

HEIDI KITROSSER

University of Minnesota Law School - Walter F. Mondale Hall – 229 19th Ave. South
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ACADEMIC EXPERIENCE (while tenured or tenure-track)

University of Minnesota Law School, Minneapolis, MN

Fall 2005 – current

Current appointment: Robins Kaplan Professor of Law. Courses include constitutional law I, Fourteenth Amendment, First Amendment, government secrecy seminar, and information access practicum.

Past appointments: Julius E. Davis Professor, 2011-12; Vance K. Opperman Research Scholar, 2010–11; Associate Professor (with tenure), Fall 2008 – Spring 2011; Associate Professor (tenure-track), Fall 2006 – Spring 2008; Visiting Associate Professor, Fall 2005 – Spring 2006

Northwestern University School of Law, Chicago, IL

Fall 2019-Spring 2020;

Fall 2014-Spring 2015;

Fall 2012–Spring 2013

Visiting Professor. Courses have included government secrecy seminar, constitutional law, First Amendment.

University of Illinois Law School, Champaign, IL

Spring 2014

Visiting Professor. Taught government secrecy seminar and First Amendment.

Brooklyn Law School, Brooklyn, NY

Fall 2003 – Spring 2006

Assistant Professor. Taught constitutional law, administrative law and free speech seminar.

AWARDS AND FELLOWSHIPS

- John Simon Guggenheim Memorial Fellowship, 2017
- 2014 IIT Chicago-Kent College of Law / Roy C. Palmer Civil Liberties Prize for RECLAIMING ACCOUNTABILITY: TRANSPARENCY, EXECUTIVE POWER, AND THE U.S. CONSTITUTION

BOOKS AND ARTICLES

- RECLAIMING ACCOUNTABILITY: TRANSPARENCY, EXECUTIVE POWER, AND THE U.S. CONSTITUTION (University of Chicago Press) (2015)

Designated a 2015 “Outstanding Academic Title” by CHOICE, a publication of the Association of College and Research Libraries of the American Library Association; also received CHOICE’s top rating of “essential”

- *On Public Employees and Judicial Buck-Passing: The Respective Roles of Statutory and Constitutional Protections for Government Whistleblowers*, 94 Notre Dame L. Rev. 1699 (2019)
 - *Accountability in the Deep State*, 65 UCLA L. Rev. 1532 (2018)
 - *Public Employee Speech and Magarian’s Dynamic Diversity*, 95 Wash. U. L. Rev. 1405 (2018)
 - *The Shadow of Executive Privilege*, 15 The Forum 547 (2017)
 - *Free Speech and National Security Bootstraps*, 86 Fordham Law Review 509 (2017)
 - *Free Speech, Higher Education, and the PC Narrative* 101 Minnesota Law Review 1987 (2017)
 - *Interpretive Modesty*, 104 Georgetown L.J. 459 (2016)
 - *The Special Value of Public Employee Speech*, 2015 Supreme Court Review 301 (2015)
- [reviewed in Jotwell – Helen Norton, *Checking the Government’s Deception Through Public Employee Speech* (Sept. 25, 2017), <https://conlaw.jotwell.com/checking-the-governments-deception-through-public-employee-speech/>]

- *Leak Prosecutions and the First Amendment: New Developments and a Closer Look at the Feasibility of Protecting Leakers*, 56 Wm. & Mary L. Rev. 1221 (2015)
- *Free Speech aboard the Leaky Ship of State: Calibrating First Amendment Protections for Leakers of Classified Information*, 6 J. Nat'l. Sec. L. & Pol'y 409 (2013)
- *What if Daniel Ellsberg Hadn't Bothered?* 45 Ind. L. Rev. 89 (2011)
- *Scientific Integrity: The Perils and Promise of White House Administration*, 79 Fordham L. Rev. 2395 (2011)
- *Supremely Opaque? Accountability, Transparency, and Presidential Supremacy* 5 ST. THOMAS JNL. L. & PUB. POL'Y 62 (2011)
- *It Came From Beneath the Twilight Zone: Wiretapping and Article II Imperialism*, 88 TEXAS L. REV. 1401 (2010)
- *National Security and the Article II Shell Game*, 26 CONST. COMM. 483 (2010)
- *The Accountable Executive*, 93 U. MINN. L. REV. 1741 (2009)
- *Accountability and Administrative Structure*, 45 WILLAMETTE L. REV. 607 (2009)
- *Classified Information Leaks and Free Speech*, 2008 ILLINOIS L. REV. 881 (2008) [reprinted in *First Amendment Law Handbook, 2008-09* (Thomson Reuters / West)]
- *Congressional Oversight of National Security Activity: Improving Information Funnels*, 29 CARDOZO L. REV. 1049 (2008)
- *"Macro-Transparency" as Structural Directive: A Look at the NSA Surveillance Controversies*, 91 MINN. L. REV. 1163 (2007)
- *Secrecy and Separated Powers: Executive Privilege Revisited*, 92 IOWA L. REV. 489 (2007)
- *Containing Unprotected Speech*, 57 FLA. L. REV. 843 (2005)
- *Secrecy in the Immigration Courts and Beyond: Considering the Right to Know in the Administrative State*, 39 HARV. C.R. – C.L. L. REV. 95 (2004) [reprinted in 25 IMMIGR. AND NAT'LITY L. REV. (2004)]
- *From Marshall McLuhan to Anthropomorphic Cows: Communicative Manner and the First Amendment*, 96 NW. U. L.R. 1339 (2002)
- *Meaningful Consent: Toward a New Generation of Statutory Rape Laws*, 4 VA. J. SOC. POL'Y & L. 287 (1997)

BOOK REVIEWS

- *Secret Law and the Snowden Revelations: A Response to THE FUTURE OF FOREIGN INTELLIGENCE: PRIVACY AND SURVEILLANCE IN A DIGITAL AGE*, by Laura K. Donohue, 51 NEW ENGLAND L. REV. 5 (2017)
- *Review of SECRECY IN THE SUNSHINE ERA: THE PROMISE AND FAILURES OF U.S. OPEN GOVERNMENT LAW* by Jason Ross Arnold, 131 POL. SCI. Q. 876 (2016 - 2017)
- *Review of Whistleblowers, Leaks, and the Media: The First Amendment and National Security*, edited by Paul Rosenzweig, Timothy J. McNulty, & Ellen Shearer, 6 INTERNATIONAL DIALOGUE 142 (2016)

SHORT ESSAYS AND OPINION PIECES

- *Opinion Analysis: With Facts Like These*, SCOTUSBLOG.COM, June 19, 2018
- *Argument Analysis: Justices Weigh Threats to Free Speech Against Constraints on Local Policing*, SCOTUSBLOG.COM, Feb. 28, 2018
- *Argument Preview: Justices to Consider Whether Probable Cause Defeats Claims of Retaliatory Arrest for First-Amendment-protected Expression*, SCOTUSBLOG.COM, Feb. 21, 2018
- *Trust Me and Transparency Do Not Mix*, 2017 ILLINOIS L. REV. ONLINE (online symposium about the first 100 days of the Trump administration), April 2017
- *Is Speech From the Campaign Trail Relevant to Religious Discrimination Claims?*, American Constitution Society Blog, March 20, 2017

- *Leaks, Leakers, and a Free Press*, HARV. L. & POL'Y REV. BLOG: NOTICE AND COMMENT, March 9, 2017
- *Accountability and Presidential Administration*, ADMINISTRATIVE AND REGULATORY LAW NEWS (published by ABA Section of Administrative Law & Regulatory Practice) (spring 2015)
- “Book Talk” about RECLAIMING ACCOUNTABILITY: TRANSPARENCY, EXECUTIVE POWER, AND THE U.S. CONSTITUTION on American Constitution Society Blog, January 14, 2015

SELECTED ACADEMIC SYMPOSIA AND PRESENTATIONS (SINCE 2011)

- Presenter, chapter from work-in-progress on U.S. government whistleblowers. Colloquium hosted by Professor Margaret Kwoka (Governance Workshop: Transparency and Privacy), University of Denver Sturm College of Law, October 21, 2019 (*upcoming*)
- Panelist, Yale Law School Media Freedom and Information Access Clinic’s annual Access and Accountability Conference, October 5, 2019 (*upcoming*); October 13, 2018; October 28, 2017
- Panelist, roundtable on EU and U.S. protections for whistleblowers entitled “Empowering Public Voices,” Maastricht University (Brussels campus), September 20, 2019 (*upcoming*)
- Panelist, conference sponsored by NYU’s London program, entitled “Exposing Secrets: The Past, Present, and Future of U.S. National Security Whistleblowing and Government Secrecy,” January 17-18, 2019
- Presenter, *On Public Employees and Judicial Buck-Passing: The Respective Roles of Statutory and Constitutional Protections for Government Whistleblowers*: Notre Dame Law Review symposium, November 2, 2018
- Discussant, annual Freedom of Expression Scholars Conference at Yale Law School, April 28, 2018; April 29, 2017; May 1, 2016; May 2, 2015; & May 5, 2013
- Presenter, early outline of book-in-progress at faculty workshops: Ohio State University Moritz College of Law, April 18, 2018; University of Georgia School of Law, March 7, 2018; UC Hastings College of the Law, November 7, 2017
- Moderator, Wayne Law Review Symposium on “Congressional Oversight in the 21st Century,” Mar. 23, 2018
- Panelist, Denver Law Review symposium entitled “Uproar: The Intersection of Animals and the Law,” February 9, 2018
- Presenter, *Accountability in the Deep State*, UCLA Law Review Symposium on “The Safeguards of our Constitutional Republic,” Feb. 2, 2018
- Presenter, *Public Employee Speech and Magarian’s Dynamic Diversity*, Washington University Law Review symposium on “The Roberts Court’s First Amendment,” January 19, 2018
- Panelist on two sessions of American Association of Law Schools 2018 Annual Meeting: National Security Law Section panel (January 5, 2018); Internet and Computer Law Section panel (January 6, 2018)
- Presenter, early outline of book-in-progress at faculty workshop, UC Hastings College of the Law, November 7, 2017
- Panelist, Vermont Law Review symposium on “Media Law and Journalism: Protecting Democracy’s Safeguards,” September 15, 2017
- Presenter, *Free Speech, Higher Education, and the PC Narrative*: annual Freedom of Expression Scholars Conference at Yale Law School, April 29, 2017; University of Minnesota Law Review symposium, October 21, 2016
- Presenter, *Free Speech and National Security Bootstraps*, Fordham Law Review symposium, April 7, 2017
- Panelist, Presidential Power and Polarized Politics, Harvard Law School, April 1, 2016

- Presenter, *The Special Value of Public Employee Speech*: First Amendment Law Review symposium, University of North Carolina Law School, October 30, 2015; Freedom of Expression Scholars Conference at Yale Law School, May 2, 2015
- Discussant, 23rd Annual Ira C. Rothberger Conference, University of Colorado Law School, Boulder, CO, October 15, 2015
- Presenter, *RECLAIMING ACCOUNTABILITY: TRANSPARENCY, EXECUTIVE POWER, AND THE U.S. CONSTITUTION* (University of Chicago Press 2015): Palmer Prize Lecture, Chicago-Kent College of Law (November 21, 2014); Case Western Reserve Law Review symposium (November 14, 2014); faculty workshop, DePaul University College of Law (Mar. 20, 2014); faculty workshop, University of Illinois Law School (Feb. 13, 2014); faculty workshop, Northwestern University School of Law (October 18, 2012); legal history workshop, University of Minnesota (September 28, 2012); public law workshop, University of Minnesota (March 26, 2012); legal history workshop, University of Minnesota (October 7, 2011); annual Law & Society Conference (May 30, 2010); faculty symposium, University of Texas Law School (April 10, 2010)
- Panelist, Freedom of Speech and National Security: Dialogue on Free Speech series, University of Texas, September 30, 2014
- Presenter, *Leak Prosecutions and the First Amendment: New Developments and a Closer Look at the Feasibility of Protecting Leakers*: William and Mary Law Review symposium, February 21, 2014
- Presenter, *Interpretive Modesty*: Georgetown Law School advanced constitutional law colloquium, September 16, 2013
- Discussant, conference on Professor Mariah Zeisberg's book, *WAR POWERS*, Georgetown University Law School, Washington, D.C., September 13 – 14, 2013
- Presenter, *Free Speech Aboard the Leaky Ship of State: Calibrating First Amendment Protections for Leakers of Classified Information*: Yale Law School Information Society Project (October 24, 2012); Northwestern University School of Law faculty scholarship day (August 28, 2012); panel co-sponsored by Association of American Law Schools (AALS) media law and national security law sections, AALS annual meeting, January 7, 2012
- Presenter, several works on secrecy and presidential power at conference, "From the Pentagon Papers to Wikileaks," University of Heidelberg (Germany), American Studies Center, May 11, 2012
- Moderator, panel on *Citizens United* for Minnesota Law Review symposium, October 21, 2011
- Presenter, *What if Daniel Ellsberg Hadn't Bothered?* Indiana Law Review symposium, Apr. 1, 2011
- Discussant, panel regarding executive power in the wake of 9/11, Wayne Law Review symposium, Wayne State University Law School, Detroit, MI, February 4, 2011

SELECTED PUBLIC EDUCATION AND CAMPUS TALKS (SINCE 2011)

Speaker at event on the "Mueller Report" and public and congressional access to the same sponsored by the American Constitution Society, University of Minnesota students' chapter, April 16, 2019

Speaker at event on emergency declarations and the U.S. presidency sponsored by the American Constitution Society, University of Minnesota students' chapter, March 12, 2019

Lecturer on "Committing Truth in the Deep State" on occasion of my receiving the Robins Kaplan Professor of Law chair at University of Minnesota Law School, March 6, 2019

Keynote speaker at the University of Illinois 2018 Cline Symposium (annual event of the Cline Center for Advanced Social Research, 2018 theme was "Democracy, the Separation of Powers, and the Future of American Constitutionalism"), November 29, 2018

Speaker at event on judicial nominations and the U.S. Supreme Court sponsored by the American Constitution Society, Minneapolis – St. Paul Lawyers' Chapter, November 13, 2018

Panelist at symposium on Free Speech and Campus Violence and Disruption co-sponsored by the Academic Engagement Network and Northwestern University -- Pritzker School of Law, January 25, 2018

Speaker at event on hate speech and hate crimes on college campuses sponsored by several student groups, University of Minnesota Law School, March 29, 2017

Panelist at event sponsored by several student groups: "Can Trump's Policies Pass Constitutional Muster?", University of Minnesota Law School, February 13, 2017

Panelist at public education event on First Amendment rights sponsored by We the People Minnesota, January 29, 2017

Panelist at student-organized discussion on campus hate speech, University of Minnesota Law School, November 14, 2016

Panelist, University of Minnesota "Critical Conversation" on tensions between free speech and religion on college campuses, November 20, 2015

Conducted 8-hour CLE program on topic of government secrecy as part of University of Minnesota's summer CLE program, Minneapolis, MN, June 4, 2015

Panelist, "Supreme Court Roundup" Panel, National Conference of State Legislatures Annual Legislative Summit, Minneapolis, MN, August 20, 2014

Spoke to student chapter of American Constitution Society about progressive constitutionalism, University of Minnesota Law School, Minneapolis, MN, September 19, 2013

Spoke to student chapter of American Constitution Society about government secrecy, Northwestern University Law School, Chicago, IL, October 29, 2012

Moderated discussion on constitutional challenges to the Affordable Care Act for Minnesota State Bar Association, health law section, St. Paul, MN, March 23, 2012

Panelist, *Executive Orders: Executive Necessity or Executive Overreach?*, sponsored by Federalist Society, student chapter of University of St. Thomas, Minneapolis, MN, January 25, 2012

Spoke on panel discussing legacy of *Near v. Minnesota* as part of series of first amendment events sponsored by U. of Minn. School of Journalism & Mass Communication, Minneapolis, MN, November 16, 2011

Spoke on panel regarding national security and free speech at ACLU Northwest Civil Liberties Conference, Portland, OR, October 28th, 2011

Spoke to Minneapolis chapter of American Association of University Women on presidential power and government secrecy, Minneapolis, MN, October 17th, 2011

Spoke to student chapter of American Constitution Society about progressive values and the U.S. Constitution, University of Minnesota Law School, Minneapolis, MN, September 22, 2011

Presented lecture to student chapter of Federal Bar Association on recent free speech cases in the U.S. Supreme Court, University of Minnesota Law School, Minneapolis, MN, September 20, 2011

Presented lecture on campaign finance law and the First Amendment as part of University of Minnesota “Constitution Day,” Minneapolis, MN, September 16, 2011

Spoke to Milwaukee chapter of American Constitution Society on constitutionality of federal law mandating individual health insurance coverage, Milwaukee, WI, July 14, 2011

TESTIMONY

Submitted solicited written testimony to U.S. Senate Judiciary Committee, Subcommittee on the Constitution, for hearing on Restoring the Rule of Law, September 16, 2008

Testified before U.S. Senate Judiciary Committee, Subcommittee on the Constitution, in hearing on Secret Law and the Threat to Democratic and Accountable Government, April 30, 2008

PRO-BONO AND OTHER NON-UNIVERSITY SERVICE WORK

Organized team for and co-authored amicus brief on behalf of a group of constitutional law, First Amendment law, and media law scholars for the sentencing phase of U.S. v. Albury (D. Minn. Oct. 2018) (urging court to consider speech and press freedom implications at sentencing of former FBI agent for leaking information to the media in violation of the Espionage Act)

Member of steering committee for newly formed Free Expression Legal Network (FELN), a coalition of groups and individuals, including the Reporter’s Committee for Freedom of the Press and the Yale Media Freedom and Information Access Clinic, devoted to increasing both pro bono and practical learning opportunities tied to press freedom and information access in law schools.

Member of the Board of Advisors, Minneapolis – St. Paul Lawyer Chapter of the American Constitution Society

Board member, Minnesota Coalition on Government Information

Board member, Public Record Media, Minneapolis, MN

Member of curriculum project faculty committee of Government Accountability Project in Washington, D.C. (committee develops university curricula on legal and other aspects of workplace whistleblowing)

Consulted on equal protection and standing issues for the Battered Women’s Justice Project of Minneapolis, MN, spring 2011

Co-authored (with Stephen Vladeck) amicus brief on behalf of Erwin Chemerinsky in Hepting v. AT&T (U.S. D.Ct., N.D. Cal.) March 2007 (addressing state secrets issue in case involving warrantless electronic surveillance)

PEER REVIEW WORK

Have provided solicited peer review assistance to Oxford University Press; Cambridge University Press; Columbia University Press; Journal of National Security Law and Policy; American Journal of Political Science, Ethics & International Affairs; Language Sciences; and Polity. Regularly conduct peer review of articles as a member of *Constitutional Commentary* editorial board.

LAW SCHOOL & UNIVERSITY COMMITTEE WORK (SINCE 2011)

- 2018-19: editor, *Constitutional Commentary*; co-faculty advisor to UMN student branch of American Constitution Society; member, appointments committee; member, diversity committee; 1L faculty advisor; student note advisor
- 2017-18: editor, *Constitutional Commentary* (no other committee assignments for the year due to sabbatical)
- 2016-17: editor, *Constitutional Commentary*; co-faculty advisor to UMN student branch of American Constitution Society; member, admissions committee; chair, faculty recognition committee; 1L faculty advisor; student note advisor
- 2015-16: editor, *Constitutional Commentary*; co-faculty advisor to UMN student branch of American Constitution Society; member, admissions committee; member, faculty recognition committee; 1L faculty advisor; student note advisor; member, University committee on public engagement
- 2014-15: editor, *Constitutional Commentary*; co-faculty advisor to UMN student branch of American Constitution Society
- 2013-14: editor, *Constitutional Commentary*; co-faculty advisor to UMN student branch of American Constitution Society; member, clerkships committee; 1L faculty advisor; student note advisor
- 2012-13: editor, *Constitutional Commentary*; co-faculty advisor to UMN student branch of American Constitution Society
- 2011-12: editor, *Constitutional Commentary*; faculty advisor to UMN student branch of American Constitution Society; member, clerkships committee; 1L faculty advisor; student note advisor

EDUCATION

YALE LAW SCHOOL, New Haven, CT J.D., May 1996

Honors: Harlan Fiske Stone Prize for Best Oral Argument, Morris Tyler Moot Court of Appeals Competition.

Activities: Coker Teaching Fellow (teaching assistant for Professor Robert Gordon's contracts course); *Yale Journal of Law and Feminism*, editor

UCLA, Los Angeles, CA B.A., December 1992

Honors: Phi Beta Kappa; *summa cum laude*

PRE-TENURE-TRACK ACADEMIC EXPERIENCE

Northwestern University School of Law, Chicago, IL Fall 2002 - Spring 2003
Visiting Assistant Professor. Taught courses on First Amendment and civil procedure.

Santa Clara University School of Law, Santa Clara, CA Spring 2002
Visiting Assistant Professor. Taught courses on constitutional law and administrative law.

University of Oregon School of Law, Eugene, OR Fall 2001
Visiting Assistant Professor. Taught courses on administrative law and telecommunications law.

NON-ACADEMIC WORK EXPERIENCE (since law school)

Law and Policy Consulting, San Francisco Bay Area, CA Fall 2000 – Spring 2001
Performed full time consulting work on law and policy matters. Primary project undertaken in this time entailed researching and writing extensive comments and reply comments to the FCC, on behalf of the non-profit organization Children Now. The comments concerned the importation of broadcasters'

educational and informational programming requirements into the era of digital television, and raised significant issues of telecommunications law and policy and of First Amendment law.

U.S. Court of Appeals, D.C. Circuit, Washington, D.C. Summer 1999 -Summer 2000
Law Clerk to Judge Judith Rogers. Assisted Judge Rogers on a wide variety of civil and criminal matters.

Jenner & Block, Washington, D.C. Fall 1997 - Spring 1999
Law firm associate. Wrote numerous federal court briefs concerning telecommunications company's rights under 1996 Telecommunications Act; prepared lengthy First Amendment analysis for client; drafted significant portions of petition for review, merits and reply briefs in appeal of habeas corpus decision in death penalty case. Also participated extensively in public housing discrimination class action on behalf of pro bono plaintiffs, including drafting class settlement notice, participating in all settlement negotiations, drafting summary judgment motions, defending depositions, and communicating with named plaintiffs.

U.S. District Court, Central District of California, Los Angeles, CA Fall 1996 - Fall 1997
Law Clerk to Judge William Rea. Assisted Judge Rea on a wide variety of civil and criminal matters.

Irell & Manella, LLP, Los Angeles, CA Summer 1996
Summer Associate. Drafted memoranda on subjects including Article III standing of public interest organizations, breach of contract, and director and officer liability insurance. Permanent offer extended.

BAR ADMISSION

California (active)