

MARC C. McALLISTER

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EDUCATION

University of Florida, Levin College of Law, Gainesville, Florida

LL.M. in Taxation, GPA 3.59 / 4.0 (10 credits earned, anticipate completing degree in 2022)

University of Notre Dame Law School, Notre Dame, Indiana

Juris Doctor, May 2003, GPA 3.50 / 4.0

Honors: cum laude, Dean's Fellowship Recipient (full tuition scholarship)

Editor, Journal of College and University Law

DePauw University, Greencastle, Indiana

Bachelor of Arts, Economics, May 2000, GPA 3.74 / 4.0

Honors: magna cum laude, Phi Beta Kappa

LAW TEACHING EXPERIENCE

Texas State University, San Marcos, Texas

Assistant Professor of Business Law, Department of Finance and Economics, July 2017 – present

- ❖ Courses Taught: Commercial Law, Legal Environment of Business (including Torts, Contracts, and Property), Employment Law, Employment Relationship (MBA course)
- ❖ Students in the Employment Relationship course serve as remote interns for Chief Judge Mark E. Walker of the United States District Court for the Northern District of Florida
- ❖ Average student teaching evaluation score through Summer 2020: 4.85 of 5.0

Indiana Tech Law School, Fort Wayne, Indiana

Assistant Professor of Law, August 2015 – July 2017

- ❖ Courses Taught: Evidence, Experiential Legal Writing I, Experiential Legal Writing IV (Contract Drafting), Federal Judicial Intern Practicum, Mock Trial
- ❖ Created and taught Federal Judicial internship course requiring students to serve as remote interns for federal District Court Judges
- ❖ Created and coached Indiana Tech's Mock Trial team
- ❖ Average student teaching evaluation score: 4.95 of 5.0

Florida Coastal School of Law, Jacksonville, Florida

Associate Professor of Law, August 2008 – July 2013

- ❖ Courses Taught: Criminal Law, Criminal Procedure, Advanced Criminal Procedure, Federal Criminal Law, Counterterrorism Law, Supreme Court Litigation, Fourth Amendment (online)
- ❖ Served as Lead Professor for AAMPLE online teaching program: 2010-2012
- ❖ Average student teaching evaluation score 2011 – 2013: 4.76 of 5.0

Western State College of Law, Fullerton, California

Associate Professor of Law, June 2005 – July 2008

- ❖ Courses Taught: Administrative Law, Legal Writing I and II, Legal Methods, Basic Bar Studies
- ❖ As Director of Legal Writing, created and administered a new Legal Writing program, law school orientation course, and bar review course

JUDICIAL CLERKSHIP EXPERIENCE

United States Court of Appeals for the Eleventh Circuit, Tampa, Florida

Judicial Clerk, Judge Charles R. Wilson, September 2003 - September 2004

- ❖ Drafted three published opinions
- ❖ Drafted several unpublished opinions and bench memoranda

United States District Court, Northern District of Florida, Pensacola, Florida

Judicial Clerk, Chief Judge M. Casey Rodgers, September 2014 – August 2015

- ❖ Drafted over 150 orders, bench memoranda, jury instructions, and an Eleventh Circuit published tax opinion
- ❖ Attended trials, drafted jury instructions, and helped resolve evidentiary objections at trial

United States District Court, Northern District of Florida, Gainesville, Florida

Judicial Clerk, Judge Mark E. Walker, March 2014 – August 2014, and July 2016 – August 2016

- ❖ Drafted over 50 orders, bench memoranda, and jury instructions

LAW PRACTICE EXPERIENCE

Faegre Drinker (formerly Baker Daniels), Indianapolis, Indiana

Associate Attorney, September 2004 - May 2005

- ❖ Practiced law in the areas of tax, employment, and construction litigation
- ❖ Handled *pro bono* criminal cases

BAR ADMISSIONS AND PROFESSIONAL ASSOCIATIONS

Member, Indiana Bar, 2003 – present

Member, American Inns of Court, 2016 – present

Member, ALSB, 2017 - present

PUBLICATIONS

Marc C. McAllister, *Employment Law for Business* (McGraw-Hill 2020), ISBN-13: 978-1-265-23153-8

Marc C. McAllister, *Compare This: How Employers Use Comparator Evidence to Defeat Employment Discrimination Claims*, __ Mich. St. L. Rev. __ (anticipated publication March 2021)

Marc C. McAllister, *Cell Phone Searches by Employers*, 99 Neb. L. Rev. __ (anticipated publication March 2021)

Marc C. McAllister, *Proving Sex-Plus Discrimination through Comparator Evidence*, 50 Seton Hall L. Rev. 757 (2020)

Marc C. McAllister, *Extending the Sex-Plus Discrimination Doctrine to Age Discrimination Claims*, 60 B.C. L. Rev. 469 (2019)

Marc C. McAllister, *GPS and Cell Phone Tracking of Employees*, 70 Fla. L. Rev. 1265 (2019)

Marc C. McAllister, *Subgroup Analysis in Disparate Impact Age Discrimination Cases: Striking the Appropriate Balance through Age Cutoffs*, 70 Ala. L. Rev. 1073 (2019)

Marc C. McAllister, *Sexual Orientation Discrimination as a Form of Sex-Plus Discrimination*, 67 Buff. L. Rev. 1007 (2019)

Marc C. McAllister, *Ending Litigation and Financial Windfalls on Time-Barred Debts*, 75 Wash. & Lee L. Rev. 449 (2018)

Marc C. McAllister, *Modernizing the Video Privacy Protection Act*, 25 Geo. Mason L. Rev. 102 (2018)

Marc C. McAllister, *Go Tiny or Go Home: How Living Tiny May Inadvertently Reduce Privacy Rights in the Home*, 69 S.C. L. Rev. 265 (2017)

Marc C. McAllister, *Rethinking Student Cell Phone Searches*, 121 Penn St. L. Rev. 309 (2016)

Marc C. McAllister, *Forfeiture-by-Wrongdoing and Faretta: Reaffirming Counsel's Vital Role When Defendants Manipulate the Sixth Amendment Representation Rights*, 44 Hofstra L. Rev. 1227 (2016)

Marc C. McAllister, *GPS and Cell Phone Tracking: A Constitutional and Empirical Analysis*, 82 U. Cin. L. Rev. 207 (2014)

Marc C. McAllister, *The Fourth Amendment and New Technologies: The Misapplication of Analogical Reasoning*, 36 S. Ill. U. L. J. 475 (2012)

Marc C. McAllister, *Evading Confrontation: From One Amorphous Standard to Another*, 35 Seattle U. L. Rev. 473 (2012)

Marc C. McAllister, *Dicta Redefined*, 47 Willamette L. Rev. 161 (2011)

Marc C. McAllister, *The Disguised Witness and Crawford's Uneasy Tension with Craig: Bringing Uniformity to the Supreme Court's Confrontation Jurisprudence*, 58 Drake L. Rev. 481 (2010)

Marc C. McAllister, *Down But Not Out: Why Giles Leaves Forfeiture by Wrongdoing Still Standing*, 59 Case W. Res. L. Rev. 393 (2009)

Marc C. McAllister, *What the High Court Giveth the Lower Courts Taketh Away: How to Prevent Undue Scrutiny of Police Officer Motivations Without Eroding Randolph's Heightened Fourth Amendment Protections*, 56 Clev. St. L. Rev. 663 (2008)

Marc C. McAllister, *Two-Way Video Trial Testimony and the Confrontation Clause: Fashioning a Better Craig Test in Light of Crawford*, 34 Florida St. U. L. Rev. 835 (2007)

Marc C. McAllister, *Judicial Review of Administrative Agency Action in Germany and the United States*, 2006 Annual of German and European Law, Volume II/III (Berghahn Books) (2006)

Marc C. McAllister, *Human Dignity and Individual Liberty in Germany and the United States as Examined Through Each Country's Leading Abortion Cases*, 11 Tulsa J. of Comp. & Int'l L. 491 (2004)

WORKS IN PROGRESS

Tracking Employee Movements in the COVID-19 Era

Coercion in Employment: Common Threads

Why a Comparator's Relatively More Serious Misconduct is Relevant in Proving Pretext: Comparing the Eighth and Eleventh Circuit Approaches to the Issue

Summary Judgment Reverse Engineering: Crafting an Alternative to the McDonnell Douglas Test Using Pattern Jury Instructions

Employer Social Media Policies After the NLRB's Boeing Decision

OTHER WRITINGS

EvidenceProf Blog, September 9, 2011: *Bryant and Multiple Concurrent Purposes*, available at <http://lawprofessors.typepad.com/evidenceprof/2011/09/bryant-and-multiple-concurrent-purposes.html>

EvidenceProf Blog, September 5, 2011: *Post-Bryant Case Law Confirms Scalia's Fears*, available at <http://lawprofessors.typepad.com/evidenceprof/2011/09/post-bryant-case-law-confirms-scalias-fears.html>

Pleading the Sixth? Sacrificing Forfeiture for Confrontation, Coastal Law Magazine (Winter 2009), available at <http://issuu.com/coastallaw/docs/winter2009mag>

TEACHING AND RESEARCH AWARDS

Texas State University, McCoy College of Business Administration Advisory Board Teaching Excellence Award. Awarded August 20, 2020.

Texas State University, Department of Finance and Economics, Departmental Award for Excellence in Teaching. Awarded May 5, 2020.

Texas State University, Department of Finance and Economics, Departmental Award for Excellence in Scholarly/Creative Activities. Awarded May 5, 2020.

Texas State University, McCoy College of Business Administration Robert J. Olney Early Career Research Award. Awarded August 22, 2019.

Texas State University, Alpha Chi National College Honor Society Favorite Professor for 2018-2019. Awarded April 12, 2019.

Texas State University, Department of Finance and Economics, Departmental Award for Excellence in Scholarly/Creative Activities. Awarded May 1, 2018.

Texas State University, Alpha Chi National College Honor Society Favorite Professor for 2017-2018. Awarded April 20, 2018.

Indiana Tech University, 2016 Professor of the Year. Awarded by Indiana Tech University for outstanding contributions and commitment to the Indiana Tech Law School.

PRESENTATIONS

November 8, 2019: "The Proper Role of Comparator Evidence in Sex-Plus Discrimination Claims." Southeastern Academy of Legal Studies in Business, Montgomery, Alabama.

October 25, 2019: "Proving Sex-Plus Discrimination through Comparator Evidence." Great Lakes Academy of Legal Studies in Business, Indianapolis, Indiana.

March 1, 2019: "Using Cell Phones to Track and Monitor Employees." Southern Academy of Legal Studies in Business, San Antonio, Texas.

February 14, 2019: "GPS and Cell Phone Tracking of Employees." Pacific Southwest Academy of Legal Studies in Business, Palm Springs, California.

September 13, 2018: "Intellectual Property Law for Small Business Owners." Mermaid Society SMTX: Entrepreneurship & Small Business Symposium - Empowering Creative Entrepreneurship, San Marcos, Texas.

April 19, 2018: "GPS and Cell Phone Tracking of Employees," McCoy College Advisory Board Meeting, San Marcos, Texas.

February 16, 2018: "Ending Litigation and Financial Windfalls on Time-Barred Debts," Pacific Southwest Academy of Legal Studies in Business, Palm Springs, California.

February 5, 2018: "Go Tiny or Go Home: How Living Tiny May Inadvertently Reduce Privacy Rights in the Home," Lunch and Learn Presentation, Texas State University Round Rock Campus, Round Rock, Texas.

September 22, 2017: "Ending Litigation and Financial Windfalls on Time-Barred Debt," Fall 2017 Department Seminar Series - Department of Finance & Economics, Texas State University, San Marcos, Texas.

September 6, 2017: "Intellectual Property Law for Business." Mermaid Society SMTX: Entrepreneurship & Small Business Symposium - Empowering Community Entrepreneurship, San Marcos, Texas.

April 21, 2016: "Defending the Guilty Client: Legal Ethics and Biblical Commands." Presented research to Indiana Tech Law School community, Fort Wayne, Indiana.

March 24, 2016: "Criminal Investigations of College and University Students." Presented research on issues involving criminal investigations of college and university students, including student cell phone searches. 2016 University General Counsel Conference, Las Vegas, Nevada.

December 4, 2015: "Writing Across the Curriculum." Presented integrated approach to experiential education at Legal Writing Institute One Day Workshop on "Preparing the Academically Unprepared Law Student." Florida A&M University College of Law, Orlando, Florida.

September 18, 2012: "Criminal Investigation on College Campuses." Presented research on constitutional issues that arise in criminal investigations of college and university students. University of North Florida, Jacksonville, Florida.

April 19, 2012: "Trayvon Martin and the Law." Presented research on the self-defense claims in the Trayvon Martin shooting. Florida Coastal School of Law, Jacksonville, Florida.

October 19, 2011: "Constitutional Constraints on the Admissibility of Digital Evidence." Presented research on constitutional issues that arise when litigants seek to admit digitally stored evidence. University of North Florida, Jacksonville, Florida.

September 8, 2011: "The Fourth Amendment and New Technologies: The Misapplication of Analogical Reasoning." Presented work in progress to Florida Coastal community, Jacksonville, Florida.

July 31, 2010: "The Admissibility of Electronically Stored Evidence." Presented research on constitutional issues impacting admission of digitally stored evidence. Southeastern Association of Law Schools Conference, Palm Beach, Florida.

November 14, 2009: "Bringing Uniformity to the Supreme Court's Confrontation Jurisprudence." Presented work in progress at the Florida Legal Scholarship Forum, Stetson University, St. Petersburg, Florida.

October 23, 2009: "Recent Developments in the Sixth Amendment Confrontation Right: What Does it Mean to the Criminal Law Practitioner?" Event organizer and panelist, CLE seminar, Jacksonville, Florida.

October 22, 2009: "Defending the Guilty Client: The Ethical and Moral Implications." Presented research to Florida Coastal School of Law community, Jacksonville, Florida.

September 16, 2009: "The Constitution and Police Misconduct." Panelist, University of North Florida's Constitution Week, Jacksonville, Florida.

December 10, 2004: "Preserving Evidentiary Error for Appeal in Indiana." Along with Jay Yeager, presented research at CLE event for Indiana attorneys.

FUNDED RESEARCH AND TEACHING GRANTS

Harvard Business School Case Method Teaching Seminar, Texas State University, McCoy College of Business, Texas State University, \$2,400.00. (Funded: November 9, 2018 - November 10, 2018). Teaching Grant.

Subgroup Employment Discrimination, Texas State University, \$8,000.00. (Funded: 2017 - 2018).

GPS and Cell Phone Tracking: A Constitutional and Empirical Analysis, Florida Coastal School of Law, Institutional (Higher Ed), \$8,500.00. (Funded: March 31, 2012 - August 31, 2012).

The Fourth Amendment and New Technologies: The Fallacy of Analogical Reasoning, Florida Coastal School of Law, Institutional (Higher Ed), \$8,500.00. (Funded: March 31, 2011 - August 31, 2011).

Vibrant Dicta, Dormant Dicta or Mere Dicta: Differentiating Between Judicial Seed-Planting and Judicial Musing, Florida Coastal School of Law, Institutional (Higher Ed), \$8,500.00. (Funded: March 31, 2010 - August 31, 2010).

The Disguised Witness and Crawford's Uneasy Tension with Craig: Does Crawford's Literal Cross-Examination Requirement Mandate Return to a Literal Face-to-Face Requirement?, Florida Coastal School of Law, \$8,500.00. (Funded: March 31, 2009 - August 31, 2009).

What the High Court Giveth the Lower Courts Taketh Away: How to Prevent Undue Scrutiny of Police Officer Motivations Without Eroding Randolph's Heightened Fourth Amendment Protections, Western State College of Law, Institutional (Higher Ed), \$10,000.00. (Funded: March 31, 2008 - August 31, 2008).

Two-Way Video Trial Testimony and the Confrontation Clause: Fashioning a Better Craig Test in Light of Crawford, Western State College of Law, Institutional (Higher Ed), \$10,000.00. (Funded: March 31, 2007 - August 31, 2007).

MEDIA AND NEWS APPEARANCES

August 7, 2019: The Washington Post. My research was discussed and cited in article entitled, "Zombie debt: How collectors trick consumers into reviving dead debts," *accessible at* <https://www.washingtonpost.com/business/2019/08/07/zombie-debt-how-collectors-trick-consumers-into-reviving-dead-debts/>

February 15, 2019: Bloomberg Law. My research was discussed and cited in article entitled, "Death-Row Inmate Forced to Self-Lawyer Asks Justices to Step In," Feb. 15, 2019, *accessible at* <https://news.bloomberglaw.com/us-law-week/death-row-inmate-forced-to-self-lawyer-asks-justices-to-step-in?context=article-related>

August 10, 2016: Indiana Lawyer Newspaper. Featured in article entitled, “Fitness trackers add to flood of digital evidence in courts,” regarding the use of digital data in litigation.

July 9, 2012: Jacksonville, Florida, First Coast Connect, WJCT FM/TV. Appeared live for 60-minute segment to debate admissibility of confession in Cristian Fernandez case.

February 3, 2011: Jacksonville, Florida, Channel 4 News. Discussed Senator Nelson’s proposal to equip Florida police officers with “see-through-wall” technology.

August 19, 2010: Jacksonville, Florida, Channel 4 News. Discussed legal issues surrounding disappearance of five-year old child, Haleigh Cummings.

SELECTED SERVICE

Lead Articles Editor, Journal of Law, Business & Ethics (April 2018 - Present)

Pro bono volunteer for United States District Court for the Northern District of Florida (June 1, 2019 - July 10, 2019, and January 22, 2018 - May 8, 2018)

Member, Texas State University, Honor Code Council (July 2019 - Present)

Member, Texas State University, Faculty Handbook Committee (June 2019 - Present)

Member, McCoy College Scholarship Review Committee, Finance and Economics (February 2019 - Present)

Member, Department of Finance and Economics, PPS Review Committee (January 2020 – Present)

Member, Indiana Tech University, Law School Diversity Committee (August 2015 - May 2017)

Member, Indiana Tech University, Law School Rules Committee (August 2015 - May 2017)

Member, Indiana Tech University, Law School Academic Freedom Committee (January 2016 - October 2016)

Member, Indiana Tech University, Law School Academic Outcomes Committee (January 2016 - October 2016)

Member, Indiana Tech University, Law School Honor Code Council (January 2016 - October 2016)

Member, Indiana Tech University, Faculty Senate Student Affairs Committee (August 2015 - May 2016)

Working Team Member, Infilaw Legal Education 2.0 Project (2012 - 2013)

Faculty Member, Infilaw's Faculty Advisory Committee (2009 - 2012)

Chair, Florida Coastal Bar Prep Committee (2009 - 2011)

Assistant Chair, Florida Coastal Bar Prep Committee (2008 - 2009)

Member, Western State University College of Law, Curriculum Committee (2006 - 2007)

Member, Western State University College of Law, Honor Code Council (2005 – 2006)

REFERENCES

Chief Judge Mark E. Walker
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Northern District of Florida
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