

Create Change

Defense Clinic Challenges Three Strikes Convictions

A life sentence in prison is generally associated with murderers and rapists, but Stanford Law School's Criminal Defense Clinic is representing clients who have been sentenced to life for much lesser crimes. One client was charged with writing bad checks, another with possessing small amounts of methamphetamine, and a third with stealing children's shoes from a retail store. Due to California's Three Strikes law, all three of these clients are serving life terms for relatively minor, non-violent crimes.

Michael Romano '03, Lecturer in Law for the Criminal Defense Clinic, says, "I think our cases are heartbreaking. We represent clients who have never committed a crime of violence and are serving longer prison terms than most murderers in California."

Galit Lipa, the clinic's Teaching Fellow adds, "Most of our clients are drug addicts who have never received appropriate services and now the prison system is serving as their mental health and welfare providers."

CLINIC SHEDS LIGHT ON THREE STRIKES' INEQUITIES
Since its founding in spring 2007, the Criminal Defense Clinic has focused



PHOTO: JOE NETO

Galit Lipa, Teaching Fellow, and Michael Romano '03, Lecturer in law, of the Criminal Defense Clinic

on teaching students about complex appellate and post-conviction litigation and to shedding light on problems with the Three Strikes law to inspire reform.

At the clinic's inception, Romano; Professor Larry Marshall, the Associate Dean for Public Service and Clinical Education and the David & Stephanie Mills Director of Clinical Education; Professor Bob Weisberg, Director of the Criminal Justice Center; and Kara Dansky, Executive Director of the Criminal Justice Center, discussed at length how to structure a new criminal defense clinic. They decided that

it should capitalize on Marshall's experience working on death penalty cases at Northwestern Law School's Center on Wrongful Convictions.

Romano explains, "We believed we could leverage experience in capital cases by applying many of the strategies and legal precedents from the death penalty context to cases under the Three Strikes law."

He adds, "On a pedagogical level, we believed that the factual investigations, legal research and writing, and client contact could provide a number of rewarding lessons to *(continued on page 6)*

Executive Director's Note



"To all those who have hunger, give bread. To all of those who have bread, give the hunger for justice."

Native American Prayer

The Levin Center has enjoyed a fruitful and productive Fall. Our Public Interest Fellows and Pro Bono Programs continue to flourish and contribute to the Levin Center's mission of promoting a service ethic among our students and the broader legal community.

We commend two Fellows, Andrew Bruck '08 and Andrew Canter '08, for their pathbreaking work in expanding the Building a Better Legal Profession Project. Their grassroots project, ranking law firms based on pro bono commitment and demographic diversity, challenges firms, and the profession more broadly, to aspire to make the rhetoric of pro bono and work/life balance a reality for the next generation of lawyers.

We are also grateful for the efforts of another Fellow, Mariko Hirose '08, who has developed a multi-dimensional human rights pro bono project through which over fifty SLS students will work on a broad range of human rights matters with Asylum Access, the Center for Justice and Accountability, and Freedom House.

Finally, we owe a great debt to the faculty, graduates, and public interest practitioners who have participated in Levin Center programs including Public Service Awardees David Doniger and Chris Ho '87; Distinguished Practitioners Mark Chavez '79, Chavez & Gertler LLP; Luke Cole, Center on Race, Poverty and the Environment; and Jamiene Studley, Public Advocates. You are the 'drum majors for justice,' who remind us that good lawyering requires us not only to 'think like lawyers,' but also to act with courage, creativity, vision, and a spirit of service.

We look forward to our spring semester which will include a wide range of programs including a Practitioner Speaker Series in collaboration with the Stanford Center on Ethics; a symposium on "Education as a Civil Right" co-sponsored with the Stanford Journal on Civil Rights and Civil Liberties and the Mills Legal Clinic's Youth and Education Law Project; Public Interest Skills Trainings focused on persuasive public speaking, legislative advocacy, and media outreach; and Alternative Spring Break pro bono projects.

We urge you all to join us for these many programs designed to enrich the curriculum and promote a dialogue among academicians and practitioners which will inspire fresh ideas and action plans for promoting social justice through the law.

Susan J. Feathers

News Briefs

Save the date! Feb. 2008 Symposium Will Focus on Education as a Civil Right

With the *Stanford Journal of Civil Rights and Civil Liberties* and the Youth and Education Law Project of the Mills Legal Clinic, the Levin Center is hosting a symposium on education on Feb. 2, 2008. This will create a forum for legal scholars, education scholars, and practitioners to share groundbreaking work and perspectives on a number of urgent education-related civil rights issues. With No Child Left Behind coming up for review, California's successful *Williams* lawsuit facing implementation challenges, and the Supreme Court issuing a decision on the constitutionality of voluntary integration efforts, educational rights are currently at the forefront of the civil rights and civil liberties landscape.

Attorneys can receive 7 hours of MCLE credit. Registration is free for students but \$50 for professionals. Details and the symposium schedule are available on our website at <http://www.law.stanford.edu/calendar/details/844/>

SPILF Auction Set for March 8, New Postgraduate Fellowship is Announced

Alumni, faculty, students, and members of the public are invited to attend the Stanford Public Interest Law Foundation's annual auction on March 8, 2008 from 6 - 10 pm.

Organized entirely by students, the Auction offers an exciting evening featuring both a silent auction and a live auction emceed by Stanford law professors.

In conjunction with Stanford Law School, SPILF is also delighted to announce that it is offering a new postgraduate public interest fellowship.

Students in the current graduating class and alumni from the class of 2003 and later are eligible to apply. Compensation for the 2008-09 year will be \$45,000 plus benefits the recipient's sponsor would ordinarily provide to an employee at the recipient's level.

For more information, please see <http://spilf.stanford.edu/>

Well before September 11 or the dot-com boom, Marc Rotenberg '87 recognized the need for an organization that would advocate in Washington on behalf of the public about the impact of emerging technologies on privacy, the First Amendment, and civil liberties

Rotenberg founded the Electronic Privacy Information Center (EPIC) in 1994 and it quickly developed a national reputation for its efforts to protect privacy rights. For example, EPIC filed a series of innovative complaints at the Federal Trade Commission that led to significant changes in the technology of Internet identification and reforms in the data profiling industry. Rotenberg also organized the first Internet petition to stop a government proposal to regulate encryption, a key technology for privacy protection.

Rotenberg's goal in founding EPIC is to develop an organization with a public interest mission and the expertise to speak about new technologies. EPIC's advisory board features many distinguished experts in law, computer science, and public policy. He adds, "EPIC has an interesting and unusual mission in that we are constantly focused on the public interest and the future."

PUBLIC SERVICE INFORMS ROTENBERG'S CHOICES

Rotenberg was inspired by his work in Washington, D.C. before law school. He felt that the impact of technology on civil liberties was not well understood and he also believed that the public interest was being overshadowed by the private sector. Rotenberg helped the ACLU and other advocacy groups set up their first computers and he launched the first project on technology and privacy. He also worked with Congressional lawmakers to update the federal wiretap laws.

Rotenberg went to law school because of the "need for lawyers that understood the impact of technology on civil liberties and could help create appropriate policies for a constantly



Marc Rotenberg '87

Alumni Spotlight

Protecting Citizens' Privacy Rights in Post-9/11 America

changing field." At EPIC he continues to address that need by offering a high-level internship program, modeled after a law school clinic, to train future advocates. He strongly encourages SLS students to apply for an internship with EPIC.

While at SLS, Rotenberg served as president of the Stanford Public Interest Law Foundation and was a research assistant for the great jurist and civil rights leader Judge A. Leon Higginbotham. He also found time at Stanford to work with faculty in other fields, especially the Computer Science department. Upon graduating from SLS, Rotenberg went to work for Senator Patrick Leahy on the Senate Judiciary Committee when the Congress was

beginning to explore the intersection of law and technology. He helped draft laws, organize Congressional hearings, and oversee government agencies.

CONTINUING THE FIGHT TO PRESERVE PRIVACY

More than 20 years later, Rotenberg has emerged as a leader in the privacy field. He has testified before Congress more than fifty times. He appeared before the 9/11 Commission to discuss how best to protect privacy while preventing terrorism. Rotenberg has also written dozens of amicus curiae briefs for appellate courts on new challenges to privacy. He teaches a course on privacy law at Georgetown Law School. He has testified in the European Parliament and spoken at judicial conferences in the U.S., Canada, Italy, and South Korea. Rotenberg has also sparred with industry lobbyists, U.S. Senators, and FBI Directors in his career in public interest law and even debated the USA PATRIOT ACT in public hearings with the bill's author.

Not long ago, Rotenberg argued the legality of DNA dragnet searches before the Fifth Circuit Court of Appeals. The case involved the police department of Baton Rouge taking DNA samples from over 600 African-American males because the victim reported that her attacker was a young African-American male. The Fifth Circuit eventually ruled against the use of DNA dragnets. Of the numerous instances where EPIC stands up for the public—Rotenberg sees this as one of the most striking example of the important work that EPIC can do "because it is at the intersection of law, technology, and social justice."

More recently, EPIC filed a series of petitions at the Federal Trade Commission, arguing that privacy safeguards should be established as a condition of the Google-DoubleClick merger. Officials in Europe and Canada, as well as the US Federal Trade Commission, are now considering EPIC's (continued on page 7)

PHOTO COURTESY OF MARC ROTENBERG '87

Mills Legal Clinic Reports New Victories for Clients, Environmental Causes

Editor's note: This is a summary of e-mail announcements sent by Professor Larry Marshall, Associate Dean for Public Service and Clinical Education and the David and Stephanie Mills Director of Clinical Education, this past semester.

Congratulations to all of the clinic students, faculty, and staff for their hard-won victories on behalf of their clients.

ENVIRONMENTAL LAW CLINIC

In mid-November, the Environmental Law Clinic won a victory in the Ninth Circuit Court of Appeals in an expedited lawsuit challenging the new corporate fuel economy standards for light trucks (pickups, SUVs, and minivans). The clinic represented the Center for Biological Diversity ("CBD") in this matter.

This is one of the first, if not the first, case to ever overturn a major National Highway Traffic Safety Administration fuel economy standard.

The National Highway Traffic Safety Administration promulgated the new standards in 2006 for light trucks manufactured from 2008-2011, touting them as a major benefit to the environment. The CBD argued that, under the rule, average mileage for these vehicles, which now make up half of all new vehicles sales in the US, would rise over the next four years by less than 1.5 mpg (from 22.2 to 23.5 mpg) and would remain far behind fuel efficiencies in most other countries. Moreover the CBD argued that the way the rule is drafted, there is no guarantee that even these minimal expected increases would occur.

On behalf of the CBD, the clinic argued that the rulemaking was arbitrary and capricious because NHTSA failed to take account of the global warming impacts from the new standards, failed to consider a reasonable range of alternative standards, and failed to calculate the benefits of reduced greenhouse gas emissions from higher standards (i.e., NHTSA justified the rule based on a cost-benefit analysis that valued the reduction of greenhouse gas emissions from higher standards at zero), among other things. Eleven states, the District of Columbia, the City of New York, and four other national environmental groups eventually joined in our lawsuit.

In a 90-page opinion, the Ninth Circuit found in our client's favor on virtually all of the points that the ELC advanced and remanded the rulemaking with direction to prepare a full Environmental Impact Statement and promulgate new standards "as expeditiously as possible and for the earliest model year practicable." *Center for Biological Diversity v. National Highway Traffic Safety Administration*, Case No. 06-71891 (9th Cir. Nov. 15, 2007).

This is one of the first, if not the first, case to ever overturn a major NHTSA fuel economy standard and another significant judicial decision recognizing the need for the federal government to consider global warming impacts in its actions and decisions.

Huge kudos to ELC students Noah Long '08 and Ben Ratner '08 who wrestled with the large rulemaking docket and worked tirelessly on both the opening and reply briefs during the last two semesters. The students worked under the supervision of clinic director Debbie Sivas, clinical fellow Leah Russin, and legal assistant Lynda Johnston.

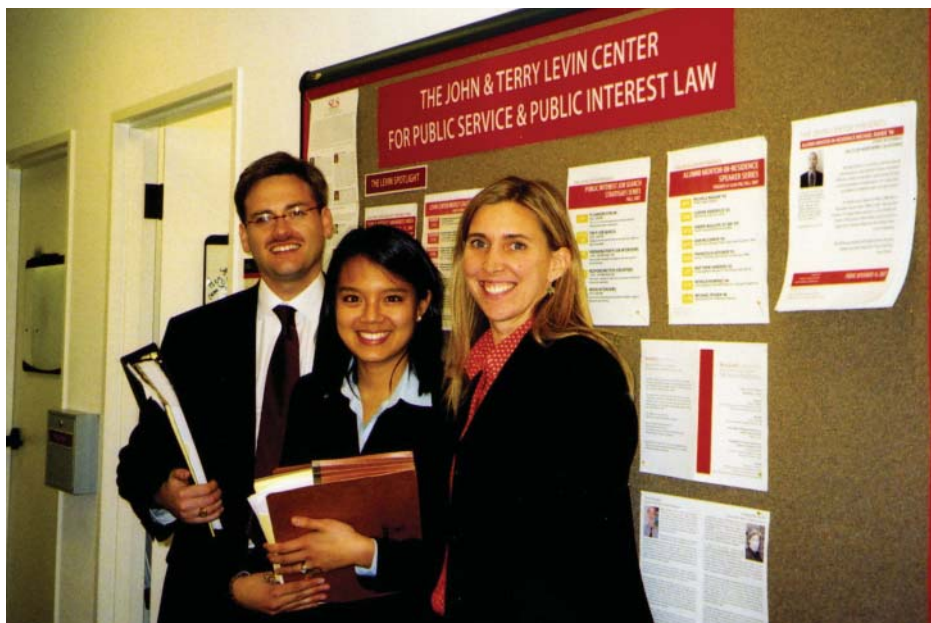
YOUTH AND EDUCATION LAW PROJECT

The Youth & Education Law Project had two victories in October. At the end of the last school year, six-year-old A.C. had made a great deal of progress in her specialized classroom for children with visual impairments. A.C. suffers from both cortical visual impairment and traumatic brain injuries, and requires the expertise of a teacher for the visually impaired, as well as orientation and mobility instruction.

Despite those needs, and without having conducted any additional assessments, A.C.'s school district demanded that she be moved to a "non-categorical" classroom for children who do not have visual impairments. When A.C.'s mother refused the change in placement, the school district filed for a fair hearing against her. That's when A.C.'s mother found YELP. YELP students Inbal Naveh '09 and Alexis Casillas (Columbia '08) plunged into the case by interviewing witnesses, developing expert witness testimony, filing pre-hearing documents, and preparing for a seemingly inevitable hearing. To the delight (and surprise) of A.C.'s family, and due to the terrific hearing preparation work of YELP, the school district withdrew its fair hearing complaint during mediation two weeks ago and A.C. gets to remain in her classroom—a complete victory for A.C. Congratulations to Alexis, Inbal, YELP legal assistant Joanne Newman, and supervisors Brenda Shum and Bill Koski.

For several months last school year, J.O., a hard-of-hearing middle school student, was denied the sign-language interpreter services specified in his individual education plan under the Individuals with Disabilities Education Act. Hoping to swiftly resolve the matter, YELP student Peter Khalil '07 attempted to negotiate with the school district to secure an (*Continued on page 5*)

Pro Bono Program Continues to Thrive



Aaron Konopasky '09, Ling Lew '09, and Social Security Disability Project Director Lisa Douglass pose in front of the Levin Center offices after Konopasky and Ling presented their case in an administrative hearing before a Social Security Administration officer. Under Douglass' supervision, the two students successfully secured benefits for their client.

Over the past semester, a significant number of students—including 78% of the first-year class—participated in pro bono projects to serve low-income clients in local communities.

SOCIAL SECURITY DISABILITY PROJECT SECURES TWO VICTORIES FOR CLIENTS WITH DISABILITIES

In October, pro bono volunteer Blair Andy Stewart '09 and Project Director Lisa Douglass of the Levin Center's Social Security Disability Project (SSDP) won an exciting victory for an elderly, disabled man in the area.

The man suffered from a serious heart condition and was facing imminent homelessness, having lived in temporary housing without income or medical care for two years. Thanks to the successful advocacy of Stewart and Douglass, the Social Security Administration has reinstated the man's SSI and medical benefits. He will receive \$864 per month, which will cover housing, prescriptions, and medical care for his heart condition.

On November 28th, SSDP won its first administrative hearing. Aaron Konopasky '09 and Ling Lew '09

presented their client's case with guidance from Douglass. During the two hour hearing at the San Jose Social Security Administration office, the students made opening remarks, interviewed the client on the stand, cross-examined the vocational expert, and responded to the judge's questions. The decision was life-changing for the client, who was a former garbage collector before hurting his back, developing severe depression, and becoming homeless. Having had no income or medical benefits for almost three years, he will now be on SSDI and Medi-Cal/Medicare. He now lives at the Opportunity Center in Palo Alto.

LANGUAGE BANK LAUNCHED TO SERVE UNMET NEED

A new Pro Bono Program, the Language Bank, has been introduced this year. Led by students Paco Garay '09 and Esteban Rodriguez '09, the program boasts sixty student translators and a variety of languages such as Spanish, Russian, and Mandarin. The students work on an as-needed basis, interpreting and translating not only for Stanford law clinics but also for local agencies.

Mills Legal Clinic News

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appropriate interpreter. When that effort proved fruitless, Peter filed a complaint with the California Department of Education. That complaint prompted the District to negotiate with YELP. Thanks to Khalil's efforts, J.O. received a settlement including the hiring of a sign-language interpreter (as well as provision for the interpreter's absence) and nearly \$15,000 in compensatory education services for J.O.

CYBERLAW CLINIC

In September, the Ninth Circuit ruled in favor of the position that the Cyberlaw Clinic's took on behalf of its client, the Electronic Frontier Foundation ("EFF"), as an amicus curiae in *DirecTV v. Huynh*. In this case, the company was trying to pile monetary consequences on people who purchased and used smart card devices for satellite TV piracy by applying the higher statutory damages prescribed by a statute that prohibits manufacturing and trafficking in the devices rather than the lower damages that are prescribed by the statute that prohibits merely intercepting the satellite signal.

The clinic's interest in this case was that DirecTV had threatened computer scientists who purchased smart card devices for the purposes of studying signal encryption with lawsuits, and our client was concerned that if they were able to threaten these scientists with an even harsher statutory penalty than we felt Congress intended, it would have a further chilling effect on legitimate research.

Cyberlaw Clinic student David Price '06 did the heavy lifting on this case in the trial court, Trevor Dryer '06 wrote the appellate briefs, and Jason Schultz of EFF argued it before the Ninth Circuit. Former Cyberlaw Clinic Director Jennifer Grannick supervised the case.

New Program Coordinator Injects Energy into Center

Julianne Manske has been named the new Levin Center Program Coordinator, providing a full range of support for the center's programs, services, and staff.

This new full-time position expands the part-time support previously provided by Lynda Johnston, a Legal



Assistant who remains with the Mills Legal Clinic, where she now serves both the Environmental Law Clinic and the Criminal Defense Clinic.

A 2001 University of Michigan alumna, Manske was attracted to the position because of its relationship to many of her past work experiences in public interest law and marketing.

Prior to coming to Stanford, she worked as the Community Relations and Marketing Coordinator for Chicago Volunteer Legal Services (CVLS). In addition to improving upon her marketing, writing and event planning skills, her position at CVLS opened her eyes to "the difference that lawyers who do pro bono and public interest work can make in the lives of individuals."

Manske looks forward to working with her colleagues to develop and implement programs that will educate, inspire, and expand the students' view of public service and public interest law, and she is enthusiastic about her new role.

She states, "I continue to be impressed by Stanford Law School's staff and students, and because of the creative and collaborative environment created by my Levin Center colleagues, I truly look forward to coming to work every day."

Clinic Exposes Injustice of Three Strikes' Law

(Continued from page 1)

students, many of which can be extrapolated beyond criminal defense work. On the practice side, we believed that the Three Strikes law was horribly unfair, unjust, and ineffective—especially as applied to defendants sentenced to life for extremely petty crimes."

Lipa states, "From the start, we set three goals: (1) teach students techniques, strategies, and skills for complex appellate and post-conviction litigation in state and federal court; (2) win relief for our clients who are serving life terms in prison for extremely minor offenses; and (3) raise awareness about some of the problems and opportunities for reform in the Three Strikes law."

CLINICAL FACULTY BRING REAL-WORLD EXPERIENCE

The Clinic's faculty bring valuable practical experience to their teaching.

A nationally recognized advocate for reform of the U.S. criminal justice system, Marshall co-founded the world-renowned Center on Wrongful Convictions, for which he served as legal director and represented several wrongly convicted inmates on death row.

Before law school, Romano was a reporter in Seattle who wrote about grunge, local politics, and Microsoft. He also took a year off from law school to work for the Innocence Project in New York. After graduating from SLS, he served in a judicial clerkship on the Ninth Circuit. He then joined Riordan & Horgan, a small criminal defense and civil rights firm in San Francisco, where he continues to work part-time.

Lipa, the Clinic's Teaching Fellow, is a Yale Law School alumna who served in a Prettyman Fellowship at Georgetown after graduation, where she represented clients in felony, misdemeanor, and delinquency proceedings in DC Superior Court as well as supervised students in the clinics who represented

their own clients at trial. After the fellowship, Lipa joined the Contra Costa County Public Defenders office in the San Francisco Bay Area.

STUDENTS INVESTIGATE AND PURSUE LEGAL CLAIMS

During the fall semester of 2007, the Clinic's 20 students were paired into teams of two and assigned a pre-selected client. Within the first two weeks, each team visited their client in prison, some of whom were out in the far reaches of California. Students then developed a case theory and litigation strategy based on their interview and their review of the client's file, including the client's prior criminal history and the current procedural posture of the case.

In most cases, students conducted factual investigations into their client's crime and prior criminal history, the client's social and mental health history, and the adequacy of the client's prior counsel, which then formed the basis for claims raised under state and federal constitutional law, including ineffective assistance of counsel and violations of prohibitions on cruel and unusual punishment. By the end of the term, most teams filed pleadings in state or federal court challenging the adequacy of procedures at the clients' sentencing hearings.

Since the Clinic is still so new, the courts have not yet ruled on any of its appeals. But given the compelling arguments of the claims filed thus far, many are optimistic of success.

Romano and Lipa both point out that they enjoy the fact that students from all political backgrounds enroll. Lipa observes, "Regardless of their politics or backgrounds, they learn to put their clients above their own personal feelings and agendas. That is the true work of a lawyer, to be a zealous and courageous advocate for your clients and our students do a terrific job doing that."

Levin Center Honors Public Service Award Winners



Professor Larry Marshall, Susan Feathers, Christopher Ho '87, Dean Larry Kramer, and David Doniger pose after the Fall Public Service Awards reception. Ho received the Alumni Public Service Award and Doniger received the National Public Service Award.

Two outstanding public interest attorneys were honored by the Levin Center on Monday, November 5, 2007.

Christopher Ho '87, Director of the Legal Aid Society-Employment Law Center's National Origin, Immigration, and Language Rights Program, was named our Alumni Public Service Award winner.

David Doniger, policy director of the Natural Resources Defense Council's (NRDC) Climate Center, received our National Public Service Award.

Dean Larry D. Kramer joined Susan Feathers, Professor Larry Marshall, John Levin '73 (MA '70) and Terry Levin (BA '74, MA '81), Miles Rubin '52 (BA '50) and Nancy Rubin, members of the faculty, and nearly 150 students to honor the award recipients.

The recipients were chosen by a nominations committee that included Kramer, Marshall, Feathers, former Secretary of State Warren Christopher '49 and William Neukom '67, president of the American Bar Association.

Ho was honored for his tireless work to prove a basic principle: that undocumented status does not mean these workers have given up all their rights under U.S. law, or that unscrupulous employers are free to exploit or mistreat them with impunity. He has pioneered legal challenges to "English-only" policies and arbitrary English-language proficiency requirements that are often covert means for employers to target immigrants.

Doniger was honored for his pathbreaking work on *Massachusetts v. EPA*, the landmark April 2007 Supreme Court decision that found carbon dioxide and other greenhouse gases are air pollutants subject to regulation under the Clean Air Act. He is also the lead environmental lawyer in related cases defending California's landmark standards for motor vehicle emissions of greenhouse gases, and has led NRDC's effort to craft sound national global warming legislation.

About *Create Change*

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Privacy Advocate Maintains Vigilance on Emerging Issues

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theories about privacy protection and antitrust review in the twenty-first century.

In 2000, Businessweek called Rotenberg "the Net's Ralph Nader" and his visibility has only soared since then due to EPIC's work and the growing significance of new technologies. Whether it's the debate over wiretap authority, the deployment of new identification technologies, or the collection of personal information by social network sites, EPIC will continue to advocate on behalf of the public.