

REBECCA WEXLER

691 Simon Hall, Berkeley, CA 94720 • (510) 664-5258 • rebecca.wexler@berkeley.edu

EXPERIENCE

U.C. Berkeley School of Law, <i>Assistant Professor of Law</i>	2019-present
Yale Law School Information Society Project, <i>Affiliated Fellow</i>	2019-present
U.S. District Court, Southern District of N.Y., <i>Clerk to Hon. Katherine Polk Failla</i>	2018-2019
U.S. Court of Appeals, Second Circuit, <i>Clerk to Hon. Pierre N. Leval</i>	2017-2018
The Legal Aid Society Criminal Defense Practice, <i>Yale Public Interest Fellow</i>	2016-2017
The Data & Society Research Institute <i>Lanyer-in-Residence</i>	2016-2017
U.C. Berkeley School of Law Human Rights Center, <i>Visiting Scholar</i>	Summer 2015
Harvard University History of Science Department, <i>Visiting Scholar</i>	Summer 2015
The Electronic Frontier Foundation, <i>Legal Intern</i>	Summer 2014
Senior Fulbright Advanced Research & Lecturing Scholar, Sri Lanka	2012

BAR MEMBERSHIP

New York State

EDUCATION

Yale Law School, J.D. 2016

- *The Yale Law Journal* Forum Editor

Cambridge University, M.Phil., *high first distinction* 2006

- Gates-Cambridge Fellow

Harvard College, A.B., *summa cum laude* 2005

- *Phi Beta Kappa* Junior Inductee (top 1%)

ACADEMIC PUBLICATIONS & WORKS-IN-PROGRESS

Privacy Asymmetries: Access to Data in Criminal Investigations, 67 UCLA L. REV. ____ (forthcoming 2020).

This Article identifies and critiques a troubling and unintentional side effect of data privacy laws; these laws often give law enforcement more or better access to sensitive information than they afford to criminal defense investigators. Without correction, the consequences of these inequalities will only increase as third party service providers collect more and more data about our heart beats, movements, communications, consumptions, and more, much of which will be relevant to criminal investigations.

Life, Liberty and Trade Secrets: Intellectual Property in the Criminal Justice System, 70 STAN L. REV. 1343 (2018)

This Article challenges claims to a trade secret evidentiary privilege in criminal proceedings. The developers of new automated criminal justice technologies often claim that details about how the tools work are trade secrets that cannot be disclosed to criminal defendants and their attorneys, even under a protective order. Reasoning from the perspective of evidence law, I argue that privileging trade secrets overprotects intellectual property and is harmful, ahistorical, and unnecessary.

Technology's Continuum: Body Cameras, Data Collection, and Constitutional Searches, in VISUAL IMAGERY AND HUMAN RIGHTS PRACTICE (Monroe Price, ed., *forthcoming* 2018).

The way judges analogized early police video to photographs, audio recordings, and the human eye biased courts against applying robust constitutional privacy protections. By suggesting that today's police body cameras are instead better understood as part of a technological continuum of wearable and indiscriminate sensor-data collection devices, I open a new doctrinal path to expand constitutional privacy protections for body camera recordings inside the home.

Gags as Guidance: Expanding Notice of National Security Letter Investigations to Targets and the Public, 31 BERKELEY TECH. L.J. 325 (2016) (Note).

National Security Letters (NSLs) are administrative subpoenas that the FBI uses to demand information from Internet service providers without prior judicial approval. They almost always include gag orders prohibiting the recipient from discussing the letter's contents or even its mere existence. This Note argues that once a gag order is lifted, reflecting the abatement of the Governments' interests in secrecy, the FBI should notify the targets of the investigation and the public. This transparency policy would harmonize with longstanding, closely related domestic criminal statutes and advance core principles that underlie the Fourth Amendment. Moreover, the First Amendment offers ready balancing tests that can easily guide government notice practices.

The Private Life of DRM: How Fundamental Rights Frame Copyright Enforcement Reform, 17 YALE J.L. & TECH. 368 (2015).

Digital Rights Management (DRM) technologies are encryption tools that track the use of, and restrict access to, copyrighted information. This Article argues that information privacy claims in debates over DRM have not lead to determinant outcomes; each argument drawn from a privacy interest corresponds to a counterclaim drawn from that same interest but supporting an opposite policy preference. The Article cautions against adopting new definitions of privacy interests for the digital age, and in favor of focusing policy choices on who uses new technologies and for what ends.

Warrant Canaries and Disclosure by Design: The Real Threat to National Security Letter Gag Orders, 124 YALE L.J. F. 158 (2014).

This Essay examines the First Amendment implications of "warrant canaries," or regularly published statements that a communications service provider has received no covert government surveillance orders. If such an order were received, the service provider could stop publishing the canary and thereby notify astute observers. I show how this self-help practice reframes certain legal issues that the FBI has repeatedly relied on to defend the constitutionality of National Security Letter nondisclosure orders, and could make ongoing legal challenges to the nondisclosure orders obsolete before courts have a chance to decide them.

Book Note, 8 INT'L J. OF THE COMMONS 688 (2014) (reviewing PATRICK BURKART, PIRATE POLITICS: THE NEW INFORMATION POLICY CONTESTS (2014)).

Onward, Christian Penguins: Wildlife Film and the Image of Scientific Authority, 39 HIST. & PHIL. OF BIOLOGICAL & BIOMEDICAL SCIENCES 273 (2008).

OTHER PUBLICATIONS

How data Privacy laws Could make the Criminal Justice System even more Unfair, L.A. TIMES (July 31, 2019).

When a Computer Program Keeps you in jail, N.Y. TIMES (June 13, 2017).

Code of Silence: How Private Companies Hide Flaws in the Software that Governments use to Decide who goes to Prison and who gets out, WASH. MONTHLY (June/July/Aug. 2017).

Why it's so Difficult to Authenticate Videos that Appear to Show Human Rights Violations, SLATE (Feb. 28, 2017, 12:50 PM).

Convicted by Code, SLATE (Oct. 6, 2015, 12:28 PM).

U.N. Investigators for Sri Lanka, Show Your Work, GROUNDVIEWS (Aug. 8, 2014).

Transparency in the UNHRC Investigation of War Crimes in Sri Lanka, THE ISLAND May 8, 2014.

Integrity vs. Authenticity in Video Journalism, COMMIT. TO PROTECT JOURNALISTS (Dec. 13, 2012).

The Post-Wikileaks World, YALE GLOBAL ONLINE MAG. (Dec. 17, 2010).