

**EMILY BERMAN**  
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ACADEMIC APPOINTMENTS

**WASHINGTON UNIVERSITY IN ST. LOUIS SCHOOL OF LAW**, St. Louis, MO  
**(Virtual) Visiting Professor of Law**

Classes: National Security Law, Spring 2021  
Foreign Affairs Law, Spring 2022

**UNIVERSITY OF HOUSTON LAW CENTER**, Houston, TX

**Associate Professor of Law**, 2019-present

**Assistant Professor of Law**, 2014-2019

Classes: Constitutional Law; Foreign Affairs Law; National Security Law

Honors: Royce R. Till Professorship

*2019 Student Bar Association Professor of the Year Award*

**BROOKLYN LAW SCHOOL**, Brooklyn, NY

**Visiting Assistant Professor of Law**, 2012-14

Classes: Constitutional Law; National Security Law

**NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, NY

**Furman Fellow & Brennan Center Fellow**, 2011-12

EDUCATION

**NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, NY

LL.M., International Legal Studies, May 2011

J.D., *magna cum laude*, May 2005

Honors: *New York University Law Review*, Editor-in-Chief, 2004-05

*Order of the Coif*

*Furman Scholar* – exceptional candidates for careers in legal academia

*International Law & Justice Junior Fellow*

*George P. Foulk Memorial Award* – for distinguished scholarship

*Jerome Lipper Prize* – for outstanding work in International Law

*Pomeroy Scholar* – top ten students in the class after two semesters

Other: *Research Assistant*, Professor Barry Friedman, 2003

*Teaching Assistant – Torts*, Professor Eleanor Fox, 2003

**DUKE UNIVERSITY**, Durham, NC

B.A. in Political Science, May 1994

CLERKSHIP

**U.S. COURT OF APPEALS FOR THE SECOND CIRCUIT**, New Haven, CT

**Law Clerk to the Honorable John M. Walker Jr.**, 2005-06

LAW REVIEW ARTICLES

*Cooperative Surveillance* (in progress) (with Leah Fowler & Jessica Roberts).

*Reimagining Surveillance Law*, 2023 U. ILL. L. REV. forthcoming (2023).

- Weaponizing the Office of Legal Counsel*, 62 B.C. L. REV. 515 (2021).  
Winner, 2020 Levin Center Award for Excellence in Oversight Research.
- The Role of the State and Federal Governments in Pandemic Response*, 11 J. NAT'L SEC. L. & P. (2020) (peer reviewed).
- Individualized Suspicion in the Age of Big Data*, 105 IOWA L. REV. 463 (2020).
- A Government of Laws and Not of Machines*, 98 B.U. L. REV. 1277 (2018).  
Winner, 2018 Southeast Association of Law Schools Call-for-Papers Award
- Digital Searches, the Fourth Amendment, and the Magistrates' Revolt*, 68 EMORY L. J. 49 (2018).
- When Database Queries are Fourth Amendment Searches*, 102 MINN. L. REV. 577 (2017).
- Quasi-Constitutional Rights and Government Surveillance*, 2016 B.Y.U. L. REV. 771.
- The Two Faces of the Foreign Intelligence Surveillance Court*, 91 IND. L. J. 1191 (2016).
- Regulating Domestic Intelligence Collection*, 71 WASH. & LEE L. REV. 3 (2014).
- The Paradox of Counterterrorism Sunset Provisions*, 81 FORDHAM L. REV. 1777 (2013).
- Too Big a Canon in the President's Arsenal: Another Look at United States v. Nixon*, 17 GEO. MASON L. REV. 737 (2010) (with Eric Lane & Frederick A.O. Schwarz, Jr.).
- Democratizing the Media*, 35 FLA. ST. U. L. REV. 817 (2008).
- Note, *In Pursuit of Accountability: The Red Cross, War Correspondents, and Evidentiary Privilege in International Criminal Tribunals*, 80 N.Y.U. L. REV. 241 (2005).

#### BOOKS & BOOK CHAPTERS

- STEPHEN DYCUS ET AL., NATIONAL SECURITY LAW 2022-23 SUPPLEMENT (2022).
- STEPHEN DYCUS ET AL., COUNTERTERRORISM LAW 2022-23 SUPPLEMENT (2022).
- A Decade of FISA in ABA STANDING COMMITTEE ON LAW AND NATIONAL SECURITY, 60TH ANNIVERSARY, AN ANTHOLOGY* (2022) (invited contribution).
- Lessons from the FISA Court: Maximizing Minimization in JUDGING NATIONAL SECURITY* (Robert M. Chesney & Stephen I. Vladeck, eds. OXFORD UNIVERSITY PRESS forthcoming).
- STEPHEN DYCUS ET AL., NATIONAL SECURITY LAW 2021-22 SUPPLEMENT (2021).
- STEPHEN DYCUS ET AL., COUNTERTERRORISM LAW 2021-22 SUPPLEMENT (2021).
- The Role of the State and Federal Governments in Pandemic Response in COVID-19: THE LEGAL CHALLENGES* (Steven Dycus & Eugene Fidell eds. 2020).
- THE CONFLICT BETWEEN NATIONAL SECURITY AND ACCESS TO INFORMATION (Emily Berman ed., 2014) (anthology highlighting key issues in the conflict between national security and access to information in a democracy).

OTHER PUBLICATIONS

- Trustworthy Digital Contact Tracing?*, 56 UNIV. RICH. L. REV. 801 (2022) (with Leah Fowler & Jessica Roberts) (invited contribution).
- The Twenty-Third Annual Frankel Lecture: Introduction*, 56 HOUSTON L. REV. 737 (2019) (invited contribution).
- The Torture Memos*, in ENCYCLOPEDIA OF AMERICAN GOVERNANCE (Stephen L. Schechter et al. eds. 2016) (invited contribution).
- DOMESTIC INTELLIGENCE COLLECTION: NEW POWERS, NEW RISKS (2011) (Brennan Center Publication).
- Executive Privilege Disputes Between Congress and the President: A Legislative Proposal*, 3 ALB. GOV'T L. REV. 741 (2010) (symposium publication).
- EXECUTIVE PRIVILEGE: A LEGISLATIVE REMEDY (2009) (Brennan Center Publication).

BLOGS AND OPINION PIECES

- 2022 Update: Good Government Paper No. 2: Congress' Subpoena Power*, JUST SECURITY, Jan. 28, 2022.
- The Good Governance Papers: A January 2022 "Report Card" Update*, JUST SECURITY, Jan. 20, 2022 (with Ryan Goodman, Tess Bridgeman, Megan Corrarino, & Dakota Rudesill).
- The Triumph of the Securocracy*, ACS EXPERT FORUM, Sept. 9, 2021 (with Aziz Huq).
- Responding to the Capitol Attack: Accountability Without Overreaction*, JUST SECURITY, Jan. 12, 2021.
- The Good Governance Paper No. 2: Congress' Subpoena Power*, JUST SECURITY, Oct. 14, 2020.
- The Good Governance Papers: An Introduction*, JUST SECURITY, Oct. 14, 2020 (with Ryan Goodman, Tess Bridgeman, & Dakota Rudesill).
- Insecurity: How lax security procedures could hurt our national security*, ACS BLOG, Mar. 8, 2018.
- Never Waste a Good Crisis, FBI Edition*, JUSTSECURITY.ORG, May 15, 2017 (crossed-posted at NEWSWEEK).
- The Elephant in the Room: The FBI*, JUSTSECURITY.ORG, Mar. 6, 2014.
- When Did It Become Legal to Spy on Americans?*, THE ATLANTIC ONLINE, Oct. 26, 2011.
- FBI Overreaching*, NATIONAL LAW JOURNAL, November 8, 2010.
- You Still Have the Right to Remain Silent*, CNN.COM, June 2, 2010.
- Detention Promises Ring Hollow*, POLITICO.COM, May 25, 2010.
- Bill Will Restore Congress' Powers*, Roll Call, July 28, 2009 (with Rep. Brad Miller, D-NC).

SERVICE

University of Houston Law Center Appointments Committee, Chair 2021-present;  
Member 2016-2020

University of Houston Law Center Admissions Committee, 2014-16, 2019-present

University of Houston Law Center Executive Committee, 2017-2019

Faculty Advisor, University of Houston Law Center Int'l Law Society, 2017-present

Faculty Advisor, *Houston Journal of International Law*, 2016-present

University of Houston Law Center Honor Court Member (elected by students)

University of Houston Law Center 1L Faculty Mentor, 2014-present

Editorial Board Member, *Journal of National Security Law and Policy*, 2020-present

Paper Selection Committee, AALS Conference on Rebuilding Democracy and the Rule of Law, May 2021

AALS National Security Section Executive Committee, 2016-present, Chair, 2020

Defending Rights & Dissent, Member, Board of Directors 2013-17; V.P. 2017-present

SELECT PRESENTATIONS

Texas Democratic Lawyers Association CLE, *Dobbs: What the Supreme Court Said, and Does Justice Thomas Know What's Next?*, July 7, 2022.

*Reimagining Surveillance Enforcement*

- ACS Constitutional Law Scholars Forum Conference, online, Feb. 25, 2022

*The Future of Surveillance Law*

- Invited: ABA Standing Committee on Law & Security, Annual Meeting, February 18, 2021.

*The Role of the State and Federal Governments in Pandemic Response*

- Invited: ABA Standing Committee on Law & Security, National Security Law CLE Webinar, January 28, 2021.

*Weaponizing the Office of Legal Counsel*

- Invited: Levin Center at Wayne State University, online (January 22, 2021).
- Invited: Pennsylvania Journal of Constitutional Law Symposium, *The Constitution Outside the Courts*, online (October 2, 2020).
- Invited: Duke University Faculty Workshop Series, Durham, NC (November 18, 2019).
- Selected: Loyola-Chicago Annual Constitutional Law Colloquium, Chicago, IL (November 8, 2019)
- Selected: Chicagoland Junior Scholars Conference, Chicago, IL (September 27, 2019).
- Invited: Ohio State University Law School Summer Workshop Series, Columbus, OH (July 31, 2019).

*Individualized Decision Making in the Age of Big Data*

- Selected: National Conference of Constitutional Law Scholars, Tucson, AZ (Mar. 4, 2019).
- Invited: Boston College Law School Junior Faculty Roundtable, Boston, MA (Feb. 15, 2019).
- Invited: Second Annual Junior Faculty Works-in-Progress Conference at Chapman University Fowler School of Law, Orange, CA (Sept. 21-22, 2018).

*A Government of Laws and Not of Machines*

- Selected: Southeastern Association of Law Schools Annual Meeting, Call for Papers Lunch, Fort Lauderdale, FL (August 6, 2018).
- Selected: George Mason University Program on Economics & Privacy, Third Annual Digital Information Policy Scholars Conference (Apr. 27, 2018).
- University of Houston Law Center, Faculty Workshop (February 2, 2018).
- 112<sup>th</sup> AALS Annual Meeting, Panel on the Intersection of Civil Rights and Technology, San Diego, CA. (Jan. 5, 2018).
- Invited: South Texas College of Law, Faculty Workshop (Oct. 23, 2017).

*Digital Searches, the Fourth Amendment, and the Magistrates' Revolt*

- University of Houston Law Center, Faculty Workshop (Feb. 9, 2018).
- Selected: Eighth Annual Constitutional Colloquium at Loyola University of Chicago School of Law, Chicago, IL (Nov. 4, 2017).

*Panelist at Extent of, and Limitations on, Presidential Power*

- Invited: American Constitution Society, Austin Lawyers Chapter, Austin, TX (Nov. 29, 2017).

*Invited Speaker at Courts at War: A Conference on Judicial Accountability for U.S. National Security and Counterterrorism Policies*

- University of Texas Law School, Austin, TX (Sept. 14-15, 2017).

*When Database Queries are Fourth Amendment Searches*

- University of Michigan Law School, Michigan Young Scholars Conference, Ann Arbor, MI (Apr. 2017).
- 111<sup>th</sup> AALS Annual Meeting, New Voices in National Security Law, San Francisco, CA (Jan. 2017).
- SMU Dedman School of Law, Texas Junior Legal Scholars Conference, Dallas, TX (Aug. 26, 2016).

*Invited Participant at Scholars Roundtable on Congressional Oversight*

- Levin Center at Wayne Law, Detroit, MI (June 9, 2017).

*Panelist at What's That Up in the Sky? A Panel Discussion on Drones*

- Lone Star College-Cyfair, Center for Civil Engagement, Houston, TX (Nov. 15, 2016).

Panelist at *Human Rights Series: Torture*

- University of Houston, Honors College (Nov. 9, 2016).

Abortion Rights after *Whole Women's Health*

- University of Houston Law Center, Supreme Court Update CLE (July 21, 2016).

*Quasi-Constitutional Protections and Government Surveillance*

University of Houston Law Center, Faculty Workshop (Jan. 22, 2016).

*Disaggregating the Government's Interest in National Security*

- University of Houston Law Center, Texas Legal Scholars (Aug. 28, 2015).
- University of Kentucky Law School, Developing Ideas Conference, Lexington, KY (May 15, 2015).

*The Two Faces of the Foreign Intelligence Surveillance Court*

- Southeastern Association of American Law Schools 2015 Annual Meeting, Ft. Lauderdale, FL (Aug. 1, 2015).
- University of Houston Law Center, Faculty Workshop (Feb. 6, 2015).

*Regulating Domestic Intelligence Collection*

- Law & Society 2013 Annual Meeting, Boston, MA (May 2013).

*The Paradox of Counterterrorism Sunset Provisions*

- NYU School of Law, Scholarship Camp (Apr. 13, 2012).

Panelist at *The Humanitarian Law Project Decision: Problems for Peace-Building, Aid, and Free Speech*

- National Press Club, Washington, DC (June 2011).

*Executive Privilege: A Legislative Remedy*

- University of Virginia's Miller Center of Public Affairs, Symposium (Sept. 2010).
- Albany Law School, Albany Government Law Review, Symposium (Sept. 2009).

Panelist at *The Prosecution of Guantanamo Bay Detainees in Civilian Courts: Does It Promote Justice and Security?*

- New York County Lawyers Association American Inns of Court, New York, NY (Jan. 2010).

Panelist at *Debating Powers, Disputing Justice: Uighur Detainees Appeal for Release from Gitmo*

- NYU Wagner Graduate School of Public Service, New York, NY (Dec. 2009).

SELECT MEDIA APPEARANCES

Guest on *Town Square*, "Abortion in Texas After *Dobbs*," Houston Public Radio (July 20, 2022)

Quoted in Christopher Rowland, *Groups that aid abortion patients pull back, fearing legal liability*, Wash. Post, July 15, 2022

Commentary on *Dobbs v. Whole Women's Health* (2022), Houston Chron. June 27, 2022.

- Quoted in Editorial, *6 years after a landmark victory for Texas abortion providers, the Supreme Court reverses course*, Texas Trib., June 2, 2022.
- Quoted in Amber Phillips, *6 Takeaways from the Supreme Court Opinion the Ended Roe v. Wade*, Wash. Post, June 24, 2022.
- Quoted in Erin Douglas and Eleanor Klibanoff, *Abortions in Texas have stopped after Attorney General Ken Paxton said pre-Roe bans could be in effect, clinics say*, Texas Trib., June 24, 2022.
- Quoted in James Barragan, *Texas Abortion Restrictions*, Texas Trib., June 24, 2022.
- Interviewed in FOX-TV26 story on the Supreme Court decision overturning *Roe v. Wade*, June 24, 2022.
- Interviewed in KHOU story on how overturning *Roe v. Wade* might impact other privacy rights, May 3, 2022.
- Interviewed in KHOU story on how the Supreme Court opinion-writing process works, May 3, 2022.
- Quoted in Molly Hennessy-Fiske, *Can Texas declare a border ‘invasion’ and return migrants to Mexico?*, Los Angeles Times, Apr. 20, 2022.
- Quoted in Acacia Coronado & Paul J. Weber, *Ex-Trump officials urge Texas to declare border ‘invasion,’* ASSOC. PRESS, Apr. 6, 2022.
- Guest on *Houston Newsmakers with Khambrel Marshall*, KPRC Channel 2, Jan. 23, 2022.
- Quoted in Tierney Sneed, *Bannon judge represented Bush Justice Department in executive privilege fights*, CNN, Nov. 18, 2021.
- Quoted in Harper Neidig & Rebecca Beitsch, *Executive privilege fight poses hurdles for Trump*, THE HILL, Sept. 27, 2021.
- Quoted in Alisha Ebrahimji, *A Texas couple wore face masks at a restaurant to protect their immunocompromised infant. The owner asked them to leave.*, CNN, Sept. 21, 2021.
- Quoted in Louis Jacobson & Brandon Mulder, *Ted Cruz’s dubious claim that GOP didn’t “rig” SCOTUS Confirmations*, POLITIFACT, Apr. 27, 2021.
- Quoted in Corky Siemaszko, *Texas AG threatens to sue city of Austin for defying governor on mask mandate*, NBCNews.com, Mar. 10, 2021.
- Quoted in Jennifer Valentino-DeVries et al., *Arrested in Capitol Riot: Organized Militants and a Horde of Radicals*, N.Y. TIMES, Feb. 4, 2021.
- Quoted in FOX-TV26, *The History of the 25<sup>th</sup> Amendment* (Jan. 12, 2021).
- Guest on *The Ben Hall Legal Hour – The Aftermath of the 2020 Presidential Election*, KCOH Radio (Nov. 12, 2020).

- Guest on KPRC, “Trump vs. Biden: Who is winning the 2020 presidential race?” (Nov. 3, 2020).
- Guest on KHOU-TV11, “Law Professor: Obstruction charge possible after President Trump tweet during witness impeachment testimony” (Nov. 15, 2019).
- Guest on *Texas Standard* on Houston Public Radio to discuss Supreme Court arguments in three LGBTQ-rights cases, (Oct. 9, 2019).
- Guest on Houston Public Media’s weekly politics show, *Red, White, & Blue*, to discuss the upcoming Supreme Court term (Sept. 26, 2019).
- Guest on *Houston Matters*, “The First Amendment on College Campuses,” Houston Public Radio (Aug. 19, 2019).
- Guest on *Briefcase*, “How Our Digital Privacy is Protected,” Houston Public Radio (Mar. 24, 2019).
- Guest on KHOU-TV11, “Could President Trump declare a national emergency to build border wall?” (Jan. 8, 2019).
- Guest on *Houston Matters*, “What the Nomination of Brett Kavanaugh to the Supreme Court Means for Texas,” Houston Public Radio (July 10, 2018).
- Guest on Fox 26 5:30pm Newscast to discuss the Supreme Court nominee selection process (July 9, 2018).
- Guest on *Houston Matters*, “Abortion rights for undocumented minors,” Houston Public Radio (Oct. 25, 2017).
- Guest on *The Monitor*, “New FBI Director Nominee Chris Wray,” Pacifica Radio (July 25, 2017).
- Guest on *Houston Matters*, “Common Misconceptions about the Constitution,” Houston Public Radio (Aug. 8, 2016).
- Guest on *The Ben Hall Legal Hour*, KCOH Radio (Feb. 25, 2016).
- Guest on *Eyewitness News*, “*Obergefell v. Hodges* Supreme Court Decision,” Houston ABC Affiliate, Channel 13 (June 28, 2015).

## LEGAL EXPERIENCE

### **BRENNAN CENTER FOR JUSTICE, New York, NY**

***Counsel, Liberty & National Security Project*** September 2009-September 2011

***Katz Fellow, Liberty & National Security Project*** September 2007-September 2009

Developed policy recommendations, drafted reports, and engaged in advocacy regarding U.S. national security policy and its impact on civil liberties. Issue areas included executive privilege and domestic intelligence collection. Drafted briefs for impact litigation cases.



**U.S. DEPARTMENT OF STATE, OFFICE OF THE LEGAL ADVISOR, Washington, DC**

***Law Clerk***, May 2005-July 2005

Researched legal issues and wrote memoranda for the Human Rights & Refugees and Political-Military Affairs sections of the Office of the Legal Advisor.

**PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP, New York, NY**

***Summer Associate***, May 2004-July 2004

BAR ADMISSIONS

State of New York, admitted September 2008

District of Columbia Circuit Court of Appeals, admitted January 2010

OTHER PROFESSIONAL EXPERIENCE

**ESPN REGIONAL TELEVISION, Charlotte, NC**

***Producer***, August 1999-August 2002

***Associate Producer***, March 1998-August 1999

***Production Assistant***, July 1995-March 1998

Produced broadcasts for college football, college basketball, and World Cup soccer, including ABC and ESPN's coverage of the 2002 & 1998 Men's Tournaments, as well as the 1999 Women's World Cup Tournament.