

MAILYN J. R. FIDLER

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EDUCATION

Yale Law School JD 2020	New Haven, CT
Oxford University Marshall Scholar MPhil in International Relations, 2016	Oxford, U.K.
Stanford University BA Science, Technology, & Society with Honors and Distinction, 2014 Honors in International Security	Stanford, CA

PUBLICATIONS

Works In Progress

- *Situational Right to Exclude: A Privacy-Protective Return to a Property-Based Fourth Amendment*
- *Rethinking Trade Secret Discovery in Criminal Litigation*
- *Infrastructure, Cybersecurity Law, and Cyber Instability: An African Union Case Study*

Law Review Articles

- *Local Police Surveillance and the Administrative Fourth Amendment*, 36 SANTA CLARA HIGH TECH. L.J. 481 (2020).
- *First Amendment Sentence Mitigation: Beyond A Public Accountability Defense for Whistleblowers*, 11 HARV. NAT'L. SEC. J. 214 (2020).
- *Regulating the Zero-Day Vulnerability Trade: A Preliminary Analysis*, 11 I/S: J.L. & POL'Y FOR INFO. SOC'Y 405 (2015) (now OHIO STATE TECH. L. J.).

Book Manuscripts

- RULES AS RESISTANCE: CYBER POLITICS AND AFRICA'S QUEST FOR AUTONOMY (forthcoming, under contract with University of Wisconsin Press).

Book Chapters & White Papers

- *Cross-Border Data Access Reform: A Primer on the Proposed U.S.-U.K. Agreement*, BERKMAN KLEIN CENTER RESEARCH PUBLICATION NO. 2017-7 (2017) (with Tiffany Lin).
- *Government Acquisition and Use of Zero-Day Software Vulnerabilities*, in CYBER INSECURITY: NAVIGATING THE PERILS OF THE NEXT INFORMATION AGE (Trey Herr and Richard Harrison eds., 2016).

ACADEMIC POSITIONS

University of Nebraska College of Law <i>Adjunct Professor (Spring 2021)</i> <i>Teaching cross-listed Domestic Cybersecurity course.</i>	Lincoln, NE
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Nebraska Governance & Technology Center

Lincoln, NE

University of Nebraska at Lincoln | Visiting Faculty Fellow (2020-21)

Berkman Klein Center for Internet & Society

Cambridge, MA

Harvard Law School, Fellow (2016-2017) and Affiliate (2017-present)

LEGAL EXPERIENCE

Hon. Robert Bacharach

Oklahoma City, OK

U.S. Court of Appeals for the Tenth Circuit, 2021-2022

- I will serve as a law clerk for Judge Bacharach beginning in the fall of 2021.

Reporters Committee for Freedom of the Press

Washington, D.C.

Technology & First Amendment Fellow, 2020-2021

- Drafted amicus briefs in cases involving the Computer Fraud and Abuse Act, attempts to ban apps, and First Amendment *Bivens* cases.
- Drafted litigation filings in cases requesting unsealing of surveillance records.

Wilson Sonsini Goodrich & Rosati

Palo Alto, CA

Summer Associate, Internet Strategy & Litigation Practice, 2019

- Provided extensive research and drafting support regarding First Amendment, CDA §230 defenses for Google, Twitter against lawsuits alleging suppression of disfavored speech online.
- Audited social media company responses to law enforcement data requests.
- Prepared legal advice for U.S. companies regarding overseas law enforcement data requests.

San Francisco Affirmative Litigation Project

New Haven, CT

Clinic at Yale Law; Member, Spring 2018-Fall 2019; Student Director, 2019

- Drafted opposition to motion for stay in the City's challenge to restrictive changes to the federal public charge rules (*San Francisco v. USCIS*).
- Conducted significant research for complaint in the City's challenge on First Amendment, APA grounds to overly broad HHS conscience rules for medical staff (*San Francisco v. Alex M. Azar II*).
- Developed, pitched novel consumer protection lawsuit involving cybersecurity practices in the real estate industry to the Affirmative Litigation Task Force; case approved for further development.

Knight First Amendment Institute

New York, NY

Legal Intern, Summer 2018

- Drafted amicus letter brief for submission in federal district court arguing FBI whistleblower First Amendment rights should be recognized as mitigating factors at sentencing.
- Authored memos to co-counsel re First Amendment protections for military documentary film maker.
- Reviewed FOIA documents that informed a First Amendment challenge to the Department of Defense's Prepublication Review Process.

ACADEMIC WORKSHOPS AND TALKS

Data as Property for the Fourth Amendment, Law & Tech Junior Scholars Workshop (August 2020).

Local Surveillance, Berkman Klein Center for Internet & Society Cybersecurity Workshop (March 2019).

Local Surveillance, Tufts Graduate Student Symposium in Cybersecurity Policy (March 2019).

Panelist at “Government Hacking: Vulnerability Equities Process,” Stanford University Law School, 16 November, 2016.

Presented “First They Came for Them, Then They Came for Us: Why Police Surveillance of Protesters Matters to the Rest of Us” at the Nieman Foundation for Journalism at Harvard University, 14 October 2016, Cambridge, MA.

Panelist at “Managing the Vulnerability Economy” at the Belfer Cyber Security Project, John F. Kennedy School of Government, Harvard University, 12 October 2016, Cambridge, MA.

Panelist at “Press Freedom in Africa: How States Achieve Compliance with African Court and AU Standards, Online and Offline,” Columbia University Law School, 4 November 2016.

Presented paper, *Regulatory Options for the Global Trade in Zero-Day Vulnerabilities*, at the Second Annual Conference on Governance of Emerging Technologies, Arizona State University, 2014, Phoenix, AZ.

Presented paper, *Ubiquity, Interrupted? A Comparison of European, Chinese, and U.S. Governance of the Internet of Things as an Emerging Technology*, at the First Annual Conference on Governance of Emerging Technologies, Arizona State University, 2013, Phoenix, AZ.

INVITED POLICY TALKS

Expert Participant in Cybersecurity Ethics Workshop, funded by the Department of Defense, (July-August 2020).

Panelist at U.K. Foreign Policy in Changed World Conditions, House of Lords International Relations Committee Roundtable with Early Career Experts (invitation only) (July 2018).

Panelist at Bipartisan Cybersecurity Policy Workshop, U.S. Senate (invitation only) (November 2017).

Interviewed on Mozilla’s “IRL” podcast regarding police surveillance, August 2017.

Invitation-only roundtable participant at “MLATs in the Global South,” RightsCon, March 2017.

Invitation-only roundtable participant at “The Vulnerability Equities Process and the Underground Economy,” Center for Strategic and International Studies, March 2017.

Panelist at “The Vulnerabilities Economy: A Closer Look at How Software Vulnerabilities Shape Our Security for Better and Worse” at the Woodrow Wilson International Center for Scholars, 27 October, 2016, Washington, D.C.

Panelist at “African Frameworks on Internet Freedom – What are the Provisions? What are the Conflicts?” at the Forum on Internet Freedom in Africa 2016, 28 September 2016, Kampala, Uganda.

Panelist at “Transaction Declined: Can Activists, Industry, and Authorities Prevent Repressive Regimes from Buying Surveillance Technologies?” at Computers, Freedom, and Privacy 2015, 14 October 2015, Washington, D.C.

Panelist at “Real Digital Security: How to Modernize the EU’s Export Control Regime and Trade in Zero-Day Vulnerabilities” at an event hosted by the European Parliament, 30 September 2015, Brussels, Belgium.
<http://www.marietjeschaake.eu/2015/09/real-digital-security-how-to-modernize-the-eus-export-control-regime-and-the-trade-in-zero-day-vulnerabilities/>.

Presented, “The Global Trade in Zero-Day Vulnerabilities: Human Rights Implications” to Amnesty International, 30 April 2015, London, United Kingdom.

Presented “Technical-Policy Governance Gaps: Findings from a Case Study on European Governance of the Internet of Things” to the EU-sponsored Internet of Things Forum 2012, November 2012, Bled, Slovenia.

BLOG POSTS

“Four Obstacles to Local Surveillance Ordinances,” Lawfare, 4 September 2020 (with Lily Liu),
<https://www.lawfareblog.com/four-obstacles-local-surveillance-ordinances>.

“Fourteen Places Have Passed Local Surveillance Laws. Here’s How They’re Doing,” Lawfare, 3 September 2020, <https://www.lawfareblog.com/fourteen-places-have-passed-local-surveillance-laws-heres-how-theyre-doing>.

“Disinformation Colonialism and African Internet Policy,” *Net Politics – Council on Foreign Relations*, 21 November 2019, <https://www.cfr.org/blog/disinformation-colonialism-and-african-internet-policy>.

“Conscientious Objectors and Whistleblowers: Sentencing Should Recognize First Amendment Interests,” *Just Security*, October 2018, at <https://www.justsecurity.org/61125/conscientious-objectors-whistleblowers-sentencing-recognize-amendment-interests/>.

“African Union Bugged by China: Cyber Espionage as Evidence of Strategic Shifts,” *Net Politics – Council on Foreign Relations*, 7 March 2018, <https://www.cfr.org/blog/african-union-bugged-china-cyber-espionage-evidence-strategic-shifts>.

“In the U.S.-U.K. Deal, Both Sides Deserve Scrutiny.” *Just Security*, 9 August, 2017, at <https://www.justsecurity.org/44020/u-s-u-k-deal-sides-deserve-scrutiny1/> (with Scarlet Kim).

- “The Weak Link in a Double Act: U.K. Law is Inadequate for Proposed Cross-Border Data Request Deal.” *Lawfare*, 11 July 2017, at <https://www.lawfareblog.com/weak-link-double-act-uk-law-inadequate-proposed-cross-border-data-request-deal> (with Scarlet Kim.)
- “PATCH: Debating Codification of the VEP.” *Lawfare*, 17 May 2017, at <https://www.lawfareblog.com/patch-debating-codification-vep> (with Trey Herr).
- “South Africa Introduces Revised Cybercrime Legislation, Acknowledging Criticism.” *Net Politics – Council on Foreign Relations*, 7 March, 2017, at <https://www.cfr.org/blog/south-africa-introduces-revised-cybercrime-legislation-acknowledging-criticism>.
- “Investigating Surveillance Around Standing Rock.” *Just Security*, 16 November 2016, at <https://www.justsecurity.org/34449/investigating-surveillance-standing-rock/> (with Collin Anderson).
- “Africans Want Cross-Border Data Access Reform, But They Might Get Left Out.” *Net Politics – Council on Foreign Relations*, 26 October 2016, at <http://blogs.cfr.org/cyber/2016/10/26/africans-want-cross-border-data-access-reform-but-they-might-get-left-out/>.
- “A Response to ‘The Tech:’ Continuing the Vulnerability Equities Process Debate.” *Just Security*, 13 September 2016, at <https://www.justsecurity.org/32883/response-the-tech-continuing-vulnerability-equities-process-debate/>.
- “The Vulnerability Equities Process Should Consider More than Intelligence Community Needs.” *Just Security*, 2 September 2016, at <https://www.justsecurity.org/32697/vulnerability-equities-process-intelligence-community/>.
- “Cyber Diplomacy with Africa: Lessons from the African Cybersecurity Convention.” *Net Politics – Council on Foreign Relations*, 7 July 2016, at <http://blogs.cfr.org/cyber/2016/07/07/cyber-diplomacy-with-africa-lessons-from-the-african-cybersecurity-convention/>.
- “The African Internet Governance Forum: Continued Discomfort with Multistakeholderism.” *Net Politics - Council on Foreign Relations*, 20 October 2015, at <http://blogs.cfr.org/cyber/2015/10/20/the-african-internet-governance-forum-continued-discomfort-with-multistakeholderism/>.
- “MLAT Reform: Thoughts from Civil Society.” *Lawfare*, 11 September 2015, at <https://www.lawfareblog.com/mlat-reform-some-thoughts-civil-society>.
- “The African Union Cybersecurity Convention: A Missed Human Rights Opportunity.” *Net Politics - Council on Foreign Relations*, 22 June 2015, at <http://blogs.cfr.org/cyber/2015/06/22/the-african-union-cybersecurity-convention-a-missed-human-rights-opportunity/> (with Fadzai Madzingira).

“Proposed U.S. Export Controls: Implications for Zero-Day Vulnerabilities and Exploits.” *Lawfare*, 10 June 2015, at <http://www.lawfareblog.com/proposed-us-export-controls-implications-zero-day-vulnerabilities-and-exploits>.

“Update: Changes to Export Control Arrangement Intended to Apply to Surveillance Technology, not Exploits, but Confusion and Ambiguity Remain.” *Just Security*, 19 February 2014, at <http://justsecurity.org/7276/update-export-control-arrangement-intended-apply-surveillance-technology-exploits-confusion-ambiguity-remain/> (with Jennifer Granick).

“Changes to Export Control Arrangement Apply to Computer Exploits and More.” *Just Security*, 15 January 2014, at <http://justsecurity.org/5703/export-control-arrangement-apply-computer-exploits/> (with Jennifer Granick).

“Policy & Innovation in the Internet of Things: Findings from Europe and China.” *Google Policy By the Numbers Blog*, 2 January 2013, at <http://policybythenumbers.blogspot.co.uk/2013/01/policy-innovation-in-internet-of-things.html>.

TEACHING EXPERIENCE

- Teaching “Domestic Cybersecurity” as adjunct professor at the University of Nebraska College of Law, Spring 2021, cross-listed in the college of engineering.
- Guest lecturer, “Legal Threats to Press Freedom,” Northwestern Medill School of Journalism, (Fall 2020).
- Designed syllabus for “Habeas Corpus in Indian Country,” student-initiated course, Yale Law School (Fall 2020).
- Co-designed and taught “The Changing Right to Privacy,” student-initiated course, Yale Law School (Fall 2018).
- Guest lecturer, “Edward Snowden and Conscientious Objection,” University of Michigan (Fall 2016).
- Section Leader, “Introductory Computer Science,” Stanford University (Winter and Summer 2013).