

Jane Bambauer

520.626.6004 | janebambauer@email.arizona.edu

ACADEMIC POSITIONS

University of Arizona James E. Rogers College of Law, Tucson, AZ.

Professor of Law (2017 – present)

Associate Professor of Law (2012 - 2017)

- Deputy Director for Societal Impact, NSF Center for Quantum Networks
- Faculty Director, QuantLaw
- Faculty Co-Director, TechLaw

Brooklyn Law School, Brooklyn, NY.

Visiting Assistant Professor of Law (2010 - 2012)

EDUCATION

Yale Law School, J.D., 2006.

- Journal of Law and Feminism, *Symposium Director and Editor*
- Legal Assistance Clinic, *Landlord/Tenant Intern at the New Haven Legal Assistance Association*
- Legislative Advocacy Clinic, *Tax Reform Advocate*

Yale University, B.S. in Mathematics, with Distinction, 2002.

- Deforster (2002), Stanley (2001), and Barge-Runck (2000) prizes for mathematics

ARTICLES

When a Small Change Makes a Big Difference, 55 U.C. DAVIS LAW REVIEW __ (forthcoming 2022) (with Tal Zarsky & Jonathan Mayer).

From Damage Caps to Decarceration: Extending Tort Law Safeguards to Criminal Sentencing, 102 BOSTON UNIVERSITY LAW REVIEW __ (forthcoming 2021) (with Andrea Roth).

The Quiet Resignation: Why Do So Many Female Lawyers Abandon Their Careers?, 10 U.C. IRVINE LAW REVIEW 799 (2020) (with Tauhidur Rahman).

The Algorithm Game, 94 NOTRE DAME L. REV. 1 (2018) (with Tal Zarsky).

Snake Oil Speech, 93 WASHINGTON LAW REVIEW 73 (2018).

Information Libertarianism, 105 CALIFORNIA LAW REVIEW 335 (2017) (with Derek Bambauer).

Other People's Papers, 94 TEXAS LAW REVIEW 205 (2015).

Outrageous and Irrational, 100 MINNESOTA LAW REVIEW 281 (2015) (with Toni Massaro).

Hassle, 113 MICHIGAN LAW REVIEW 461 (2015).

Is Data Speech?, 66 STANFORD LAW REVIEW 57 (2014).

The New Intrusion, 88 NOTRE DAME LAW REVIEW 205 (2012).

The Secret of My Success: How Status, Prestige, and School Performance Shape Legal Careers, 9 JOURNAL OF EMPIRICAL LEGAL STUDIES 893 (2012) (peer-reviewed) (with Richard Sander).

Tragedy of the Data Commons, 25 HARVARD JOURNAL OF LAW & TECHNOLOGY 1 (2011) (published as Jane Yakowitz).

Marooned: An Empirical Investigation of Law School Graduates Who Fail the Bar Exam, 60 JOURNAL OF LEGAL EDUCATION 3 (2010) (peer-reviewed) (published as Jane Yakowitz).

ESSAYS, TECHNICAL PAPERS, AND OTHER WORKS

Conceptions of Fairness in Artificial Intelligence, invited chapter in THE PHILOSOPHICAL FOUNDATIONS OF IT LAW (David Mangan, ed., Oxford University Press, 2021).

COVID Apps Are Terrible. They Didn't Have to Be. LAWFARE.COM REPORT (2020) (with Brian Ray).

Plausible Deniability, 2020 PRIVACY IN STATISTICAL DATABASES 91 (2020) (peer-reviewed) (co-authored with David Sidi).

Privacy Versus Research in Big Data, in THE CAMBRIDGE HANDBOOK OF CONSUMER PRIVACY (Evan Selinger et al., eds., Cambridge University Press, 2018).

Sensorship, in RON COLLINS & DAVID SKOVER, ROBOTICA: SPEECH RIGHTS & THE NEW TECHNOLOGIES (Cambridge University Press, 2018).

The Empirical First Amendment, 78 OHIO ST. L. J. 947 (2018) (symposium issue).

Dr. Robot, 51 U.C. DAVIS L. REV. 383 (2017) (symposium issue).

Identifying and Countering Fake News, University of Arizona Privacy & Free Expression White Paper (2017) (with M. Verstraete & D. Bambauer) (to be published in ARIZ. J. EMERGING TECH.).

Biometric Privacy Laws: How a Little-Known Illinois Law Made Facebook Illegal, George Mason University School of Law Program on Economics & Privacy White Paper (2017).

A Bad Education, 2017 U. ILL. L. REV. 109 (2017) (with J. Loe & D. Winkelman).

Glass Half Empty, 64 UCLA L. REV. DISC. 434 (2016) (invited contribution).

Are Privacy Disclosures Informational or Ideological?, 65 DEPAUL L. REV. 503 (2017) (Clifford symposium issue).

The Relationships Between Speech and Conduct, 49 U.C. DAVIS L. REV. 1941 (2016) (invited response to *Information Fiduciaries and the First Amendment* by Jack Balkin).

Assessing Data Intrusion Threats, SCIENCE (letter) (with D. Barth-Jones et al.) (2015).

All Life Is an Experiment. (Sometimes It's a Controlled Experiment.), 47 LOY. CHI. L. REV. 487 (2015) (symposium issue).

Freedom From Thought, 65 EMORY L. J. 219 (2015) (symposium issue).

Cyber-Exploitation and Distributed Enforcement, B.U. L. REV. ANNEX (November 6, 2015) (with D. Bambauer) (invited response to HATE CRIMES IN CYBERSPACE by Danielle Citron).

Collection Anxiety, 99 CORNELL L. REV. ONLINE 195 (2014) (invited response to *Digital Innocence* by Joshua Fairfield and Erik Luna).

Fool's Gold: An Illustrated Critique of Differential Privacy, 16 VAND. J. ENT. & TECH. L. 701 (2014) (with K. Muralidhar and R. Sarathy).

Vanished: Analyzing Censorship with Google Transparency Data, 18 VA. J. L. & TECH. 137 (2013) (with D. Bambauer).

Defending the Dog, 91 OR. L. REV. 1203 (2013) (symposium issue).

How the War on Drugs Distorts Privacy Law, 64 STAN. L. REV. ONLINE 131 (2012).

PRESENTATIONS, COMMITTEES, AND AWARDS

Reporter, The Collection and Use of Personally Identifiable Data, Uniform Law Commission, 2020–2021.

Cats, Cars, and Nazis, Freedom of Expression Scholars Conference Works-in-Progress, Yale Law School, October 2020.

Privacy & Pandemics: Responsible Uses of Technology & Health Data, Future of Privacy Forum, September 2020.

Privacy and the Pandemic (invited panelist), Electronic Privacy Information Center, June 2020.

How the Pandemic Will Affect Washington's Privacy Policy Debate (invited panelist), Technology Policy Institute, April 2020.

Symposium on Algorithmic Criminal Justice (invited panelist), UCLA College of Law, Los Angeles, CA, January 2020.

Board Member, TPRC Conference on Communications, Information, and Internet Policy, American University Washington College of Law, Washington, D.C., 2019.

Director, Program on Economics & Privacy, George Mason University Antonin Scalia Law School, Arlington, VA, 2018–2019.

Panelist, *Commercial Speech and the First Amendment*, Yale Law School's Abrams Institute for Freedom of Speech, New York, NY, 2019.

Measuring Grossly Excessive Punishment, Criminal Law Works-in-Progress Roundtable, Yale Law School, New Haven, CT., 2019 (invited author).

A Differentially Private Census Bureau?, Population Association of America Annual Conference, Austin, TX, 2019 (invited panelist).

Testimony, *GDPR and CCPA: Opt-Ins, Consumer Control, and the Impact on Competition and Innovation*, Senate Judiciary Committee, Washington, D.C., 2019.

Testimony, *The Impact of Privacy Regulations on Competition and Innovation*, Federal Trade Commission Hearings on Competition and Consumer Protection in the 21st Century, Washington, D.C., 2018.

Testimony, *Free Speech and Data Privacy*, Federal Trade Commission Hearings on Competition and Consumer Protection in the 21st Century, Washington, D.C., 2018.

Board Member, TPRC Conference on Communications, Information, and Internet Policy, American University Washington College of Law, Washington, D.C., 2018.

How Speech Libertarianism Serves Progressives, invited response to Michael Seidman, *Can Free Speech Be Progressive?*, 118 COL. L. REV. 2219 (2018), Virtual Roundtable hosted by FIRST AMENDMENT WATCH, 2018.

Dr. Robot, Conference on the Governance of Emerging Technologies, Arizona State University School of Law, Phoenix, AZ, 2018.

The Algorithm Game, Michigan State University College of Law, East Lansing, MI, 2018.

Machine Influencers and Decision Makers, University of Arizona College of Science Public Lecture Series, Tucson, AZ, 2018 (rebroadcast on AZPM).

Female Labor Participation and the Limits of Law, Governance and the Law, University of Arizona and World Bank Development Economics Workshop, Tucson, AZ, 2017.

Guest blogger, Volokh Conspiracy, THE WASHINGTON POST, August-September 2017.

Board Member, TPRC Conference on Communications, Information, and Internet Policy, George Mason University School of Law, Arlington, VA, 2017.

The Algorithm Game, Privacy Law Scholars Conference, UC Berkeley Law School, Berkeley, CA, 2017.

The First Amendment's Application to Rapidly Developing Information Technologies, The William O. Douglas Annual Lecture, Gonzaga University School of Law, Spokane, WA, 2017.

Google Fellow, Privacy Law Salon, Miami, FL, 2017.

Who Owns Your Data?, Presentation to the Conference of Chief Justices, Scottsdale, AZ, 2017.

Dr. Robot, UC Davis Law Review Symposium, Davis, CA, 2017.

Information Libertarianism, TPRC Conference on Communications, Information, and Internet Policy, George Mason University School of Law, Arlington, VA, 2016.

Program Committee Member, UNESCO Privacy in Statistical Databases, Dubrovnik, Croatia, 2016.

Information Libertarianism, Free Expression Scholars Conference, Yale Law School, New Haven, CT, 2016. (plenary session).

A Bad Education, Program on Economics and Privacy, George Mason University School of Law, Arlington, VA, 2016.

Are Privacy Policies Informational or Ideological?, Clifford Symposium on Tort Law and Social Policy, DePaul University College of Law, Chicago, IL, 2016.

Center for Law & Information Policy, invited commentary on *Privacy and the Right to Record* by Margot Kaminski, Fordham University Law School, New York, NY, 2016.

Glass Half Empty, PULSE symposium, UCLA School of Law, Los Angeles, CA, 2016.

Other People's Papers, University of Haifa Law Department Cyberforum, Haifa, Israel, 2016.

Bad Education, University of Haifa Law Department, Haifa, Israel, 2016.

Privacy Versus Research in the Age of Big Data, University of Utah LABS colloquium, Salt Lake City, UT, 2016.

2015-16 Privacy Fellow, George Mason University Law & Economics Center Research Roundtable (supporting experimental research on privacy).

Criminal Justice Roundtable, invited commentary on *The New Surveillance Discretion: Automated Suspicion, Big Data and Policing* by Elizabeth Joh, Vanderbilt University School of Law, Nashville, TN, 2015.

Harry W. Stonecipher Award for top scholarship in communication and free speech law, Association for Education in Journalism and Mass Communication Law & Policy Division, 2015.

Program Chair, TPRC Conference on Communications, Information, and Internet Policy, George Mason University School of Law, Arlington, VA, 2015.

Privacy Law Scholars Conference, invited commentary on *Leaps and Bounds: Toward a Normative Theory of Inferential Privacy* by Solon Barocas, Berkeley, California, 2015.

All Life is An Experiment. (Sometimes It's a Controlled Experiment.), Loyola Chicago Law School, Chicago, IL, 2015.

Truth in the Age of Uncertainty, University of Maryland Law School, Baltimore, MD, 2015.

Hassle, Author talk, University of Michigan Law School, Ann Arbor, MI, 2015.

Data, the Police, and the Whole Constitution, University of Texas Faculty Colloquium, Austin, TX, 2015.

Freedom From Knowledge, The 2015 Randolph W. Thrower Symposium, Emory University School of Law, Atlanta, GA, 2015.

Data, the Police, and the Whole Constitution, Rocky Mountain Junior Scholars Workshop, University of Utah, UT, 2014.

The Era of Big Data: Balancing Privacy Rights, Law Enforcement Needs, and Corporate Interests, National Asian-Pacific American Bar Association Annual Conference, Scottsdale, AZ, 2014.

Public Health in the Shadow of the First Amendment, Yale Law School, New Haven, CT, 2014.

Program Vice Chair, TPRC Conference on Communication, Information and Internet Policy, George Mason University School of Law, Arlington, VA, 2014.

Other Peoples' Papers, Privacy Law Scholars Conference, George Washington University Law School, Washington, DC, 2014 (selected for a second, encore presentation).

Other Peoples' Papers, Public Policy Conference on the Law & Economics of Privacy and Data Security, George Mason University School of Law, Arlington, VA, 2014.

Surveillance in the Technological Age: The Case of the NSA, Keynote Address at the International Criminal Law Conference, Babes-Bolyai University, Cluj-Napoca, Romania, 2014.

Is Data Speech?, Yale Law School Information Society Project, New Haven, CT, 2014.

Google Fellow, Privacy Law Salon (invitational event for scholars and industry), Miami, FL, 2014.

When Worlds Collide: Technology, Privacy, and Security, Appellate Judges Education Institute, San Diego, CA, 2013.

The De-Identified Data Commons, United Nations Economic Commission for Europe (Eurostat Work Session), Ottawa, Canada, 2013.

Into the Breach: Introduction to the 2012-2013 National Health Law Moot Court Problem, 34 J. LEG. MED. 337 (2013).

Vanished: Analyzing Censorship with Google Transparency Data, Privacy Law Scholars Conference, University of California, Berkeley Law School, Berkeley, CA, 2013.

Is Data Speech?, Free Expression Scholars Conference, Yale Law School, New Haven, CT, 2013.

Is Data Speech?, Cyberlaw Works in Progress, Santa Clara University School of Law, Santa Clara, CA, 2013.

Problem Author, National Health Law Moot Court, Southern Illinois University, Carbondale, IL, 2012 (fictitious civil rights case based on a data breach at a public health clinic).

Is Data Speech?, Rocky Mountain Junior Scholars Workshop, University of Utah School of Law, Salt Lake City, UT, 2012.

Seeding the Data Commons: Legal Safe Harbors for Research Data, Think Tank on the Identifiability of Genomic Data and Biospecimens, National Institute of Health / National Cancer Institute, Rockville, MD, 2012.

The New Intrusion, Privacy Law Scholars Conference, George Washington University Law School, Washington, DC, 2012.

Is Data Speech?, Cyberlaw Scholars Conference, Harvard Law School, Cambridge, MA, 2012.

Invited Debater, *Is Privacy Overhyped?*, The Open Society Institute, New York, NY, 2012.

Invited Panelist, *Balancing Privacy Interests and Innovation*, Law and Information Society Symposium, Fordham Law School, New York, NY, 2012.

Invited Panelist, *Bullying Bans and the First Amendment*, Seton Hall Law School, Newark, NJ, 2012.

Google Fellow, Privacy Law Salon (invitational event for scholars and industry), Miami, FL, 2012.

Invited Speaker, *The Benefits and Risks of De-Identification*, The Future of Privacy Forum, Washington, D.C., 2011.

Tragedy of the Data Commons, The Privacy Working Group Speaker Series, Information Technology and Innovation Foundation, Washington, DC, 2011.

Commenter, *Privacy and Utility in Data Sets* by Felix Wu, Privacy Law Scholars Conference, University of California, Berkeley School of Law, Berkeley, CA, 2011.

The Illusory Privacy Problem in Sorrell v. IMS Health, Technology Policy Institute, 2011 (technical paper) (with Daniel Barth-Jones).

Invited Interviewee, *Tragedy of the Data Commons*, Surprisingly Free Podcast Series, Mercatus Center, George Mason University, 2011.

Tragedy of the Data Commons, Google Public Policy Speaker Series, Mountain View, CA, 2011.

Privacy Chaff, IP Scholars Roundtable, Drake University Law School, Des Moines, IA, 2011.

Tragedy of the Data Commons, Internet Law Works in Progress, Santa Clara School of Law, Santa Clara, CA, 2011.

Moderator and Poster Presentation, *The Secret of My Success: How Status, Prestige, and School Performance Shape Legal Careers*, Conference on Empirical Legal Studies, Yale Law School, New Haven, CT, 2010.

The Secret of My Success: How Status, Prestige, and School Performance Shape Legal Careers, Law & Society Association Annual Meeting, Chicago, IL, 2010.

Program Co-Chair and Discussant, Conference on the Scale and Effect of Admissions Preferences in Higher Education, UCLA School of Law, Los Angeles, CA, 2009.

What Are the Effects of Failing the Bar? An Empirical Study, Law & Society Association Annual Meeting, Denver, CO, 2009.

PRESS COVERAGE

Alisa Alering, *Are You Ready for the Quantum Internet?*, SCIENCE NODE (September 21, 2020).

Alexei Barrionuevo, *Coronavirus Tracing Apps Are Being Tested Around the World, But Will Concerts Get on Board?*, BILLBOARD.COM (May 28, 2020).

Jenny McGrath, *Inside the Groundbreaking Plan to Truly Anonymize Your 2020 Census Data*, DIGITAL TRENDS (February 28, 2020).

Natasha Singer, *The Government Protects Our Food and Cars. Why Not Our Data?*, N. Y. TIMES (2019).

Danielle Abril, *Facebook's \$5 Billion Privacy Settlement Argued Consumers Weren't Harmed. Experts Think the Damage Was Incalculable*, FORTUNE (2019).

Timmy Broderick, *Privacy, Accuracy, and the Looming 2020 Census*, CHRISTIAN SCIENCE MONITOR (2019).

Campus Free Speech, ARIZONA 360 (April 19, 2019) (interview broadcast on Arizona Public Media).

James Langford, *#GoodLuck: Odds Stacked Against Devin Nunes in His Lawsuit Against Twitter*, WASHINGTON EXAMINER (March 20, 2019) (reproduced in *The Hill*).

Andrew Howard, *UA Professor Cautions Senators to Go Slow in Bid to Protect Personal Data*, CRONKITE NEWS ARIZONA PBS (March 12, 2019).

Justin Sherman, *How to Regulate the Internet Without Becoming a Dictator*, FOREIGN POLICY (quoting *Is Data Speech?*).

Ariel Shapiro, *Trump's SCOTUS Nominee Thinks That ISPs Have First Amendment Rights, Which Could Spell Bad News for Your Privacy*, CNBC.COM (2018).

Tim Steller, *Cochise Officials Pursue Blogger for Publishing Transcript*, ARIZONA DAILY STAR (2017).

Ronald K. Collins, *11 First Amendment Experts Comment on Legality of NYT Release of Trump's Tax Returns*, CONCURRING OPINIONS (2016).

Jacob Gershman, *Free Speech Case About Cash vs. Plastic Store Prices Gestes a Supreme Court Review*, WALL ST. J. (2016) (quoting from amici brief for *Expressions Hair Design v. Schneiderman*).

Stephanie Fairington, *Do You Have a Right to Privacy in Your Marriage?*, TIME (2016).

Christopher Slobogin, *The Definition of Suspicion in an Era of Modern Policing*, JOTWELL (2016) (reviewing my article, *Hassle*).

Fernanda Santos, *Border Patrol Accused of Profiling and Abuse*, N.Y. TIMES (2015).

Connor Harris, *Matters of Mismatch: The Debate over Affirmative Action's Effectiveness*, HARVARD POLITICAL REVIEW (2015) (describing findings from *The Secret of My Success*).

Kathleen Hale, *Glory Johnson Says She Was Victim in Her Altercation with Brittney Griner*, SPORTSILLUSTRATED.COM (2015).

Tim Cushing, *The Government's Antipathy Towards Transparency Has Made FOIA Lawsuits the Default Process*, TECHDIRT (2014).

Driver-Less Cars About a Decade Away, UA Engineer Says, ARIZONA ILLUSTRATED (2014) (television coverage).

Katherine Jacobsen, *Google Challenges Secret Court Over Gag Order*, THE CHRISTIAN SCIENCE MONITOR (2013).

The Bright Side of Telephone Metadata, THE HUFFINGTON POST (2013).

Jerry Brito, *What Europe's 'Right to Be Forgotten' Has in Common with SOPA*, TIME.COM (2012).

More Bad Ideas From the E.U., FORBES.COM (2012).

Leon Neyfakh, *Our Data, Ourselves*, THE BOSTON GLOBE (2011) (describing *Tragedy of the Data Commons* in depth).

L. Gordon Crovitz, *The 0.00002% Privacy Solution*, THE WALL STREET JOURNAL (2011) (quoting *Tragedy of the Data Commons*).

Ashby Jones, *New Study: Forget the Rankings, Just Bring Home Straight A's*, THE WALL STREET JOURNAL LAW BLOG (2010) (describing findings from *The Secret of My Success*).

Terry Baynes, *Don't Sweat Your School's Status*, THE AMERICAN LAWYER (2010) (describing findings from *The Secret of My Success*).

Karen Sloan, *Those Who Never Pass Bar Exam Initially Lag Far Behind Those Who Do*, THE NATIONAL LAW JOURNAL (2010) (describing findings from *Marooned*).

Karen Dybis, *What Happens When You Fail the Bar Exam?*, NATIONAL JURIST (2010) (describing findings from *Marooned*).

SELECTED AMICUS BRIEFS AND PRO BONO WORK

Alabama v. U.S. Department of Commerce, No. 3:21-cv-211-RAH (M.D. Alab.), Brief of Jane Bambauer as Amicus Curiae in support of Alabama (arguing that the use of Differential Privacy to protect privacy in Census Data will needlessly degrade the quality of data used for redistricting and for the enforcement of Voting Rights Act claims).

Hassell v. Bird, No. S235968 (CA), Brief of Amici Curiae First Amendment and Internet Law Scholars in support of appellant, Yelp, Inc. (arguing that the First Amendment and Section 230 of the Communications Decency Act prohibit a court from ordering a non-party Internet intermediary to remove content).

ACLU Foundation of Arizona v. Department of Homeland Security, No. 14-2052 (D. Ariz.), co-plaintiff with Derek Bambauer and ACLU of Arizona in Freedom of Information Act request for documents related to Border Patrol operations in Arizona north of the Mexican border.

Expressions Hair Design v. Schneiderman, No. 15-1391 (U.S. Supreme Court), Brief of Amici Curiae First Amendment Scholars in support of petitioner's writ of certiorari (arguing that credit card surcharge bans, as applied, are unconstitutional restrictions on commercial speech).

Sorrell v. IMS Health Inc., 564 U.S. 552 (2011), Brief of Dr. Khaled El Emam and Jane Yakowitz as Amici Curiae in support of IMS Health (arguing that HIPAA-compliant pharmacy data pose little risk of re-identification to the patients).

BAR ADMISSIONS

State Bar of California, member