

# **Stephanie K. Pell**

## **ACADEMIC EXPERIENCE**

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### **THE BROOKINGS INSTITUTION, WASHINGTON, DC (October 2021 to Present).**

#### **Fellow, Governance Studies and Senior Editor, *Lawfare***

- Research areas and interests: privacy and reproductive justice, cybersecurity law and policy, cyber warfare and conflict, surveillance, cyber ethics, and the impact of technology upon racial equity.

### **UNITED STATES MILITARY ACADEMY, WEST POINT**

#### **Associate Professor & Cyber Ethics Fellow (with tenure) (August 2020 to August 2021).**

#### **Assistant Professor & Cyber Ethics Fellow (July 2014-July 2020).**

#### **Joint appointments to the Army Cyber Institute and the Department of English and Philosophy.**

- Inaugural scholar who helped establish and build the capacity of the Army Cyber Institute, which included mentoring junior scholars and Army officers.
- Taught courses in Constitutional and Military Law.
- Developed West Point's first ever Cyber Ethics course, a multi-disciplinary course examining the chief current legal, ethical, and social issues related to cyberspace. Course taken by students majoring in Computer Science, Electrical Engineering, English, Philosophy, and Law.

#### **Affiliate Scholar, Stanford Center for Internet and Society (October 2012 to Present).**

## **OTHER EXPERIENCE**

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### **SKP Strategies, LLC, Washington, D.C. (June 2011 to July 2014).**

- Provided legislative, policy and government relations consulting across the entire range of communications privacy issues found at the nexus of law enforcement, intelligence, commercial and consumer interests, including privacy, electronic surveillance, big data collection and analysis, data retention, cloud computing, cybersecurity, and location-based information and services.

### **Counsel, Judiciary Committee, US House of Representatives, Washington, D.C. (Detail from DOJ; July 2009-December 2010).**

- Advised then Chairman John Conyers, then Subcommittee Chairman Jerrold Nadler (now Ranking Member Nadler) and other Committee members in legislative and oversight matter areas including government surveillance and electronic privacy, national security law, cybersecurity, and criminal law.
- Lead counsel for both Electronic Communication Privacy Act (ECPA) reform and PATRIOT Act reauthorization (developed hearings; drafted bills and Committee report).

### **Senior Counsel to the Deputy Attorney General, Office of the Deputy Attorney General (ODAG), US Department of Justice, Washington, D.C. (Career employee on detail to ODAG; April 2008-July 2009).**

- Advised and/or represented the Deputy Attorney General on diverse national security and criminal matters.
- Performed oversight of various components of DOJ and the FBI.

**Counsel to the Assistant Attorney General (AAG), National Security Division (NSD), US Department of Justice, Washington, D.C.** (Career employee on detail to NSD front office; Oct. 2007-April 2008).

- Advised the AAG on national security matters including Foreign Intelligence Surveillance Act (FISA), Foreign Agents Registration Act (FARA) and Bureau of Prisons programs.
- Negotiated with intelligence agencies regarding use of classified information in criminal prosecutions.

**Trial Attorney, Counterterrorism Section, National Security Division, US Department of Justice, Washington, D.C.** (Nov. 2002-Oct. 2007).

- Investigated and prosecuted national security cases.
- Provided legal and investigative training to US Attorneys' Offices and various law enforcement entities.

**Assistant US Attorney, Southern District of Florida (SDFL), Miami** (Feb. 1998-Nov. 2002).

- Investigated and prosecuted health care fraud, public corruption, terrorism and narcotics cases.
- Argued before the 11<sup>th</sup> Circuit Court of Appeals.

**Special Assistant US Attorney, SDFL, Miami** (Aug. 1996-Feb. 1998).

- Prosecuted criminal immigration cases.

**Assistant District Counsel, Immigration and Naturalization Service (INS), Miami** (Aug. 1995-Feb. 1998).

- DOJ Honors Program Attorney.
- Represented INS in federal administrative proceedings.

**Intern, United Nations High Commissioner for Refugees, Geneva, Switzerland** (Summers 1993 and 1994).

- Conducted research for database on international refugee law and evaluated data for report about the provision of care and counseling to women refugees who suffered significant trauma in war zones.

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## ACADEMIC PUBLICATIONS

*Bodies of Evidence: The Criminalization of Abortion and Surveillance of Women in a Post-Dobbs World*, 19 DUKE J. CONST OF LAW & PUB. POL'Y (forthcoming April 2024) (co-authored with Jolynn Dellinger).

*Broken*, 32 HARVARD JOURNAL OF LAW & TECHNOLOGY 479 (2019) (co-authored with Dr. Andrea Matwyshyn).

*The Ethical Imperative for a Vulnerability Equities Process and How the Common Vulnerability Scoring System Can Aid That Process*, 49 CONNECTICUT LAW REVIEW 1549 (2017) (symposium) (co-authored with LTC James Finocchiaro).

*Location Tracking* in THE CAMBRIDGE HANDBOOK OF SURVEILLANCE LAW (David Gray & Stephen Henderson, eds.), Cambridge University Press (2017)

*Systematic Government Access to Private-Sector Data in the United States* in SYSTEMATIC GOVERNMENT ACCESS TO PRIVATE-SECTOR DATA (Fred H. Cate and James X. Dempsey, eds.), Oxford University Press (2017).

*It's Too Complicated: How the Internet Upends Katz, Smith and Electronic Surveillance Law*, 30 HARVARD JOURNAL OF LAW & TECHNOLOGY 1 (2017) (co-authored with Computer Scientists Dr. Steven M. Bellovin, Dr. Matt Blaze, and Dr. Susan Landau).

*You Can't Always Get What You Want: How Will Law Enforcement Get What it Needs in a Post-CALEA, Cybersecurity-centric Encryption Era*, 17 NORTH CAROLINA JOURNAL OF LAW & TECHNOLOGY 599 (2016) (symposium).

*Your Secret StingRay's No Secret Anymore: The Vanishing Government Monopoly Over Cell Phone Surveillance and Its Impact on National Security and Consumer Privacy*, 28 HARVARD JOURNAL OF LAW & TECHNOLOGY 1 (2014) (co-authored with Computer Scientist Dr. Christopher Soghoian).

- Cited by the Fourth Circuit in Andrews v. Baltimore City Police Department, 18-1953 (March 27, 2020).
- Cited by the Tenth Circuit in United States v. Dahda, 835 F.3d 101 (2017).
- Cited by the Seventh Circuit in United States v. Patrick, 842 F.3d 540 (2017).
- Cited by the Committee on Oversight and Government Reform, U.S. House of Representatives (114<sup>th</sup> Congress) in the Committee Report titled “Law Enforcement Use of Cell-Site Simulation Technologies: Privacy Concerns and Recommendations” (Dec. 19, 2016).

*A Lot More Than a Pen Register, and Less Than a Wiretap: What the StingRay Teaches Us About How Congress Should Approach the Reform of Law Enforcement Surveillance Authorities*, 16 YALE JOURNAL OF LAW & TECHNOLOGY 134 (2013) (co-authored with Computer Scientist Dr. Christopher Soghoian).

- Cited by the Maryland Special Court of Appeals in State v. Andrews, 227 Md. App. 350 (2016).

*Jonesing For A Privacy Mandate, Getting A Technology Fix—Doctrine to Follow*, 14 NORTH CAROLINA JOURNAL OF LAW & TECHNOLOGY 489 (2013) (symposium).

*Mapping Our Privacy: Use and Misuse of Location Data (A Law Enforcement Perspective and Legislative Balancing)*, 47 UNIVERSITY OF SAN FRANCISCO LAW REVIEW 479 (2013) (prepared remarks) (symposium).

*Systematic Access to Private Sector Data in the United States*, INTERNATIONAL DATA PRIVACY LAW, Vol. 2, No. 4, 247 (2012) (peer reviewed).

*Can You See Me Now?: Toward Reasonable Standards for Law Enforcement Access to Location Data That Congress Could Enact*, 27 BERKELEY TECHNOLOGY LAW JOURNAL 117 (2012) (co-authored with computer scientist Dr. Christopher Soghoian).

- Cited by the Third Circuit in United States v. Stimler, 864 F.3d 253, 278 (2017).
- Cited by the Maryland Supreme Court in State v. Copes, 454 Md. 581, 588 n.8 (2017).
- Cited by the New Jersey Supreme Court in State v. Earls, 70 A. 3d 630, 214 N.J. 564 (2013).

Comment, *Adjudication of Gender Persecution Cases Under the Canada Guidelines: The United States Has No Reason to Fear an Onslaught of Asylum Claims*, 20 NORTH CAROLINA JOURNAL OF INTERNATIONAL LAW & COMMERCIAL REGULATION 655 (1995).

### **Selected Popular Publications:**

*A Pound of Flash: Rhetoric Versus Reality When FISA Section 702 is Not Too Big to Fail*, Lawfare (September 28, 2023).

*Don't Write Off the Southern District of Florida in the Trump Prosecution*, Lawfare (June 30, 2023).

*Biden-Harris Administration Releases New National Cybersecurity Strategy*, Lawfare (March 2, 2023) (co-authored with Eugenia Lostri).

*Private-Sector Cyber Defense in Armed Conflict*, Lawfare (December 1, 2022).

*Privacy In Peril: From Reproductive Freedom to Forced Birth*, Verfassungsblog (August 12, 2022) (co-authored with Jolynn Dellinger).

*Cybersecurity, the ECPA, Carpenter and Government Transparency*, Lawfare (July 22, 2022).

*The Impotence of the Fourth Amendment in a Post-Roe World*, Lawfare (June 13, 2022) (co-authored with Jolynn Dellinger).

*Protecting National Security, Cybersecurity, and Privacy While Ensuring Competition*, Brookings (January 19, 2022) (co-authored with Bill Baer).

*We Must Secure America's Cell Networks—From Criminals and Cops*, Op-ed in Wired (August 2014).

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### **NOTABLE TRIALS, APPELLATE ARGUMENTS, INVESTIGATIONS & AWARDS**

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Lead or co-counsel in 11 jury trials and numerous grand jury investigations including:

United States v. Padilla, et al., Convicted US citizen formerly held as “enemy combatant” and co-defendants in Article III court, following 4-month trial, on all counts, including conspiracy to murder and other terrorism charges.

Attorney General’s Award for Exceptional Service, Oct. 2008 (highest employee performance award given by DOJ): Prosecution of United States v. Padilla, et al.

- Attorney General Michael Mukasey noted “the Padilla trial team cemented a new prosecutorial model in terrorism cases and set the standard for others to follow.”

United States v. Claxton, et al., Convicted 3 defendants, following 6-week trial, of smuggling guns on behalf of the IRA and other terrorism related charges.

- First case to charge 18 U.S.C. § 2339A, providing material support to terrorists.

Health Care Fraud Investigations: Investigated South Florida hospital for multi-million dollar cost report fraud scheme; investigated physicians and medical equipment companies for kickback schemes.

United States v. Cook, Following a 3-year public corruption investigation and an 11-day trial, convicted Broward County Corrections Officer of drug conspiracy.

United States v. Edwards, 166 F.3d 1362 (11th Cir. 1999). Argued evidence was sufficient to uphold defendant's narcotics conviction under the theory of constructive possession.

United States v. Lozano, 138 F.3d 915 (11th Cir. 1998). Argued federal sentencing guideline enhancement did not violate Ex Post Facto clause.

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### **SELECTED ACADEMIC TALKS & PRESENTATIONS**

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*Dobbs and Privacy*, February 2023: Panelist on American Bar Association Plenary Panel discussing data privacy and the law enforcement investigations of abortion crimes.

*Data Privacy Post-Dobbs*, February 2023: Panelist at Duke Law School Symposium discussing *Dobbs*, abortion criminalization, and surveillance.

*Ethics and Emerging Tech*, April 2019: Panelist at Duke University Kenan Institute for Ethics Conference discussing the ethical lessons of StingRay technology.

*Data, Technology, and Criminal Law*, April 2019: Invited talk at Duke Law School workshop on technology and criminal law about revising the Computer Fraud and Abuse Act.

*Cybersecurity As a National Security Interest*, February 2019: Panelist at Notre Dame International and Comparative Law Journal Symposium discussing government and private sector botnet takedown efforts and the need for a new statutory provision authorizing and regulating this activity.

*Cybercrime 2020: Revisiting the Future of Online Crime and Investigations*, November 2018: Panelist at Georgetown Law symposium discussing whether legislation authorizing new prosecutorial tools is necessary to address current digital crimes and security threats

*Ethical Hacking*, August 2018: Panelist at DEF CON 2018 Ethics Village event discussing the ethics of various "gray area" security research practices.

*The Internet of Bodies*, August 2018: Panelist at DEF CON 2018 Bio-hacking Village event discussing constitutional protections against law enforcement access to data generated by Internet connected devices implanted or imbedded in our bodies.

*Location Privacy after Carpenter v. United States*, July 2018: Panelist at Georgetown Law event discussing location privacy issues following the landmark Supreme Court decision in *Carpenter*.

*The Future of Privacy and Cybersecurity Law*, February 2018: Panelist at University of North Carolina at Chapel Hill School of Law's Festival of Legal Learning discussing cutting edge issues in cybersecurity law.

*Broken*, March 2017: Invited talk at the Center For Applied Cybersecurity Research (CACR), Indiana University, about how to reform the Computer Fraud and Abuse Act (CFAA). Talk also given to the Cyber Policy group in the Office of the Secretary of Defense (Pentagon).

*You Can't Always Get What You Want: How Will Law Enforcement Get What it Needs in a Post-Snowden, Cybersecurity-Centric Encryption Era?* May 2016: Two invited talks given at University of Bologna, Italy, Conference on *Criminal Investigations in the Age of Smart Data* and to the Law Faculty at the University of Basel, Switzerland.

*Bulk Data Collection and Personal Privacy*, April 2016: Panelist at University of Maryland School of Law symposium discussing the Fourth Amendment and privacy implications of bulk data collection.

*Privacy of the Home and the Internet of Things*, February 2016: Presentation at University of North Carolina at Chapel Hill School of Law symposium about how the Internet of Things may provide new surveillance platforms for law enforcement.

*It's Too Complicated: The Technological Implications of IP-based Communications on the Content/Non-Content Distinction and the Third Party Doctrine*, Oct. 2015: Invited talk (with Dr. Steven M. Bellovin) given at the CATO Surveillance Conference.

*The StingRay's Tale: Claims of Method Secrecy for Surveillance Technology As a Source of Public Harm*, Nov. 2014: Invited talk given at Princeton's Center for Information Technology conference on *Trusting Human Safety to Software: What Could Possibly Go Wrong?*

*The Importance of Incorporating Privacy & Civil Liberties Considerations Into Cyber Operations & Cyber Security Practices*, Oct. 2014: Invited talk given a Columbia Law School and originally presented at *Cyber Talks* event sponsored by West Point's Army Cyber Institute.

*Law Enforcement & Hacking: When the Cops Control Your Webcam*, Feb. 2014: Panelist at Yale Law School Information Society Project symposium discussing the legal and policy implications of hacking by law enforcement.

*The Future of the Fourth Amendment*, Oct. 2013: Panelist at University of Maryland School of Law symposium discussing the privacy and Fourth Amendment implications of *U.S. v. Jones*.

*Where There Is No Darkness: Technology and the Future of Privacy*, March 2013: Panelist at Rutgers Law Review Symposium discussing how two specific privacy enhancing technologies can serve as regulators of government power while simultaneously enhancing security for users.

*Location Tracking and Biometrics Conference*, March 2013: Panelist at Yale Law School Information Society Project symposium discussing mobile privacy and law enforcement access to cell phone location data.

*U.S. v. Jones: Defining A Search In the 21<sup>st</sup> Century*, Jan. 2013: Presentation at University of North Carolina at Chapel Hill School of Law symposium on forthcoming article on *U.S. v. Jones* for NORTH CAROLINA JOURNAL OF LAW & TECHNOLOGY symposium edition.

*Mapping Our Privacy: Use and Misuse of Location Data*, Feb. 2012: Panelist at University of San Francisco School of Law Symposium on Electronic Communications Privacy Act (ECPA) Reform.

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**SELECTED PROFESSIONAL SERVICE, PUBLIC TESTIMONY, PUBLIC SERVICE TALKS & TRAINING PRESENTATIONS**

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*Cybersecurity Ethics Education Workshop*, July-August 2020: DoD funded workshop bringing together faculty from multiple disciplines to consider best practices for the incorporation of ethical decision making in various disciplines that address or specifically focus on cybersecurity.

*ACM Inaugural Conference on Computer Science and Law*, October 2019: Program Committee and Program Subcommittee on Student Paper Competition.

*Botnet Takedowns*, November 2018: Chaired and moderated panel about Botnet Takedowns at CyCon US 2018.

*Informationalization of Body Signals and Criminal Investigations*, January 2018: Chaired and moderated panel focusing on the regulation of data produced by the “Internet of Bodies” at the Computers, Privacy, and Data Protection Conference in Brussels, Belgium.

*Journalism and Cyber Conflict*, November 2017: Chaired and moderated panel focusing on the challenges of investigative reporting about cyber conflict at CyCon US 2017.

*The Vulnerability Equities Process*, October 2016: Chaired and moderated panel about the Vulnerability Equities Process at CyCon US 2016.

*The Grand Cyber Challenge and the IoT*, April 2016: Presentation at West Point’s Cyber Security Summit.

*The New Crypto Wars: Competing Visions of Security*, May 2015: Presentation at West Point’s Cyber Security Summit.

*Testimony (oral and written), Privacy and Civil Liberties Oversight Board Public Hearing*, Nov. 2013: Consideration of Recommendations for Change: The Surveillance Programs Operated Pursuant to Section 215 of the USA PATRIOT Act and Section 702 of the Foreign Intelligence Surveillance Act.

*Clapper, FISA, and the Future of Data Breach Litigation*, June 2013: Bloomberg BNA Webinar presentation (with Edward R. McNicholas) discussing relevant aspects of the FISA Amendments Act of 2008 and *Clapper v. Amnesty International USA*.

*State of the Mobile Net Conference* (sponsored by the Advisory Committee to the Congressional Internet Caucus), May 2013: Panelist debating how best to approach mobile location privacy issues in the age of smartphones and mobile devices.

*ECPA and CALEA Reform*, Feb. 2011: Panelist at National Association of Regulatory Commissioners' (NARUC) winter meeting discussing the current legislative and policy landscape for ECPA, CALEA and data retention issues.

*Cybersecurity—Balancing Security and Privacy Needs*, Nov. 2010: Panelist at Federal Communications Bar Association CLE discussing the current regulatory, legislative and policy landscape and proposals for change.

*Electronic Communications Privacy Act Reform—Protecting Privacy and Security in the Digital Age*, September 2010: Panelist at Federal Communications Bar Association CLE discussing the policy, proposals and prospects for legislative reform of ECPA.

*Compelling Evidence in Bulk Cash Smuggling Investigations*, July 2005, Dubai, UAE: Presentation to Emirate Police on how to develop compelling evidence for prosecution of bulk cash smuggling cases at U.S. Customs Dubai Conference on Bulk Cash Smuggling.

*Sources of Terrorist Financing*, March 2005-2006, Department of State: Frequently lectured foreign services officers regarding sources of terrorist financing and money laundering.

*The Investigation and Prosecution of Fraudulent Charities*, December 2004, Bangkok, Thailand: Trained delegations from 4 Asian countries at US State Department South East Asian Regional Conference on Protecting Charities from Abuse.

*Drafting Anti-Terrorism Legislation*, September 2004, San Salvador, El Salvador: Advised legislators preparing to draft anti-terrorism legislation for El Salvador.

*The Zen of Direct and Cross-Examination*, ABA Section of Litigation Annual Meeting, May 2004: Panelist discussing successful techniques for direct and cross-examination.

*How to Investigate and Prosecute Terrorism Cases*, February 2004, Bangkok, Thailand: Instructed Indonesian police and prosecutors how to investigate and build a terrorism cases.

*National Institute for Trial Advocacy (NITA)*, 1997 to 2008: Served as Trial Advocacy Instructor for programs in Louisiana, Florida, and Canada.

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## **SELECTED MEDIA**

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### **Selected Mentions:**

- The Economist, *The StingRay's Tale*, January 30, 2016,  
<http://www.economist.com/news/united-states/21689244-courts-take-aim-technology-belovedcountry-police-forces-secretive/>
- NPR, *Should Police Be Able To Keep Their Devices Secret?*, October 22, 2014,  
<http://www.npr.org/2014/10/22/358120429/should-police-be-able-to-keep-their-devices-secret/>
- Ars Technica, *FCC to examine “unauthorized” cell snooping devices*, August 12, 2014,  
<http://arstechnica.com/tech-policy/2014/08/fcc-to-examine-unauthorized-cell-snooping-devices/>
- McClatchy DC, *Americans’ personal data shared with CIA, IRS, others in security probe*, November 14, 2013, <http://www.mcclatchydc.com/news/special-reports/insider-threats/article24758938.html>

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## **EDUCATION**

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J.D., University of North Carolina at Chapel Hill, School of Law, 1995.

- Moot Court.

M.A., Speech Communication (now Department of Communication), University of North Carolina at Chapel Hill, 1992.

- Master’s Thesis: A Feminist Analysis of Arthur Miller’s Play, *Playing for Time*
- Designed and taught undergraduate course in speech writing and public speaking techniques.

B.A., English Literature and Speech Communication (now Department of Communication), University of North Carolina at Chapel Hill, 1991.

- Highest Honors, Honors Thesis, Phi Beta Kappa.

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## **ADVISORY COUNCILS**

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Member of Palantir’s Advisory Council on Privacy and Civil Liberties (November 2013 to Present).

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## **BAR MEMBERSHIP**

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North Carolina (1995).