

EVA E. SUBOTNIK

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Associate Dean for Faculty Scholarship
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EDUCATION

- Columbia Law School: J.D., 2003.
 - Senior Editor, *Columbia Law Review*.
 - Kent Scholar (2001-2002); Stone Scholar (2000-2001; 2002-2003).
 - Public Interest Law Foundation (Vice President for Community Grants, 2001-2002).
- Columbia College: B.A. summa cum laude, 1997. Major: Philosophy; Phi Beta Kappa.

SCHOLARSHIP

- *Copyright's Capacity Gap*, 57 UC Davis L. Rev. 899 (2023) (with Andrew Gilden).
- *Dead-Hand Guidance: A Preferable Testamentary Approach for Artists*, in POSTHUMOUS ART, LAW AND THE ART MARKET: THE AFTERLIFE OF ART (Sharon Hecker & Peter J. Karol eds., Routledge, 2022).
- *The Fine Art of Rummaging: Successors and the Life Cycle of Copyright*, in the RESEARCH HANDBOOK ON ART AND LAW (Jani McCutcheon & Fiona McGaughey eds., Edward Elgar Publ'g Ltd, 2020).
- *Existential Copyright and Professional Photography*, 95 NOTRE DAME L. REV. 263 (2019) (with Jessica Silbey & Peter DiCola).
- *Artistic Control After Death*, 92 WASH. L. REV. 253 (2017).
- *The Author Was Not an Author: The Copyright Interests of Photographic Subjects from Wilde to Garcia*, 39 COLUM. J.L. & ARTS 449 (2016).
- *Copyright and the Living Dead?: Succession Law and the Postmortem Term*, 29 HARV. J.L. & TECH. 77 (2015).
- *Copyright Policy and the Problem of Generalizing*, 38 COLUM. J.L. & ARTS 375 (2015).
- *Intent in Fair Use*, 18 LEWIS & CLARK L. REV. 935 (2014).
- *Constitutional Obstacles? Reconsidering Copyright Protection for Pre-1972 Sound Recordings*, 37 COLUM. J.L. & ARTS 327 (2014) (with June M. Besek).
- *Speaking of Moral Rights, A Conversation*, 30 CARDOZO ARTS & ENT. L.J. 91 (2012) (with Jane C. Ginsburg).
- *Originality Proxies: Toward a Theory of Copyright and Creativity*, 76 BROOK. L. REV. 1487 (2011).
- *Note, Past Violence, Future Danger?: Rethinking Diminished Capacity Departures Under Federal Sentencing Guidelines Section 5K2.13*, 102 COLUM. L. REV. 1340 (2002).

Works-In-Progress

- *What the Warhol Court Got Wrong: Use as an Artist Reference and the Derivative Work Doctrine*, 47 COLUM. J.L. & ARTS (forthcoming 2024) (with Jessica Silbey).

- *Free as the Heir?: Copyright Successors and Stewardship.*

EMPLOYMENT

ST. JOHN'S UNIVERSITY SCHOOL OF LAW (2011-present). New York

Professor of Law and Associate Dean for Faculty Scholarship (2020-present), teaching *Copyright Law; Introduction to Intellectual Property; IP Colloquium; Trusts & Estates*. Additional position: Faculty Director, St. John's Intellectual Property Law Center (IPLC) (2017-present). Prior positions: Chair, Faculty Appointments Committee (2018-2019); Associate Professor of Law (2015-2020); Assistant Professor of Law (2011-2015).

KERNOCHAN CENTER FOR LAW, MEDIA AND THE ARTS, COLUMBIA LAW SCHOOL (2009-2011). New York

Intellectual Property Fellow, focusing on copyright law and policy. Research and scholarship on issues pertaining to treatment of visual arts, sound recordings and other media. Guest Lecturer, *Authors, Artists and Performers* seminar: class session on appropriation art, the derivative work right, and fair use.

DEBEVOISE & PLIMPTON LLP (2007-2009; 2005-2006; 2003-2004). New York

Associate in Corporate and Litigation departments. Corporate: mergers and acquisitions work, including representation of parties in telecommunications, entertainment, and energy transactions. Litigation: general and intellectual property work, including drafting briefs, pleadings, trademark filings, WIPO Arbitration and Mediation Center disputed domain name decision, and assisting with witness interviews in entertainment and insurance industry investigations. Pro bono: counseled college alumni association; drafted legal papers and conducted negotiations for immigrant-run business in contract dispute; advised theater company on corporate governance issues; filed 501(c)(3) application for elephant art auctioneer; assisted Tibetan asylum seeker.

OBAMA/BIDEN OHIO VOTER PROTECTION PROGRAM (2008). Toledo

Regional Voter Protection Coordinator (Volunteer).

HON. BRUCE M. SELYA, FIRST CIRCUIT COURT OF APPEALS Providence/Boston

(2006-2007).
Law Clerk to U.S. Circuit Judge. Also served as Teaching Assistant to Judge Selya for new seminar, *Lessons of Litigation*, on litigation theory and practice at Roger Williams University School of Law (Fall 2006).

HON. ALVIN K. HELLERSTEIN, SOUTHERN DISTRICT OF NEW YORK New York

(2004-2005).
Law Clerk to U.S. District Judge.

U.S. ATTORNEY'S OFFICE, SOUTHERN DISTRICT OF NEW YORK, CIVIL DIVISION New York

(Summer 2001).
Summer intern. Researched and prepared memoranda on aspects of the Americans with Disabilities Act, Federal Tort Claims Act, Family and Medical Leave Act, and Title VII. Assisted with witness interviews and depositions.

MANHATTAN DISTRICT ATTORNEY'S OFFICE (1998-1999). New York

Paralegal in the Rackets Bureau, aiding in investigations and prosecutions. Served as liaison between DA's Office and various criminal justice agencies.

NOTABLE MEDIA AND BLOG CITATIONS

- Jessica Silbey, *Copyright Fiduciaries: Problems and Solutions*, JOTWELL (October 18, 2023).
- Eren Orbey, *Who Owns Mike Disfarmer's Photographs?*, THE NEW YORKER magazine's website (July 13, 2021).

- Brian Frye, *Art & the Hereafter*, THE FACULTY LOUNGE (July 11, 2017).
- Alfred Brophy, *Two Issues from Edward Albee's estate*, THE FACULTY LOUNGE (July 5, 2017).
- Michael Paulson, *Edward Albee's Final Wish: Destroy My Unfinished Work*, N.Y. TIMES (July 4, 2017).
- Jessica Silbey, *Speaking from the Grave. Should Copyright Listen?*, JOTWELL (Sept. 19, 2016).
- Andrew Gilden, *Subotnik on Copyright and T&E*, PRAWFSBLAWG (Dec. 17, 2015).

AWARDS

- 2018-2019 Dean's Award for Outstanding Service.
- 2019-2020 and 2016-2017 Dean's Award for Outstanding Scholarship.
- 2020-2021 and 2015-2016 Dean's Award for Outstanding Teaching.

FELLOWSHIPS

- Dorot Fellowship in Israel: Nazareth Arab Institute and Israel Religious Action Center (1999-2000).
- Eesti Fellowship: Estonian Ministry of Education (Summer 1997).
- Solomon & Seymour Fisher Civil Liberties Fellowship: ACLU, National Office (Summer 1996).

LICENSURE, ADMISSIONS & MEMBERSHIPS

- Bar of the State of New York (admitted March 2004).
- Bar of the Southern District of New York (admitted February 2006).
- Member, Association of the Bar of the City of New York.
- Member, Copyright & Literary Property Committee, Association of the Bar of the City of NY (various years).
- Member, Art Law Committee, Association of the Bar of the City of NY (2021-2022).
- Member, Copyright Society of the USA.
- Officer, AALS IP Section Executive Committee (2024-2025).

PRESENTATIONS

- AI Disrupting Law Symposium, Chicago-Kent College of Law, *Commentator* (Online, March 2024) (upcoming).
- Fourteenth Annual Tri-State Region IP Workshop, NYU School of Law, *Presenter* (New York, January 2024). Work-In-Progress Presented: *What the Warhol Court Got Wrong: Use as an Artist Reference and the Derivative Work Doctrine* (with Jessica Silbey).
- Nassau County Bar Association, by invitation of the Association's Intellectual Property Law Committee, *Presenter* (Mineola, NY, December 2023).
- Ninth Annual IP Mosaic Conference, University of Illinois Chicago Law, *Presenter* (Online, October 2023). Work-In-Progress Presented: *Copyright's Capacity Gap* (with Andrew Gilden).
- "Rearrange, Transform, or Adapt: The Derivative Works Right After *Andy Warhol Foundation v. Goldsmith*," full-day Symposium, Columbia Law School, *Presenter* (New York, October 2023). Work-In-Progress Presented: *What the Warhol Court Got Wrong: Use as an Artist Reference and the Derivative Work Doctrine* (with Jessica Silbey).
- Fourth Annual Art Law Works-in-Progress Colloquium, New England Law, *Presenter* (Boston, June 2023). Work-In-Progress Presented: *Copyright's Capacity Gap* (with Andrew Gilden).

- Eighth Copyright Scholarship Roundtable (University of Pennsylvania Carey Law School), *Presenter* (Philadelphia, May 2023). Work-In-Progress Presented: *Copyright's Capacity Gap* (with Andrew Gilden).
- Thirteenth Annual Tri-State Region IP Workshop, NYU School of Law, *Commentator* on Professor Richard Chused's article, *Mural Controversy* (New York, January 2023).
- Copyright and Technology 2022 Conference, "Thank You for Your Service: The Future of the Server Test" Panel, Fordham University School of Law, *Moderator* (New York, September 2022).
- Third Annual Art Law Works-in-Progress Colloquium, *Invited Participant* (Online, June 2022).
- M3 Intellectual Property Scholars Workshop, *Presenter* (Online, May 2022). Work-In-Progress Presented: *Copyright's Capacity Gap* (with Andrew Gilden).
- Critical Trusts & Estates Conference, Oklahoma City University School of Law, *Presenter* (Online, April 2022). Work-In-Progress Presented: *Copyright's Capacity Gap* (with Andrew Gilden).
- Intellectual Property Scholars Conference, Cardozo School of Law, *Presenter* (Online, August 2021). Work-In-Progress Presented: *Dead-Hand Guidance: A Preferable Testamentary Approach for Artists*.
- Second Annual Art Law Works-in-Progress Colloquium, *Presenter* (Online, May 2021). Work-In-Progress Presented: *Graven Instructions: Deconstructing the Posthumous Control of Visual Art*.
- Intellectual Property Scholars Conference, DePaul University College of Law, *Presenter* (Chicago, August 2019). Work-In-Progress Presented: *The Fine Art of Rummaging: Successors and the Life Cycle of Copyright*.
- "What's Real? – IP from a Property Theory Perspective," University of Houston Law Center, *Fellow*, commenting on papers presented by Professors Michael Carrier, Tun-Jen Chiang, Brett Frischmann, Irina Manta, and Carol Rose (Santa Fe, June 2019).
- "Intellectual Property Law Updates for Media Lawyers," PLI's Communications Law in the Digital Age 2018 Program, *Presenter* (New York, November 2018).
- Third Copyright Scholarship Roundtable, University of Pennsylvania Law School, *Presenter* (Philadelphia, June 2018). Work-In-Progress Presented: *Copyright in Sharp Focus: An Empirical Study of Professional Photographers*.
- "Images, Copyright, and the Public Domain in the Long Nineteenth Century," Winterthur Museum, Garden & Library, in partnership with LARCA, Université Paris Diderot, *Moderator*, Session 8: Photographers, the Press, and the Law (Wilmington, March 2018).
- Intellectual Property Scholars Conference, Cardozo School of Law, Plenary Panel, *Presenter* (New York, August 2017). Work-In-Progress Presented: *Empirical Study of Photographic Copyright and Changing Aesthetic and Business Practices in the Digital Age*.
- International Society for the History and Theory of Intellectual Property (ISHTIP), Centre for Innovation Law and Policy & the Faculty of Information, University of Toronto, *Presenter* (Toronto, July 2017). Works-In-Progress Presented: *Free as the Heir? & Empirical Study of Photographic Copyright and Changing Aesthetic and Business Practices in the Digital Age*.
- Federal Law Clerk Copyright Seminar, New York City Bar Association, Copyright and Literary Property Committee, *Subcommittee Chair* and *Presenter* (New York, February 2017).
- Chicago IP Colloquium, IIT Chicago-Kent College of Law/Loyola University Chicago School of Law, *Presenter* (Chicago, January 2017) (via Skype). Work-In-Progress Presented: *Artistic Control After Death*.

- Seventh Annual Tri-State Region IP Workshop, NYU School of Law, *Commentator* on article by Professor Amy Adler (New York, January 2017).
- Faculty Workshop, University of Kentucky College of Law, *Presenter* (Lexington, November 2016). Work-In-Progress Presented: *Free as the Heir?*
- MSU IP Capstone Seminar, Michigan State University College of Law, *Presenter* (East Lansing, November 2016) (via Skype). Work-In-Progress Presented: *Artistic Control After Death*.
- IP Junior Scholars Workshop, St. John's University School of Law, *Presenter* and *Co-Organizer* (New York, October 2016). Work-In-Progress Presented: *Free as the Heir?*
- Intellectual Property Scholars Conference, Stanford Law School, *Presenter* (Palo Alto, August 2016). Work-In-Progress Presented: *Free as the Heir?*
- "Spring Symposium: Values, Questions, and Methods in Intellectual Property," St. John's University School of Law, *Moderator* of Panel and Q&A Session with the Hon. Pierre N. Leval, U.S. Court of Appeals for the Second Circuit (New York, April 2016).
- Sixth Annual Tri-State Region IP Workshop, NYU School of Law, *Presenter* (New York, January 2016). Work-In-Progress Presented: *Artistic Control After Death*.
- "Interpreting the Scope of Rights in IP," AALS Panel, IP Section, *Presenter* (New York, January 2016).
- IP Junior Scholars Workshop, Fordham Law School, *Presenter* (New York, October 2015). Work-In-Progress Presented: *Artistic Control After Death*.
- Intellectual Property Scholars Roundtable, Texas A&M University School of Law, *Presenter* (Fort Worth, October 2015). Work-In-Progress Presented: *Artistic Control After Death*.
- "Copyright Outside the Box," full-day Symposium, Columbia Law School, *Presenter* (New York, October 2015). Work-In-Progress Presented: *The Author Was Not an Author: The Copyright Interests of Photographic Subjects from Wilde to Garcia*.
- "The Walking Dead Colloquium," two-day Symposium, Savannah Law School, *Presenter* (Savannah, September 2015). Work-In-Progress Presented: *Artistic Control After Death*.
- Intellectual Property Scholars Conference, DePaul University College of Law, *Presenter* (Chicago, August 2015). Work-In-Progress Presented: *Artistic Control After Death*.
- "Creation is Not Its Own Reward: Making Copyright Work for Authors and Performers," full-day Symposium, Columbia Law School, *Presenter* (New York, October 2014).
- Federal Law Clerk Copyright Seminar, New York City Bar Association, Copyright and Literary Property Committee, *Subcommittee Chair* and *Presenter* (New York, September 2014).
- Nassau County Bar Association, by invitation of the Association's Intellectual Property Law Committee, *Presenter* (Mineola, NY, April 2014).
- Intellectual Property Scholars Roundtable, Drake University Law School, *Presenter* (Des Moines, March 2014). Work-In-Progress Presented: *Fiduciary Duties and the Stewardship of Intellectual Property*.
- Faculty Workshop, Pace Law School, *Presenter* (White Plains, March 2014). Work-In-Progress Presented: *Intent in Fair Use*.

- Fourth Annual Tri-State Region IP Workshop, NYU School of Law, *Presenter* (New York, January 2014). Work-In-Progress Presented: *Intent in Fair Use*.
- “IP, Meet the Constitution” Junior Scholars Workshop, Columbia Law School, *Presenter* (New York, October 2013). Work-In-Progress Presented: *Constitutional Obstacles? Reconsidering Copyright Protection for Pre-1972 Sound Recordings* (co-authored with June M. Besek).
- “User-Generated Content Under Canadian Copyright Law,” full-day Symposium, Osgoode Hall Law School, York University, *Presenter* (Toronto, October 2013). Talk Presented: *Appropriation Anxiety or Ecstasy? Appropriation Art and Collage under U.S. Law*.
- “The Essentials of Copyright Law,” Pennsylvania Bar Institute, 4-credit CLE program, *Presenter* (Philadelphia, October 2013). Talk Presented: *Toward a 21st Century Copyright Act*.
- Intellectual Property Scholars Conference, Cardozo School of Law, *Presenter* (New York, August 2013). Work-In-Progress Presented: *Intent to Fair Use*.
- “IP Academics’ Boot Camp,” by invitation of UNH School of Law (New Hampshire, June 2013).
- “Hot Links - After Flava Works, Will Linking Burn You?” Copyright Society of the USA, New York Chapter, CLE program, *Moderator* (New York, November 2012).
- Second Annual Intellectual Property Scholars’ Roundtable, UNH School of Law, *Presenter* (Concord, September 2012).
- Intellectual Property Scholars Conference, Stanford Law School, *Presenter* (Palo Alto, August 2012).
- “Appropriation Art and Fair Use,” Columbia Law School, Kernochan Center Spring IP Speaker Series, *Presenter*, with Robert Clarida, Esq. (New York, April 2012).
- “Piracy and the Politics of Policing: Legislating and Enforcing Copyright Law,” Cardozo Arts & Entertainment Law Journal Symposium, Cardozo School of Law, *Moderator* (New York, March 2012).
- Intellectual Property Scholars Conference, DePaul University College of Law, *Presenter* (Chicago, August 2011).
- International Society for the History and Theory of Intellectual Property (ISHTIP), American University Washington College of Law, *Discussant* (Washington, September 2010).
- Intellectual Property Scholars Conference, UC Berkeley School of Law, *Presenter* (Berkeley, August 2010).
- Trade, Culture, and Intangible Property: From Employees’ Know-How to Geographical Indicators Panel, Law and Society Association Annual Meeting, *Presenter* (Chicago, May 2010).
- Copyright Issues and Issues Beyond Copyright Roundtable, Digital Archives Symposium, Columbia Law School, *Organizer* (New York, April 2010).
- “Artists’ Rights in the YouTube Era,” Columbia Law School, Reunion Panel, *Moderator* (New York, June 2009).