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EMPLOYMENT:

July 2008-
Present John S. Stone Chair, Director of the Program in Constitutional Studies & Initiative for Civic Engagement, and Professor of Law, University of Alabama School of Law (Tuscaloosa, Alabama)

Director of Faculty Research, 2008-2023

Courses Taught: Administrative Law, Constitutional Law, First Amendment, Telecommunications Law, Comparative Constitutional Law, Comparative Law, Federal Civil Rights

July 2002-
June 2008 Professor of Law, Washington and Lee University School of Law (Lexington, Virginia)

Alumni Faculty Fellow, 2005-2007
Ethan Allen Faculty Fellow, 2001-2003

July 2000-
June 2002 Associate Professor of Law, Washington and Lee University School of Law

July 1999-
June 2000 Paul Beam Research Fellow and Associate Professor of Law (with tenure), Indiana University School of Law-Indianapolis (Indianapolis, Indiana)

August 1995-
June 1999 Assistant Professor of Law, Indiana University School of Law-Indianapolis

November 1992-
August 1995 Associate Attorney, Covington & Burling (communications law, administrative law, and appellate practice) (Washington, D.C.)

July 1991-
September 1992 Law Clerk, The Hon. Frank M. Johnson, Jr., U.S. Court of Appeals for the Eleventh Circuit (Montgomery, Alabama)

August 1987-
September 1987 Congressional Intern, Office of Rep. Wayne Dowdy (D-MS) (Washington, D.C.)

Visiting Academic Appointments: University of Alabama School of Law (2007-2008); Brooklyn Law School (Spring 2006); Washington and Lee University School of Law (Fall 1999); William and Mary School of Law (Fall 1998)

Short Course Appointments: Syracuse University College of Law (Fall 2021 & Fall 2018); Texas A & M University School of Law (Fall 2017 & Fall 2016); Loyola Law School-Los Angeles (Fall 2011); Seattle University School of Law (Summer 2010); Florida State University School of Law (Spring 2007)

Visiting Scholar Appointments: University of Washington School of Law (Summer 1996-2001, 2016), Seattle University School of Law (Summer 2002-2007, 2009-2012, 2014-2019, 2022-2024), Lewis & Clark Law School (Summer 2008, 2013)

EDUCATION:Duke University School of Law

J.D., 1991 (with high honors); G.P.A.: 3.79/Rank: 5 of 187

LL.M., 1991 (International & Comparative Law)

Awards: Order of the Coif
James A. Bell Scholar
Best Judge Award, 1991 Dean's Cup Moot Court Competition

Activities: Articles Editor, *Duke Law Journal*
Special Editor, 1991 Administrative Law Issue
Moot Court Board

Emory University

B.A., 1987 (Political Science/Philosophy); G.P.A.: 3.75

M.A., 1987 (Philosophy)

Awards: Phi Beta Kappa
Omicron Delta Kappa
Pi Sigma Alpha

Activities: Emory Scholar
Student Fellow, Stipe Society of Scholars
Intern, Carter Presidential Center
Chief Justice, Emory SGA Judiciary

PUBLICATIONS:Books:

FREE SPEECH AS CIVIC STRUCTURE: A COMPARATIVE ANALYSIS OF HOW COURTS AND CULTURE SHAPE THE FREEDOM OF SPEECH (Oxford University Press 2024).

THE DISAPPEARING FIRST AMENDMENT (Cambridge University Press 2019).

PRIVACY REVISITED: A GLOBAL PERSPECTIVE ON THE RIGHT TO BE LEFT ALONE (Oxford University Press 2016 & 2018).

RECLAIMING THE PETITION CLAUSE: SEDITIOUS LIBEL, "OFFENSIVE" PROTEST, AND THE RIGHT TO PETITION THE GOVERNMENT FOR A REDRESS OF GRIEVANCES (Yale University Press 2012).

THE FIRST AMENDMENT IN CROSS-CULTURAL PERSPECTIVE: A COMPARATIVE LEGAL ANALYSIS OF THE FREEDOM OF SPEECH (New York University Press 2006 & 2009).

THE FIRST AMENDMENT: CASES AND THEORY (Aspen Publishers 2008, 2d ed. 2013, 3rd ed. 2017 & 4th ed. 2022) (co-authored with Professors Lyrissa Barnett Lidsky, Caroline Mala Corbin, and Timothy Zick).

ADMINISTRATIVE LAW (Aspen Publishers 2003, 2d ed. 2008, 3rd ed. 2012, 4th ed. 2017, & 5th ed. 2021) (co-authored with Judge John Rogers, Professor Michael Healy, and Professor Kent Barnett).

Book Chapters and Contributions:

Disinformation, Misinformation, and Democracy: Defining the Problem, Identifying Potentially Effective Solutions, and the Merits of a Using a Comparative Legal Approach in DISINFORMATION, MISINFORMATION, AND DEMOCRACY: LEGAL APPROACHES IN COMPARATIVE CONTEXTY (Ronald J. Krotoszynski, Jr., András Koltay & Charlotte Garden eds., forthcoming Cambridge University Press 2024).

Whalen v. Roe (1977) in LANDMARK CASES IN PRIVACY LAW, at pp. 65-84 (Paul Wragg & Peter Coe eds., Hart Publishing 2023).

Giving the Invisible Hand a Relatively Free Hand: Data Privacy in the U.S. and the Unfortunate, but Lawful, Commodification of the Person, in THE LAW OF GLOBAL DIGITALITY, at pp. 96-121 (Matthias C. Kettemann, Alexander Peukert & Indra Spiecker eds., Routledge 2022).

Judge Frank M. Johnson, Jr. and His Extended Law Clerk Family: Reminiscences on Working For a Living Profile in Courage, in OF COURTIERIERS AND PRINCES, at pp. 179-210 (Todd C. Peppers ed., University of Virginia Press 2020).

Privacy, Remedies & Comity: The Emerging Problem of Global Injunctions and Some Preliminary Thoughts on How Best to Address It in COMPARATIVE PRIVACY AND DEFAMATION, at pp. 307-328 (András Koltay & Paul Wragg eds., Edward Elgar 2020).

Big Data and the Electoral Process in the United States: Constitutional Constraint and Limited Data Privacy Regulations in BIG DATA, POLITICAL CAMPAIGNING AND THE LAW: DEMOCRACY AND PRIVACY IN THE AGE OF MICROTARGETING, at pp. 186-213 (Norman Witzleb, Moira Patterson & Janice Richardson eds., Routledge 2020).

“The Devil Is in the Details”: *On the Central Importance of Distinguishing the Truly Public from the Truly Private in Reconciling Equality and Religious Liberty* in RELIGIOUS FREEDOM, LGBT RIGHTS, AND THE PROSPECTS FOR COMMON GROUND, at pp. 82-101 (William N. Eskridge & Robin Fretwell Wilson eds., Cambridge University Press 2018).

Functionalism in THE SAGE ENCYCLOPEDIA OF POLITICAL BEHAVIOR, at pp. 314-317 (Fathali M. Moghaddam ed., SAGE Publications 2017).

Responding to a World Without Privacy: On the Potential Merits of a Comparative Law Perspective, in A WORLD WITHOUT PRIVACY: WHAT LAW CAN AND SHOULD DO?, at pp. 234-270 (Austin D. Sarat, ed., Cambridge University Press 2015).

Bringing Meiklejohn to Privacy: On the Essential Complementarity of Privacy and Speech, in INFORMATION AND LAW IN TRANSITION: FREEDOM OF SPEECH, THE INTERNET, PRIVACY AND DEMOCRACY IN THE 21ST CENTURY, at pp. 244-263 (Anna-Sara Lind, Inger Österdahl & Jane Reichel, eds., Liber 2015).

“The Best Time of Your Life”: *Reflections on the Myth of Moral Progress and the Continuing Evolution of Civil Rights Law*, in CIVIL RIGHTS IN AMERICAN LAW, HISTORY, AND POLITICS, at pp. 226-247 (Austin D. Sarat, ed., Cambridge University Press 2014).

Questioning the Value of Dissent and Free Speech More Generally: American Skepticism of Government and the Protection of Low-Value Speech in DISSENTING VOICES IN AMERICAN SOCIETY: THE ROLE OF LAWYERS, JUDGES, AND CITIZENS, at pp. 209-229 (Austin D. Sarat, ed., Cambridge University Press 2012).

The Separation of Legislative and Executive Powers, in HANDBOOK OF RESEARCH ON COMPARATIVE CONSTITUTIONAL LAW, at pp. 234-253 (Thomas Ginsburg & Rosalind Dixon, eds., Edward Elgar 2011).

Resignations, the (Quasi) Plural Executive, and a Critical Assessment of the Unitary Executive Theory, in SPEECH AND SILENCE IN AMERICAN LAW, at pp. 83-105 (Austin D. Sarat, ed., Cambridge University Press 2010).

Civil Disobedience entry in the OXFORD COMPANION TO AMERICAN LAW (Oxford University Press 2002).

Articles and Essays:

Reimagining First Amendment Remedies, 109 IOWA L. REV. 911 (2024) (co-authored with Caprice L. Roberts).

Do Elections Really Have Consequences?: Presidential Indifference, Attenuated Accountability, and Policy Paralysis within the Administrative State, 58 GA. L. REV. 1015 (2024).

Common Law Constitutionalism and the Protean First Amendment, 25 U. PA. J. CONST. L. 1 (2023).

On the Importance of Being Earnest: Contrasting the Dangers of Makeweights with the Virtues of Judicial Candor in Constitutional Adjudication, 74 ALA. L. REV. 243 (2022).

Squaring a Circle: Advice and Consent, Faithful Execution, and the Vacancies Reform Act, 55 GA. L. REV. 731 (2021) (co-authored with Atticus DeProspero).

Against Congressional Case Snatching, 62 WM. & MARY L. REV. 791 (2021) (co-authored with Atticus DeProspero).

“A Republic If [We] Can Keep It”: A Prolegomenon on Righting the Ship of State in the Wake of the Trumpian Tempest, 98 TEX. L. REV. 539 (2020) (review essay).

Transborder Speech, 94 NOTRE DAME L. REV. 473 (2018).

Whistleblowing Speech and the First Amendment, 93 IND. L.J. 267 (2018).

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Deconstructing Deem and Pass: A Constitutional Analysis of the Enactment of Bills by Implication, 90 WASH. U. L. REV. 1071 (2013).

The Polysemy of Privacy, 88 IND. L.J. 881 (2013).

Cooperative Federalism, the New Formalism, and the Separation of Powers Revisited: Free Enterprise Fund and the Problem of Presidential Oversight of State Government Officers Enforcing Federal Law, 61 DUKE L.J. 1599 (2012).

The Argot of Equality: On the Importance of Disentangling “Diversity” and “Remediation” as Justifications for Race-Conscious Government Action, 87 WASH. U. L. REV. 907 (2010).

The Shot (Not) Heard ‘Round the World: Reconsidering the Perplexing U.S. Preoccupation With the Separation of Legislative and Executive Powers, 51 B.C. L. REV. 1 (2010).

If Judges Were Angels: Religious Equality, Free Exercise, and the (Underappreciated) Merits of Smith, 102 NW. U. L. REV. 1189 (2008).

The Return of Seditious Libel, 55 UCLA L. REV. 1239 (2008) (co-authored with Clint Carpenter).

The Irrelevant Wasteland: An Exploration of Why Red Lion Doesn’t Matter (Much) in 2008, the Crucial Importance of the Information Revolution, and the Continuing Relevance of the Public Interest Standard in Regulating Access to Spectrum, 60 ADMIN. L. REV. 911 (2008).

“I’d Like to Teach the World to Sing (in Perfect Harmony)”: *International Judicial Dialogue and the Muses – Reflections on the Perils and Promise of International Judicial Dialogue*, 104 MICH. L. REV. 1321 (2006) (review essay).

Dumbo’s Feather: An Examination and Critique of the Supreme Court’s Use, Misuse, and Abuse of Tradition in Protecting Fundamental Rights, 48 WM. & MARY L. REV. 923 (2006).

“History Belongs to the Winners”: *The Bazelon-Leventhal Debate and the Continuing Relevance of the Process/Substance Dichotomy in Judicial Review of Agency Action*, 58 ADMIN. L. REV. 995 (2006).

Reconsidering the Nondelegation Doctrine: Universal Service, the Power to Tax, and the Ratification Doctrine, 80 IND. L.J. 239 (2005).

Navigating Dangerous Constitutional Straits: A Prolegomenon on the Federal Marriage Amendment and the Disenfranchisement of Sexual Minorities, 76 U. COLO. L. REV. 599 (2005) (co-authored with Professor E. Gary Spitko).

Taming the Tail that Wags the Dog: Ex Post and Ex Ante Constraints on Informal Adjudication, 56 ADMIN. L. REV. 1057 (2004).

A Comparative Perspective on the First Amendment: Free Speech, Militant Democracy, and Primacy of Dignity as a Preferred Constitutional Value in Germany, 78 TUL. L. REV. 1549 (2004).

An Epitaphios for Neutral Principles in Constitutional Law: Bush v. Gore and the Emerging Jurisprudence of Oprah!, 90 GEO. L.J. 2087 (2002).

Expropriatory Intent: Defining the Proper Boundaries of Substantive Due Process and the Takings Clause, 80 N.C. L. REV. 713 (2002).

Why Deference?: Implied Delegations, Agency Expertise, and the Misplaced Legacy of Skidmore, 54 ADMIN. L. REV. 735 (2002).

Dissent, Free Speech, and the Continuing Search for the “Central Meaning” of the First Amendment, 98 MICH. L. REV. 1613 (2000) (review essay).

Equal Justice Under Law: The Jurisprudential Legacy of Judge Frank M. Johnson, Jr., 109 YALE L.J. 1237 (2000).

Enhancing the Spectrum: Media Power, Democracy, and the Marketplace of Ideas, 2000 U. ILL. L. REV. 813 (2000) (co-authored with Richard Blaiklock).

Recalibrating the Cost of Harm Advocacy: Getting Beyond Brandenburg, 41 WM. & MARY L. REV. 1159 (2000) (co-authored with Professor S. Elizabeth Wilborn-Malloy).

The New Legal Process: Games People Play and the Quest for Legitimate Judicial Decision Making, 77 WASH. U. L.Q. 993 (2000).

The Chrysanthemum, the Sword, and the First Amendment: Disentangling Culture, Community, and Freedom of Expression, 1998 WIS. L. REV. 905.

Constitutional Flares: On Judges, Legislatures, and Dialog, 83 MINN. L. REV. 1 (1998).

The Inevitable Wasteland: Why the Public Trustee Model of Broadcast Television Regulation Must Fail, 95 MICH. L. REV. 2101 (1997) (review essay).

On the Danger of Wearing Two Hats: Mistretta and Morrison Revisited, 38 WM. & MARY L. REV. 417 (1997).

Fundamental Property Rights, 85 GEO. L.J. 555 (1997).

Into the Woods: Broadcasters, Bureaucrats, and Children’s Television Programming, 45 DUKE L.J. 1193 (1996).

Back to the Briarpatch: An Argument in Favor of Constitutional Meta-Analysis in State Action Determinations, 94 MICH. L. REV. 302 (1995).

Celebrating Selma: The Importance of Context in Public Forum Analysis, 104 YALE L.J. 1411 (1995).

Brind & Rust v. Sullivan: Free Speech and the Limits of a Written Constitution, 22 FLA. ST. U. L. REV. 1 (1994).

Autonomy, Community, and Traditions of Liberty: The Contrast of British and American Privacy Law, 1990 DUKE L.J. 1398.

Published Lectures and Shorter Essays:

The First Amendment as a Procrustean Bed?: On How and Why Bright Line First Amendment Tests Can Stifle the Scope and Vibrancy of Democratic Deliberation, U. CHI. LEGAL F. 145 (2020).

The Clear and Present Dangers of the Clear and Present Danger Test: Schenck and Abrams Revisited, 72 SMU L. REV. 415 (2019).

Agora, Dignity, and Discrimination: On the Constitutional Shortcomings of “Conscience” Laws that Promote Inequality in the Public Marketplace, 20 LEWIS & CLARK L. REV. 1221 (2017).

The Heisenberg Uncertainty Principle and the Challenge of Resisting – or Engaging – Transnational Constitutional Law, 66 ALA. L. REV. 105 (2014) (review essay).

A Prolegomenon to Any Future Restatement of Privacy, 79 BROOK. L. REV. 505 (2014) (symposium).

Transparency, Accountability, and Competency: An Essay on the Obama Administration, Google Government, and the Difficulties of Securing Effective Governance, 65 U. MIAMI. L. REV. 449 (2011) (symposium).

John S. Stone Chair Inaugural Lecture: A Man for All Seasons: Judge Frank M. Johnson, Jr. and the Quest to Secure the Rule of Law, 61 ALA. L. REV. 165 (2009).

The Perils and the Promise of Comparative Constitutional Law: The New Globalism and the Role of the United States in Shaping Human Rights, 61 ARK. L. REV. 603 (2009) (Hartman-Hotz Lecture).

Defamation in the Digital Age: Some Comparative Law Observations on the Difficulty of Reconciling Free Speech and Reputation in the Emerging Global Village, 62 WASH. & LEE L. REV. 339 (2005) (review essay).

Childproofing the Internet, 41 BRANDEIS L.J. 447 (2003) (symposium).

The Wages of Crying Wolf Revisited: The Essential Consanguinity of Lochner, Roe, and Eastern Enterprises, 1 GEO. J.L. & PUB. POL’Y 133 (2002).

A Remembrance of Things Past?: Reflections on the Warren Court and the Struggle for Civil Rights, 59 WASH. & LEE L. REV. 1005 (2002) (symposium).

Identity, Privacy, and the New Information Scalpers: Recalibrating the Rules of the Road in the Age of the Infobahn, 33 IND. L. REV. 233 (1999) (symposium).

Legal Scholarship at the Crossroads: On Farce, Tragedy, and Redemption, 77 TEX. L. REV. 321 (1998).

Listening to the “Sounds of Sovereignty” But Missing the Beat: Does the New Federalism Really Matter?, 32 IND. L. REV. 11 (1998) (symposium).

Views From the Front: A Dialog About the Corporate Law Firm, 1996 UTAH L. REV. 1293 (co-authored with Professor S. Elizabeth Wilborn).

Building Bridges and Overcoming Barricades: Exploring the Limits of Law as an Agent of Transformational Social Change, 47 CASE W. RES. L. REV. 423 (1996) (review essay).

Cohen v. California: “Insignificant” Cases and Larger Legal Principles, 74 TEX. L. REV. 1251 (1996) (symposium).

Guest Editor, Volume 18, Issue Nos. 3 & 4, LAW & POLICY (1996).

Commentaries/Editorial Essays:

The Supreme Court's Elevation of School Prayer Over Other Free Speech Is Untenable, SLATE, July 1, 2022, available at <https://slate.com/news-and-politics/2022/07/supreme-court-kennedy-school-prayer-untenable.html>.

Laws Against Teaching Critical Race Theory in College Are Unconstitutional, WASH. POST, May 26, 2021, available at <https://www.washingtonpost.com/opinions/2021/05/26/laws-against-teaching-critical-race-theory-college-are-unconstitutional/>.

The War on Trans Kids Is Totally Unconstitutional, THE ATLANTIC, May 16, 2021, available at <https://www.theatlantic.com/ideas/archive/2021/05/anti-transgender-children-laws-unconstitutional/618864/>.

How the Senate Could Speed Up the Impeachment Trial, POLITICO, Jan. 13, 2021, available at <https://www.politico.com/news/magazine/2021/01/13/senate-impeachment-trial-biden-presidency-shorten-459052>.

Why Florida Public Health Officials Won't Blow the Whistle on Ron DeSantis, SLATE, Dec. 17, 2020, available at <https://slate.com/news-and-politics/2020/12/florida-covid-data-whistleblower-ron-desantis.html>.

The Conservative Idea That Would Let Biden Seize Control of Washington, POLITICO, Dec. 10, 2020, available at <https://www.politico.com/news/magazine/2020/12/10/nathan-simington-christopher-waller-fcc-federal-reserve-appointments-unitary-executive-authority-444136>.

John Bolton Has a Clear First Amendment Right to Publish His Book, SLATE, June 18, 2020, available at <https://slate.com/news-and-politics/2020/06/john-bolton-first-amendment-right-to-publish-his-book.html>.

States Are Using the Pandemic to Roll Back Americans' Rights, THE ATLANTIC, Apr. 29, 2020, available at <https://www.theatlantic.com/ideas/archive/2020/04/states-are-using-pandemic-roll-back-americans-rights/610825/>.

Vote-by-Mail Can Save the 2020 Election, THE ATLANTIC, Mar. 27, 2020, available at <https://www.theatlantic.com/ideas/archive/2020/03/best-way-protect-election/608887/>.

The Senate Must Hear Witnesses, N.Y. TIMES, Jan. 16, 2020, at A23.

The Court's Free Speech Hypocrisy, WASH. POST, Dec. 12, 2019, at A25.

For Whistleblowers, Protections Fall Short, L.A. TIMES, Oct. 3, 2019, at A11.

Bigger Is Not Better at Law School, WASH. POST, June 12, 2019, at A23.

By Censoring Arthur's Same-Sex Wedding, Alabama Public Television Betrayed Mr. Rogers' Legacy, SLATE, May 23, 2019, available at <https://slate.com/human-interest/2019/05/arthur-gay-wedding-alabama-mister-rogers.html>.

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- States to Candidates: Show Us Your Tax Returns*, L.A. TIMES, May 9, 2019, at A13.
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- A Warning from Alabama: Amendment 2 Makes Clear How Aggressively States Will Act if Roe vs. Wade Is Overturned*, L.A. TIMES, Nov. 9, 2018, at A13.
- Speaking Truth to Power: Petitioning the Government Is a Constitutional Right. Jeff Flake Showed Why*, L.A. TIMES, Oct. 2, 2018, at A11.
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- In Defense of the Country Lawyer*, N.Y. TIMES, Sept. 8, 2018, at A21.
- Yes, The G.O.P. Can Block Roy Moore*, N.Y. TIMES, Nov. 12, 2017, at A23.
- A Poll Tax by Another Name*, N.Y. TIMES, Nov. 14, 2016, available at <https://www.nytimes.com/2016/11/14/opinion/a-poll-tax-by-another-name.html>.
- Selma March? Not Today*, L.A. TIMES, Mar. 8, 2015, at A26.
- Alabama's Dangerous Defiance*, N.Y. TIMES, Mar. 6, 2015, at A29.
- A Judge Alabama Can Be Proud Of*, WASH. POST, Feb. 6, 2015, at A13.
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- Protecting Face-to-Face Protest*, N.Y. TIMES, April 9, 2012 at A19.
- Seattle Could Devise a Diversity Plan that Passes Constitutional Muster*, SEATTLE TIMES, July 26, 2007, at B7.

PROFESSIONAL CERTIFICATIONS AND ACTIVITIES:

- President, Southeastern Association of Law Schools, 2022-2023
 President-Elect, Southeastern Association of Law Schools, 2021-2022
 Member, ABA Administrative Law Section Council, 2015-2018
 Chair, ABA Administrative Law Section Book/Article Annual Scholarship Award Committee, 2017-2021; Vice-Chair, 2007-2017
 Vice-Chair, ABA Administrative Law Section Publications Committee, 1996-2000
 Member, American Law Institute, 2013-present
 Editor, American Journal of Comparative Law, 2008-present
 Director, American Society of Comparative Law, 1996-2008
 Member, Finance Committee, American Society of Comparative Law, 2009-present
 Member, Law Journal Committee, Federal Communications Bar Association
 Editorial Board, Journal of Free Speech Law, 2020-present
 Deputy Executive Director, Southeastern Association of Law Schools, 2007-2009
 Member, Board of Directors, Southeastern Association of Law Schools, 2007-2009
 Member, Board of Editors, *American Journal of Comparative Law*, 2008-present
 Member, Annual Meeting Planning Committee, AALS 2016 Annual Meeting, 2015-2016
 Member, Board of Editors, *Journal of Legal Education*, 2012-2015
 Delegate, AALS House of Representatives, 1996-1998
 Member, Indiana State Bar Association Task Force on Legal Education, 1997-2000

Member, Federal Communications Bar Association
Member, Bar of the District of Columbia
Member, State Bar of Georgia

ACADEMIC REFERENCES:

Professor Dan Cole, Indiana University School of Law–Bloomington

Professor Michael C. Dorf, Cornell University Law School

Dean Julie A. Hill, University of Wyoming College of Law

Professor Vicki Jackson, Harvard Law School

Professor David Law, University of Virginia School of Law

Professor Lyryssa Barnett Lidsky, University of Florida Levin College of Law

Professor Blake Morant, George Washington University National Law Center

Professor Meredith Render, University of Alabama School of Law

Professor Robin Fretwell Wilson, University of Illinois College of Law