<table>
<thead>
<tr>
<th>ESSAY</th>
<th>Even in a Time of Terror</th>
<th>Owen Fiss</th>
<th>1</th>
</tr>
</thead>
<tbody>
<tr>
<td>ARTICLES</td>
<td>The Institutional Politics of Federal Judicial Conduct Regulation</td>
<td>Dana A. Remus</td>
<td>33</td>
</tr>
<tr>
<td></td>
<td>Transparency With(out) Accountability: Open Government in the United States</td>
<td>Jennifer Shkabatur</td>
<td>79</td>
</tr>
<tr>
<td>FEATURE</td>
<td>National Security Law, Lawyers, and Lawyering in the Obama Administration</td>
<td>Jeh Charles Johnson</td>
<td>141</td>
</tr>
<tr>
<td>POLICY ESSAYS</td>
<td>The Distance Between Principle and Practice in the Obama Administration’s Targeted Killing Program: A Response to Jeh Johnson</td>
<td>Pardiss Kebriaei</td>
<td>151</td>
</tr>
<tr>
<td></td>
<td>The Ethics of National Security Lawyering: A Response to Jeh Johnson</td>
<td>Jamil N. Jaffer</td>
<td>173</td>
</tr>
<tr>
<td>NOTES</td>
<td>Evidentiary Rules Governing Guantánamo Habeas Petitions: Their Effects and Consequences</td>
<td>Jasmeet K. Ahuja and Andrew Tutt</td>
<td>185</td>
</tr>
<tr>
<td></td>
<td>Toward a Constitutionalized Theory of Immigration Detention</td>
<td>Travis Silva</td>
<td>227</td>
</tr>
</tbody>
</table>
The Yale Law & Policy Review is published twice each year by students of the Yale Law School. Third-class postage is paid at New Haven, Connecticut, and other mailing offices.

PUBLICATION POLICY

The Review provides a forum for the discussion of a range of contemporary legal and policy issues. Views expressed in the Review are those of the authors and do not reflect the views of the Editorial Members.

The Review publishes solicited and unsolicited articles, book reviews, and student-written pieces. Please submit unsolicited manuscripts to the Submissions Editors according to the procedures described on the Review's website. Due to the large volume of submissions that we receive, the Review does not accept submissions in hard copy or via facsimile.

SUBSCRIPTIONS AND SPECIAL ISSUES

The subscription rate for institutions is $30.00 domestic and $40.00 foreign. The subscription rate for individuals is $20.00 domestic and $30.00 foreign. Payments received by institution checks will be billed at institution rates. Subscriptions are automatically renewed unless the Review receives a request for cancellation. Issues not received will be supplied free of charge only if a claim for nonreceipt is made within one year after the scheduled mailing date. All requests concerning subscriptions and special issues should be addressed to the Subscriptions Department, Yale Law & Policy Review, at the above address. Back issues for Volume 1 to the current issue are available from the Review, at the above address, for $20.00 domestic and $25.00 foreign, including postage.

COPYRIGHT AND REPRODUCTION

Articles published in the Review may be duplicated for classroom use provided that the author and the Yale Law & Policy Review are identified, each copy is distributed at or below cost with proper notice of the copyright affixed, and written notice of the use is given to the Managing Editor, Yale Law & Policy Review, at the above address or via e-mail.
ADVISORY BOARD

ANNE L. ALSTOTT
Jacquin D. Bierman Professor in Taxation
Yale Law School

DAN M. KAHAN
Elizabeth K. Dollard Professor of Law and
Professor of Psychology
Yale Law School

JACK M. BALKIN
Knight Professor of Constitutional Law
and the First Amendment
Yale Law School

DOUGLAS KYSAR
Deputy Dean and Joseph M. Field '55 Professor of Law
Yale Law School

RUSSELL B. BALIKIAN
Editor-in-Chief, Volume 30
Yale Law & Policy Review

JONATHAN R. MACEY
Sam Harris Professor of Corporate Law, Corporate Finance,
and Securities Law
Yale Law School

ROSA BROOKS
Professor of Law
Georgetown University Law Center

JERRY L. MASHAW
Sterling Professor of Law
Yale Law School

THE HONORABLE JOSÉ A. CABRANES
U.S. Court of Appeals
Second Circuit

KASDIN E. MILLER
Editor-in-Chief, Volume 30
Yale Law & Policy Review

OWEN M. FISS
Sterling Professor Emeritus of Law and
Professorial Lecturer in Law
Yale Law School

THE HONORABLE WILLIAM H. PRYOR, JR.
U.S. Court of Appeals
Eleventh Circuit

PAUL GEWIRTZ
Potter Stewart Professor of Constitutional Law and
Director, The China Center
Yale Law School

PETER H. SCHUCK
Simeon E. Baldwin Professor Emeritus of Law
Yale Law School

JACOB S. HACKER
Stanley B. Resor Professor of Political Science and
Director, Institution for Social and Policy Studies
Yale University

KATE STITH
Lafayette S. Foster Professor of Law
Yale Law School

PAMELA HARRIS
Visiting Professor of Law
Georgetown University Law Center

THE HONORABLE MYRON H. THOMPSON
U.S. District Court
Middle District of Alabama
Officers of Administration

Richard Charles Levin, B.A., B.Litt., Ph.D., President of the University
Peter Salovey, A.B., M.A., Ph.D., President-Elect of the University
Benjamin Polak, B.A., M.A., Ph.D., Provost of the University
Robert C. Post, J.D., Ph.D., Dean
Douglas Kysar, B.A., I.D., Deputy Dean
S. Blair Kauffman, J.D., LL.M., M.LL., Law Librarian
Megan A. Barnett, B.A., I.D., Associate Dean
Toni Hahn Davis, J.D., LL.M., Associate Dean
Brent Dickman, B.B.A., M.B.A., Associate Dean
Mark LaFontaine, B.A., J.D., Associate Dean
Kathleen B. Overly, I.D., Ed.D., Associate Dean
Asha Rangappa, A.B., I.D., Associate Dean
Mike K. Thompson, M.B.A., I.D., Associate Dean

Faculty Emeriti

Guido Calabresi, LL.B., Dr. Jur., LL.D., D.Poli.Sci., Sterling Professor Emeritus of Law and Professorial Lecturer in Law
Harlon Leigh Dalton, A.B., I.D., Sterling Professor Emeritus of Law
Mirjan Radovan Damatka, LL.B., Dr. Jur., Sterling Professor Emeritus of Law and Professorial Lecturer in Law
Drew S. Days III, B.A., LL.B., Alfred M. Rankin Professor Emeritus of Law and Professorial Lecturer in Law
Jan Ginter Deutsch, LL.B., Ph.D., Walter Hale Hamilton Professor Emeritus of Law and Professorial Lecturer in Law
Owen M. Fiss, M.A., LL.B., Sterling Professor Emeritus of Law and Professorial Lecturer in Law
Robert W. Gordon, A.B., I.D., Chancellor Kent Professor Emeritus of Law and Legal History
Michael J. Graetz, B.B.A., LL.B., LL.D., Justus S. Hotchkiss Professor Emeritus of Law and Professorial Lecturer in Law
Quintin Johnstone, J.D., I.S.D., Justus S. Hotchkiss Professor Emeritus of Law
Carroll L. Lucht, M.S.W., J.D., Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law
Carol M. Rose, J.D., Ph.D., Gordon Bradford Tweedy Professor Emeritus of Law and Organization and Professorial Lecturer in Law
Peter H. Schuck, J.D., LL.M., Simeon E. Baldwin Professor Emeritus and Professor (Adjunct) of Law
John G. Simon, LL.B., LL.D., Augustus E. Lines Professor Emeritus of Law and Professorial Lecturer in Law
Robert A. Solomon, B.A., I.D., Clinical Professor Emeritus of Law
Stephen Wizner, A.B., I.D., William O. Douglas Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law

Faculty

Bruce Ackerman, B.A., LL.B., Sterling Professor of Law and Political Science
† Muniru I. Ahmad, A.B., I.D., Clinical Professor of Law
Anne L. Altott, A.B., I.D., Jacquin D. Bierman Professor in Taxation
Akhil Reed Amar, B.A., I.D., Sterling Professor of Law
Ian Ayres, I.D., Ph.D., William K. Townsend Professor of Law
‡ Jack M. Balkin, J.D., Ph.D., Knight Professor of Constitutional Law and the First Amendment
Alharon Barak, LL.M., Dr.Jur., Visiting Professor of Law and Gruber Global Constitutionalism Fellow (fall term)
Lea Brilmayer, J.D., LL.M., Howard M. Holtzmann Professor of International Law
Richard B.W. Brooks, Ph.D., J.D., Leighton Homer Surbeck Professor of Law
Robert Amsterdam Burt, M.A., I.D., Alexander M. Bickel Professor of Law (fall term)
Guido Calabresi, LL.B., Dr. Jur., LL.D., D.Poli.Sci., Sterling Professor Emeritus of Law and Professorial Lecturer in Law
Stephen Lile Carter, B.A., I.D., William Nelson Cromwell Professor of Law
† Amy Chua, A.B., I.D., John M. Duff, Jr. Professor of Law
Dennis E. Curtis, B.S., LL.B., Clinical Professor Emeritus of Law and Professorial Lecturer in Law
Harlon Leigh Dalton, B.A., I.D., Professor Emeritus of Law
Mirjan Radovan Damatka, LL.B., Dr. Jur., Sterling Professor Emeritus of Law and Professorial Lecturer in Law
Toni Hahn Davis, J.D., LL.M., Associate Dean
Drew S. Days III, B.A., LL.B., Alfred M. Rankin Professor Emeritus of Law and Professorial Lecturer in Law
Jan Ginter Deutsch, LL.B., Ph.D., Walter Hale Hamilton Professor Emeritus of Law and Professorial Lecturer in Law
Brent Dickman, B.B.A., M.B.A., Associate Dean
Fiona M. Doherty, B.A., I.D., Clinical Associate Professor of Law
Steven Barry Duke, J.D., LL.M., Professor of Law
Robert C. Ellickson, A.B., LL.B., Walter E. Meyer Professor of Property and Urban Law (spring term)
Edwin Donald Elliott, B.A., I.D., Professor (Adjunct) of Law
† William N. Eskridge, Jr., M.A., I.D., John A. Garver Professor of Jurisprudence
‡ Daniel C. Esty, M.A., I.D., Hillhouse Professor of Environmental Law and Policy, School of Forestry & Environmental Studies; and Clinical Professor of Environmental Law and Policy, Law School
Jeffrey Fagan, M.E., M.S., Ph.D., Florence Rogatz Visiting Professor of Law (spring term)
Owen M. Fiss, M.A., LL.B., Sterling Professor Emeritus of Law and Professornial Lecturer in Law
† James Forman, Jr., A.B., J.D., Clinical Professor of Law
† Heather K. Gerken, A.B., J.D., J. Skelly Wright Professor of Law
Paul Gewirtz, A.B., J.D., Potter Stewart Professor of Constitutional Law
Abbe R. Gluck, B.A., J.D., Associate Professor of Law
Robert W. Gordon, A.B., J.D., Chancellor Kent Professor Emeritus of Law and Legal History and Professor (Adjunct) of Law (fall term)
Michael J. Graetz, B.B.A., LL.B., LL.D., Justus S. Hotchkiss Professor Emeritus of Law and Professorial Lecturer in Law (fall term)
David Singh Grewal, J.D., Ph.D., Associate Professor of Law
Dieter Grimm, LL.M., Dr.Jur., Visiting Professor of Law and Gruber Global Constitutionalism Fellow (spring term)
Henry B. Hansmann, I.D., Ph.D., Oscar M. Ruebhausen Professor of Law
Robert D. Harrison, J.D., Ph.D., Lecturer in Legal Method
Oona A. Hathaway, B.A., J.D., Gerard C. and Bernice Latrobe Smith Professor of International Law
Roderick M. Hills, B.A., J.D., Anne Urowsky Visiting Professor of Law
Edward J. Janger, J.D., J.D., Visiting Professor of Law (fall term)
Quintin Johnstone, J.D., J.S.D., Justus S. Hotchkiss Professor Emeritus of Law
† Christine Jolls, J.D., Ph.D., Gordon Bradford Tweedy Professor of Law and Organization
† Diana E. Kastner, B.A., J.D., Elizabeth K. Dollard Professor of Law and Professor of Psychology
† Paul W. Kahn, J.D., Ph.D., Robert W. Winner Professor of Law and the Humanities
Amy Kaczynski, M. Phil., M.A., J.D., Associate Professor of Law
S. Blair Kaufman, J.D., LL.M., M.L.L., Law Librarian and Professor of Law
Amalia D. Kessler, M.A., Ph.D., Sidney Austin-Robert D. McLean ’70 Visiting Professor of Law (fall term)
Daniel J. Kevels, B.A., Ph.D., Professor (Adjunct) of Law (fall term)
† Abbe C. Klewicki, M.A., Ph.D., John Thomas Smith Professor of Law and Professor of Economics
† Harold Hongju Koh, A.B., J.D., Sterling Professor of International Law
Anthony Townsend Kronman, J.D., Ph.D., Sterling Professor of Law
Douglas Kysar, B.A., J.D., Deputy Dean and Joseph M. Field ’53 Professor of Law
John H. Langbein, LL.B., Ph.D., Sterling Professor of Law and Legal History
Justin Levitt, M.P.A., J.D., Visiting Associate Professor of Law (spring term)
† Yair Listokin, Ph.D., J.D., Associate Professor of Law
Carroll L. Lucht, M.S.W., J.D., Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law
† Jonathan R. Macey, A.B., J.D., Sam Harris Professor of Corporate Law, Corporate Finance, and Securities Law Luis Miguel Poi res Pessao Maduro, Lic. en Derecho (J.D.), Ph.D., Visiting Professor of Law and Gruber Global Constitutionalism Fellow (fall term)
† Chibli Mallat, LL.M., Ph.D., Visiting Professor of Law and Oscar M. Ruebhausen Distinguished Senior Fellow (fall term)
Joseph G. Manning, A.M., Ph.D., Professor (Adjunct) of Law (fall term)
David Marcus, B.A., J.D., Maurice R. Greenberg Visiting Professor of Law
Daniel Markovits, D.Phil., Ph.D., Lecturer in Legal Method
Jerry L. Mashaw, LL.B., Ph.D., Sterling Professor of Law (fall term)
Brazier McKee, M.D., Associate Professor (Adjunct) of Law (fall term)
† Tracey L. Meares, B.S., J.D., Walton Hale Hamilton Professor of Law
Noah Messing, B.A., J.D., Lecturer in the Practice of Law and Legal Writing
Jeffrey A. Meyer, B.A., J.D., Visiting Professor of Law
Alice Miller, B.A., J.D., Associate Professor (Adjunct) of Law (spring term)
Nicholas Parrillo, M.A., J.D., Associate Professor of Law
Jean Koh Peters, A.B., J.D., Sol Goldman Clinical Professor of Law and Supervising Attorney
Thomas Pooge, Dipl. Ph.D., Professor (Adjunct) of Law (spring term)
Robert C. Post, J.D., Ph.D., Dean and Sol & Lillian Goldman Professor of Law
J.L. Pottinger, Jr., A.B., J.D., Nathan Baker Clinical Professor of Law and Supervising Attorney
Claire Priest, J.D., Ph.D., Professor of Law
George L. Priest, B.A., J.D., Edward J. Phelps Professor of Law and Economics and Kauffman Distinguished Research Scholar in Law, Economics, and Entrepreneurship
† William S. Rice, B.A., LL.M., J.S.D., Myres S. McDougal Professor of International Law
† Judith Resnik, B.A., J.D., Arthur Liman Professor of Law
† Roberta Romano, M.A., J.D., Sterling Professor of Law
Carol M. Rose, J.D., Ph.D., Gordon Bradford Tweedy Professor Emeritus of Law and Organization, and Professorial Lecturer in Law
Susan Rose-Ackerman, B.A., Ph.D., Henry R. Luce Professor of Jurisprudence (Law School and Department of Political Science)
Jed Rubenfeld, A.B., J.D., Robert R. Slaughter Professor of Law
Jennifer Phra Ruger, Ph.D., M.S.L., Associate Professor (Adjunct) of Law (spring term)
William M. Sage, M.D., J.D., Visiting Professor of Law (spring term)
Peter H. Schuck, M.A., J.D., LL.M., Simeon E. Baldwin Professor Emeritus and Professor (Adjunct) of Law (fall term)
Vicki Schultz, B.A., J.D., Ford Foundation Professor of Law

† Alan Schwartz, B.S., LL.B., Sterling Professor of Law

Ian Shapiro, J.D., Ph.D., Professor (Adjunct) of Law (spring term)

† Scott I. Shapiro, J.D., Ph.D., Charles F. Southmayd Professor of Law and Professor of Philosophy

Robert J. Shiller, B.A., Ph.D., Professor (Adjunct) of Law (spring term)

Reva Siegel, M.Phil., J.D., Nicholas deB. Katzenbach Professor of Law

Norman I. Silber, Ph.D., J.D., Visiting Professor of Law

James I. Silk, M.A., J.D., Clinical Professor of Law

John G. Simon, LL.B., LL.D., Augustus E. Lines Professor Emeritus of Law and Professorial Lecturer in Law

Robert A. Solomon, B.A., J.D., Clinical Professor Emeritus of Law

Richard Squire, M.B.A., J.D., Florence Rogatz Visiting Professor of Law

Stephanie M. Stern, B.A., J.D., Irving S. Ribicoff Visiting Associate Professor of Law (fall term)

Richard B. Stewart, M.A., J.D., LL.B., Visiting Professor of Law (fall term)

† Kate Stith, M.P.P., J.D., Lafayette S. Foster Professor of Law

Alec Stone Sweet, M.A., Ph.D., Leitner Professor of International Law, Politics, and International Studies

Tom Richard Tyler, M.A. Ph.D., Macklin Fleming Professor of Law and Professor of Psychology

Patrick Weil, M.B.A., Ph.D., Visiting Professor of Law (fall term)

James Q. Whitman, J.D., Ph.D., Ford Foundation Professor of Comparative and Foreign Law

Abraham Wickedgren, J.D., Ph.D., Florence Rogatz Visiting Professor of Law

Luzius Wildhaber, Dr. Jur., LL.M., J.S.D., Visiting Professor of Law and Gruber Global Constitutionalism Fellow (fall term)

Ralph Karl Winter, Jr., M.A.H., LL.B., Professor (Adjunct) of Law

† Michael J. Wishnie, B.A., J.D., Clinical Professor of Law and Director, Jerome N. Frank Legal Services Organization

John Fabian Witt, J.D., Ph.D., Allen H. Duffy Class of 1966 Professor of Law

Stephen Winzer, A.B., J.D., William O. Douglas Clinical Professor Emeritus of Law, Supervising Attorney, and Professorial Lecturer in Law

† Gideon Yaffe, A.B., Ph.D., Professor of Law and Professor of Philosophy

Howard V. Zonana, B.A., M.D., Professor of Psychiatry and Clinical Professor (Adjunct) of Law

† On leave of absence, fall term, 2012.

‡ On leave of absence, spring term, 2013.

Lecturers in Legal Research

Margaret Chisholm, M.L.S., J.D.

Jason Eiseman, B.A., M.L.S.

Julie Graves Krishnaswami, J.D., M.L.I.S.

Ryan Harrington, J.D., M.L.S.

Evelyn Ma, J.D., M.L.S.

John B. Nann, M.S., J.D.

Fred I. Shapiro, M.S., J.D.

Daniel Wade, M.S., J.D.

Michael Widener, B.A., M.L.S.

Lecturers in Law

John C. Baltano, M.A., J.D.

Nicholas Bramble, M.A., J.D.

Cynthia Carr, J.D., LL.M.

Adam S. Cohen, A.B., J.D.

Linda Greenhouse, B.A., M.S.L., Joseph Goldstein Lecturer in Law

Adam Grogg, M.Phil., J.D.

Lucas Guttenberg, A.B., J.D.

Bruce Ho, M.E.M., J.D.

Jamie P. Horsley, M.A., J.D.

Margot E. Kaminski, B.A., J.D.

Katherine Kennedy, A.B., J.D., Timothy B. Atkeson Environmental Lecturer in Law

Alex A. Knopp, B.A., J.D.

Annie Lai, B.A., J.D.

John T. Marshall, M.A., J.D.

Hope R. Metcalf, B.A., J.D.

Christina M. Mulligan, B.A., J.D.

James E. Ponet, M.A., D.D.

Nina Rabin, B.A., J.D.

Sia M. Sanneh, M.A., J.D.

Daniel Wade, M.S., J.D.
Visiting Lecturers in Law

Josh Abramowitz, A.B., J.D.

Melinda Agsten, A.B., J.D.

Guillermo Aguilar-Alvarez, Lic. en Derecho (J.D.)

Richard Baxter, M.A., J.D.

Stuart Beck, B.A., J.D.

Frank R. Blando, M.B.A., J.D.

Stephen B. Bright, B.A., J.D., Harvey Karp Visiting Lecturer in Law

Jennifer Gerard Brown, A.B., J.D.

Helen V. Cantwell, B.A., J.D.

Brett Cohen, B.A., J.D.

Timothy C. Collins, B.A., M.B.A.

Victoria A. Cundiff, B.A., J.D.

Brian Daly, M.A., J.D.

Karl Dannenbaum, M.A., J.D.

Lisa Nachmias Davis, B.A., J.D.

Francis X. Dineen, A.B., LL.B.

Stewart I. Edelstein, B.A., J.D.

Eugene R. Fidell, B.A., LL.B., Florence Rogatz Visiting Lecturer in Law

Gregory Fleming, B.A., J.D.

Lawrence I. Fox, B.A., J.D., George W. and Sadella D. Crawford Visiting Lecturer in Law

Shelley Diehl Geballe, J.D., M.P.H.

Lee Gelernt, M.Sc., J.D.

Jeffrey Gentes, B.A., J.D.

Frederick S. Gold, B.A., J.D.

Greg Gonsalves, B.S.

Benjamin W. Heineman, Jr., B. Litt., J.D.

Rebecca M. Heller, B.A., J.D.

Stephen Hudspeth, M.A., J.D.

Frank Iacobucci, LL.B., LL.M., Gruber Global Constitutionalism Fellow

Aaron Korman, M.Sc., J.D.

Anika Singh Lemar, B.A., J.D.

Barbara B. Lindsay, J.D., LL.M.

Barbara Marcus, M.S., Ph.D.

Michael S. McGarry, A.B., J.D.

Margaret Middleton, B.S., J.D.

Cantwell F. Muckenfuss III, B.A., J.D.

Laurence P. Nadel, A.B., J.D.

Charles Nathan, B.A., J.D.

Ann M. Parrent, B.A., J.D.

Andrew J. Pincus, B.A., J.D.

Eric Robinson, M.B.A., J.D.

David N. Rosen, B.A., LL.B.

Charles A. Rothfield, A.B., J.D.

Barry R. Schaller, B.A., J.D.

David A. Schultz, M.A., J.D.

Michael S. Solender, B.A., J.D.

Laurence T. Sorkin, LL.B., LL.M.

Sidney H. Stein, A.B., J.D.

David J. Stoll, B.A., J.D.

Christof R. Swaak, Dipl., Ph.D.

William B. Taylor, B.A., LL.B.

Stefan R. Underhill, B.A., J.D.

John M. Walker, Jr., B.A., J.D.

Michael Weisman, B.A., J.D.

David M. Zornow, B.A., J.D.