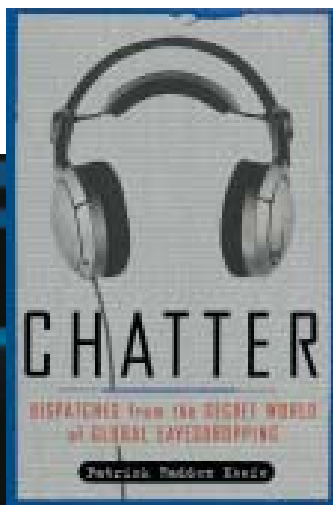


# Books in Print by Yale Law School Alumni, Faculty, Staff, and Students



England, he went to a local pub and talked with people who had worked at the base. Then he went to the U.S. Patent Office. He explains that in the last twenty years, the NSA has started patenting some of the technologies they develop. These patents gave Keefe a glimpse of the agency's activities. For instance, he knew that terrorist groups have used a technology called steganography to conceal encrypted messages in images on websites. "If I had gone to the NSA and said, 'Is that a problem for you guys? Is that something you're thinking about?' they never would have told me anything. But if you go to the patent office, they actually have patents, and the title of the

patent is something like 'method for extracting text implicit in site images.'"

Keefe adds, "The second sense in which it was like intelligence work is that you're always worried about reliability. The agencies will never come out and actively debunk any kind of a story—they just always stay silent. There are all kinds of paranoid cranky weirdos out there who will tell you all kinds of nutty things."

Keefe began this research as a graduate student in England, after reading accounts of a European Union investigation into a surveillance system run by the U.S., the U.K., and several other countries, called Echelon. He was captivated by reports that he said sounded like a "conspiracy theory." Echelon was supposedly capable of capturing millions of communications every hour, but

## Listening to the Listeners

**Chatter: Dispatches from the Secret World of Global Eavesdropping**

*Random House, 2005*

After being reviewed in the country's biggest newspapers, *Chatter* by Patrick Radden Keefe is hardly a secret. However, Keefe says that the process of researching the National Security Agency had similarities to the secretive world of intelligence work.

"The cliché about intelligence is that you're connecting the dots," says Keefe. "You take a data set that's incomplete and draw from that various conclusions—and that was very much my experience."

The NSA operates in secrecy, refusing even to disclose its annual budget. When Keefe visited a large listening station in the English countryside, he wasn't allowed past the front gate. He interviewed former intelligence agents, experts in communications technology, politicians, and conspiracy theorists, but the NSA wouldn't answer his questions.

But Keefe was able to assemble his dots obliquely. When he couldn't get into the listening station in

**"The agencies will never come out and actively debunk any kind of a story—they just always stay silent."**

it operated in near-total secrecy. "There's nothing that sparks your interest quite like being told that there's a big thing that you can't know about," Keefe says.

From the moment he began investigating Echelon, Keefe figured he would never know everything he wanted to about it. However, he says, "There were so many questions and they were so compelling and important that they were worth raising." For example, Keefe notes, the British had data protection obligations

as part of the EU but also participated in Echelon. What did that mean for international relations? What did such a large program mean for privacy rights and government accountability?

Keefe continued his investigations after starting Law School in 2001, and some of his courses shaped his understanding of the issues underlying Echelon. A class on the Fourth Amendment led Keefe to consider “the intersection of theoretical and technical interpretations of privacy.” One paper he wrote became a part of his book proposal, and a legislation class helped him understand how laws could be crafted to properly regulate intelligence activities—or fail in that role.

After five years studying the secret workings of the NSA, Keefe has a new understanding of what privacy means today. “When you really spend time among the people who are advancing surveillance technology at the ground level, it’s extraordinary what they’re doing. And you can’t help but wonder if this technology continues unabated, what kind of a society we’ll be living in.”



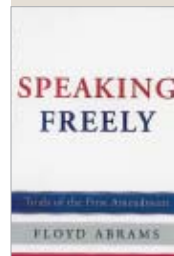
#### A FULL BOOKSHELF FOR PROFESSOR IAN AYRES

On May 11, 2005, Ian Ayres’s new book, *Insincere Promises*, was released—an exciting moment for any author. Less than three weeks later, his next new

book, *Straightforward*, came out, relegating *Insincere Promises* to the heap where his five other old books sit. Then, after only a month, yet another Ayres tome, *Optional Law*, made its debut, bumping its two siblings down. “It’s an amazing time for me,” says Ayres.

Each book deals with different ideas. “They’re on three very different parts of the law, and they’re also three very different types of analysis and methodology,” says Ayres, the William K. Townsend Professor of Law. *Optional Law* applies the math of option finances to theories of entitlement law. *Insincere Promises*, which analyzes contract law, “is more philosophical and more doctrinal than anything I’ve ever done,” says Ayres. Finally, *Straightforward* applies economically informed public policy to a civil rights issue, specifically, how to mobilize heterosexual support for gay rights.

Here’s just a sampling of the many books recently written or edited by our alumni, faculty, staff, and students. We welcome your submissions. If possible, please send us two review copies of your book: one for the Lillian Goldman Law Library and one for the Alumni Reading Room.



**Floyd Abrams**

#### **Speaking Freely: Trials of the First Amendment**

*Penguin Putnam, Inc., 2005*

Floyd Abrams ’59 shares some of the major cases of his career—landmark trials and Supreme Court arguments that have involved key First Amendment protections. His cause has placed him at the center of many memorable legal bat-

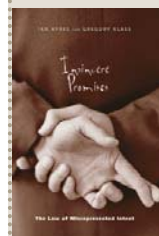
tles, including the Pentagon Papers case and the constitutional challenge to the controversial McCain-Feingold campaign finance reform legislation.

**Ian Ayres and Jennifer Gerarda Brown**

#### **Straightforward: How to Mobilize Heterosexual Support for Gay Rights**

*Princeton University Press, 2005*

Ayres ’86, William K. Townsend Professor of Law, and Brown, Visiting Lecturer, advance a thesis that to make real progress at the central flashpoints of controversy—marriage rights, employment discrimination, gays in the military, exclusion from the Boy Scouts, and religious controversies over homosexuality—straight as well as gay people need to speak up and act for equality.



**Ian Ayres and Gregory Klass**

#### **Insincere Promises: The Law of Misinterpreted Intent**

*Yale University Press, 2005*

Ayres ’86 and Klass ’02 discuss how incidences of promissory fraud are frequently litigated because they can result in punitive

damage awards. The authors explore what promises say from the perspectives of philosophy, economics, and the law; identify four chief mistakes that courts make in promissory fraud cases; and offer a theory for how courts and practitioners should handle promissory fraud cases.

► **Books in Print**

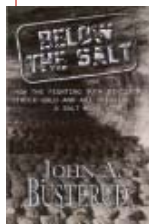
► **Books** continued from previous page

Ian Ayres

**Optional Law: The Structure of Legal Entitlements**

*Chicago University Press, 2005*

A revolution is taking shape in the way legal scholars conceptualize property and the way it is protected by the law. This book by Ayres '86 explores how option theory is overthrowing many accepted wisdoms and producing tangible new tools for courts in deciding cases. He identifies flaws in the current system and shows how option theory can radically expand and improve the ways that lawmakers structure legal entitlements.



John A. Busterud

**Below the Salt: How the Fighting goth Division Struck Gold and Art Treasure in a Salt Mine**

*Xlibris Corporation, 2001*

During the closing weeks of World War II, soldiers of the goth Division uncovered a great treasure buried deep in a salt mine in Germany: all of the gold reserves and priceless art works which had been removed from war-torn Berlin for safekeeping. Busterud's '49 book tells the dramatic story of that discovery, written by a key witness.

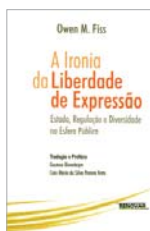


Eli Evans

**The Provincials: A Personal History of Jews in the South**

*Free Press, 1997*

This book by Evans '63 weaves together his autobiography of growing up Jewish in the South with stories of communities, individuals, and events in southern Jewish history. It is enhanced by thirty-two family and historic photographs and a new introduction.



Owen M. Fiss

**A Ironia da Liberdade de Expressão (The Irony of Free Speech: State, Regulation and Diversity in the Public Sphere)**

*Editora Renovar, 2005*

This book addresses key First Amendment issues. Examining the position of the U.S. Supreme Court during the past three decades, Fiss, Sterling Professor of Law, discusses the role of the state in promoting First Amendment values. He argues that the state can be an ally in fostering freedom of speech and democracy through regulation and allocation of subsidies.

Linda Greenhouse

**Becoming Justice Blackmun**

*Times Book/Henry Holt & Co., 2005*

Greenhouse '78 MSL, a Pulitzer Prize-winning *New York Times* correspondent with unprecedented access to the inner working of the U.S. Supreme Court, chronicles the personal transformation of a legendary justice. The first print reporter to have access to Justice Harry A. Blackmun's extensive archive and private and public papers, she has crafted a compelling narrative of his years on the Court.

Paul W. Kahn

**Putting Liberalism in Its Place**

*Princeton University Press, 2004*

In a wide-ranging, interdisciplinary work, Kahn '80, Robert W. Winner Professor of Law & Humanities and Director of the Orville H. Schell, Jr. Center for International Human Rights, argues that the modern political order is founded not on the social contract but on sacrifice. The author draws on philosophy, cultural theory, American constitutional law, religious and literary studies, and political psychology to advance political theory in a sweeping examination of the deep structure of the modern conception of the self.

**ALSO OF NOTE**

Denis Boivin '93 LL.M.

**Insurance Law: Essentials of Canadian Law**

*Irwin Law Inc., 2004*

John T. Masterson, Jr. '76, Editor

**International Trademarks and Copyrights: Enforcement and Management**

*American Bar Association, 2004*

Mark C. Weber '78, Ralph Mawdsley, and Sarah Redfield

**Special Education Law: Cases and Materials**

*LexisNexis, 2004*



Laurel Leff

**Buried by The Times: The Holocaust and America's Most Important Newspaper**

*Cambridge University Press, 2005*

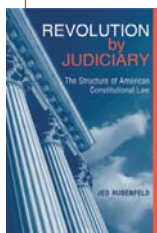
Leff '93 MSL examines the coverage by *The New York Times* of the fate of European Jews from 1939 until 1945. She concludes that the paper minimized and misunderstood modern history's worst genocide and, because of the paper's profound influence on other media, helped keep news of the Nazis' "Final Solution" from the American public.

Victor S. Navasky

**A Matter of Opinion**

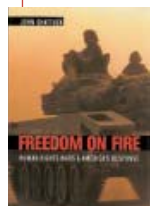
*Farrar, Straus and Giroux, LLC., 2005*

Navasky '59, longtime editor and publisher of *The Nation*, recounts highlights of his long career as a writer and editor, and argues for the important role journals of opinion play in our democracy—despite the forces of political opposition and unfavorable economics that make them so hard to run (*see page 30*).



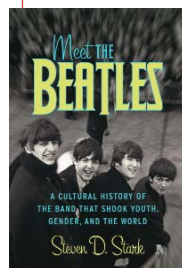
**Jed Rubenfeld**  
**Revolution by Judiciary:  
 The Structure  
 of American  
 Constitutional Law**  
*Harvard University Press,*  
 2005

Although constitutional law is supposed to be fixed and enduring, its central narrative in the twentieth century has been one of radical reinterpretation. Rubenfeld, Robert R. Slaughter Professor of Law, posits two different understandings of how constitutional rights would apply or not apply to particular legislation. His powerful argument challenges current theories of constitutional interpretation from Bork to Dworkin.



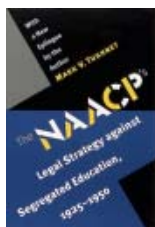
**John Shattuck**  
**Freedom on Fire:  
 Human Rights Wars and  
 America's Response**  
*Harvard University Press, 2003*  
 As the chief human rights

official of the Clinton administration, Shattuck '70 recounts his struggles as he worked to change the administration's human rights policy from disengagement to saving lives and bringing war criminals to justice.



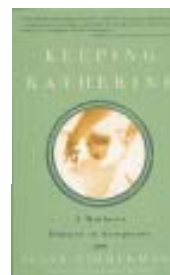
**Steven D. Stark**  
**Meet the Beatles:  
 A Cultural History  
 of the Band that  
 Shook Youth, Gender,  
 and the World**  
*HarperEntertainment,*  
 2005

Stark '79 has a new take on the greatest story in the history of popular culture. He explains why the Beatles were magic, putting the impact of the Beatles into unique and entertaining perspective by revealing both the personal details and the larger events that made them into the 20th century's greatest cultural phenomenon.



**Mark V. Tushnet**  
**The NAACP's Legal  
 Strategy against  
 Segregated Education,  
 1925-1950**  
*The University of North  
 Carolina Press, 2005*

Mark V. Tushnet '71 emphasizes the internal workings of the NAACP as revealed in its own documents. He argues that the dedication and political and legal skills of staff members such as Walter White, Charles Hamilton Houston, and Thurgood Marshall were responsible for the ultimate success of public interest law.



**Susan Zimmermann**  
**Keeping Katherine:  
 A Mother's Journey to  
 Acceptance**  
*Three Rivers Press News,*  
 2005

This book by Zimmermann '76 is a remarkable story about a family overcoming adversity and growing stronger as a result. She describes her life with her daughter Katherine, a child who developed normally during her first year, but went on to develop Rett syndrome, a neurological condition akin to autism. ∞



**Michael J. Graetz and Ian Shapiro**  
**Death by a Thousand Cuts:  
 The Fight over Taxing Inherited Wealth**  
*Princeton University Press, 2005*

Spring in New Haven—the trees filled with leaves, and the newspapers filled with quotations from Michael Graetz, Justus S. Hotchkiss Professor of Law.

Since his book—coauthored with Shapiro '87, a political science professor at Yale—describing the decades-long effort to repeal the estate tax was released at the same

time that the House of Representatives debated and passed a measure to do just that, he became an obvious source of expertise.

"I think this train has an awful lot of momentum," he told the *Washington Post*, referring to the drive to make repeal permanent. He explained the opposing forces of the debate to *Newhouse News Service*. His book served as an armament of arguments for pundits on the op-ed pages.

*Death by a Thousand Cuts* opens in the late 1980s, describing some of the individuals who initiated a movement that at first seemed "eccentric, if not quixotic," according to the authors. The narrative hits further important markers—the Republican takeover of Congress in 1994, the change of "estate tax" to "death tax," and the election of George W. Bush. It revisits the compelling personal stories that shaped public opinion. It explores the ideology and politics behind estate tax repeal. And the book closes with the current unresolved situation, as the estate tax is scheduled to be eliminated in 2010, then reinstated at full strength in 2011.

As this magazine went to press, the Senate had not yet passed a companion to the House repeal bill. If you want to know what's likely to happen, ask Graetz. ∞