

Brian C. Kalt

Curriculum Vitae

TEACHING EXPERIENCE

Professor of law July 2011–present
Michigan State University College of Law *East Lansing, Michigan*

Harold Norris Faculty Scholar January 2010–present

Associate professor of law with tenure July 2006–June 2011
Associate professor of law July 2003–June 2006
Assistant professor of law July 2000–June 2003

Classes taught:

Administrative Law
Bill of Rights Seminar
Constitutional Law I
Torts
Torts II
The Bill of Rights (Undergraduate Freshman Seminar)

Visiting Professor Spring 2013
University of Alabama *Tuscaloosa, Alabama*
Taught two-credit seminar on Constitutional Cliffhangers

Visiting Professor January 2008
University of Ottawa *Ottawa, Canada*
Taught three-credit course on U.S. Federal Administrative Law

Visiting Lecturer February 2002
Vytautas Magnus University *Kaunas, Lithuania*
Taught two-credit course on Constitutional Law and Theory

PUBLICATIONS

Books

CONSTITUTIONAL CLIFFHANGERS: A LEGAL GUIDE FOR PRESIDENTS AND THEIR ENEMIES (Yale University Press 2012).

SIXTIES SANDSTORM: THE FIGHT OVER ESTABLISHMENT OF A SLEEPING BEAR DUNES NATIONAL LAKESHORE (Michigan State University Press 2001).

Law Review Publications

Of Death and Deadlocks: Section 4 of the Twentieth Amendment, 54 HARV. J. ON LEGIS. (forthcoming Winter 2017).

Unconstitutional But Entrenched: Putting UOCAVA and Voting Rights for Permanent Expatriates on a Sound Constitutional Footing, 81 BROOKLYN L. REV. 441 (2016).

Winning Recounts: Essential Mathematical and Statistical Insights for Election Lawyers, 30 J. L. & POL. 141 (2014).

The Application of the Disqualification Clause to Congress: A Response to Benjamin Cassady, “You’ve Got Your Crook, I’ve Got Mine”: Why the Disqualification Clause Doesn’t (Always) Disqualify, 33 QUINNIPIAC L. REV. 7 (2014).

The Ninth Amendment in Congress, 40 PEPPERDINE L. REV. 75 (2012).

Explaining, Defending, and Exporting the Socratic Method, 27 SOONGSIL L. REV. 309 (2012) (partially translated into Korean).

Politics and the Federal Appointments Process, 5 HARV. L. & POL’Y REV. (Online), Apr. 5, 2011, <http://hlpronline.com/2011/04/politics-and-the-federal-appointments-process/>.

Tabloid Constitutionalism: How a Bill Doesn’t Become a Law, 96 GEO. L.J. 1971 (2008).

Keeping Recess Appointments in Their Place, 101 NW. U. L. REV. COLLOQUY 88 (2007), <http://www.law.northwestern.edu/lawreview/colloquy/2007/3/>; and *Keeping Tillman Adjournments in Their Place: A Rejoinder to Seth Barrett Tillman*, 101 NW. U. L. REV. COLLOQUY 108 (2007), <http://www.law.northwestern.edu/lawreview/colloquy/2007/6/>.

Crossing Eight Mile: Juries of the Vicinage and County-Line Criminal Buffer Statutes, 80 WASH. L. REV. 271 (2005).

The Perfect Crime, 93 GEO. L.J. 675 (2005), reprinted in THE GREEN BAG ALMANAC AND READER 2006 in the category of “Exemplary Legal Writing 2005.”

Three Levels of Stare Decisis: Distinguishing Common-Law, Constitutional, and Statutory Cases, 8 TEX. REV. L. & POL. 277 (2004) (transcript of presentation).

The Exclusion of Felons from Jury Service, 53 AM. U. L. REV. 65 (2003).

“American Perspective,” in *MSU–DCL Tri-Panel on the Election Process: A Discussion of the 2000 Elections in The United States, Canada, and Mexico*, 10 MSU–DCL J. INT’L L. 109 (2001) (transcription of presentation).

The Constitutional Case for the Impeachability of Former Federal Officials: An Analysis of the Law, History, and Practice of Late Impeachment, 6 TEX. REV. L. & POL. 13 (2001).

Death, Ethics, and the State, 23 HARV. J.L. & PUB. POL'Y 487 (2000).

The People's Forest and Levy's Trees: Popular Sovereignty and the Origins of the Bill of Rights, 17 CONST. COMMENTARY 119 (2000) (book review).

Wade H. McCree, Jr., and the Office of the Solicitor General, 1977–1981, 1998 DET. C.L. MICH. ST. U. L. REV. 703.

The Presidential Privilege Against Prosecution, 2 NEXUS 11 (with Akhil Reed Amar) (1997).

Note, *Pardon Me?: The Constitutional Case Against Presidential Self-Pardons*, 106 YALE L.J. 779 (1996).

Other work

INTERACTIVE TORTS (2006) (multimedia Torts study guide, distributed by Aspen).

Blogging at Volokh.com (guest, January 2012); Concurringopinions.com (guest, December 2008–January 2009); and Fullcomment.com.

Unpublished conference papers

“And Stay Out! . . . The Constitutional Case for the Impeachability of Former Federal Officials,” presented at the 2001 meeting of the Central States Law School Association, Michigan State University College of Law, Oct. 6, 2001.

“The Endless Recount: Some Thoughts on Optimal Recount Strategy and Al Gore’s Plan in the 2000 Florida Presidential Race,” presented at the 2001 Annual Meeting of the Public Choice Society & Economic Science Association, San Antonio, Texas, Mar. 10, 2001. (*Note: this paper was accepted as a chapter in a book on the 2000 recount, by Cambridge University Press. The editor, Henry Brady, has not yet finished the manuscript.*)

Op-eds

Should President Obama Pardon Hillary Clinton?: Pardoning Her Would Reinforce Bad Precedents That Others Would Follow, N.Y. TIMES: ROOM FOR DEBATE (Nov. 16, 2016), <http://www.nytimes.com/roomfordebate/2016/11/15/should-president-obama-pardon-hillary-clinton> (op-ed debate) (arguing against a pardon for Hillary Clinton by President Obama)

A Better Line to the Oval Office, L.A. TIMES, Jan. 12, 2015 (op-ed) (advocating for reform of the presidential line-of-succession statute).

“Now He Belongs to the Ages:” Why Lincoln Was Made by His Martyrdom, NAT’L POST (Toronto), Oct. 24, 2012 (op-ed) (discussing the extent to which President Lincoln’s reputation rests on his assassination).

Politicizing Court Bad for Nation, DET. NEWS, Jan. 29, 2010 (op-ed) (criticizing political views of constitutional law that sell legal interpretation short).

You Keep Your Health System and We’ll Keep Ours, NAT’L POST (Toronto), Sep. 15, 2009 (op-ed) (discussing U.S. and Canadian attitudes toward other’s health-care systems).

Still Smoking, NAT’L POST (Toronto), Feb. 26, 2009 (op-ed) (discussing persistence of smoking during recession).

Once Pardoned, Always Pardoned, WASH. POST, Jan. 26, 2009 (op-ed) (arguing that President Bush’s purported revocation of Isaac Toussie’s pardon is invalid).

The Liberal Temptations of President Obama, NAT’L POST (Toronto), Nov. 5, 2008 (op-ed) (discussing possibility of President Obama governing from the left versus the center).

Colour-Coded and Polarized, NAT’L POST (Toronto), Nov. 1, 2008 (op-ed) (discussing reasons for the persistence of states’ party identification in U.S. presidential elections).

It Could Happen Here, Too, NAT’L POST (Toronto), Oct. 14, 2008 (op-ed) (discussing the potential for a controversially close election in Canada).

Who’ll Get the Last Laugh?, NAT’L POST (Toronto), Sep. 3, 2008 (op-ed) (discussing Democratic tactics against Sarah Palin).

Get Over Yourselves, NAT’L POST (Toronto), July 5, 2007 (op-ed) (discussing Canadian nationalism on children’s television programming).

“Raising the Rankings”, RES IPSA LOQUITUR (student publication at Michigan State University College of Law), Apr. 2007 (discussing U.S. News rankings).

Life Lessons from a President, NAT’L POST (Toronto), Dec. 28, 2006 (op-ed) (discussing the early life of Gerald Ford).

The Exclusion of Felons from Jury Service, AMICUS, Spring 2005.

A Betting Man’s Guide to Electoral Politics, NAT’L POST (Toronto), Nov. 9, 2004 (op-ed) (discussing the predictive power of political futures markets).

The Blogosphere Takes on CBS, NAT’L POST (Toronto), Sept. 17, 2004 (op-ed) (discussing the value to traditional media added by input from millions of autonomous internet denizens).

Jeopardy!’s Lance Armstrong, NAT’L POST (Toronto), July 29, 2004 (op-ed) (praising Jeopardy! champion Ken Jennings).

Scan Voting Best Option for Michigan, DET. NEWS & FREE PRESS, July 25, 2004 (op-ed) (criticizing touch-screen voting as unnecessary in light of the success of correctable scan ballots).

Postpone Presidential Vote?, DET. FREE PRESS, July 15, 2004 (op-ed) (proposing a basic structure for a law rescheduling presidential elections disrupted by terrorist attacks); also ran as *Terror Attacks and Postponing the Election*, THE HILL (Washington, D.C.), July 15, 2004, at 18.

“Don’t Consent!”, RES IPSA LOQUITUR (student publication at Michigan State University College of Law), Nov. 2003 (discussing ideological diversity and student participation).

Drop Misguided Jury Rule on Felons, DET. NEWS & FREE PRESS, Oct. 26, 2003 (op-ed) (discussing the Michigan law that bars felons from jury service for life).

Democracy Ensures Rights Increase over Time; Bush Policies Don’t Threaten Constitution, DET. NEWS & FREE PRESS, Sept. 14, 2003 (op-ed) (discussing civil liberties and the War on Terror).

What Do U-M Court Rulings Mean?, DET. NEWS, June 24, 2003 (op-ed blurb) (discussing Supreme Court opinions in the U-M affirmative action cases).

Constitution Allows Americans to Reduce Liberties During Crises, DET. NEWS, Sept. 11, 2002 (op-ed) (describing how a conventional understanding of constitutional rights mandates that their scope be reducible during crises).

Would-be Pledge Ban Gives GOP an Opening, NAT’L POST (Toronto), June 29, 2002 (op-ed) (discussing the effect of a judicial decision against allowing the mention of God in the Pledge of Allegiance, on the politics of judicial nominations).

What Does U-M Admissions Ruling Mean?, DET. NEWS, May 15, 2002 (op-ed blurb) (discussing the Sixth Circuit’s opinion in the U-M law school affirmative action case).

President Was Reasonable with Decision on Arsenic, DET. NEWS, Nov. 16, 2001 (op-ed) (discussing the Bush Administration’s decision to accept limits on arsenic proposed by Clinton, and the mischaracterization of Bush’s earlier delay in doing so).

Oh, What a Fragmented Web We Weave, NAT’L POST (Toronto), June 28, 2001 (op-ed) (discussing political polarization on the World Wide Web).

Ist Down For Bush—That’s What Counts, L.A. TIMES, Apr. 6, 2001 (op-ed) (discussing the need for finality despite statistical uncertainty in the presidential electoral system); also ran as

When the Chains Came Out, Bush Had the First Down, NAT'L POST (Toronto), Apr. 5, 2001.

"...*And Stay Out!*": *The Constitutional Case for Post-Presidential Impeachment*, JURIST, posted Mar. 1, 2001 (op-ed) (arguing that the Constitution permits post-term impeachment).

Al Gore's Victory, NAT'L POST (Toronto), Jan. 13, 2001 (op-ed) (discussing the history of popular-vote majorities in American presidential elections).

Gore Lies, NAT'L REV. ONLINE, posted Dec. 11, 2000 (op-ed) (discussing Al Gore's legal strategy of avoiding a statewide recount in Florida).

Law, Facts Were on Bush's Side, DET. NEWS, Dec. 6, 2000 (op-ed) (evaluating the legal basis of the trial court decision in *Gore v. Harris*).

What Does Supreme Court's Ruling Mean?, DET. NEWS, Dec. 5, 2000 (op-ed blurb) (discussing the U.S. Supreme Court's decision in *Bush v. Palm Beach County Canvassing Bd.*).

Our New President: Richard Cheney, DET. FREE PRESS, Nov. 7, 2000 (with Jorge E. Souss) (op-ed) (discussing the possibility of a tie in the Electoral College).

'Non-Threatening' Land, WINDSOR STAR, Sept. 10, 1999 (op-ed) (discussing some differences between American and Canadian cultures and gun laws).

And Stay Out: Impeachment Should Remain on the Table for Clinton, NAT'L POST (Toronto), June 9, 1999 (op-ed) (discussing the legal feasibility of post-presidential impeachment).

SELECTED SPEECHES, PRESENTATIONS, AND CONFERENCES

To Peers

Speaker, *The Ninth Amendment in Congress*, University of Alabama School of Law, Mar. 4, 2013.

Speaker, *The Ninth Amendment in Congress*, University of Maryland School of Law, Feb. 27, 2012.

Speaker, *American Legal Education*, Beijing Technology and Business University School of Law, Beijing, China, Dec. 21, 2011.

Panelist, *The Prospect for Legal Education: Incorporating American Legal Teaching Methods*, Soongsil University, Seoul, Korea, Symposium, *The Prospect for Legal Education*, May 28, 2011.

Chair, *The Supreme Court and the Idea of Constitutionalism: Comparative Perspectives*, LeFrak Forum, Symposium on Science, Reason, and Modern Democracy, Michigan State University, Jan. 27, 2007.

Panelist, *State Jurisprudence, the Role of Courts, and the Rule of Law: The Role of Precedent*, event co-sponsored by Ave Maria School of Law and Federalist Society, Sept. 16, 2003 (discussing stare decisis, prospectivity, and legislative acquiescence on panel with Justices Stephen Markman (Michigan) and Wallace Jefferson (Texas)), *transcribed at* 8 TEX. REV. L. & POL. 277 (2004).

Speaker, *Should Ex-Felons Be Allowed to Serve on Juries?*, Michigan State University College of Law Faculty Brown Bag, Oct. 23, 2002.

Presenter, *The Constitutional Case for the Impeachability of Former Federal Officials*, 2001 meeting of the Central States Law School Association, Michigan State University College of Law, Oct. 6, 2001.

Panelist, *Elections Analysis: A Tri-National Comparison*, Michigan State University College of Law, Mar. 12, 2001 (discussing United States electoral system), *transcribed at* 10 MSU-DCL J. INT'L L. 109 (2001) (with Professors Gregory Tardi and Manuel Gonzalez Oropeza).

Presenter, panel on the 2000 Florida recount, 2001 Annual Meeting of the Public Choice Society & Economic Science Association, San Antonio, Texas, Mar. 10, 2001.

Discussant, panel on electoral systems, 2001 Annual Meeting of the Public Choice Society & Economic Science Association, San Antonio, Texas, Mar. 9, 2001.

To Students

Panelist, *The Perfect Crime*, Law Week, University of Wyoming College of Law Oct. 13, 2015.

Speaker, *Enumerate This!: The Ninth Amendment in Congress*, University of Pittsburgh School of Law Federalist Society, Sep. 19, 2013.

Speaker, *The Ninth Amendment in Congress: A Legitimate Way to Find Rights That Aren't in the Constitution*, University of Alabama School of Law Federalist Society, Mar. 6, 2013.

Speaker, *The Ninth Amendment: How to Like Something Enough to Make It a Right*, Pepperdine University School of Law and Pepperdine Law Review, Nov. 19, 2012.

Featured Speaker, *Congress and the Ninth Amendment*, Michigan State University College of Law Federalist Society, Nov. 2, 2011.

Panelist, *The Constitutional Debate: Structuralism*, Michigan State University College of Law Federalist Society, Sep. 14, 2011.

Featured speaker, *The Zone of Death*, University of Idaho School of Law Federalist Society, Moscow, ID, Jan. 28, 2011.

Featured speaker, *The Zone of Death*, Gonzaga University School of Law Federalist Society, Spokane, WA, Jan. 28, 2011.

Featured speaker, *Ex-Felons and Jury Duty*, Ohio State University Moritz College of Law Federalist Society, Columbus, OH, Nov. 4, 2010.

Featured speaker, *Testing the Limits of Impeachment*, Cooley Law School Federalist Society, Lansing, MI, Mar. 18, 2010.

Featured speaker, *The Law and Economics of Tort Law*, Law and Economics Society, Michigan State University College of Law, Sep. 20, 2007.

Panelist, *Diversity of Legal Thought: Opposing Viewpoints Concerning Judicial Review*, Michigan State University College of Law, Feb. 5, 2003 (asking questions of judicial speakers).

Panelist, *Second Annual Supreme Court Docket Review*, event co-sponsored by American Constitution Society and Federalist Society, University of Michigan Law School, Oct. 1, 2002 (previewing upcoming Supreme Court term).

Lecturer, *Comparative Electoral Systems: The U.S. and Canada*, Michigan State University College of Law Canadian summer program, June 23, 2001 (comparing U.S. and Canadian electoral structures and procedures).

Featured speaker, *Al Gore Was Robbed . . . By His Lawyers*, Michigan State University College of Law Federalist Society program, Feb. 1, 2001 (discussing 2000 presidential election and Al Gore's strategic errors).

Featured speaker and program leader, *Discuss the Legal Issues Surrounding the Election*, Michigan State University College of Law, Nov. 22, 2000.

To Community

Featured speaker, *The Perfect Crime*, NEXT, Birmingham, MI, Oct. 20, 2016.

Featured speaker, *The Perfect Crime*, Adult Learning Institute, Oakland Community College, Farmington, MI, May 5, 2015.

Featured speaker, *The Ninth Amendment in Congress*, Federalist Society Grand Rapids Lawyers' Chapter, Grand Rapids, MI, Feb. 6, 2014.

Invited witness, Hearing before the Michigan House Committee on Financial Liability Reform, Lansing, MI, January 30, 2014 (testifying regarding the convention method of proposing constitutional amendments, in the context of a proposed federal balanced budget amendment).

Featured speaker, *Unenumerated Rights in Congress*, Western Michigan University Center for the Study of Ethics in Society, Kalamazoo, MI, January 20, 2012.

Keynote speaker, *Lawyers and the Sleeping Bear Dunes National Lakeshore*, Historical Society for the United States District Court for the Western District of Michigan, Grand Rapids, MI, November 13, 2007.

Featured speaker, *The Perplexing History of Presidential Pardons*, University Club Colloquy, Michigan State University, Aug. 21, 2007.

Debater, *Michigan Civil Rights Initiative*, Grand Rapids Community College, June 20, 2006.

Presenter, *How to Commit the Perfect Crime*, Little Gray Book Lectures, New York, NY, June 16, 2005.

Featured speaker, *Leelanau County in the Sixties Sandstorm*, Leelanau County (Michigan) Historical Society, Aug. 20, 2001 (discussing local history of the struggle over establishment of the Sleeping Bear Dunes National Lakeshore).

Featured speaker, *People and the Government in the Sixties Sandstorm*, Empire (Michigan) Town Hall, Aug. 17, 2001 (discussing struggle over establishment of the Sleeping Bear Dunes National Lakeshore as a case study of shifting government-citizen relations in the 1960s).

Featured speaker, Grand Ledge (Michigan) Rotary Club, July 25, 2001 (discussing history of Sleeping Bear Dunes National Lakeshore).

Featured speaker, Grand Ledge (Michigan) Rotary Club, Nov. 15, 2000 (discussing 2000 presidential election).

COMMITTEE SERVICE

Current committee and other positions:

- Faculty Advisory Council (2007–09, 2016–present)
- Jewish Legal Society faculty advisor (2000–present)
- Federalist Society faculty advisor (2002–present)
- J. Reuben Clark Law Society faculty advisor (2006–present)

Previous positions:

Academic Standards Committee (2002–05, Spr. 2007–08, 2010–11, 2014–16); Chair (Spr. 2007, 2014–16)
 Promotion Advisory Committee for Veronica Thronson (2015–16)
 Tenure Advisory Committee for Jennifer Carter-Johnson (2010–16)
 Ad Hoc Committee on Student Evaluations, Chair (Spr. 2011–2014)
 University Committee on Faculty Affairs (Fall 2013)
 Curriculum Committee (Fall 2013)
 Self-Study Committee, Chair (2012–2013)
 Admissions Committee, Chair (2011–2012)
 University Committee on Honors Programs (2007–2012)
 Committee on Faculty Appointments (Spr. 2009–10); Chair (2009–10)
 Tenure Advisory Committee for Lumen Mulligan (2007–10); Chair (2008–09)
 Tenure and Promotion Advisory Committee for Renee Knake (2012–2013)
 Committee on Committees (2005–07)
 Student-Faculty Liaison Committee; Chair (2005–06)
 Finance Committee (2005–06)
 Judicial Clerkship advisory committee; Chair (2002–05)
 Bylaws Committee (2004–05)
 Law Review Advisory Committee (2000–03); Chair (2001–03)
 Health Care Task Force member (Spr. 2003)
 Faculty Programs Committee (2001–02); Chair (Spr. 2002)
 Faculty Secretary (August–September 2000, Spr. 2002)
 University Graduate Council (2000–02)
 Library Director Search Committee (Fall 2000)

LEGAL EXPERIENCE

Associate	August 1998–June 2000
Summer associate	Summers 1996, 1997
Sidley & Austin	<i>Washington, D.C.</i>
<i>Practice areas:</i> Supreme Court litigation, environmental law, employment discrimination.	
Briefed and argued <i>Evono v. Reno</i> , 216 F.3d 1105 (D.C. Cir. 2000).	

Law clerk	August 1997–August 1998
Judge Danny J. Boggs, U.S. Court of Appeals for the Sixth Circuit	<i>Louisville, Kentucky</i>

Law clerk	<i>Pontiac, Michigan</i>
Judge Alice L. Gilbert, Michigan Sixth Circuit Court (Oakland County)	Summer 1995

OTHER EXPERIENCE

Commissioner	<i>East Lansing, Michigan</i>
East Lansing Cable and Telecommunications Commission	Fall 2001–Fall 2003

EDUCATION (INCLUDING HONORS AND AWARDS)

Yale Law School

New Haven, Connecticut

J.D., June 1997

Grades: 13 Honors, 5 Passes

Selected activities:

Yale Law Journal: editor (1995–96); notes development (1996–97)

Yale Law & Policy Review: editor (1994–95)

Research assistant–Professor Akhil Reed Amar (Fall 1995)

Research assistant–Professor Bruce A. Ackerman (Summer 1995)

Street Law: teacher (1994–95); director (1995–96)

Legal Assistance clinic (Fall 1995)

University of Michigan

Ann Arbor, Michigan

A.B. with Highest Distinction, April 1994

Grades: 3.99 GPA; ranked 4th in class of 4,012

Honors and Awards:

Graduated with High Honors in History

Bentley Scholar (four years' tuition and all expenses; one of two awarded annually)

Eight-term Angell Scholar

Phi Beta Kappa

Phi Alpha Theta history society

Branstrom Prize (1991)

Selected activities:

Michigan Daily: weekly columnist (Spring 1994)

University Activities Committee: board member (1991–93)

Smithsonian Institution, National Museum of American History: intern (Summer 1992)

MEMBERSHIPS AND BAR ADMISSIONS

State Bar of Michigan

United States Courts of Appeals: District of Columbia Circuit; Sixth Circuit

Life Member, Sixth Circuit Judicial Conference

Federalist Society

AWARDS AND HONORS

Harold Norris Faculty Scholar, 2010–present

Selected as Faculty Speaker, 2011 Commencement

MSU Law Faculty Advisor of the Year, 2011 (Federalist Society)

Crystal Apple Award, MSU College of Education, 2011

THE GREEN BAG ALMANAC AND READER 2006, honored in the category of “Exemplary Legal Writing 2005”