

MICHAEL GENTITHES

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ACADEMIC APPOINTMENTS

Associate Professor 2021-Present; Assistant Professor 2019-2021

University of Akron School of Law

Teaching criminal procedure, constitutional law, digital forensics, and legal writing. Faculty Fellow at the Center for Constitutional Law. Lecturer in PLUS program. Moot court coach and advisor. Member of the appointments committee; alumni committee; standards and bylaws committee; CM Law joint exploratory working group, faculty and curriculum subcommittee; ad hoc inclusion, diversity, and equity committee; bar performance analytics working group.

Visiting Assistant Professor 2017-2019

Chicago-Kent College of Law

Taught digital forensics, payment systems, and legal writing. Presented to faculty workshops and student organizations. Coached several moot court teams.

Adjunct Professor 2015-2017

Loyola University Chicago School of Law

Taught courses in appellate advocacy and judicial and scholarly writing.

PUBLICATIONS & WORKS-IN-PROGRESS

***A Manageable Constitution* (work in progress)**

Describes the Supreme Court's recent development of a general "manageability" requirement for constitutional tests, then prescribes limiting such a requirement's scope and applicability to emerging tests that lower courts have yet to implement.

***Incentives and the Good Faith Exception to the Exclusionary Rule* (Co-Author Professor Matthew Tokson) (work in progress)**

Conducts an empirical and theoretical examination of the good faith exception to the exclusionary rule to explain how, in its current form, the exception incentivizes violations of Fourth Amendment rights.

***Exigencies, Not Exceptions: How the Exigent Circumstances Doctrine Can Swallow Warrant Exceptions* (work in progress)**

Explains how the exigent circumstances exception to the Fourth Amendment's warrant requirement has the normative and theoretical power to swallow other categorical warrant exceptions, reducing officers' discretion and citizens' distrust in officer-citizen interactions.

***Janus-Faced Judging: How the Supreme Court Is Radically Weakening Stare Decisis*, 62 WM. & MARY L. REV. 83 (2020)**

Contends that recent Supreme Court decisions have undermined legal stability by suggesting that "poor reasoning" in a prior decision justifies overruling cases and by claiming that older precedents have less *stare decisis* value because they may have long violated individual rights.

***Rulifying Reasonable Expectations: How Katz and Originalism Can Work Together To Create a More Determinate Fourth Amendment*, 59 HOUS. L. REV. 1 (forthcoming 2021)**

Argues how both originalist interpretations and judge-made standards for interpreting the Fourth Amendment struggle to identify appropriate sources for interpretation and create determinate rulings, but both can serve a common goal: a more rule-like Fourth Amendment jurisprudence.

***Rhetoric & Nostalgia in Criminal Justice Reform*, 12 CONLAWNOW 129 (2021)**

Prescribes reform policies that broadly and equitably address a broad course of injustices, including, but not limited to, the overpolicing of many urban neighborhoods.

***Suspicionless Witness Stops: The New Racial Profiling*, 55 HARV. C.R.-C.L. L. REV. 491 (2020)**

Details police tactic of stopping individuals that may have witnessed a crime but committed no offense, then argues that in order to avoid racial profiling, courts should find such stops distinct from police roadblocks and unconstitutional unless officers possess robust reasonable suspicion.

***Gobbledygook: Political Questions, Manageability, & Partisan Gerrymandering*, 105 IOWA L. REV. 1081 (2020)**

Argues that the Supreme Court has misapplied the political question doctrine in partisan gerrymandering cases, seeking ideal rather than manageable standards and failing to address the existential threat partisan gerrymandering presents to representative democracy.

***Felony Disenfranchisement & The Nineteenth Amendment*, 53 AKRON L. REV. 431 (2020) (symposium)**

Contends that the history of the suffragist movement and the passage of the Nineteenth Amendment can be leveraged to argue against felony disenfranchisement laws, which wrongly assume that the votes of traditionally subordinated groups in society are less valuable.

***Pandemic Surveillance: The New Predictive Policing*, 12 CONLAWNOW 57 (2020) (symposium) (Co-Author Prof. Harold Krent)**

Assesses privacy and constitutional impact of government efforts to test and track citizens considered healthy enough to return to work and travel freely following the COVID-19 pandemic and quarantine.

***App Permissions & the Third-Party Doctrine*, 59 WASHBURN L. J. 35 (2020) (symposium)**

Explains how “permissions” allow “apps” to perform functions that gather highly personal data about the user. Argues that the Fourth Amendment’s third-party doctrine should not apply to information collected via a permission lacking a sufficient nexus to the app’s intended purpose.

***Justice Begins Before Trial: How to Nudge Inaccurate Pre-trial Rulings Using Behavioral Law & Economic Theory & Uniform Commercial Laws*, 60 WM. & MARY L. REV. 2185 (2019)**

Proposes an application of commercial law to the agreements underlying a criminal conspiracy in order to reduce judicial reliance upon anti-defendant intuition in pre-trial evidentiary rulings.

***The End of Miller’s Time: How Sensitivity Can Categorize Third-Party Data After Carpenter*, 53 GA. L. REV. 1039 (2019)**

Contends that the Supreme Court should refocus the third-party doctrine and overrule *United States v. Miller*’s holding that the government may warrantlessly obtain unlimited data—even sensitive financial information—that is collected by a third party.

***The Trouble with Appeals Invited by Supreme Court Justices*, 82 MO. L. REV. 339 (2017)**

Discusses the effects of and appropriate responses to appeals invited by Supreme Court Justices, with special emphasis on Justice Breyer’s recent invitation for death penalty abolitionists to argue directly against the constitutionality of capital punishment.

***Tranquility & Mosaics in the Fourth Amendment*, 82 TENN. L. REV. 937 (2015)**

Contends that the concept of constitutional tranquility can be applied to solve the arithmetic flaw inherent in the mosaic theory of the Fourth Amendment, thereby explaining why government use of data dragnets such as the NSA’s telephony metadata program are searches.

***Sunsets on Constitutionality & Supreme Court Efficiency*, 21 VA. J. SOC. POL’Y & L. 373 (2014)**

Reviews the history of sunsets common in legislation in the 1970s and considers the potential application of such sunsets to the Supreme Court’s rulings on the constitutionality of a government policy, which could increase accuracy and efficiency in its decision making process.

***Hey, But It’s My Money! Ownership & the Enforcement of Conversion Liability Under U.C.C. § 3-420*, 33 B.U. REV. BANKING & FIN. L. 191 (2013) (Co-Author Prof. Wayne Lewis)**

Argues for amendment to the Uniform Commercial Code’s section on Conversion, § 3-420.

***The Tiered Article V*, 34 WHITTIER L. REV. 307 (2013)**

Proposes a unique, tiered scheme for constitutional change that would restore the Madisonian balance between constancy and modernity in our constitution.

***Precedent, Humility, & Justice*, 18 TEX. WES. L. REV. 835 (2012)**

Contends that appellate judges should apply jurisprudential humility, including meaningful respect for precedent, to enhance judicial cooperation generationally and with contemporaries.

***An Aggregated Threat: Campaign Contribution Bundling & the Future of Reform*, 30 QUINNIPIAC L. REV. 587 (2012)**

Addresses “bundled” campaign contributions, a long-ignored threat to the political process.

***The Equal Protection Clause & Immutability: The Characteristics of Suspect Classifications*, 40 U. MEM. L. REV. 507 (2010)**

Takes a Rawlsian perspective on “suspect classifications” in equal protection cases and suggests a way forward in the stalemate between antidiscrimination and antidisubordination accounts.

***In Defense of Stare Decisis*, 45 WILLAMETTE L. REV. 799 (2009)**

Analyzes the effects of principled application of *stare decisis* on the stability of democratic government, with a focus on the mechanics of *stare decisis* as applied by the Supreme Court.

EDUCATION

New York University School of Law (2011) - New York, NY

Master of Laws (LL.M.) in Legal Theory

Thesis: *Precedent, Humility, & Justice* (published in Texas Wesleyan Law Review)

Thesis Advisors Professors Jeremy Waldron & Ronald Dworkin

Activities: Presenter at Academic Careers Program Scholarship Clinic

DePaul University College of Law (2008) - Chicago, IL

Juris Doctor, summa cum laude

Honors: Order of the Coif; Law Merit & Charles Kocoras Scholarships for High Academic Achievement; Richard D. Cudahy Public Interest Law Fellowship

Activities: Law Review, Managing Editor of Lead Articles; Research Assistant, Professors Stephen Siegel, Wayne Lewis, & Michael Evans

Colgate University (2005) - Hamilton, NY

Bachelor of Arts, Political Science & Philosophy, magna cum laude

Honors: Inducted into Gamma Sigma Alpha Honor Society, Pi Sigma Alpha Political Science Honor Society, and Phi Eta Sigma Honor Society

Activities: Captain of the men's varsity swim team; Philanthropy chair, Theta Chi fraternity

PROFESSIONAL EXPERIENCE

Assistant Appellate Defender, 2014-2019

Office of the State Appellate Defender - Chicago, IL

Briefed and argued more than 250 criminal appeals in state and federal courts.

Assistant Corporation Counsel, 2012-2014

City of Chicago Law Department - Chicago, IL

Lead counsel in multiple trials and arbitrations, handling cases from discovery through trial.

Litigation Associate, 2011-2012

Kraus & Zuchlewski LLP - New York, NY

Litigation association in commercial and employment law at trial and appellate levels.

Clerk, Illinois Appellate Court, 2008-2010

Chambers of Justice Rodolfo Garcia - Chicago, IL

PRESENTATIONS, LECTURES, & MEDIA APPEARANCES

Appellate Advocacy Blog, Regular Contributor, September 2019-Present

Did writing prompts in Hudson class constitute child pornography or any other crime?, Akron-Beacon Journal, Akron, OH, Sept. 2021

Legal Challenges to Ohio's Redistricting Process, Ohio 24/7, Akron, OH, Sept. 2021

The Legal Repercussions of Forging Vaccination Cards, Ohio 24/7, Akron, OH, Sept. 2021

Defining Defamation in Ohio, Akron Beacon Journal, Akron, OH, Aug. 2021

The Constitutionality of Vaccine Mandates, Ohio 24/7, Akron, OH, Aug. 2021

Honest Services Fraud at First Energy, Cleveland.com, Akron, OH, July 2021

Exigencies, Not Exceptions: How the Exigent Circumstances Doctrine Can Swallow Warrant Exceptions, Brooklyn Law CrimFest (virtual), Akron, OH, July 2021

Donald Trump Lawsuits against Twitter and Facebook, Ohio 24/7, Akron, OH, July 2021

Harassment of Akron Police Officers, Akron Beacon Journal, Akron, OH, June 2021

It's Exigent Circumstances, Stupid!, AALS CrimWIP speaker series, Akron, OH, June 2021

Sanctuary Cities in Ohio, Ohio 24/7, Akron, OH, June 2021

Gamification in the Classroom, New Explorations in Teaching Conference, Akron, OH, May 2021

First Energy and Deferred Prosecution Agreements, Columbus Dispatch, Columbus, OH, April 2021

The Derek Chauvin Verdict, Ohio 24/7, Akron, OH, April 2021

Week One of the Derek Chauvin Trial, Ohio 24/7, Akron, OH, April 2021

Vaccine Requirements in Public Schools, Medina Gazette, Akron, OH, April 2021

The Fourth Amendment in Sixty Minutes: Latest Trends in Supreme Court Jurisprudence, Akron Law CLE Series, Akron, OH, April 2021

It's Exigent Circumstances, Stupid!, Barry University ACS Constitutional Law Colloquium, Miami Shores, FL, Mar. 2021

COVID-19 Hate Crimes Act, Ohio 24/7, Akron, OH, Mar. 2021

Rhetoric and Nostalgia in Criminal Justice Reform, Akron Law Review Symposium, Akron, OH, Mar. 2021

The Electoral College: A Benefit or Detriment to Democracy?, Federalist Society and American Constitution Society, Akron, OH, Mar. 2021 (moderator)

Rulifying Reasonable Expectations, SMU Law Deason Criminal Justice Center, Dallas, TX, Mar. 2021

It's Exigent Circumstances, Stupid!, Akron Law FReD Workshop Series, Akron, OH, Feb. 2021

Donald Trump Impeachment Trial, Ohio 24/7, Akron, OH, Feb. 2021

Cleveland City Council Subpoena Powers, Cleveland.com, Cleveland, OH, Feb. 2021

Building Mid-terms In Mid-Class, AALS Annual Meeting Panel Presentation, San Francisco, CA, Jan. 2021

Election Lawsuits Against Vice President Mike Pence, Ohio 24/7, Akron, OH, Dec. 2020

Rulifying Reasonable Expectations, NE Ohio Law School Colloquium, Akron, OH, Dec. 2020

Rulifying Reasonable Expectations, ABA-AALS Academy for Justice Criminal Justice Roundtables, Akron, OH, Nov. 2020

Rulifying Reasonable Expectations, Loyola University Chicago School of Law Constitutional Law Colloquium, Chicago, IL, Nov. 2020

Donald Trump Election Lawsuits, Ohio 24/7, Akron, OH, Nov. 2020

Defund the Police? A Libertarian View of Cops and Replacing Them, Federalist Society and Black Law Students Association, Akron, OH, Oct. 2020 (moderator)

Does Qualified Immunity mean Unqualified Impunity?, Federalist Society and American Constitution Society, Akron, OH, Sept. 2020 (moderator)

TikTok's Legal Challenges to Trump Administration Executive Orders, Ohio 24/7, Akron, OH, Aug. 2020

The Constitutionality of Ohio Governor Mike Dewine's Mask Mandate, EP for Ohio, Akron, OH, July 2020

Rulifying Reasonable Expectations, Crimfest, Online, July 2020

Fostering Student Group Work in Online Teaching, William & Mary Conference for Excellence in Teaching Legal Writing Online, Online, June 2020

Criminal Neutralization and Affirmative Defenses, Akron University Criminology Course, Akron, OH, April 2020

The Common Problems with Originalism and Reasonable Expectations, Akron Law FReD Workshop Series, Akron, OH, March 2020

Emerging Constitutional Issues in the Supreme Court, Stow Rotary Club, Stow, OH Jan. 2020

How the Supreme Court is Radically Weakening Stare Decisis, Akron FReD Workshop Series, Akron, OH, Jan. 2020

Janus-Faced Judging, Loyola University Chicago School of Law Constitutional Law Colloquium, Chicago, IL, Nov. 2019

Government Surveillance and Originalism: A Debate with Logan Beirne, Federalist Society, Akron, OH, Nov. 2019

Immigration and Human Rights: A Debate with Hans von Spakovsky, Federalist Society and American Constitution Society, Akron, OH, Nov. 2019 (moderator)

Ipse Dixit Podcast, Akron, OH, Oct. 2019

Northern District of Ohio Opioid Litigation Settlement, NBC-21, Akron, OH, Oct. 2019

Suspicionless Witness Stops, LatCrit 2019 Biennial Conference and Faculty Development Workshop, Atlanta, GA, Oct. 2019

Law Enforcement in America: Reform or Abolition?, American Constitution Society, Akron, OH Oct. 2019

Felony Disenfranchisement & The Nineteenth Amendment, The 19th Amendment at 100: From the Vote to Gender Equality, Akron, OH, Sept. 2019

Janus-Faced Judging, Akron FReD Workshop Series, Akron, OH, August 2019

Suspicionless Witness Stops, Crimfest, Brooklyn, NY, July 2019

Criminal Procedure and Elections in the Supreme Court, Chicago-Kent Pre-Law Undergraduate Scholars Program, Chicago, IL June 2019

Intuitive Judgements and Pre-Trial Evidentiary Rulings, American Psychology-Law Society Conference, Portland, OR, March 2019

Data Rights in the Digital Age, Cyber-Security & Data Privacy Society, Chicago, March 2019

The Charges Against Jussie Smollett, Fox-32 Chicago, Chicago, IL, Feb. 2019

Stopping Witnesses Without Suspicion, Chicago-Kent Faculty Workshop Series, Chicago, IL, Feb. 2019

Gobbledygook: A Standard Red Herring, Loyola University Chicago School of Law
Constitutional Law Colloquium, Chicago, IL, Nov. 2018

Justice Begins Before Trial, SEALS Prospective Law Teachers Workshop, Fort Lauderdale, FL,
Aug. 2018

Hot Topics in Constitutional Law, Chicago-Kent Pre-Law Undergraduate Scholars Program,
Chicago, IL, June 2018

The End of Miller's Time, New York University School of Law Scholarship Clinic, New York,
NY, Apr. 2018

The End of Miller's Time, Chicago-Kent Faculty Workshop Series, Chicago, IL, Mar. 2018

Building a Better Fourth Amendment: Carpenter v. United States, American Constitution
Society, Chicago, IL, Sept. 2017

Justice Begins Before Trial, Chicago-Kent Faculty Workshop Series, Chicago, IL, Aug. 2017

The Trouble with Appeals Invited by Supreme Court Justices, New York University School of
Law Scholarship Clinic, New York, NY, Apr. 2016

Appellate Tips for Trial Lawyers, Panelist and Moderator, Chicago Bar Association Young
Lawyers Section, Chicago, IL, Feb. 2016

Tranquility & Mosaics in the Fourth Amendment, Chicago Bar Association Civil Rights and
Constitutional Law Committee, Chicago, IL, Mar. 2015

Sunsets on Constitutionality & Supreme Court Efficiency, New York University School of Law
Scholarship Clinic, New York, NY, Apr. 2014

TEACHING EXPERIENCE & INTERESTS

Criminal Procedure; Constitutional Law and Theory; Digital Forensics; Payment Systems;
Legal Research & Writing; Appellate Advocacy; Judicial and Scholarly Writing