

IN MEMORIAM OF JOEL R. REIDENBERG*

Thomas Norton **

This year, the Fordham Law community lost a great thinker, teacher, colleague, and friend in Professor Joel R. Reidenberg, who passed away in April at the age of fifty-nine after a long, courageous battle with acute leukemia.

Joel was a founder of and pioneer in the field of information law. For three decades, he focused on the thorny legal and policy questions arising from technology's constant evolution. He was among the first to explore issues such as information governance, data protection and privacy, government surveillance and national security, international data transfers and jurisdictional challenges, and algorithmic decision-making and the role of transparency in democracy. His work has guided lawyers, scholars, and law and policy makers across the globe.

Joel laid the foundation for conceptualizing information systems as governance schemes. His groundbreaking 1998 article, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*,¹ showed that the design of networked systems creates rules that compete with—and sometimes supplant—traditional forms of regulation. His framing of technological standards as a set of norms and values,² as well as his vision of automated self-execution as a replacement for regulatory enforcement,³ were prophetic precursors to the modern concepts of privacy by design and algorithmic accountability. In this area, and so many others, Joel was leaps and bounds ahead of everyone else.

Joel had an international reputation as an authority on information privacy. His 2003 article, *Privacy Wrongs in Search of Remedies*,⁴ criticized the American approach to data privacy for over-relying on market self-

* Professor Joel R. Reidenberg held the Stanley D. and Nikki Waxberg Chair in Law and was the Founding Academic Director of the Fordham Center on Law and Information Policy (CLIP) at Fordham University School of Law.

** Executive Director, Fordham CLIP, Fordham University School of Law. The text of this tribute has been lightly edited and footnoted. For an overview of the corresponding Tribute, see *Foreword: Celebrating a Lasting Legacy*, 89 FORDHAM L. REV. ONLINE 1 (2020).

1. See generally Joel R. Reidenberg, *Lex Informatica: The Formulation of Information Policy Rules Through Technology*, 76 TEX. L. REV. 553 (1998).

2. *Id.* at 568–72.

3. *Id.* at 572–73.

4. See generally Joel R. Reidenberg, *Privacy Wrongs in Search of Remedies*, 54 HASTINGS L.J. 877 (2003).

regulation⁵ and pointed to a mismatch between privacy wrongs and available remedies to call for enhanced data privacy rights.⁶ Similarly, his persistent criticism of European data transfer regulation tracked the ongoing political and legal discord between the United States and the European Union on the issue.⁷ His early arguments in critique of the U.S.-EU Safe Harbor Agreement,⁸ which facilitated personal data flows from Europe to the United States,⁹ were later endorsed by the Court of Justice of the European Union when it invalidated the Agreement in 2015.¹⁰ His sharp, multi-perspective understanding of these issues earned him respect across the globe.

As a creative thinker and teacher, he wasn't afraid to be provocative to prove his point. In one famous example, Joel battled U.S. Supreme Court Justice Antonin Scalia over online privacy. To demonstrate how accessible individuals' information is online, Joel traditionally would have his students compile a dossier on him using information publicly available on the internet. But after Justice Scalia once made dismissive remarks about the notion of online data privacy, Joel had his students create the dossier on the Justice instead. The resulting fifteen-page document perturbed Scalia, who accused Joel of exercising "abominably poor judgment."¹¹ The two traded barbs through the press, where Joel noted: "Indeed, the very fact that Justice Scalia found it objectionable and felt compelled to comment underscores the value and legitimacy of the exercise."¹² Joel always loved a little bit of mischief.

Through his work, Joel bridged academic analysis with real-world advocacy and policymaking. For example, his work on issues such as student data privacy inspired new state legislation.¹³ Always interested in the workings of technology, he joined forces with computer scientists at Carnegie Mellon University, the University of Michigan, and Penn State

5. *Id.* at 879–81.

6. *Id.* at 887–96.

7. *See generally* Joel R. Reidenberg, *E-Commerce and Trans-Atlantic Privacy*, 38 HOUS. L. REV. 717 (2001).

8. Issuance of Safe Harbor Principles and Transmission to European Commission, 65 Fed. Reg. 45,666 (July 24, 2000). The Department of Commerce issued corrections to the final rule a few months later. *See* Issuance of Safe Harbor Principles and Transmission to European Commission; Procedures and Start Date for Safe Harbor List, 65 Fed. Reg. 56,534 (Sept. 19, 2000).

9. *See, e.g.*, Reidenberg, *supra* note 7, at 743–46.

10. *See* Case C-362/14, *Schrems v. Data Prot. Comm'r*, 2015 E.C.R. 1.

11. Noam Cohen, *Law Students Teach Scalia About Privacy and the Web*, N.Y. TIMES (May 17, 2009), <https://www.nytimes.com/2009/05/18/technology/internet/18link.html> [<https://perma.cc/ATQ6-KKSM>].

12. Martha Neil, *Fordham Law Class Collects Personal Info About Scalia; Supreme Ct. Justice Is Steamed*, ABA J. (Apr. 29, 2009, 6:58 PM CDT), https://www.abajournal.com/news/article/fordham_law_class_collects_scalia_info_justice_is_steamed [<https://perma.cc/4AGS-2489>].

13. *See Data Brokers*, OFF. OF THE VT. ATT'Y GEN. (Dec. 5, 2017), <https://ago.vermont.gov/blog/2017/12/05/data-brokers/> [<https://perma.cc/E4WP-25ES>] (listing N. Cameron Russell, Joel R. Reidenberg, Elizabeth Martin & Thomas B. Norton, *Transparency and the Marketplace for Student Data*, VA. J.L. & TECH. 107 (2019) among the materials that were publicly submitted to the Vermont General Assembly in connection with Vermont's recent data broker regulation legislation, Act of May 22, 2018, 2018 Vt. Acts and Resolves 584 (imposing new requirements on data brokers)).

University under a grant from the National Science Foundation to develop technological tools to help consumers evaluate the privacy of online services.¹⁴ This work informed regulations promulgated under the newly enacted California Consumer Privacy Act of 2018.¹⁵ His intense curiosity and scholarly drive never waned even despite his illness: in 2019, he was awarded the Berkeley Center on Law and Technology's BCLT Privacy Award for his "seminal scholarship, innovative policy entrepreneurship, and tireless support of the privacy community."¹⁶ He was also drafting a book at the time of his death.

In his thirty years as a member of the Law School faculty, Joel made a lasting imprint on Fordham Law. In 2005, he founded the Fordham Center on Law and Information Policy (CLIP) to contribute cutting-edge scholarship and legal education in the information law field. He also played a key role in founding the Law School's Samuelson-Glushko Intellectual Property and Information Law Clinic. In 2015, he developed an information law survey course, which was among the first of its kind not only for Fordham Law, but for law schools across the country. Beyond that, he created Fordham Law's LL.M. program in Intellectual Property and Information Law, served as the Law School's LL.M. program director, and created the school's joint degree program with the Université de Paris-Sorbonne. Joel also held leadership roles at the university, including president of Fordham's Faculty Senate, associate vice president for academic affairs, and others too numerous to list.

In addition to Fordham Law, Joel taught at Princeton University, where he was the inaugural Microsoft Visiting Professor of Information Technology Policy and a visiting research collaborator at the Center for Information Technology Policy. He taught abroad at the Université de Paris-Sorbonne and at the Institut d'Études Politiques de Paris (Sciences Po). He was a member of the American Law Institute and an advisor to its Principles of the Law, Data Privacy project. He also served as an expert adviser to the U.S. Congress, the Federal Trade Commission, the European Commission, and the World Intellectual Property Organization.

Despite his towering scholarly achievements, Joel constantly enabled and elevated those around him. Through his scholarship, he established key nexuses between lawyers and technologists on both sides of the Atlantic and beyond. He gave junior academics platforms to showcase their work before more senior members of the academy, and he offered mentorship to countless

14. For more information on this collaboration, see THE USABLE PRIVACY POLICY PROJECT, <https://www.usableprivacy.org> [<https://perma.cc/7B9P-CKSP>] (last visited Nov. 22, 2020).

15. CAL. CIV. CODE §§ 1798.100–1798.199 (2020); see *CCPA Regulation – Documents and Other Information Relied upon*, STATE OF CALIF. OFF. OF THE ATTY. GEN., <https://oag.ca.gov/privacy/ccpa/docs-info> [<https://perma.cc/4AGS-2489>] (last visited Nov. 22, 2020) (listing Joel R. Reidenberg et al., *Ambiguity in Privacy Policies and the Impact of Regulation*, 45 J. LEGAL STUD. S163 (2016), then a working paper, as a source upon which the California Department of Justice relied during its rulemaking process).

16. 2019 BCLT Privacy Award, UC BERKELEY SCH. OF L., <https://www.law.berkeley.edu/research/bclt/bcltevents/2019bclt-privacy-lecture/2019-bclt-privacy-award/> [<https://perma.cc/3Z9B-G4MM>] (last visited Nov. 22, 2020).

others. He invited law students to coauthor articles with him and to join him on trips, such as to Washington, D.C. when he testified before Congress. Many of those Joel took under his wing have become noted information law scholars, practitioners, and policymakers in their own right. He simply delighted in seeing others develop and thrive.

His passion extended far beyond law. His love for his family was profound—his deep respect for his wife and parents was evident, as was his pride in his two sons and his grandchildren. He was also deeply devoted to his Jewish faith. He loved cycling and Springsteen. Beyond that, he was a true people person. He was curious about *your* life and the people and things that were important to you, and he remembered details about your family and your interests with astounding precision. One of his favorite customs was to adjourn CLIP events to the Rosa Mexicana restaurant next to the Law School, where he would catch up with familiar guests and get to know newcomers while enjoying a frozen pomegranate margarita. Similarly, each semester, he would treat his student research assistants to lunch to celebrate a job well done. He had a rare combination of intellect, personability, and fierce *joie de vivre*.

Even during his illness, his optimism was unrelenting. During a particularly difficult phase, in a letter to friends he recalled the French general Ferdinand Foch's famous message from the First Battle of the Marne during World War I: "My centre is giving way, my right is retreating, excellent situation, I am attacking." Even in challenging circumstances, Joel accentuated the positive with infectious enthusiasm. Despite his numerous accomplishments and accolades, Joel's courageous optimism was his most impressive and inspiring feat, and it will be among his most enduring legacies.

Joel's positive attitude, his love for his family and friends, and his intense commitment to the people he cared about inspired all who knew him. For decades, he influenced the thinking of students, colleagues, and professionals across the globe, and his work will surely continue to influence law and policy debates for decades more to come. His scholarly contributions, the community he built around information law, and his reputation for kindness, generosity, and courage will endure for ages. He was a titan.