

Robert George is McCormick Professor of Jurisprudence at Princeton University, where he lectures on constitutional interpretation, civil liberties and philosophy of law and serves as director of the James Madison Program in American Ideals and Institutions. George is the Herbert W. Vaughan senior fellow of the Witherspoon Institute, a senior fellow at the Hoover Institution, and a Visiting Professor at Harvard Law School. Alongside stating his Princeton appointment and his Roman Catholicism, in 2009, David Kirkpatrick of the New York Times declared him to be the most influential of conservative Christian thinkers in America at that time.





## **Sherif Girgis**

### **JD candidate, Yale Law School**

Sherif Girgis was born in Cairo and grew up in Delaware. He majored in philosophy at Princeton, where he won several academic prizes, including the 2007 Dante Prize for the nation's best undergraduate essay on Dante. His senior thesis on sex ethics won the Princeton prizes for best thesis in ethics and best thesis in philosophy. Upon graduating Phi Beta Kappa and summa cum laude in 2008, he went on to earn a master's degree in moral, political and legal philosophy at Oxford as a Rhodes Scholar. He is now pursuing his Ph.D. in philosophy at Princeton and his JD at Yale Law School. His paper "What Is Marriage?", coauthored with Robert George and Ryan Anderson, was published in December and quickly became Social Science Research Network's most downloaded paper of the previous year.



## **Linda Greenhouse**

Knight Distinguished Journalist in Residence and Joseph M. Goldstein Senior Fellow, Yale Law School



Linda Greenhouse is the Knight Distinguished Journalist in Residence and Joseph Goldstein Lecturer in Law at Yale Law School. She covered the Supreme Court for The New York Times between 1978 and 2008 and writes a biweekly column on law.



## **John Harrison**

### **James Madison Distinguished Professor of Law; University of Virginia School of Law**

John C. Harrison joined the faculty in 1993 as an associate professor of law after a distinguished career with the U.S. Department of Justice. His teaching subjects include constitutional history, federal courts, remedies, corporations, civil procedure, legislation and property. In 2008 he was on leave from the Law School to serve as counselor on international law in the Office of the Legal Adviser at the U.S. Department of State. A 1977 graduate of the University of Virginia, Harrison earned his law degree in 1980 at Yale, where he served as editor of the Yale Law Journal and editor and articles editor of the Yale Studies in World Public Order.





## **Andrew Koppelman**

John Paul Stevens Professor of Law and Professor of Political Science at Northwestern University

Andrew Koppelman is John Paul Stevens Professor of Law and Professor of Political Science at Northwestern University. His scholarship focuses on issues at the intersection of law and political philosophy. His latest books are *The Tough Luck Constitution and the Assault on Health Care Reform* (Oxford University Press, 2013) and *Defending American Religious Neutrality* (Harvard University Press, 2013). He has also published more than 80 articles in books and scholarly journals. His article, *Bad News for Mail Robbers: The Obvious Constitutionality of Health Care Reform*, is the most viewed article in the history of the Yale Law Journal Online (over 100,000 hits in the first month of posting). He is also an occasional contributor to the Balkinization blog.





## **Douglas NeJaime**

### **Professor of Law at UCLA School of Law**

Douglas NeJaime is Professor of Law at UCLA School of Law and Faculty Director of the Williams Institute. He teaches in the areas of family law, law and sexuality, constitutional law, and legal ethics.

NeJaime has provided commentary on issues relating to sexual orientation and same-sex marriage to numerous press outlets, including the New York Times, Los Angeles Times, NPR, and NBC News.



## **Reva Siegel**

### **Nicholas deB. Katzenbach Professor of Law, Yale Law School**

Professor Reva Siegel is the Nicholas deB. Katzenbach Professor of Law at Yale Law School. Professor Siegel's writing draws on legal history to explore questions of law and inequality and to analyze how courts interact with representative government and popular movements in interpreting the Constitution





## **Jeremy Waldron**

### **University Professor at New York University School of Law**

Jeremy Waldron teaches legal and political philosophy at NYU School of Law. Until recently, he was also Chichele Professor of Social and Political Theory at Oxford University (All Souls College). A prolific scholar, Waldron has written extensively on jurisprudence and political theory, including numerous books and articles on theories of rights, constitutionalism, the rule of law, democracy, property, torture, security, homelessness, and the philosophy of international law.





# **Freedom of Expression Scholars Conference 4 (FESC4)**

**April 30 – May 1, 2016**

The Information Society Project at Yale Law School hosted the third Freedom of Expression Scholars Conference (FESC) at Yale Law School on April 30 – May 1, 2016. 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 fourth 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.

Because the format of the conference depends on active participation, the expectation is that audience participants will read the papers in advance of the sessions they plan to join.

### **Saturday, April 30, 2016**

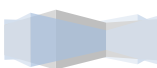
*Registration - Room 122*

*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)*

Author	Paper Title	Discussant	Room
Sonja West	The Press Clause and Speaker Discrimination	Samantha Barbas	128
Kiel Brennan-Marquez and Daniel Susser	The Big Chill	Paul Smith	120



Caroline Corbin	Government Employee Speech vs. Government Employee Religion: A Comparison	Tabatha Abu El-Haj	121
Heather M. Whitney & Robert Mark Simpson	Search Engines and Free Speech Coverage	Heidi Kitrosser	112

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

<b>Author</b>	<b>Paper Title</b>	<b>Discussant</b>	<b>Room</b>
Margot Kaminski	Privacy and the Right to Record	Andrea Matwyshyn	128
Brian Hutler	Hate Speech, Political Conversations, and Citizenship	Maggie McKinley	112
Mesenbet Assefa Tadege	Contemporary Challenges to Free Speech in Illiberal Polities: the Case of Ethiopia and Thailand.	Thomas Healy	121
Claudia Haupt	Unprofessional Advice	Rod Smolla	120

73

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

*1:30 pm - 3:00 pm — Third Session (Plenary Panel) – First Amendment Theory and Coverage*

<b>Author</b>	<b>Paper Title</b>	<b>Moderator</b>	<b>Room</b>
Jane Bambauer, Derek Bambauer	Information Libertarianism	Ash Bhagwat	127
Leslie Kendrick	Use Your Words		
Amanda Shanor	At the Boundaries of Free Speech: A Theory of First Amendment Coverage		
Morgan Weiland	Autonomy Extremism and the Digital Free Speech Crisis		

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

<b>Author</b>	<b>Paper Title</b>	<b>Discussant</b>	<b>Room</b>
Lyrissa Lidsky & Rachael Jones	Reclaiming the Fourth Estate	RonNell Anderson Jones	120

James Weinstein	Hate Speech Bans, Democracy, and Political Legitimacy	Clarissa Piterman Gross	112
Rebecca Tushnet	The First Amendment Walks Into a Bar: Trademark Registration and Free Speech	Deven Desai	128
Rod Smolla	Professional Speech	Claudia Haupt	121

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

Amy Gajda	The Right to be Forgotten in the United States	Lauren Scholz	128
Brian Soucek	Artistic Exemptions	BJ Ard	120
Enrique Armijo	<i>Town of Gilbert: Relax Everybody</i>	Derek Bambauer	121

**Sunday, May 1, 2016**

*8:30 am - 9:00 am — Breakfast*

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



Author	Paper Title	Discussant	Room
Alexander Tsesis	Terrorist Speech on Social Media	Thomas Crocker	128
Helen Norton	Truth and Lies in the Workplace: Employer Speech and the First Amendment	Kerry Monroe	121
Urja Mittal	The Supreme Board of Sign Review: <i>Reed</i> and its Aftermath	Enrique Armijo	120

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

David Pozen	Freedom of Information Beyond the Freedom of Information Act	Jonathan Manes	128
David Post & Annemarie Bridy	Sex Offenders, Anonymous Internet Speech, and the Constitution	Jonathan Hafetz	120
Chris Fei Shen	Asian Values and Internet Freedom	Jacob Rogers	121

*12:15 pm - 2:00 pm — Eighth Session (Lunchtime Plenary Panel) – Speech Regulation by Internet Intermediaries*



Author	Paper Title	Moderator	Room
Molly Land	Human Rights and Private Governance of the Internet	Jack Balkin	127
Kate Klonick	From Constitution to Click-Worker-The Creation, Policy, and Process of Online Content Moderation		
Emma Llanso & Rita Cant	"Internet Referral Units": Co-Option of Private Content Moderation Systems for Extralegal Government Censorship		

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

Author	Paper Title	Discussant	Room
Hannah Bloch-Wehba	A First Amendment Right of Access to Electronic Surveillance Orders	Andrew Selbst	121
Andrew Tutt	Choosing Between Approaches to First Amendment Interpretation	Vince Blasi	128
Victoria	Freedom of the Press and Encryption	David Thaw	120



Baranetsky			
------------	--	--	--



## FESC 4 Participants

<b>Floyd Abrams</b>	Partner, Cahill Gordon & Reindel LLP
<b>Tabatha Abu El-Haj</b>	Associate Professor of Law, Drexel University Thomas R. Kline School of Law
<b>BJ Ard</b>	PhD Candidate and ISP Resident Fellow, Yale Law School
<b>Enrique Armijo</b>	Associate Professor of Law, Elon University School of Law
<b>Jane Bambauer</b>	Associate Professor of Law, University of Arizona College of Law
<b>Derek Bambauer</b>	Professor of Law, University of Arizona College of Law
<b>Victoria Baranetsky</b>	Digital Rights Counsel, Freedom of the Press Foundation





<b>Samantha Barbas</b>	Associate Professor of Law, University at Buffalo School of Law
<b>Sandra Baron</b>	Senior Fellow, Yale Law School
<b>Christopher Beall</b>	Partner, Levine Sullivan Koch & Schulz, LLP
<b>Ashutosh Bhagwat</b>	Martin Luther King, Jr. Professor of Law, UC Davis School of Law
<b>Vincent Blasi</b>	Corliss Lamont Professor of Civil Liberties, Columbia Law School
<b>Marc Blitz</b>	Alan Joseph Bennett Professor of Law, Oklahoma City University School of Law
<b>Hannah Bloch-Wehba</b>	Stanton Foundation National Security Fellow, Reporters Committee for Freedom of the Press
<b>Kiel Brennan-Marquez</b>	Postdoctoral Research Fellow, New York University School of Law



<b>Annemarie Bridy</b>	Professor of Law, University of Idaho College of Law
<b>Rita Cant</b>	Free Expression Legal Fellow, Center for Democracy and Technology
<b>Ge Chen</b>	Research Associate, Mercator Institute for China Studies
<b>Caroline Mala Corbin</b>	Professor of Law, University of Miami School of Law
<b>Robert Mark Corn-Revere</b>	Partner, Davis Wright Tremaine LLP
<b>Thomas Crocker</b>	Distinguished Professor of Law, University of South Carolina School of Law
<b>Steve Crown</b>	Vice President and Deputy General Counsel, Microsoft
<b>Deven Desai</b>	Associate Professor, Georgia Tech Scheller College of Business



<b>Jonathan Donnellan</b>	Vice President and Deputy General Counsel, Hearst
<b>Amy Gajda</b>	Professor of Law, Tulate University Law School
<b>Clarissa Piterman Gross</b>	Fox International Fellow, Yale University
<b>Jonathan Hafetz</b>	Associate Professor of Law, Seton Hall University School of Law
<b>Claudia Haupt</b>	Postdoctoral Researcher, Columbia Law School
<b>Thomas Healy</b>	Professor of Law, Seton Hall University School of Law
<b>Brian Hutler</b>	PhD Candidate, University of California at Los Angeles
<b>Rachael Jones</b>	Law Student, University of Florida Levin College of Law



<b>RonNell Anderson Jones</b>	Professor of Law, Brigham Young University Law School
<b>Margot Kaminski</b>	Assistant Professor of Law, The Ohio State University Moritz College of Law
<b>Leslie Kendrick</b>	Albert Clark Tate, Jr., Professor of Law, University of Virginia School of Law
<b>Heidi Kitrosser</b>	Professor of Law, University of Minnesota Law School
<b>Kate Klonick</b>	PhD Candidate and ISP Resident Fellow, Yale Law School
<b>Craig Konnoth</b>	Sharswood Fellow, University of Pennsylvania Law School
<b>Joel Kurtzberg</b>	Partner, Cahill Gordon & Reindel LLP
<b>Molly Land</b>	Professor of Law, University of Connecticut



<b>Lyrisa Lidsky</b>	Stephen C. O'Connell Professor of Law, University of Florida Levin College of Law
<b>Emma Llanso</b>	Director, Free Expression Project, Center for Democracy and Technology
<b>Jonathan Manes</b>	Abrams Clinical Fellow, Yale Law School
<b>Andrea Matwyshyn</b>	Professor of Law, Northeastern University School of Law
<b>David McCraw</b>	Assistant General Counsel, New York Times
<b>Maggie McKinley</b>	Climenko Fellow, Harvard Law School
<b>Ashley Messenger</b>	Senior Associate General Counsel, National Public Radio
<b>Urja Mittal</b>	Law Student, Yale Law School



<b>Kerry Monroe</b>	PhD Candidate and ISP Resident Fellow, Yale Law School
<b>Helen Norton</b>	Professor of Law, University of Colorado School of Law
<b>Lynn Oberlander</b>	General Counsel, Media Operations, First Look Media
<b>David Post</b>	Fellow / Adjunct Scholar, Center for Democracy and Technology / Cato Institute
<b>David Pozen</b>	Associate Professor of Law, Columbia Law School
<b>Jacob Rogers</b>	Legal Counsel, Wikimedia Foundation
<b>Lee Rowland</b>	Senior Staff Attorney, American Civil Liberties Union
<b>Lauren Scholz</b>	ISP Resident Fellow, Yale Law School



<b>Andrew Selbst</b>	Scholar in Residence, Electronic Privacy Information Center
<b>Amy Semet</b>	Postdoctoral Research Associate, Princeton University
<b>Amanda Shanor</b>	PhD Candidate and ISP Resident Fellow, Yale Law School
<b>Chris' Fei Shen</b>	Associate Professor of Media and Communication, City University of Hong Kong
<b>Robert Mark Simpson</b>	Lecturer in Philosophy, Monash University
<b>Chuck Sims</b>	Partner, Proskauer Rose LLP
<b>Scott Skinner-Thompson</b>	Acting Assistant Professor of Lawyering, New York University School of Law
<b>Paul M. Smith</b>	Partner, Jenner & Block LLP



<b>Rod Smolla</b>	Dean and Professor of Law, Delaware Law School
<b>Brian Soucek</b>	Acting Professor of Law, UC Davis School of Law
<b>Daniel Susser</b>	Assistant Professor of Philosophy, San Jose State University
<b>Mesenbet Assefa Tadeq</b>	PhD Candidate and Fellow, Irish Center for Human Rights, National University of Ireland, Galway
<b>David Thaw</b>	Assistant Professor of Law and Information Sciences, University of Pittsburgh School of Law
<b>Alexander Tsesis</b>	Professor of Law and Raymond and Mary Simon Chair in Constitutional Law, Loyola University Chicago School of Law
<b>Rebecca Tushnet</b>	Professor of Law, Georgetown University Law Center
<b>Andrew Tutt</b>	Attorney Advisor, U.S. Department of Justice





<b>Morgan N. Weiland</b>	PhD Candidate, Stanford University
<b>James Weinstein</b>	Amelia Lewis Professor of Constitutional Law, Arizona State University Sandra Day O'Connor College of Law
<b>Sonja West</b>	Associate Professor of Law, University of Georgia School of Law
<b>Heather M. Whitney</b>	Bigelow Teaching Fellow, University of Chicago Law School
<b>Elana Zeide</b>	Microsoft Research Fellow, New York University 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.

Colin Agur is the Bartlett Fellow for 2015-2016.

### EVENTS:

June 9, 2015

#### **A2K4D Annual Workshop - Cairo, Egypt**

American University in Cairo, Tahrir Campus

The Access to Knowledge for Development Center (A2K4D) at The American University in Cairo School of Business is hosting 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 will consist 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.



The one day workshop will bring together A2K4D's different networks and stakeholders from across several countries. The workshop seeks to increase the visibility of the collaborative efforts between: the Information Society Project (ISP), **Harvard's Berkman Center for Internet and Society**, members of the **Access to Knowledge Global Academy**, Innova Tunisia, **Arab Policy Institute (API)** and Canada's **International Development Research Center (IDRC)**.

December 15, 2015 - December 17, 2015

### **Gathering of the A2K Global Academy at the Fourth Global Congress on Intellectual Property and the Public Interest in Delhi, India**

A gathering of the Access to Knowledge (A2K) Global Academy will take place in Delhi, India. The A2K Global Academy is a network of academic centers dedicated to research, education, and policy analysis promoting access to knowledge. This gathering will discuss the most pressing issues in censorship and what are the things that users can do to limit the effects of censorship. Participants include: Professor Nagla Rizk, Professor of Economics and founding director of the Access to Knowledge for Development Center at the American University in Cairo; Stefanie Felsberger, Senior Researcher at A2K4; Professor Dr. Hong Xue is Director of Beijing Normal University Institute for Internet Policy & Law (IIPL), Co-Director of UNCITRAL-BNU Joint Certificate Program on International E-Commerce Law; Dr Colin Agur, Bartlett Fellow at the Yale Information Society Project; Pranesh Prakash, Policy Director of the Centre for Internet and Society; and Valerie Belair-Gagnon, executive director and research scholar at the Yale Information Society Project.

#### **BOOK:**

Access to Knowledge Research, **Global Censorship, Shifting Modes, Persisting Paradigms**, edited by Pranesh Prakash, Nagla Rizk, Carlos Affonso Souza





## 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.
- The Knight Law and Media Program is open to all Yale Law School students. The program includes courses related to law and media; writing workshops; speakers, conferences and events; and career counseling and support for summer internships. The Program's director is Professor Jack Balkin.
- The Law School received a grant from John S. and James L. Knight Foundation to support the Knight Law and Media Program. In addition, the Knight grant enables the Law School to bring working journalists to the Law School for training programs and conferences.

### **Speaker Series**

#### **October 27, 2015**

Catherine Ross, Professor of Law, George Washington University, "Lessons in Liberty: how school and courts diminish democracy"

#### **February 24, 2014**

Michel Schudson, Professor of Journalism, Columbia University, "The Rise of the Right to Know: Expectations of Openness in an Age of Secrets"



**March 24, 2016**

FOIA Bootcamp 2016, David McCraw, VP & Assistant General Counsel at The New York Times; & Raffi Khatchadourian, Staff Writer at The New Yorker

**Poynter Fellows:**

**September 30, 2015**

Nonny de la Pena, journalist, “Embodied Digital Rhetoric: Using gaming platforms for news and nonfiction”

**February 16, 2016**

Joan Biskupic, editor-in-charge for Legal Affairs at Reuters News, “The Roberts Supreme Court and the Division that Define It”



# LAW & TECHNOLOGY

## Law & Tech Speaker Series

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

### **September 15, 2015**

Neil Richards, Professor of Law, Washington University, “Intellectual Privacy: Rethinking Civil Liberties in the Digital Age”

### **October 6, 2015**

Laura Heymann, Professor of Law, William & Mary Law School “Dialogues of Authenticity”

### **November 4, 2015**

Rebecca Tushnet, Professor of Law, Georgetown University “Creating a Public Interest Trademark Bar”

### **November 10, 2015**

Cindy Cohn, Executive Director, Electronic Frontier Foundation, “The Fourth Amendment and the NSA’s Access to the Internet Backbone”

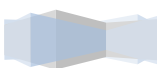
### **December 1, 2015**

Vern Norviel, partner, Wilson Sonsini Goodrich & Rosat, “Secure your Startup: How to Acquire and Protect IP”

### **January 20, 2016**

Tina Piper, Associate Professor, McGill University, “How War Creates Commons”

### **January 26, 2016**



Tarleton Gillespie, Principal Researcher, Microsoft Research, “Censorship at scale: how social media platforms moderate public discourse”

**March 1, 2016**

Alain Pottage, Professor of Law, London School of Economics, “Property as participation”

**March 30, 2016**

Gina Neff, Associate Professor, University of Washington, “The Social Lives of Personal Data”

**April 12, 2016**

Mignon L. Clyburn, Commissioner, FCC, “Discussion”

**April 19, 2016**

Molly Sauter, PhD Student, McGill University, “Disruption as Radical Nostalgia”

**April 26, 2012**

Ben Kreimer, journalism technologist, BuzzFeed “New Tools and New Perspectives: Drones, Virtual Reality and Sensors”

**Panels**

**Conferences**

**April 30 – May 1, 2016**

Freedom of Expression Scholars Conference 4





# “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 (2015-2016), informal guest speakers led animated discourse on wide range of subjects, including:

**Laura Denardis**, Book talk

**Susannah W. Pollvogt**, Cupcake wars

**David Keyes**, Executive Director of Advancing Human Rights

**David Westin**, Principal of Witherbee Holdings, LLC

**Ramesh Subramanian** on cryptocurrenciese

**Lea Shaver**, Associat Professor Law at Indiana University Robert H. McKinney School of Law

**Shlomit Yanisky-Ravid**, senior Professor of Law, Ono Academic Law School, OAC, Israel

**Anupam Chander**, Director of the California International Law Center at UC Davis

**Zhou Zhou**, Legal Counsel. Wikimedia Foundation

**Steven Wilf**, Intellectual Property Outlander in Late 19<sup>th</sup> Century America

**Hernandez Stroud**, PSRJ Resident Fellow

**Gerardo Con Diaz**, ISP Visiting Fellow

**David Karpf**, Assistant Professor of Media and Public Affairs, George Washington University

**Zackary Kaufman**, research projects involving legal and policy considerations of mass atrocities

**Chris Ali**, Assistant Professor in the Department of Media Studies, University of Virgininal



**Amy Kapczynski**, Professor of Law, Yale Law School, Patent and Eminent Domain  
Drug Pricing

**Berin Szoka**, FBI v Apple: Who Will, Should Win in Court, Congress?

**Robert Haverly**, Albany Law School, We, Cyborg

**Philip N. Howard**, professor and writer at the University of Washington

**Frank Pasquale**, Humane Automation: The Future Logic of Professionalism



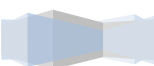


## FAIA: Foreign Affairs in the Internet Age

**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:**

### **October 13, 2015**

Aynne Koskas, Assistant Professor, University of Virginia, “At the Crossroads between Cybersecurity and Trade Policy: Sino-US Digital Entertainment Collaboration”

### **October 19, 2015**

Gerson Zweifach, Chief Compliance Officer, *20<sup>th</sup> Century Fox* “Leaks and Hacks”

### **November 3, 2015**

James Baker, General Counsel, FBI, “Going Dark: Encryption’s Challenges and Implications”

### **November 17, 2015**

Eric Freedman, Director of the Knight Center for Environmental Journalism, Michigan State University, “Suppressing Cyber-dissent and the Limits of Human Rights Activism”

### **February 29, 2016**

Nuala O’Connor, President & CEO, Center for Democracy and Technology, “Wither the Internet? Individual Liberty, Community and Surveillance”

### **March 23, 2016**

Monroe Price, Director, Annenberg School for Communication, University of Pennsylvania, “Free Expression, Global and the New Strategic Communication”





## 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.

### **Abrams Institute Activities 2015-2016**

#### **CONFERENCES, WORKSHOPS AND PANELS**

##### **October 17, 2015 – Right of Publicity Workshop**

A closed workshop brought together practitioners and academics working on questions regarding the right of publicity and the First Amendment. The following topics were addressed: Current state of right of publicity law; Introduction to the current relationship of right of publicity to copyright, trademark and privacy principles; First Amendment theories relevant to thinking about right of publicity; The nature of the “right”; How is the “right” to be reconciled with the First Amendment?; Relationship to Copyright law; Relationship to Trademark law; Practical issues.

Participants included: Floyd Abrams, Rebecca Tushnet, Jennifer Rothman, Mark Lemley, Jack M. Balkin, Bruce Keller, Stacey Dogan, Lee Levine



November 2, 2015 – **Abrams Institute First Amendment Salon: *Reed v. Gilbert & the Future of First Amendment Law***

Dialogue featuring Floyd Abrams & Dean Robert Post on the topic of *Reed v. Gilbert and the Future of First Amendment Law*. The discussion was moderated by Linda Greenhouse, Knight Distinguished Journalist in Residence & Joseph Goldstein Lecturer in Law at Yale, will guide their discussion. The event took place at Yale Law School, and was streamed to remote locations in New York and Washington, D.C. The discussion addressed the significance of the Supreme Court's recent ruling in *Reed v. Town of Gilbert* (2015).

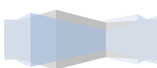
March 24, 2016 – **FOIA Bootcamp 2016:**

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

This years' speakers were David McCraw, VP & Assistant General Counsel at The New York Times, and Raffi Khatchadourian, Staff Writer at The New Yorker.

David McCraw has served as lead litigation counsel in more than 25 freedom-of-information suits brought by The Times in state and federal courts. He previously served as Deputy General Counsel of The New York Daily News and a litigation associate at Clifford Chance and Rogers & Wells. He has conducted workshops on freedom-of-information issues in various countries in the Middle East, South America, and Central and Eastern Europe as well as in Russia and China. He is a graduate of the University of Illinois, Cornell University, and Albany Law School. Mr. McCraw is an adjunct professor at the NYU School of Law.

Raffi Khatchadourian has been a staff writer at The New Yorker since 2008. His work has also appeared in the Village Voice, The Nation, and the New York Times, among other publications, and has been nominated and shortlisted for a number of journalism and magazine writing awards. He has filed numerous FOIA requests in connection with his investigative reporting, and has written on a wide range of subjects. In 2005, he was a journalism fellow at the International Reporting Project, based at Johns Hopkins University's School of Advanced International Studies, in Washington, D.C.



March 29, 2016 – **Abrams Institute First Amendment Salon: *Hate Crimes, Cyberspace & the First Amendment***

Dialogue featuring University of Maryland Law School Professor Danielle Citron (author of *Hate Crimes in Cyberspace*) and Laura Handman, a media lawyer at the Davis Wright Tremaine firm. The discussion concerned the tension between robust protection for free speech and the proliferation of harassment, and worse, online. First Amendment lawyer Ilya Shapiro of the Cato Institute moderated their discussion. The event was hosted in Washington, D.C. and was streamed to remote locations in New York and New Haven.

April 30-May 1, 2016 – **FESC 4: Freedom of Expression Scholars Conference 4**

The Freedom of Expression Scholars Conference (FESC) took place at Yale Law School on April 30-May 1, 2016. Again this year, the conference brought together academics and practitioners to discuss their scholarly works-in-progress concerning freedom of speech, expression, press, association, petition, assembly, and related issues of knowledge and information policy.

Now in its fourth 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.

In fact, this year's conference was the largest and most inclusive yet. 81 individuals participated in the conference, including approximately 10 practicing First Amendment lawyers. (In 2015, 62 people participated.) 31 papers were presented at the conference, authored (or co-authored) by 37 people. 27 individuals served as discussants, and approximately 20 individuals attended and actively participated in the workshop.

The conference is organized as a series of workshops and plenary sessions, offering participants an opportunity to receive substantive feedback through group discussion. As usual, the workshop sessions were lively discussions between and among authors, discussants, and audience participants.

June 13, 2016 – **Conference on Commercial Speech and the First Amendment**

This half-day conference will focus on the commercial speech doctrine, its changing and varying definitions, the regulation and potential liabilities based upon it, and the potential impact of *Sorrell* and *Reed*, two Supreme Court decisions that challenge it. The conference is oversubscribed, with far more people wishing to attend than

space to accommodate them. The conference is hosted at the law firm Davis, Wright & Tremaine, and co-sponsored by Avvo Inc., Cooley LLP, Frankfurt Kurnit Klein & Selz PC, Greenberg Traurig LLP, and Levine Sullivan Koch & Schulz, LLP.

## INVITED SPEAKER SERIES

October 27, 2015 – **Catherine Ross** – Lessons in Liberty: how schools and courts diminish democracy

Catherine Ross, Professor of Law at the George Washington University Law School, gave a lunchtime talk on the problem of censorship in schools, discussing her recent book, *Lessons in Censorship: How Schools and Courts Subvert Students' First Amendment Rights*. The book argues that American public schools often censor controversial student speech that the Constitution protects. The book seeks to bring clarity to a bewildering array of court rulings that define the speech rights of young citizens in the school setting, from the 1940's through the Warren years to the Roberts Court. The book examines disputes that have erupted in our schools and courts over the civil rights movement, war and peace, rights for LGBTs, abortion, immigration, evangelical proselytizing, and the Confederate flag. She argues that the failure of schools to respect civil liberties betrays their educational mission and threatens democracy.

March 23, 2016 – **Monroe Price** – Free Expression, Globalism and the New Strategic Communication

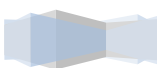
Monroe E. Price, director of the Center for Global Communication Studies (CGCS) at the Annenberg School for Communication, and the Joseph and Sadie Danciger Professor of Law and Director of the Howard M. Squadron Program in Law, Media and Society at the Cardozo School of Law, gave a lunchtime talk regarding his new book, *Free Expression, Globalism and the New Strategic Communications*. In the book, Professor Price introduces the concept of "narratives of legitimacy," their production, their functions, efforts to regulate them and their relation to current issues of media and national identity.

## MEDIA FREEDOM AND INFORMATION ACCESS CLINIC

(See separate document describing the activities of the Media Freedom and Information Access Clinic)

## ABRAMS FELLOWS

Jonathan Manes '08 - Outgoing Abrams Clinical Fellow





Following three years as the Abrams Clinical Fellow, Mr. Manes will be joining the faculty of the University at Buffalo Law School as a Clinical Assistant Professor in fall 2016, where he will be teaching a clinic focused on issues of transparency, free speech, civil liberties. (See separate entry describing Mr. Manes's activities over the course of the year.)

#### John Langford '14 – Incoming Abrams Clinical Fellow

Mr. Langford graduated from Yale Law School in 2014, during which time he was an ISP student fellow, Knight Law & Media fellow, and a four-semester member of the Media Freedom and Information Access Clinic. Following his graduation, Mr. Langford served as an associate at WilmerHale in New York, NY for one year, and then clerked for the Hon. Robin S. Rosenbaum of the U.S. Court of Appeals for the 11th Circuit in Fort Lauderdale, FL. Mr. Langford will take up his position as Abrams Clinical Fellow in July 2016.

#### **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"

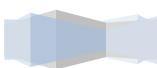
## **Panels:**

**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:**

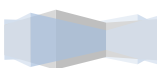
The VLP currently has six films in production: two short films on veteran deportation; post-production and distribution of one half-hour film on immigration detention commissioned by Human Rights First (HRF); post-production and distribution of a feature on political computer hackers; post-production 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.



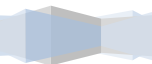
## Speakers and Pedagogical Opportunities:

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.





# 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:

## **Media Freedom and Information Access Clinic – 2016 Summary of Activities**

### **REPORTS**

Media Freedom & Information Access Clinic, 2016. **Police Body Cam Footage: Just Another Public Record.** Abrams Institute for Freedom of Expression, Information Society Project, Yale Law School.

### **AMICUS SUBMISSIONS**

**Brief of Amicus Curiae Abrams Institute for Freedom of Expression, *Animal Legal Defense Fund v. Otter*** (9th Circuit forthcoming) (arguing that First Amendment right to record is violated by Idaho “Ag-Gag” law that forbids unauthorized video of agricultural production facilities)



## ONGOING AND COMPLETED LITIGATION

### Significant victories and court decisions:

**Nicholas Merrill v. Loretta Lynch**, 2015 WL 9450650, \_\_ F. Supp. 3d \_\_ (S.D.N.Y. Aug. 28, 2015) First Amendment challenge to gag order on National Security Letter recipient. The clinic asserted First Amendment challenges to the gag order, which had been in place since 2004 and was lifted only in part in 2010 following 6 years of litigation in which Mr. Merrill was represented by the ACLU. In response to the clinic's renewed legal challenge, the Court invalidated the gag order in full, marking the first time a court has done so at least since the PATRIOT ACT was enacted in 2001. As a result of the Court's ruling, Mr. Merrill was able to disclose that the FBI had used National Security Letters to obtain such sensitive information as cell-site locational information, online purchase records, and IP addresses. The Clinic obtained an award of \$43,000 in attorney's fees from the defendants in the case.

**SUK, Inc. v. Flushing Workers Center**, No. 155192/2013 (N.Y. Sup. Ct. N.Y. County 2016)

Together with co-counsel at the Urban Justice center, the clinic obtained voluntary dismissal of a defamation lawsuit that was filed against a group of car-service drivers by their former employer in retaliation for the workers' public protests and advocacy against the employer's practices. The lawsuit raised important questions regarding the First Amendment right of workers to express their opinions on working conditions, and to be protected against retaliatory lawsuits for engaging in public protests.

**Intellectual Property Watch v. United States Trade Representative**, 134 F. Supp. 3d 726 (S.D.N.Y. 2015)

The clinic represents non-profit news organization Intellectual Property Watch FOIA lawsuit for access to information about negotiations over IP provisions of Trans-Pacific Partnership. The Court has upheld withholding of draft texts, but cast doubt on secrecy of USTR communications with industry advisors. The Clinic continues to litigate for access to both the draft texts and communications with industry advisors, particularly in light of the publication of the final text of the agreement and the eventual congressional vote to ratify. Clinic student Rebecca Wexler appeared in court in December 2015.



**Human Rights Watch v. Federal Bureau of Prisons**, No. 13-cv-7360, 2015 WL 5459713 (S.D.N.Y. Sept. 16, 2015)

FOIA lawsuit for records about potentially abusive and discriminatory treatment of individuals in federal custody on terrorism-related charges. The clinic obtained court-ordered disclosure of a great deal of detailed inmate-level information regarding BOP's practices. The clinic challenged BOP's continuing refusal to disclose certain information and, while the Court upheld BOP's determination in some respects, it ordered BOP to produce certain additional information and will conduct its own page-by-page review of other materials that may be improperly withheld. Human Rights Watch has published a report, *Illusion of Justice: Human Rights Abuses in U.S. Terrorism Prosecutions*, based in significant part on documents obtained with the clinic's help. Clinic students Nicholas Handler and Ajay Ravichandran argued the summary judgment motions in July 2016.

**Guardian News & Media LLC, et al. v. Missouri Department of Corrections**, No. 14AC-CC0251 (Missouri Circuit Court 2016)

The clinic challenged the State of Missouri's decision to keep secret the source of the drugs that it uses to execute inmates by lethal injection. Together with local counsel Bernard Rhodes (Latthrop & Gage LLP), the clinic succeeded in obtaining a judgment requiring the State of Missouri to disclose information about the source and quality of the drugs it uses to conduct executions by lethal injection, as well as the qualifications of those involved in procuring, testing, and administering the drugs. The clinic also obtained an order awarding attorney's fees.

**Crawford v. New York City Department of Information Technology and Telecommunications**, 136 A.D.3d 591 (2016) The Clinic filed an appeal challenging a blanket sealing order in a FOIL lawsuit that had sought disclosure of information about the high speed internet infrastructure in New York City. The Court dismissed the appeal on technical jurisdictional grounds, and did not reach the merits of our challenge to the lawfulness of the blanket sealing order. Clinic student John Boeglin argued the appeal in January 2016.

**Grabell v. New York Police Department**, 2016 WL 2636688 (N.Y. App. Div. 1st Dep't May 10, 2016)

The Clinic represents journalist Michael Grabell in a long-running FOIL lawsuit seeking disclosure of health, safety, and privacy-related information about NYPD's use of unmarked x-ray backscatter vans. The trial court ordered the NYPD to disclose most of the information sought. The Appellate Court upheld the trial court's

order with respect to the disclosure of health/safety information, but reversed trial court's order requiring disclosure of policies, procedures, cost information, and other material. Clinic student Joshua Divine argued the appeal in January 2016.

Ongoing active litigation:

**ACLU v. National Security Agency**, No. 13-cv-9198 (S.D.N.Y. filed Dec. 30, 2013)

The clinic is co-counsel with the ACLU in FOIA litigation regarding electronic surveillance under Executive Order 12,333. The suit seeks disclosure of the rules that government EO 12,333 surveillance, reports of non-compliance with those rules, and related information. The Clinic engaged in extensive research and intensive drafting, preparing an opposition to the government omnibus motion for summary judgment.

**Guardian News & Media LLC v. Ryan**, No. 14-cv-2363 (D. Ariz. Filed Oct. 23, 2014)

The clinic represents a coalition of news organizations in a First Amendment lawsuit asserting a public right of access to information about the State of Arizona's execution process, including the source and quality of the drugs used for lethal injection. The clinic amassed an extensive evidentiary record supporting the public's right of access and completed summary judgment briefing, which awaits the court's decision.

New matters:

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

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

**Crawford v. New York City Department of Information Technology and Telecommunications**, No. 15700/2015 (N.Y. Sup. Ct. N.Y. County filed July 10, 2015)

Second FOIL lawsuit on behalf of Prof. Susan Crawford seeking disclosure of information about NYC high speed internet infrastructure in order to understand deficiencies in NYC's infrastructure, to expose anti-competitive practices, and to foster increased competition. AT&T, RCN, Time Warner and Empire City Subway

(owned by Verizon) have all intervened in the case to oppose disclosure, citing concerns regarding possible competitive harm. Clinic student Stephen Stich argued the motions to intervene and motions to dismiss in court.

**Mattathias Schwartz v. Department of Defense**, No. 15-cv-7077 (E.D.N.Y. filed December 11, 2015)

The Clinic represents freelance journalist Mattathias Schwartz in a FOIA lawsuit seeking information about how public access to the Guantanamo military commissions proceedings is censored. Clinic student Stephen Stich appeared in court to set a schedule for the defendant agencies to produce responsive documents.

**Motion to Intervene on behalf of Raymond Bonner, Husayn v. Gates**, No. 06-cv-1360 (D.D.C. filed April 2016)

The clinic filed a motion to unseal and declassify court filings in habeas petition of Guantanamo detainee Abu Zubaydah, the first and most prominent victim of torture, including waterboarding, at the hands of the CIA. In response the court has ordered the government to promptly review all sealed documents for declassification and release.

**ACLU Foreign Intelligence Surveillance Court FOIA** (filed May 2016)

The clinic drafted a FOIA request seeking to determine whether the government is regularly publishing decisions of the Foreign Intelligence Surveillance Court decisions, as required by the USA FREEDOM Act of 2015. This continues the clinic's collaboration with the ACLU in efforts to establish a public right of access to the FISC's important decisions interpreting surveillance laws and the Constitution.

**Motion to Intervene on behalf of New York Times, Victor v. NYC Office of Trials and Hearings**, No. 100890/2015 (N.Y. Sup. Ct. N.Y. County)

The clinic, working together with counsel at the New York Times, filed a motion to intervene and motion to dismiss seeking to maintain the public's right to attend disciplinary hearings of prison guards conducted in New York City administrative tribunals.

## EVENTS

**FOIA Bootcamp 2016**, March 24, 2016.

Clinic students Yuriy Melnyk and Ethan Wong, and student directors Amanda Lynch and Divya Musinipally, organized the annual FOIA Bootcamp, which is a program of

the Abrams Institute and Media Freedom and Information Access Clinic. It is open to members of the Yale community and beyond, and draws attendance from local journalists, advocates, activists, and others. The purpose of the bootcamp is to provide attendees with a framework for understanding how FOIA can be used, and practical advice about how best to use it. This years' speakers were David McCraw, Vice President & Assistant General Counsel at The New York Times, and Raffi Khatchadourian, Staff Writer at The New Yorker.

### **NBC Universal / NBC News, April 22, 2016**

Students in the MFIA Clinic, together with clinic director David Schulz and Abrams Fellow Jonathan Manes, travelled to NBC headquarters in New York City to meet with the Vice President for Media Law at NBC Universal, David Sternlicht, other media lawyers at NBC News, as well as reporters, producers, and others directly involved in reporting and producing the news at NBC and MSNBC, including Chris Hayes. The trip allowed MFIA students to meet with and learn from practicing media lawyers, reporters and news producers, and to get an inside look at how a news organization functions and the role of lawyers in that context.

## **RESEARCH GRANTS & FUNDING**

**2015: Knight Foundation and Stanton Foundation.** The Knight Foundation and Stanton Foundation together provided a significant five-year grant to the Media Freedom and Information Access Clinic, in order to support the clinic's director, to fund ongoing litigation expenses, to provide funding for marketing and outreach activities, and for other purposes.

**2016: Stanton Foundation** – The Stanton Foundation has awarded a separate grant to fund a Stanton First Amendment Fellow to work on litigation matters in the Media Freedom and Information Access Clinic.

**2016: Arnold Foundation, Collaboration for Research Integrity and Transparency.** Worked as integral part of interdisciplinary team from the Yale Law School's Global Health Justice Partnership, Media Freedom and Information Access Clinic, Yale School of Medicine, and Yale School of Public Health to obtain significant funding for multi-year project to enhance the quality and transparency of the research base for medical products. The funding will support five new positions: program director, staff attorney, two fellows, and program administrator. Certain activities of the MFIA clinic, including ongoing litigation against the Food and Drug Administration to open up access to clinical trial data, will come within scope of the new Collaboration.





## CLINIC PERSONNEL:

Jack Balkin, Knight Professor of Constitutional Law and the First Amendment. He is the founder and director of Yale's Information Society Project. He also directs the Abrams Institute for Freedom of Expression and the Knight Law and Media Program at Yale. He has served as the director of the MFIA Clinic since its inception as a student-run practicum in 2009.

David A. Schulz, Clinic Director. David Schulz he is a partner in the law firm Levine Sullivan Koch and Schulz LLP, a national trial and appellate practice representing news and entertainment media in defamation, privacy, newsgathering, access, intellectual property and related First Amendment matters. Mr. Schulz has been co-directing the MFIA Clinic with Professor Jack Balkin since 2009. Starting this year, Mr. Schulz is working in the clinic full time.

Jonathan Manes, Abrams Clinical Fellow (outgoing). Jonathan Manes completed his third year as the Abrams Clinical Fellow and Clinical Lecturer in the MFIA Clinic. Mr. Manes will be joining the faculty of the University at Buffalo School of Law as a Clinical Assistant Professor in fall 2016, where he will be teaching a clinic focused on transparency, free speech, civil liberties. (See separate entry describing Mr. Manes's ISP activities.)

Hannah Bloch-Wehba, Stanton First Amendment Fellow (incoming). Hannah Bloch-Wehba will be the inaugural Stanton First Amendment Fellow in the MFIA Clinic beginning July 2016. She graduated from NYU School of Law in 2013. Ms. Bloch-Wehba worked as an associate at Baker Botts LLP, and served for two years as the Stanton National Security Fellow at the Reporters Committee for Freedom of the Press.

John Langford, Abrams Clinical Fellow (incoming). John Langford graduated will begin as the Abrams Clinical Fellow in July 2016. He graduated from Yale Law School in 2014, during which time he was an ISP student fellow, Knight Law & Media fellow, and a four-semester member of the Media Freedom and Information Access Clinic. Mr. Langford served as an associate at WilmerHale and clerked for the Hon. Robin S. Rosenbaum of the U.S. Court of Appeals for the 11th Circuit.

Amanda Lynch, Student Director (outgoing). Amanda Lynch participated in the MFIA clinic since her second semester of law school, and served as student director this year. Following graduation, she will clerk for the Hon. Marsha Berzon of the United States Court of Appeals for the Ninth Circuit.



Divya Musinipally, Student Director (outgoing). Divya Musinipally participated in the MFIA clinic for three semester in law school, serving as student director of the clinic for the last two. Following graduation, she will clerk for the Hon. John Owens of the United States Court of Appeals for the Ninth Circuit.

Yurij Melnyk, Student Director (incoming). Yurij Melnyk has been a member of the MFIA clinic for two semesters and will be a student director this year.

Andrew Udelsman, Student Director (incoming). Andrew Udelsman has been a member of the MFIA clinic for two semesters and will be a student director this year.



# Courses



# Information Society Project Courses and Reading Groups

## **Related Courses**

Fall 2015, Spring 2016 Advanced Supreme Court Advocacy  
Spring 2016 The Institutional Supreme Court  
Linda Greenhouse

Fall 2015, Spring 2016  
Media Freedom and Information Access Clinic  
David Schulz, Jonathan Manes, Jack Balkin

Spring 2016 Artificial Intelligence, Robotics, and the Law  
Jack Balkin

## **Reading Groups**

### **Fall 2015**

Telecommunications Law and Policy

Law and Technology

### **Spring 2016**

Big Data and Global Media

