

MICHAEL GENTITHES

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ACADEMIC APPOINTMENTS

Assistant Professor, 2019-Present

University of Akron School of Law

Teaching criminal procedure, constitutional law, digital forensics, and legal writing. Member of the appointments committee. Moot court coach and advisor.

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

Rulifying Reasonable Expectations: How Katz and Originalism Can Work Together To Create a More Determinate Fourth Amendment (Work-in-Progress)

Argues that 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.

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

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

***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.

***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.

***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 antistatutory 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

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 and Their Implications, 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