

# THE ACADEMY

Fall 2018

## OF FOOD LAW & POLICY

### GREETINGS FROM THE BOARD

Dear Members,

We have exciting news to report in this issue of our newsletter. We are delighted to welcome three new board members to the Board of Trustees, announce our inaugural meeting and scholarship workshop, and report on our members' impressive accomplishments. We'd also like to welcome Sarah Hiatt back to her role as our Executive Director. A special thank you to Sarah and to Communications Committee members Josh Galperin and Laurie Beyranevand for their work on this newsletter.

Emily Broad Leib, Co-Chair, Board of Trustees

Susan Schneider, Co-Chair, Board of Trustees

### WELCOME TO NEW BOARD MEMBERS

The AFLP welcomes three new board members.



**Michael Fakhri** is an Associate Professor of Law at the University of Oregon School of Law where he is a Faculty Co-Leader of the [Food Resiliency Project](#) at the law school's Environmental and

Natural Resources Law Center. The Project examines environmental law and policy issues across the food system from the local to the transnational.



**Timothy Lytton** is the Associate Dean for Research and Faculty Development, a Distinguished University Professor and Professor of Law at Georgia State

University's School of Law and Center for Law, Health, and Society. Professor Lytton is currently writing a book entitled, *Outbreak: Foodborne Illness and the Evolving Food Safety System* (under contract with The University of Chicago Press) about the complex interaction of government regulation, industry supply-chain management, and tort liability in the U.S. food safety system. His research also explores food policy in the areas of obesity, nutrition labeling, and school food.



**Melissa Mortazavi** is an Associate Professor of Law at the University of Oklahoma School of Law where she teaches and writes about legal ethics, food law and policy, administrative law, and torts. Her most recent article (referenced

below), *Tainted: Food, Identity, and the Search for Dignitary Redress*, addresses an important gap in the area of food law and policy by considering facially neutral food laws that fail to account for individuals' ability to express their beliefs about foods they consider "offensively tainted" even if acceptable from a food safety standpoint.

To learn a bit more about our new board members, we asked them a set of questions about the AFLP Board, food law and policy, and, of course, food!

**What makes you excited about working on the Board and what do you hope the AFLP will accomplish?**

**Michael:** When I was asked to join by Susan Schneider, I was honored. She is a doyen of the field. Her scholarship and mentorship are a defining feature of food law. More broadly, I saw this as an opportunity to work with people whom I've learned a lot from. I am excited for this relatively new field to redefine how we study and practice law writ large. It's a field that complicates common assumptions of left/right or progressive/conservative. Politically, food policy is a place defined by regular negotiation and alliance-building. Which means it is very dynamic and at times unpredictable.

**Timothy:** I am excited to promote high-quality legal scholarship in the area of food law, and I believe that the AFLP offers a growing collegial network to make that happen.

**Melissa:** There is a lot of energy in the food law space right now but it is dispersed and scholars are working in isolation. I am excited to help create a scholarly community that will support each other's work, increased intersectionality and the ongoing sustainability of the field.

**What do you see as the future of food law and policy?**

**Michael:** I think there is an incredible surge in transnational social movements committed to transforming national and international food policy. What's interesting to me is how these different movements - indigenous peoples, peasant movements, and human rights activists - are starting to build on existing relationships and while also establishing new friendships. I wonder to what degree this global movement will influence domestic US law and policy. Right now, some important groups have joined the global struggle. But we'll see if global politics will encourage people within the U.S. to forge new alliances with each other.

**Timothy:** Like many areas of regulation, food law and policy demand that regulators make decisions in the face of incomplete information. Appreciation of this fact is leading regulators to place greater emphasis on the importance of experimentation, feedback, and learning as the keys to developing better laws and policies over time.

**Melissa:** Food law and policy's future is predicated on comprehending the law in this area as a system, a system of law and a system of values. My work focuses on highlighting how identity and cultural attachments to food impact the efficacy of food law and policy. In my recent work, [Tainted](#), this interest manifests in exploring redress for religiously and socially offensive exposures to food and argues that such harms are best understood as traditional dignitary torts. Another recent piece, [Torts as Democracy: Lessons from the Food Wars](#) discusses how litigation functions to provide democratic deliberative input spurring legal change and dialogue between regulatory, legislative and judicial sources of law. Specifically, food litigation reveals different concerns driving the public's interest in food governance (including long term health, sustainability and identity rights) that are not

adequately accounted for in existing legal structures.

**What's your favorite food?**

**Michael:** Any type of noodle in any type of broth. Being from a Lebanese household means that we are rice and bread eaters. So, I try and eat noodles and broth every opportunity I have at home and whenever I travel. I'm not looking

for a predefined definition of authentic. I just want to experience as many variations of delicious as possible, and people make noodles and broth in an almost infinite amount of permutations.

**Timothy:** I am a regular consumer of fair trade chocolate (85% cocoa, preferably with nuts).

**Melissa:** My mom's Lasagna--hands down!

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## UPCOMING CONFERENCES

### [The Academy of Food Law & Policy Inaugural Conference](#)

**October 5, 2018**

**Harvard Law School**

**Boston, Massachusetts**

This conference will: (1) feature works in progress workshops to connect the Food Law and Policy scholarly community; (2) highlight and develop the parameters of the field through group driven discussion; (3) support teaching by identifying core resources and challenges; and (4) produce a published source of the proceedings that can be relied upon for developing pedagogical and research agendas.

### [The Food and Drug Law Institute and American University Washington College of Law present FDA: Past, Present, and Future](#)

**October 19, 2018**

**Claudio Grossman Hall**

**American University Washington College of Law**

**Washington, DC**

Join leading practitioners, researchers, and policymakers from across the nation for a one-day conference on the past, present, and future of the Food and Drug Administration, featuring FDA Commissioners and Chief Counsels spanning five decades.

**American Agricultural Law Association**

**2018 Annual Educational Symposium**

AAALA will host its 39th Annual Agricultural Law Symposium on October 25-27, 2018 in Portland, Oregon at the [Portland Marriott Downtown Waterfront Hotel](#).

[Click here for the 2018 Agenda.](#)

To see more upcoming conferences, visit the [Academy Conference](#) web page. To share upcoming events, send the event name, location, and web link (if available) to [foodlawandpolicy@gmail.com](mailto:foodlawandpolicy@gmail.com).

## CALLS FOR PAPERS

### **The Academy of Food Law and Policy Call for Papers – 2018 AFLP Annual Meeting**

*The Academy will be holding its Convening Conference at Harvard on October 5. The Call for Papers associated with this important event is reprinted below.*

The Academy of Food Law and Policy (AFLP) invites papers for its program “The Evolution of Food Law and Policy: 2018 Works In Progress Workshop” at the AFLP Annual Meeting, on October 5, 2018 hosted by Harvard Law School. Papers will be selected from those submitted and placed into workgroups based on subject matter and intersectionality. The selected papers will be presented on the morning of October 5<sup>th</sup>, 2018.

#### **WORKSHOP DESCRIPTION:**

This workshop will be an opportunity to nurture the growth of a scholarly community in the field of food law and policy. As such, it is a place to take risks—test ideas, work out issues in drafts and dialogue with academics doing interesting and cutting edge work. Workshop groups will include senior scholars in the field who will aid in the discussion of the pieces and provide feedback. Successful papers and topics should engage with scholarly literature and make a meaningful original contribution to the field of food law and policy. Selection includes the opportunity to publish with the University of Arkansas Journal of Food Law and Policy.

#### **ELIGIBILITY:**

All AFLP members and full-time faculty members of AALS member law schools, foreign faculty, adjunct and visiting faculty (without a full-time position at an AALS member law school), and non-law school faculty are eligible to submit papers. Preference will be given to AFLP members and junior scholars focusing their work in food law and policy. Please note, that while meals are included, all presenters at the program are responsible for paying their registration fee (waived for members) and travel expenses.

#### **PAPER SUBMISSION PROCEDURE:**

There is no formal requirement as to the form or length of proposals. Abstracts are welcome. However, the presenter is expected to have a draft or substantial outline to make available to fellow presenters and commentators one month prior to the conference.

The paper **MUST** be a work in progress and cannot be published at the time of presentation. It may, however have been accepted for publication and be forthcoming.

#### **DEADLINE:**

Please email submissions to The Conference Committee, at [aflpconference@gmail.com](mailto:aflpconference@gmail.com) on or before **August 1, 2018**. The title of the email submission should read: “Submission – 2018 AFLP Works in Progress Workshop”

## RECENT MEMBER PUBLICATIONS AND PRESENTATIONS

*Academy members responded to our call for professional news with the following list of publications and presentations.*

Laurie J. Beyranevand and Diana R.H. Winters, [Retooling American Foodralism](#), – Am. J.L. & Med. – (2018).

Marne Coit, *The Fate of Industrial Hemp in the 2018 Farm Bill – Will Our Collective Ambivalence Finally Be Resolved?*, -- J. Food L. & Pol’y – (2018).

Emily Broad Leib and Baylen Linnekin, *Food Law and Policy: An Essential Part of Today’s Legal Academy*, 13 j. Food L. & Pol’y 228 (2018).

Nathan Rosenberg and Nevin Cohen, [Let Them Eat Kale: The Misplaced Narrative of Food Access](#), 45 Fordham Urban L.J. 1090 (2018).

Ernesto Hernandez, [Sustainable Food and the Constitution](#), 50 Ariz. St. L.J. 547 (2018). Ernest also gave the following presentations: (1) “Precaution over GMO corn in México: law between Cortes’s salvation and Quetzalcoatl preservation” at Third World Approaches to International Law (TWAAIL Singapore), National University of Singapore Faculty of Law; Institute for Global Law and Policy (IGLP) Conference, Harvard Law School, Cambridge, MA; and Fourth Annual Sustainability Conference of American Legal Educators, Sandra Day O’Connor College of Law, Arizona State University, Phoenix, AZ; (2) “GMO corn and the NAFTA” for panel “What Would a New NAFTA Look Like?,” Section on North American Cooperation, 2018 AALS Annual Meeting, San Diego, CA, January 6, 2018 (selected by competition).

Joshua Galperin, [No Farms, No Food?](#), [45 Fordham Urb. L.J. 1141 \(2018\)](#). Josh also delivered *Why food law?* At Food Law: Um Dialogo Interdisciplinar, Faculty of Law of Ribeirao Preto of the University of Sao Paulo, Sao Paulo, Brazil, Jun 13, 2018.

Brian Albert Fink, Alexandra Oakley Schluntz & Joshua Ulan Galperin, *Food Localization: Empowering Community Food Systems Through the Farm Bill*, 14 J. Food L. & Pol’y 8 (2018).

Alexia Brunet Marks, [Feeding the Eco Consumer](#), 42 Vt. L. Rev. 567 (2018).

Vivek Nemane (with Prof. Mark Perry, Prof. Paul Martin and Dr. Grant Pink) presented a paper titled *The Merging Frontiers Of Future-Tech And Agro-Ecological Governance* at the 2018 International Union for Conservation of Nature ,Academy of Environmental Law Colloquium, Glasgow, Scotland, UK.

## PROGRAMMATIC UPDATES

### Harvard Food Law and Policy Clinic

- In March 2018, the [Farm Bill Law Enterprise](#) (FBLE) released three reports. The reports are the product of a novel partnership between eight law school programs, led by FLPC. FBLE's reports coincided with the release of draft farm bills in the House and Senate. In addition to FLPC, FBLE members include: Duke Law School Environmental Law & Policy Clinic; Harvard Law School Environmental Policy Initiative and Emmett Environmental Law and Policy Clinic; Harvard Law School Health Law and Policy Clinic; Pace University Elisabeth Haub School of Law Food Law Initiative; UCLA School of Law Resnick Program for Food Law and Policy; Vermont Law School Center for Agriculture and Food Systems; and Yale Law School Environmental Protection Clinic. By combining expertise in food, public health, and environmental law, FBLE is the first effort of its kind.
- In April, FLPC released [Food Safety Regulations and Guidance for Food Donation: A 50-State Survey of State Practices](#), analyzing the current landscape of state-level regulations and guidance on the topic of food safety for food donation. To learn more about this barrier to donation, FLPC conducted a survey of the top officials regulating food safety at food service and retail food establishments in every state in the country. The survey was conducted by FLPC on behalf of, and with the support of, the Food Safety for Donations Working Group, a coalition of people and organizations committed to promoting an understanding of safe food donation practices in order to reduce food waste and increase food recovery. This survey provides the first comprehensive data on this topic at a national level. The survey results confirmed that confusion about food safety procedures for food donation stems at least in part from a lack of comprehensive and consistent regulations or guidance on this topic at the state level. The survey found that most states do not have any regulations or guidance that address food safety for food donation.
- On June 26-27, 2018, The Harvard Law School Food Law and Policy Clinic (FLPC) and ReFED hosted the [U.S. Food Waste Summit](#) at Harvard Law School in Cambridge, MA. The Summit convened more than 350 leading food businesses, policymakers, innovators, investors, foundations, and nonprofits to explore emerging opportunities for food waste prevention, recovery, and recycling. Attendees learned about the latest food waste trends and insights; networked and built partnerships with thought leaders from across sectors; and joined multi-stakeholder working groups to advance new solutions.
- In May 2018, FLPC, with support from the Laura and John Arnold Foundation, launched a new initiative to identify locally-supported policies that will reduce sugar consumption and build capacity for policy change. Excess consumption of sugar is linked to obesity, diabetes, and other diet-related chronic diseases that have tremendous social and economic costs. Reducing population-level consumption of sugar is one of the most promising strategies for addressing these pressing public health concerns. FLPC is offering pro bono technical assistance (TA) to community organizations, food policy councils, and local and state government entities across

the United States interested in implementing innovative sugar-reduction policies. This [request for proposals \(RFP\) application](#) will remain open until July 31, 2018.

### **Publications, News Coverage, and Resources Releases**

- *Food Tank*, [2018 Farm Bill Must Prioritize Small Farmers and Food Insecure Communities](#)
- *Insider*, [10 Reasons You Might Think Food's Gone Bad When It's Actually Still Safe to Eat](#)
- *Waste Dive*, [2018 Farm Bill Would Extend Rural Development Grants, Establish Food Waste Liaison](#)
- *The New Food Economy*, [Grocery Stores Could Be Donating Way More Food](#)
- *Civil Eats*, [Don't Call it Food Waste: Entrepreneurs Turn Surplus Food into Gold](#)
- [Food Safety Regulations and Guidance for Food Donations: A 50-State Survey of State Practices](#)
- [Legal Fact Sheet: The Bill Emerson Good Samaritan Food Donation Act](#)
- *MACH*, [This Startup Brews Beer with Surplus Bread. Here's Why.](#)
- *Waste360*, [Could 2018 be a Big Year for Food Recovery Legislation?](#)

### **New Hires**

FLPC welcomed Erika Duniak as a Clinical Fellow in June 2018. Erika received her J.D. from Case Western Reserve University in Cleveland, Ohio, and was an intern in FLPC's summer program in 2016. Erika just completed the LL.M. Program in Agricultural & Food Law at the University of Arkansas Law School where a Graduate Assistantship allowed her to serve as Academic Journal Liaison and Executive Director to the Academy of Food Law & Policy. Journal Liaison duties included assisting with author communications, drafting abstracts, and working with the Communications team on the development of the new online platform for the [Journal of Food Law & Policy](#). Erika worked specifically on the issue, *Food Policy in the Trump Era*. As Executive Director to the Academy of Food Law & Policy, Erika helped design the [Academy's newsletter](#) and helped manage the [Academy's website](#).

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### **Pace Law School's Food Law Initiative**

- The Pace-NRDC Food Law Initiative was featured in [Civil Eats](#) and on [Arkansas Public Radio](#). The Pace Food and Beverage Law Clinic just wrapped up its third semester. So far the clinic has served 18 clients on a variety of transactional food law matters. Jon Brown, Director of the Food and Beverage Law Clinic, was named one of this year's 40 Under 40 Rising Stars in Food Policy by Hunter College's NYC Food Policy Center.
- Professor Brown also recently published *Beyond Corporate Form; A Response to Dan DePasquale's, Surbhi Sarang's and Natalie Vena's Forging Food Justice through Cooperatives in New York City* in the Fordham Urban Law Journal.
- Margot Pollans, Associate Professor and Faculty Director of the Pace-NRDC Food Law Initiative, has two forthcoming publications on food law: *Food Systems*, in *Climate Change and Public*

Health Law (Gundlach & Berger, eds., forthcoming Cambridge University Press 2018); and *The New Food Safety*, 107 Calif. L. Rev. \_\_ (forthcoming 2019) (with Emily Broad Leib).

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## University of Arkansas School of Law

### Margaret Sova McCabe, Academy Founder is New Dean



Margaret Sova McCabe, former professor at the University of New Hampshire School of Law and one of the founding members of the Board of Trustees of the Academy of Food Law & Policy has been named Dean of the University of Arkansas School of Law. She assumed her duties July 1.

Margaret is the School of Law's third successive female dean. She was selected by Provost Jim Coleman, on the recommendation of a campus search committee following a national search that drew candidates from coast to coast. Margaret replaces Stacy Leeds, who has served as dean of the School of Law since 2011. Leeds was named interim vice chancellor for economic development in 2017 and will continue in that role on a permanent basis.

### Journal of Food Law & Policy Available Online

The Journal of Food Law & Policy, the law school's student-edited journal focusing on food law & policy issues is now available to the public online through the University of Arkansas' online repository at <https://law.uark.edu/jflp/>. The latest issue features excellent essays and articles on the farm bill and its connection to food.

### Indigenous Food & Agriculture Initiative

- The Shakopee Mdewakanton Sioux Community (SMSC) commissioned the Indigenous Food & Agriculture Initiative (IFAI) to prepare a report which was subsequently published as part of their Seeds of Native Health campaign. The report, [Regaining Our Future](#), was authored by Janie Simms Hipp and Colby D. Duren and provided a comprehensive analysis of the current Farm Bill as well as a discussion of opportunities in the upcoming 2018 Farm Bill that would assist Native American Tribes, Native agriculture and Native rural communities. The report is the most comprehensive analysis ever conducted on Farm Bill issues as they relate to Indigenous populations in the U.S. The SMSC has also provided the initial support in launching a new Native Farm Bill Coalition. The Native Farm Bill Coalition is a joint project of the SMSC, the Intertribal Agriculture Council, and the National Congress of American Indians. The IFAI serves as a research and technical partner to the Coalition.
- The IFAI serves as the Native American Center for Food Safety Outreach, Education, Training and Technical Assistance and continues to conduct food safety trainings for growers and food safety trainers in Indian Country throughout the United States, focusing on the new FSMA Produce



Safety Rule. Trainings are offered in person and by webinar. For more information about IFAI's food safety work, please visit [www.nativefoodsafety.org](http://www.nativefoodsafety.org).

- The IFAI hosted the 5th annual Native Youth in Food and Agriculture Leadership Summit for American Indian, Alaska Native, and Native Hawaiian youth, ages 15-18 at the University of Arkansas School of Law. This Summit built on previous Summits, but featured more intensive material for an advanced cohort of students. The 2018 Summit was a skills-development focused event that gave attendees an opportunity to do a deep dive in a particular area of food and agricultural production or policy. These four subject matter areas were: 1) Agricultural Business and Finance; 2) Conservation Practices and Planning for Agricultural Production; 3) Agricultural & Food Law and Policy; and 4) Nutrition and Health. In addition to learning the critical skills they need to be the next generation of Indian Country food and ag leaders in each of these topic areas, all students attending also received a full Food Safety Modernization Act training on the Produce Safety Rule during their time at the Summit.

### **Explaining Distance Education**

Arkansas' LL.M. Program has a new video short created by our former Media Specialist, Reece Franklin. While some of the Arkansas classes are online only, this video showcases how distance students can integrate into regular LL.M. classes when scheduling permits. It's focused on Susan Schneider's *Food Law & Policy* class. It's available on the Program's YouTube page.

Our appreciation is expressed to Reece for all the great work he did. Reece and his wife relocated to Dallas, Texas over the summer, and we wish them the very best.

### **New Addition**

We are pleased to welcome AJ Smith to our role of Media Specialist. AJ will work with our distance candidates and our remote presenters to assure successful video connections to the classroom. He also films all of our classes for later viewing.

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### **University of Ottawa, Faculty of Law**

- The University of Ottawa is quickly establishing itself as one of the major hubs for the development and advancement of food law and policy research in Canada. The Winter 2018 term (January-April) saw the debut of a brand new upper-year JD course devoted to the topic, representing the only course of its kind in Canadian common law curricula. Co-taught by Professor Heather McLeod-Kilmurray and doctoral candidate Angela Lee, the course provided a broad overview of the Canadian food law and policy landscape, and surveyed some of the major recent developments in the area. The course will be offered again in the Winter 2019 term.
- Professor McLeod-Kilmurray and Angela Lee also continue to participate in the development of an emerging Canadian food law and policy association. One of the association's primary initiatives is the [annual conference on food law and policy in Canada](#), which will be held in Quebec City this September, hosted by the Legal Research Chair in Food Diversity and Security at Laval University. The third annual conference builds on momentum generated by

the first annual conference hosted by the Schulich School of Law at Dalhousie University in Halifax in 2016, and the second annual conference hosted by the University of Ottawa in Ottawa in 2017. The theme of the 2017 conference in Ottawa was *Taking Stock: The State of Food Law and Policy in Canada*, and featured three keynote sessions and 22 panels with over 80 speakers and over 300 attendees. Participants and speakers were encouraged to examine contemporary legal and policy developments like the national food policy that is currently under development, the revision of Canada's food guide, and a variety of legislative changes, and think critically about their intersections and broader impacts throughout the food system.

- Professor McLeod-Kilmurray and Angela Lee, along with Professor Nathalie Chalifour, are also co-editing a forthcoming volume on Canadian food law and policy, expected to be published in early 2019. The ground-breaking, cross-disciplinary volume, which includes contributions from a range of academics, practitioners, and activists, will fill a gap in the existing literature available on the topic by providing the first comprehensive overview of food law and policy in Canada in a textbook form, including both descriptive overviews and critical perspectives.
- In 2017, several JD students came together to form the University of Ottawa Food Law Society, one of the first student-run food law societies of its kind in Canada. The group has since tackled a number of initiatives and hosted several speakers, including Senator Nancy Raine, who spoke about Bill S228, which seeks to prohibit the marketing of unhealthy food and beverages to children under the age of 17.
- Many professors and students at the University of Ottawa also continue to research, publish, and present on an array of food law and policy-related issues. The research and initiatives of the Faculty of Law have also been greatly enriched by network-building and collaboration efforts. For example, in August 2018, the Faculty hosted Professor Andrea Freeman from the William S. Richardson School of Law at the University of Hawaii to speak on "Food Oppression, Big Data, and the Constitution".
- Doctoral student Angela Lee has recently had her work published in the Canadian Journal of Women and the Law, the foremost Canadian feminist legal journal. The article, entitled "[Meat-ing Demand: Is In Vitro Meat a Pragmatic, Problematic, or Paradoxical Solution?](#)", takes a critical perspective on in vitro meat (also referred to as lab-grown meat, cultured meat, or clean meat, among other names), which has been garnering significant attention in recent years

## Members of the Board

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Emily Broad Leib, Assistant Clinical Professor of Law, Director of the Food Law and Policy Clinic,  
Deputy Director of the Center for Health Law and Policy Innovation, Harvard Law School

Michael Fakhri, Associate Professor, Environmental and Natural Resources Law Center; Co-leader,  
Food Resiliency Project, University of Oregon School of Law

Neil Hamilton, Emeritus Professor of Law and Director of the Drake Agricultural Law Center, Drake  
Law School

Peter Barton Hutt, Lecturer on Food and Drug Law, Harvard Law School, Senior Counsel,  
Covington & Burling LLP, specializing in Food and Drug Law

Baylen Linnekin, Food Law & Policy author & adjunct professor, George Mason University Antonin  
Scalia Law School

Timothy Lytton, Associate Dean for Research & Faculty Development; Distinguished University  
Professor & Professor of Law, Georgia State University College of Law

Margaret Sova McCabe, Dean, University of Arkansas School of Law

Melissa Mortazavi, Associate Professor of Law, Oklahoma University College of Law

Michael Roberts, Executive Director, Resnick Center for Food Law & Policy, UCLA School

Susan Schneider, William H. Enfield Professor of Law, Director, LL.M. Program in Agricultural &  
Food Law, University of Arkansas School of Law

Sarah Hiatt, Executive Director, Academy of Food Law & Policy

Academy of Food Law & Policy

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