

NEW PERSPECTIVES ON FOURTH AMENDMENT SUSPICION

AALS Discussion Group, Criminal Procedure Section (co-sponsored by Criminal Law Section), AALS Annual Meeting

Friday, January 10, 2025 – 12:50 p.m. to 2:20 p.m.

The Fourth Amendment is intended to protect people from unreasonable searches and seizures, cabin the state's power, and establish the parameters of citizen-police interactions. Nonetheless, the doctrine has in many ways evolved to expand law enforcement power to act on suspicions, frequently to the disadvantage of disfavored groups, most notably poor people of color. Rectifying these distorted principles is not just a matter of academic interest but a pressing need, amplified with the advent of more intrusive and pervasive surveillance technologies, that lies at the intersection of our discussants' recent work.

Although our scholarship is interrelated, our panelists examine these suspicion-related questions from different perspectives and with different goals. Together, we address the ways that suspicion is defined and constructed, its role (or failed potential) in constraining government power, the need for alternatives to suspicion to regulate mass data surveillance, and the potential for suspicion to serve as cover for bias. Our discussion will include focus on the ways that we examine these questions in our teaching, as well as our scholarship.

Participants:

Alyse Bertenthal, Associate Professor of Law, Wake Forest University School of Law

Considering how suspicion is defined and constructed at the intersection of environmental and criminal law; focusing on the exercise of law enforcement discretion in the investigation of environmental violations (in the absence of a reasonable suspicion requirement).

- Bio [here](#).
- *The Green Fourth Amendment* (work in progress)
- *Toxic Narratives, Toxic Communities and Enforcement of Environmental (In)Justice* (forthcoming UNIVERSITY OF WASHINGTON LAW REVIEW)
- *Environmentalists' Latent Abolitionism* (forthcoming UCLA LAW REVIEW)

Mary D. Fan, Jack R. MacDonald Endowed Chair, University of Washington School of Law

Proposing safeguards surrounding the use of consumer data to identify criminal suspects and analyzing empathy deficits in the Fourth Amendment doctrine surrounding collateral harm to innocent persons.

- CV [here](#).
- *Suspecting with Data*, 109 MINN. L. REV. ___ (forthcoming 2024-25).
- *Big Data Searches and the Future of Criminal Procedure*, 102 TEX. L. REV. 877 (2024).

Andrew Guthrie Ferguson, Professor of Law, American University Washington College of Law

Discussing new theories of Fourth Amendment protection in the face of persistent surveillance technologies.

- Bio [here](#).
- *Video Analytics and Fourth Amendment Vision*, (forthcoming TEXAS L. REV. 2025).
- *Digital Rummaging*, 101 WASH. UNIV. LAW REVIEW 1473 (2024).
- *Why Digital Policing is Different*, 83 OHIO ST. L.J. 817 (2022).
- *Persistent Surveillance*, 74 ALA. L. REV. 1 (2022).

Barry Friedman, Jacob D. Fuchsberg Professor of Law, Director, Policing Project; NYU School of Law

Proposing regulatory mechanisms to limit the government's mass data collection.

- CV [here](#).
- *Indiscriminate Data Surveillance*, 110 VA. L. REV. 1351 (2024) (with Danielle Keats Citron).
- *Lawless Surveillance*, 97 N.Y.U. L. REV. 1143 (2022).

Lauryn Gouldin, co-moderator, co-organizer, Crandall Melvin Professor of Law, Laura J. and L. Douglas Meredith Professor of Teaching Excellence, Syracuse University College of Law

Analyzing the Fourth Amendment's crime-specificity requirement and evaluating its inconsistent application to stops, arrests, and searches.

- CV [here](#).
- *Specific Suspicion* (working paper).
- *Crimes of Suspicion*, 72 EMORY L. J. 1429 (2023).

Aliza Hochman Bloom, co-moderator, co-organizer, Assistant Professor of Law, Northeastern University

Discussing erosion of the requirement of particularized suspicion in several modern policing contexts, and the problematic effects of relying on associational suspicion to support police intervention.

- Bio [here](#).
- *Suspicion by Association* (work in progress)
- *Policing Bias Without Intent*, U. ILL. L. REV. (forthcoming 2025)
- *Whack-A-Mole Reasonable Suspicions*, 112 CAL. L. REV. 101 (2024)

Michael J.Z. Mannheimer, Regents Professor of Law, Salmon P. Chase College of Law, Northern Kentucky University

Relying on an originalist approach to Fourth Amendment suspicion (and a strict reading of *Terry*) to advocate that reasonable suspicion is an appropriate standard only in true exigencies where broad law enforcement discretion may be justified.

- CV [here](#).
- THE FOURTH AMENDMENT: ORIGINAL UNDERSTANDINGS AND MODERN POLICING (UNIV. OF MICH. PRESS 2023)

Jamelia Morgan, Professor of Law and Director of the Center for Racial and Disability Justice, Northwestern:

Discussing the subordinating effects of capacious reasonable suspicion standard when it relates to people with disabilities.

- CV [here](#).
- *Psychiatric Holds and the Fourth Amendment*, 124 COLUM. L. REV. 1363 (2024)
- *Disability's Fourth Amendment*, 122 COLUM. L. REV. 489 (2022)

Nirej Sekhon, Professor of Law, Georgia State University:

Critiquing jurisprudence that forecloses First Amendment and equal protection claims when the Fourth Amendment's reasonable suspicion requirement is met.

- CV [here](#).
- *Suspicion As Safe Harbor* (working paper).

Maneka Sinha, Associate Professor of Law and Director of the Criminal Defense Clinic, University of Maryland:

Discussing the role of technology in automating suspicion and the need for criminal legal actors to scrutinize and challenge the reliability of technology used to generate suspicion.

- CV [here](#).
- *Challenging Automated Suspicion* (work in progress).
- *The Automated Fourth Amendment*, 73 EMORY L. J. 589 (2024).