

MATTHEW J. TOKSON
383 S. University Street • Salt Lake City, UT 84112

ACADEMIC APPOINTMENTS

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

Professor of Law 2020–Present
Associate Professor 2017–2020

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

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

Faculty Affiliate 2020–Present

CHASE COLLEGE OF LAW

Director, Law and Informatics Institute 2016–2017
Assistant Professor 2015–2017

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

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

PUBLICATIONS AND FORTHCOMING WORKS

Decentering Property in Fourth Amendment Law, 92 U. CHICAGO L. REV. __ (forthcoming 2025) (with Michael C. Pollack)

The Reality of the Good Faith Exception, 113 GEORGETOWN L.J. __ (forthcoming 2025) (Michael Gentithes)

Government Purchases of Private Data, 59 WAKE FOREST L. REV. __ (forthcoming 2024)

Systemic Regulation of Artificial Intelligence, 56 ARIZONA STATE L.J. __ (forthcoming 2024)
(with Yonathan Arbel and Albert C. Lin)

Disease-Preventive Behaviors and Subjective Well-Being in the COVID-19 Pandemic, 11 BMC PSYCHOLOGY 288 (2023) (peer-reviewed journal) (with Hadley Rahrig and Jeffrey D. Green)

The Carpenter Test as a Transformation of Fourth Amendment Law, 2023 U. ILLINOIS L. REV. 507 (2023)

The Aftermath of Carpenter: An Empirical Study of Fourth Amendment Law, 2018–2021, 135 HARVARD L. REV. 1790 (2022)

Telephone Pole Cameras Under Fourth Amendment Law, 83 OHIO STATE L.J. 977 (2022)
(symposium essay)

Smart Meters as a Catalyst for Privacy Law, 72 FLORIDA L. REV. F. 104 (2022) (invited essay)

Social Norms in Fourth Amendment Law, 119 MICHIGAN L. REV. 265 (2021) (with Ari E. Waldman)

Inescapable Surveillance, 105 CORNELL L. REV. 409 (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) (note)

EDUCATION

THE UNIVERSITY OF CHICAGO LAW SCHOOL

J.D., High Honors, June 2008

The University of Chicago Law Review, Executive Articles 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

OTHER WORK EXPERIENCE

WILMER CUTLER PICKERING HALE & DORR LLP

Senior Associate (Washington, DC)
 Appellate & Supreme Court Litigation;
 Investigations & Criminal Litigation

2012–2015

SIDLEY AUSTIN LLP

Summer Associate (Chicago, IL)

Summer 2007, Summer 2008

SELECTED PRESENTATIONS

“Decentering Property in Fourth Amendment Law,” Cardozo Law School Faculty Workshop, October 2023

“Government Purchases of Private Data,” Privacy Law Scholars Conference, University of Colorado School of Law, June 2023

“The Present and Future of Fourth Amendment Law,” Utah Juvenile Judges' Conference, April 2023

“The *Carpenter* Test and Pole Camera Surveillance,” Technology Governance Workshop, University of Nebraska School of Law, February 2023

Discussant, Law & Technology Workshop, University of Minnesota Law School, January 2023

Panel, Criminal Justice: Perception v. Reality: How Evolving Understandings of Technology Influence Fourth Amendment Jurisprudence, AALS Conference, January 2023

Panel, ACS Junior Scholars Workshop, AALS Conference, January 2023

“The Case for Affirmative Action in the Harvard/UNC Litigation,” Federal Bar Association 17th Annual Tri-State Seminar, September 2022

“The *Carpenter* Test as a Transformation of Fourth Amendment Law,” Privacy Law Scholars Conference, Northeastern University School of Law, June 2022

“The *Carpenter* Test and Pole Camera Surveillance,” Ohio State Law Journal Symposium, February 2022

“The Aftermath of *Carpenter*: An Empirical Study of Fourth Amendment Law, 2018–2021,” Utah Indigent Defense Division, January 2022

“*State v. Malloy* and the Fourth Amendment,” University of Utah Webinar (with District Attorney Sam Sutton), January 2022

“The Present and Future of Fourth Amendment Law,” Utah Appellate Court Judges Conference, September 2021

“The Aftermath of *Carpenter*: An Empirical Study of Fourth Amendment Law, 2018–2021,” SEALS Conference, August 2021

“The Aftermath of *Carpenter*: An Empirical Study of Fourth Amendment Law, 2018–2021,” CrimFest Conference, July 2021

“The Aftermath of *Carpenter*: An Empirical Study of Fourth Amendment Law, 2018–2021,” Privacy Law Scholars Conference, Georgetown Law School, June 2021

“Social Norms in Fourth Amendment Law,” Law & Society Association Annual Conference, May 2021

“The Aftermath of *Carpenter*: An Empirical Study of Fourth Amendment Law, 2018–2021,” University of Akron School of Law Faculty Workshop, May 2021

“Social Norms in Fourth Amendment Law,” Joel R. Reidenberg Northeast Privacy Scholars Workshop, Northeastern University School of Law, November 2020

“Chokeholds and Officer Misconduct: Stopping the Police Force Crisis,” Panel, BYU School of Law, November 2020

“The Aftermath: An Empirical Study of All Federal and State Fourth Amendment Decisions Applying *Carpenter v. United States*, 2018–2021,” Rocky Mountain Junior Scholars Conference, University of Utah, November 2020

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

“Inescapable Surveillance,” University of Akron School of Law Faculty Workshop, May 2020

“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. 1 (2020), 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,” SEALS 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, Christine S. Scott-Hayward, Lior Strahilevitz, and 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

David B. Owens, Rachel Nowlin-Sohl, Averill L. Aubrey, Megan Haygood, Kayleigh McNeil, Michael C. Orehek, Matthew Tokson, and Michael Gentithes, *Brief of Fourth Amendment Scholars As Amici Curiae in Support of Defendant-Appellant on the Good Faith Exception Issue*, United States v. Holcomb, No. 23-469 (Ninth Cir. 2023)

AWARDS AND HONORS

Named One of the University of Utah's Top 25 Researchers, Campus-Wide, University of Utah Office of Academic Affairs, March 2023

Faculty Service Award, University of Utah S.J. Quinney College of Law, April 2022

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

Emily Anderson Stern, *Do you need to give cops your cellphone password? Here's what the Utah Supreme Court says*, SALT LAKE TRIBUNE, Dec. 15, 2023

Matthew Tokson on Government Purchases of Private Data, THE LAWFARE PODCAST, Dec. 4, 2023

Matthew Tokson, *When the Government Buys Sensitive Personal Data*, LAWFARE, Nov. 3, 2023

The Government Purchase of Private Data, PRIVACY ABBREVIATED PODCAST, Sept. 27, 2023

Death Row Defendants Find Few Wins at Supreme Court, BLOOMBERG LAW CASES AND CONTROVERSIES PODCAST, Sept. 26, 2023

CBS-KUTV, Segment on a Supreme Court petition involving the alleged constitutional right of non-violent felons to possess firearms (aired Sept. 20, 2023)

Lyndsay Winkley, *Could San Diego Police Department's smart streetlights program infringe upon privacy rights?*, SAN DIEGO UNION-TRIBUNE, July 31, 2023, <https://www.sandiegouniontribune.com/news/public-safety/story/2023-07-31/could-san-diego-police-departments-smart-streetlights-program-infringe-upon-privacy-rights>

CBS-KUTV, Segment on legality of use by local towns of private prosecutors to prosecute public cases (aired July 27, 2023)

Matthew Tokson, Trump's Fourth Amendment Claims and the Strategy Behind the Challenge to the Mar-a-Lago Search, LAWFARE, Sept. 8, 2022,

<https://www.lawfareblog.com/trumps-fourth-amendment-claims-and-strategy-behind-challenge-mar-lago-search>

Matthew Tokson & Paul Ohm, *Carpenter Should Replace Katz in Fourth Amendment Law*, LAWFARE, July 13, 2022, <https://www.lawfareblog.com/carpenter-should-replace-katz-fourth-amendment-law>

Matthew Tokson, *A First Circuit Decision and the Future of Telephone Pole Camera Surveillance*, LAWFARE, June 24, 2022, <https://www.lawfareblog.com/first-circuit-decision-and-future-telephone-pole-camera-surveillance>

Michael Macagnone, *Draft leak a ‘shocking change’ for typically airtight Supreme Court*, CQ ROLL CALL, May 3, 2022, <http://rollcall.com/2022/05/03/draft-leak-a-shocking-change-for-typically-airtight-supreme-court>

Jordan S. Rubin, *Breyer Doesn’t Leave Clear ‘Liberal’ Criminal Law Legacy*, BLOOMBERG LAW, January 26, 2022, <http://news.bloomberglaw.com/us-law-week/breyer-doesnt-leave-clear-liberal-criminal-law-legacy>

Matthew Tokson, *The Impact of Carpenter v. United States in the Lower Courts and the Emerging Carpenter Test*, LAWFARE, Nov. 3, 2021, www.lawfareblog.com/impact-carpenter-v-united-states-lower-courts-and-emerging-carpenter-test

Jacob Ryan, *To solve murders, Louisville police turn to ‘geofence’ warrants — but net few arrests*, Kentucky Center for Investigative Reporting, KYCIR.org, Oct. 19, 2021, kycir.org/2021/10/19/to-solve-murders-louisville-police-turn-to-geofence-warrants-but-net-few-arrests

Mark Harris, *How a Secret Google Geofence Warrant Helped Catch the Capitol Riot Mob*, WIRED, Sept. 30, 2021, www.wired.com/story/capitol-riot-google-geofence-warrant

KSL News Radio, *Inside Sources*, Segment on *Lange v. California* (aired June 24, 2021)

CBS-KUTV, *Utah law doesn’t cover K9 training, even though POST’s program has national acclaim*, (segment aired Oct. 14, 2020), kutv.com/news/2news-investigates/utah-law-doesnt-cover-k9-training-even-though-posts-program-has-national-acclaim

Matthew Tokson & Elizabeth Kronk Warner, *A Tribute to Ruth Bader Ginsburg*, ATTORNEY AT LAW, Oct. 5, 2020, attorneyatlawmagazine.com/a-tribute-to-ruth-bader-ginsburg

ABC4, *Segment on Powell murder case involving wiretap evidence*, (segment aired Sept. 15, 2020)

Dave Cawley and Keira Farrimond, *“Cold”: Newly Released Wiretap Conversations Depict Powell Family on the Brink*, KSLTV.com, Sept. 15, 2020, ksltv.com/445501/cold-newly-released-wiretap-conversations-depict-powell-family-on-the-brink

Alex Zielinski & Blair Stenvick, *More Portlanders Share Experiences of Being Snatched—and Detained—by Federal Police*, PORTLAND MERCURY, August 5, 2020,

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, Various posts including “The Troubling Phenomenon of Enforced Unlaws,” and “Remedial Collapse in Portland,” Dorf on Law, dorfonlaw.org (2020)

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

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

STATE 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