

MATTHEW J. TOKSON

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CURRENT POSITION

UNIVERSITY OF UTAH, S.J. QUINNEY COLLEGE OF LAW

Professor of Law

2020–Present

Associate Professor

2017–2020

Courses Taught: Criminal Procedure; Criminal Law; Cyberlaw & Internet Privacy

EDUCATION

THE UNIVERSITY OF CHICAGO LAW SCHOOL

J.D., High Honors, June 2008

The University of Chicago Law Review, Executive Articles & Book Review Editor
Order of the Coif

Research Assistant, Professor Cass Sunstein, 2006–2007

Greenberg Scholar, 2007–2008

Class of 1941 Scholarship

DARTMOUTH COLLEGE

A.B., *cum laude*, June 2002, Major in Government, Minor in English

PUBLICATIONS

Social Norms in Fourth Amendment Law, 119 MICHIGAN L. REV. __ (forthcoming 2021)
(with Ari E. Waldman)

Inescapable Surveillance, 105 CORNELL L. REV. __ (forthcoming 2021)

Supreme Court Clerks and the Death Penalty, 88 GEORGE WASHINGTON L. REV. ARGUENDO
48 (2020) (symposium essay)

The Emerging Principles of Fourth Amendment Privacy, 88 GEORGE WASHINGTON L. REV. 1
(2020)

42nd Annual Foulston-Siefkin Lecture, *The Next Wave of Fourth Amendment Challenges
after Carpenter*, reprinted in 59 WASHBURN L. REV. 1 (2020)

- Keynote lecture of a symposium dedicated to the lecture and its topic
- First junior scholar to give the lecture since 1995

The Normative Fourth Amendment, 104 MINNESOTA L. REV. 741 (2019)

Blank Slates, 59 BOSTON COLLEGE L. REV. 591 (2018)

- “Highly recommended” paper, Legal Theory Blog

Knowledge and Fourth Amendment Privacy, 111 NORTHWESTERN U. L. REV. 139 (2016)

- Referenced twice during Supreme Court oral argument in *Carpenter v. United States*, No. 16-402, once by an advocate and once by Justice Sotomayor
- Winner, PLSC Reidenberg-Kerr Award, Privacy Law Scholars Conference 2016
- Winner, Southeastern Association of Law Schools Call for Papers Prize, SEALS Conference 2016
- Reprinted in abridged form for practitioners in 44 SEARCH & SEIZURE L. REP. 97 (Dec. 2017).

Judicial Resistance and Legal Change, 82 U. CHICAGO L. REV. 901 (2015)

- Response by Toby Heytens, *Changing What Judges Do*, 82 U. CHICAGO L. REV. DIALOGUE 151 (2015)

Automation and the Fourth Amendment, 96 IOWA L. REV. 581 (2011)

- Response by Stephen Henderson, *The Timely Demise of the Fourth Amendment Third Party Doctrine*, 96 IOWA L. REV. BULLETIN 39 (2011)

The Content/Envelope Distinction in Internet Law, 50 WILLIAM & MARY L. REV. 2105 (2009)

- Cited extensively in *In re Google Inc. Cookie Placement Consumer Privacy Litigation*, 806 F.3d 125 (3d Cir. 2015), the leading case on content/noncontent issues in internet browsing

Virtual Confrontation: Is Videoconference Testimony by an Unavailable Witness Constitutional?, 74 U. CHICAGO L. REV. 1581 (2007)

CLERKSHIPS

HON. RUTH BADER GINSBURG

United States Supreme Court, 2011–2012

HON. DAVID H. SOUTER

Retired Associate Justice, United States Supreme Court, 2011–2012

HON. A. RAYMOND RANDOLPH

United States Court of Appeals for the District of Columbia Circuit, 2008–2009

OTHER ACADEMIC APPOINTMENTS

NORTHEASTERN UNIVERSITY SCHOOL OF LAW, CENTER FOR LAW, INNOVATION, AND CREATIVITY

Faculty Affiliate 2020–Present

SALMON P. CHASE COLLEGE OF LAW, NORTHERN KENTUCKY UNIVERSITY

Assistant Professor 2015–2017

Director, Law and Informatics Institute 2016–2017

Courses Taught: Criminal Procedure; Introduction to Cyberlaw; Intellectual Property

THE UNIVERSITY OF CHICAGO LAW SCHOOL

Bigelow/Kauffman Fellow 2009–2011

Courses Taught: Criminal Procedure I: The Investigative Process; Privacy and Property in Cyberspace; Legal Writing and Research

OTHER WORK EXPERIENCE

WILMER CUTLER PICKERING HALE & DORR LLP

Senior Associate (Washington, DC) 2012–2015

Appellate & Supreme Court Litigation;
Investigations & Criminal Litigation

SIDLEY AUSTIN LLP

Summer Associate (Chicago, IL) Summer 2007, Summer 2008

PROFESSOR CASS SUNSTEIN – THE UNIVERSITY OF CHICAGO LAW SCHOOL

Research Assistant 2006–2007

SELECTED ACADEMIC PRESENTATIONS

“Inescapable Surveillance,” Privacy Law Scholars Conference, George Washington University School of Law, June 2020 (via Zoom)

“Inescapable Surveillance,” University of Akron School of Law Faculty Workshop, May 2020 (via Webex)

“Inescapable Surveillance,” AALS Criminal Justice Section Works in Progress Panel, January 2020

“DNA Evidence,” University of Utah School of Human Genetics, September 2019

“The Emerging Principles of Fourth Amendment Privacy,” Privacy Law Scholars Conference, UC Berkeley School of Law, May 2019

42nd Annual Foulston-Siefkin Lecture, “The Next Wave of Fourth Amendment Challenges after *Carpenter*,” reprinted in 59 WASHBURN L. REV. __ (forthcoming 2019), Washburn University School of Law, March 2019

“Privacy and the Fourth Amendment,” University of Central Florida, March 2019

“The Normative Fourth Amendment,” Vanderbilt Criminal Justice Roundtable, Vanderbilt Law School, October 2018

“Genetics and Criminal Law Enforcement,” University of Utah School of Medicine, October 2018

“The Normative Fourth Amendment,” CrimFest, Benjamin N. Cardozo School of Law, July 2018

“The Normative Fourth Amendment,” Ruth Bader Ginsburg Clerk Reunion Workshop, United States Supreme Court, June 2018

“The Normative Fourth Amendment,” Rocky Mountain Junior Scholars Conference, BYU Law School, November 2017

“Blank Slates,” BYU Law School, October 2017

“Blank Slates,” AALS Criminal Justice Section Mid-Year Meeting, American University Washington College of Law, June 2017

“Knowledge and Fourth Amendment Privacy,” Saint Louis University School of Law, August 2016

“Knowledge and Fourth Amendment Privacy,” Southeastern Association of Law Schools Conference, August 2016

“The Normative Fourth Amendment,” Summer Workshop Series, The Ohio State University Moritz College of Law, July 2016

“Knowledge and Fourth Amendment Privacy,” CrimFest, Benjamin N. Cardozo School of Law, July 2016

“Knowledge and Fourth Amendment Privacy,” Privacy Law Scholars Workshop, George Washington University Law School, June 2016

“Knowledge and Fourth Amendment Privacy,” Midwest Privacy Law Scholars Workshop, The Ohio State University Moritz College of Law, May 2016

“Automation and the Fourth Amendment,” The University of Chicago Law School, Faculty Works in Progress Workshop, October 2010

“*Booker*, *EBay*, and Legal Change,” The University of Chicago Law School, Legal Scholarship Workshop, September 2010

“Automation and the Fourth Amendment,” George Washington Law School, Privacy Law Scholars Conference, June 2010

“Privacy and Automated Systems,” The University of Chicago Law School, Legal Scholarship Workshop, November 2009

“The Content/Envelope Distinction in Internet Surveillance Law,” The University of Chicago Law School, Legal Scholarship Workshop, April 2008

AMICUS BRIEFS

Sarah Schrup, Matthew B. Kugler, Chistine S. Scott-Hayward, Lior Strahilevitz & Matthew Tokson, *Brief of Amici Curiae Empirical Fourth Amendment Scholars in Support of Petitioner*, *Carpenter v. United States*, No. 16-402 (U.S. Supreme Court 2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3019457

AWARDS AND HONORS

Early Career Faculty Award, University of Utah S.J. Quinney College of Law, April 2019

PLSC Reidenberg-Kerr Award, Privacy Law Scholars Conference 2016

Southeastern Association of Law Schools Call for Papers Prize, SEALS Conference 2016

SELECTED MEDIA APPEARANCES AND PUBLICATIONS

Alex Zielinski & Blair Stenvick, *More Portlanders Share Experiences of Being Snatched—and Detained—by Federal Police*, PORTLAND MERCURY, August 5, 2020, <https://www.portlandmercury.com/blogtown/2020/08/05/28708420/more-portlanders-share-experiences-of-being-snatched-and-detained-by-federal-police>

Matthew Tokson, *The feds won't face legal consequences for illegal arrests in Portland*, THE WASHINGTON POST, July 29, 2020, www.washingtonpost.com/outlook/2020/07/29/arrests-portland-unconstitutional-qualified-immunity

Matthew Tokson, “The ‘Mosaic Theory’ and the Aftermath of Carpenter,” “Remedial Collapse in Portland,” *Dorf on Law*, dorfonlaw.org (2020)

Jordan Rubin, *Divided SCOTUS Skeptical of Driver’s Fourth Amendment Claim*, BLOOMBERG LAW, Nov. 4, 2019, news.bloomberglaw.com/us-law-week/traffic-stop-case-raises-public-safety-fourth-amendment-concerns

Jordan Rubin, *Supreme Court Leaks ‘Super Rare,’ Serve ‘Ulterior Purposes,’* BLOOMBERG LAW, Sept. 16, 2019, news.bloomberglaw.com/corporate-law/supreme-court-leaks-super-rare-serve-ulterior-purposes

CBS-KUTV, Segment on police using video captured by Amazon Ring (segment aired August 28, 2019)

Erika Evans, *How police might access your Lyft, Tinder and Google accounts in a criminal investigation*, DESERET NEWS, July 29, 2019, www.deseretnews.com/article/900081368/lyft-tinder-google-police-data-mackenzie-lueck.html

ABC4, “Federal access to Utah driver licenses prompts privacy concerns,” (segment aired July 8, 2019), www.abc4.com/news/federal-access-to-utah-driver-licenses-prompts-privacy-concerns

Jordan Rubin, *Supreme Court Sides with Police on Warrantless Blood Draws*, BLOOMBERG LAW, June 27, 2019, news.bloomberglaw.com/us-law-week/unconscious-driver-loses-high-court-blood-draw-battle-for-now

Megan Graham, *An anonymous Instagram account that aimed to take down the advertising world’s sexual harassers may soon be unmasked*, CNBC.com, April 14, 2019, www.cnbc.com/2019/04/14/anonymous-diet-madison-avenue-instagram-account-could-soon-be-unmasked.html

ABC4, “SCOTUS ruling has ‘major implications’ for privacy questions, says U of U law professor,” segment on *Carpenter v. United States* (segment aired June 22, 2018), www.abc4.com/news/local-news/scotus-ruling-has-major-implications-for-privacy-questions-says-u-of-u-law-professor/1256751065

Matthew Tokson, “8 Takeaways from *Carpenter*”, *Concurring Opinions*, concurringopinions.com (June 22, 2018); “Quick Reactions to Today’s *Carpenter* Oral Argument – Post 2,” *Concurring Opinions*, concurringopinions.com (Nov. 29, 2017)

CBS-KUTV, “U of U law forum discusses pending Supreme Court case on phone location data” (segment aired Feb. 15, 2018), kutv.com/news/local/u-of-u-law-forum-discusses-pending-supreme-court-case-on-phone-location-data.

CNBC Asia, Segment on *US v. Microsoft* (segment aired Feb. 27, 2018), video excerpt at CNBC.com, www.cnbc.com/video/2018/02/27/it-looks-like-microsoft-will-lose-the-case-for-data-privacy-professor.html

Erin Fuchs, *Supreme Court fight could stir up fears of US spying overseas*, YAHOO FINANCE, Feb. 10, 2018, finance.yahoo.com/news/supreme-court-fight-stir-fears-us-spying-overseas-125402542.html

Jordan Rubin, *Convicted Robber May Win Landmark SCOTUS Case, But Unclear How*, 102 BLOOMBERG L. CRIM. L. REP., Dec. 6, 2017

Sara Israelsen-Hartley, *If you have a cellphone, you need to read this*, DESERET NEWS Dec. 1, 2017, www.deseretnews.com/article/900004910/if-you-have-a-cellphone-you-need-to-read-this.html

Matthew Tokson, *The Supreme Court's Cell-Phone-Tracking Case Has High Stakes*, NEW YORK MAGAZINE, Nov. 27, 2017, nymag.com/daily/intelligencer/2017/11/the-supreme-courts-cell-phone-tracking-case-has-high-stakes.html

- SCOTUSblog, “SCOTUS link of the day,” Nov. 30, 2017

Lior Strahilevitz & Matthew Tokson, “Carpenter v. United States and the Role of Originalism,” “Should Fourth Amendment Law Pay Attention to What People Expect? If So, How?,” “The Fourth Amendment Does Not Require ‘Demonstrative Action’ to Protect Privacy,” Concurring Opinions, concurringopinions.com (Nov. 27-28, 2017)

Jordan Rubin, *Trump, Pro-Gun Groups Headed for SCOTUS Duel?*, 101 BLOOMBERG L. CRIM. L. REP. 503, Aug. 9, 2017

Jordan Rubin, *SCOTUS Takes Up “Huge” Mobile Phone Data Case*, 101 BLOOMBERG L. CRIM. L. REP. 235, June 7, 2017

STATE AND LOCAL ORGANIZATIONS

Utah Supreme Court Advisory Committee on the Rules of Criminal Procedure, member since 2020

Utah Criminal Justice Center, Board member since 2020

BAR ADMISSIONS

Bar of the State of Illinois, admitted 2009

Bar of the District of Columbia, admitted 2013