



Levin College of Law
Office of the Dean

Merritt McAlister
Interim Dean and Levin, Mabie & Levin Professor of Law

Spessard L. Holland Law Center
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Gainesville, FL 32611-7620
352-273-0600
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October 23, 2023

MEMORANDUM

TO: Full-Time Faculty, Levin College of Law

FROM: Merritt McAlister, Interim Dean

RE: Faculty Meeting Agenda, Tuesday, October 24, 2023 - REVISED

Our third Faculty Meeting of the 2023-2024 academic year will take place in the Faculty Lounge on the third floor of Holland Hall on Tuesday, October 24, 2023. The meeting will begin at noon and will end no later than 1:30 p.m.

The agenda is as follows:

1. Approve Faculty Meeting Minutes for September 26, 2023, attached
2. Information Item: Faculty Meeting on November 7, 2023
3. Information Item: Faculty Council report and updates (Danaya Wright)
4. Information Item: Report from Appointments Committee (Lyrisa Lidsky)
5. Information Item: Recent student concerns re: conflict in Middle East (Dean McAlister)
6. Action Item: Recommendation from Adjunct Teaching Committee to approve an additional course taught by Kristofer Eisenmenger. (Lisa De Sanctis, chair)
7. Action Item: Proposal from Curriculum Committee for permanent approval of *Health Law Survey* and *Probate & Estate Administration: Tax Considerations* courses (Luke/Erez-Novot, co-chairs)
8. Action Item: Joint proposal from Curriculum and International Committees relating to the U.S. Law and LL.M. program (Luke/Erez-Navot/McLendon, chairs)

9. Action Item: Presentation from Non-Tenure Track Appointments Committee of Margie Alsbrook and Stacy Biggart for Legal Writing Skills appointments. (Wolking, Chair)

If you are unable to attend, please contact Peter Molk, who will discuss available options. Otherwise, I look forward to seeing you.

UF Levin College of Law Faculty Meeting Minutes
September 26, 2023 12:00 noon

PRESENT: Yariv Brauner, Juan Caballero, Dennis Calfee, Julian Cook, Lisa De Sanctis, Teresa Drake, Donna Eng, Donna Erez-Navot, Mark Fenster, Ben Fernandez, Thomas Haley, Christopher Hampson, Kristen Hardy, David Hasen, Thomas Hawkins, Berta Esperanza Hernandez-Truyol, Benjamin Johnson, E. Lea Johnston, Zachary Kaufman, Matthew Kim, Heather Kolinski, Elizabeth Lear, Lyrissa Barnett Lidsky, Sabrina Lopez, Lynn LoPucki, Charlene Luke, Jonathan Marshfield, Merritt McAlister, Timothy McLendon, Jonathan Mills, Peter Molk, Lars Noah, Jane O'Connell, Joan Stearns Johnsen, Amy Stein, Stacey Steinberg, Lee-ford Tritt, Derek Wheeler, Michael Wolf, Sarah Wolking, Danaya Wright, Wentong Zheng

NOT PRESENT: Rachel Arnow-Richman, Derek Bambauer, Christopher Bradley, Annie Brett, Neil Buchanan, Karen Burke, Judy Clausen, Charles Collier, Barbara Evans, William Hamilton, Mindy Herzfeld, Jiaying Jiang, Elizabeth Katz, Tracey Maclin, Pedro Malavet, Grayson McCouch, Silvia Menendez, Robert Rhee, Kathryn Russell-Brown, Paige Snelgro, John Stinneford, Steven Willis, Jennifer Zedalis

Meeting called to order at 12:03 p.m.

1. Approve Faculty Meeting Minutes for September 1, 2023

Dean McAlister presented and faculty considered the faculty meeting minutes for September 1, 2023.
Outcome: Minutes were approved.

2. Approve Dean Emeritus Status, Dean Rosenbury (Interim Dean McAlister)

Interim Dean Merritt McAlister presented, and faculty considered the approval of Dean Emeritus Status.
Outcome: Status was approved.

3. Designation of Primary and Alternate Representative for the AALS House of Representatives

Dean Merritt McAlister took nominations from the floor and faculty voted on representatives.
Outcome: Primary Representative is Lyrissa Lidsky, alternate is Jane O'Connell.

4. Information Item: Faculty Council Report and updates (Danaya Wright)

There is currently no report from the Faculty Council.
Outcome: Information item only.

5. Information Item: Report from Appointments Committee (Lyrissa Lidsky)

Lyrissa Lidsky presented information on candidates, upcoming interviews, and events.
Outcome: Information Item only.

6. Information Item: Revisions through the Curriculum Committee (Donna Erez-Navot & Charlene Luke)

Charlene Luke introduced the committee and presented the process for course approvals.

Outcome: Information Item only.

7. Information Item: Bar Passage Update (Interim Dean McAlister and Sabrina Lopez)

Interim Dean Merritt McAlister and Sabrina Lopez presented bar results and discussed efforts moving forward.

Outcome: Information Item only.

8. Information Item: Staff hiring (Interim Dean McAlister)

Interim Dean Merritt McAlister discussed open positions, new hires, and staffing changes.

Outcome: Information Item only.

Meeting adjourned at 1:04 pm.

MEMORANDUM

TO: UF Law Faculty

FROM: Lisa De Sanctis and the Adjunct Committee

DATE: October 20, 2023

RE: Recommendation to Hire Kris Eisenmenger to Teach a Second Course in the 2023–2024 Academic Year

At the October 24, 2023, faculty meeting, we will recommend that you approve hiring adjunct professor, Kris Eisenmenger, to teach a second course this academic year. Professor Eisenmenger is currently teaching Trial Practice, and we recommend extending an offer to him to teach it again this spring. The matter comes before the full faculty pursuant to our faculty policy manual, which mandates that adjuncts have the support of the full faculty before being offered a second course in the same academic year. UF Law Faculty Policy Manual, Ch. 3, C.5.a., p. 44, April 9, 2021. The Adjunct Committee supports extending this offer to Professor Eisenmenger.

Professor Eisenmenger is the Chief Assistant Public Defender for the Eight Circuit Public Defender's Office. He has 14 years of criminal trial experience and has regularly supervised certified legal interns for his office. He is also a board-certified specialist in criminal trial law. Professor Eisenmenger is a double Gator and received his juris doctor in 2009.

I reviewed Professor Eisenmenger's syllabus and course materials and observed his classroom. Professor Eisenmenger has excellent command of the classroom and courtroom. He had a warm, friendly demeanor with students and had done the work of gaining his students' trust. His students were comfortable asking follow-up questions to the feedback he offered and took constructive criticism in stride. At the end of class, Professor Eisenmenger repeatedly offered to meet with students out of class to support them further as they prepare for final trials.

I was able to locate only two sets of Professor Eisenmenger's student evaluations out of the seven times he has served as a workshop instructor. Professor Eisenmenger received very positive comments about his teaching and strong overall instruction scores of 4.81 (Fall 2020) and 4.33 (Fall 2019). Comments about course structure are no longer relevant because the structure of our Trial Practice program has changed. While there were two negative comments about Professor Eisenmenger's feedback style, most students praised his ability to deliver frank feedback in a supportive manner—one described it as "refreshing" and "motivating."

I have attached my classroom observation, Professor Eisenmenger's resume, and all student evaluations on file with UF Law from Professor Eisenmenger's service as a Trial Practice Workshop Instructor.

Objective	UF Adjunct Position – Trial Practice Spring 2024.
Experience	<p>Adjunct Professor – University of Florida, Levin College of Law</p> <ul style="list-style-type: none">▪ Criminal Defense Clinic Site Supervisor (Fall 2015 - Present)▪ Trial Practice Adjunct Professor (Fall 2023)▪ Trial Practice Workshop Instructor (Spring 2015, Spring 2016, Spring 2017, Spring 2018, Fall 2018, Fall 2019, Fall 2020)▪ Trial Team Coach (Florida Bar – Jan. 2014, FJA Nov. 2014, FJA – Nov. 2015, Florida Bar – Jan. 2017)▪ Florida National Trial Advocacy Tournament, Packet Co-Author and Co-Tournament Director (2014,2015,2016) <p>Assistant Public Defender</p> <p>August 3rd, 2009 - Present Office of the Public Defender (8th Judicial Circuit), Gainesville, FL</p> <ul style="list-style-type: none">▪ Chief Assistant Public Defender (Sept. 2023 – Present): Responsible for supervision of all attorneys within the 8th Judicial Circuit Public Defender's Office, I share this role with Canaan Goldman.▪ 8th Circuit Capital Defense Team: Responsible to the representation of individuals charged with 1st Degree Murder when the State is seeking the death penalty. (2014 – Present; 1st Chair counsel since 2020)▪ Legal Technology Director: Responsible for maintaining, testing, and developing tools to aid office staff members in using our case management system. Also for coordinating technology needs with our IT staff. (June 2019 – Present)▪ Intern Director: responsible for coordination of all intern activities with the office. (Fall 2015 – Present)▪ County Court Supervisor: Alachua County, responsible for supervision of six assistant public defenders practicing in Alachua County. Also supervisor for all interns who work at the Alachua County Public Defender's Office. (April 2015 – June 2019).▪ County Court/ Circuit Court Attorney: Gilchrist County, sole Assistant Public Defender for Gilchrist County, represented juvenile and adult clients charged with all felony and/or misdemeanor offenses. (May 2014 – April 2015)▪ Circuit Court Attorney: Levy County, responsible for defending clients charged with felony offenses. (March 2014 - May 2014)▪ Circuit Court Attorney: Felony Division 4, responsible for defending clients charged with felony offenses (October 1, 2012 – March 2014)▪ Circuit Court Attorney: Felony Division 3, responsible for defending clients charged with felony offenses (May 2011 – September 2012)▪ Circuit Court Attorney: Juvenile Division, responsible for defending juveniles charges with all levels of offenses. (December 2010 – May 2011)

- County Court Attorney, responsible for defending indigent clients charged with misdemeanor offenses (Aug 2009 – December 2010)

Certified Legal Intern and Extern

August 2008 – July 2009 Office of the Public Defender (8th Judicial Circuit), Gainesville, FL and Starke, FL

- Extern in Starke, FL (Bradford county office); Responsible for investigation and research assisting Assistant Public Defenders assigned to all levels of criminal charges (January 2009- July 2009)
- Certified Legal Intern in Gainesville, FL; Responsible for assisting Assistant Public Defenders assigned to misdemeanor level cases. Under Florida law certified legal interns are allowed to practice law under the supervision of a licensed attorney. I took full advantage of that opportunity and handling speaking in court and even conducted the Jury Selection, and Closing argument during a trial. (August 2008 – December 2008)

Education

University of Florida: Levin College of Law, Gainesville, FL
August 2006 – May 2009

- Juris Doctor

University of Florida: College of Engineering, Gainesville, FL
August 2002 – August 2006

- Bachelor of Science in Computer Engineering
- With Honors

Interests

My primary focus is criminal defense, currently as an Assistant Public Defender.

Awards/Affiliations

Board Certified Specialist: Criminal Trial
August 2016 – Present

Florida Association of Criminal Defense Lawyers (FACDL) –
Statewide
2009-Present

FACDL 8th Circuit Chapter
2010-Present
President 2018-2019
Treasurer 2011-2018

James C. Adkins American Inn of Court
2010-2020
Associate

References

Hon. Stacy A. Scott
Public Defender
151 Southwest 2nd Ave
Gainesville, FL 32601

(352)338-7370
Canaan Goldman
Chief Assistant Public Defender
(352)338-7386

Kristofer Eisenmenger

151 Southwest 2nd Ave. Gainesville, FL 32601

Nick Zissimopoulos
Glassman & Zissimopoulos
804 NW 16th Ave.
Gainesville, FL 32601
(352)373-7566

More references available upon request.

Kristofer Eisenmenger

151 Southwest 2nd Ave. Gainesville, FL 32601



Individual Instructor Fall 2019 Report College of Law for LAW6363: Trial Practice (Kristofer Eisenmenger)

Project Title: **University of Florida GatorEvals –
Fall 2019**

Courses Audience: **60**
Responses Received: **33**
Response Ratio: **55.0%**

INTRODUCTION

Teaching is a fundamental purpose of the University of Florida and the dissemination of new knowledge in our classrooms, studios, and clinics enables our students and trainees to fully explore their intellectual boundaries. Assessment and evaluation of our courses are designed to enhance instruction and maximize learning to meet the mission of the university. This report contains the results gathered through the new GatorEvals system. Students were invited to share their feedback on the teaching and course material. We invite every faculty member to examine the analysis in the report and utilize the resources provided in the report. Thank you for your continued great work!

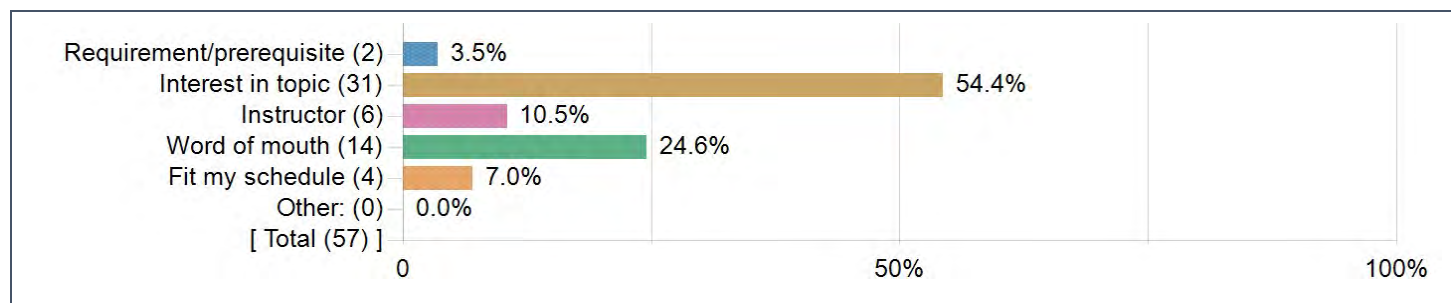
Chris Hass, Ph.D.
Associate Provost for Academic and Faculty Affairs



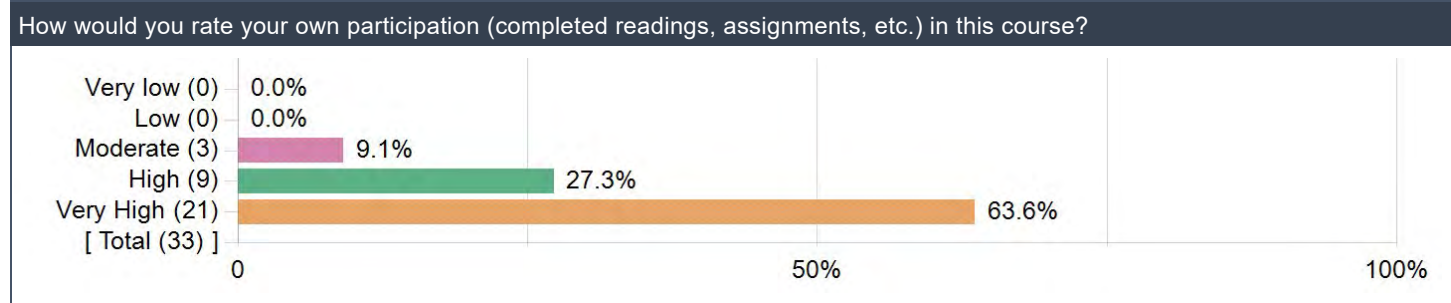
Creation Date: **Monday, January 6, 2020**

Student Self-Evaluation Questions

Why did you take this course?



How would you rate your own participation (completed readings, assignments, etc.) in this course?



Instructor Evaluation Questions

Instructor Evaluation Questions

	Strongly Disagree 1	Disagree 2	Neutral 3	Agree 4	Strongly Agree 5	Count	Mean	Interpolated Median	SD
The instructor was enthusiastic about the course.	0.0%	0.0%	22.2%	11.1%	66.7%	9	4.44	4.75	0.88
The instructor explained material clearly and in a way that enhanced my understanding.	11.1%	0.0%	0.0%	11.1%	77.8%	9	4.44	4.86	1.33
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	11.1%	0.0%	0.0%	22.2%	66.7%	9	4.33	4.75	1.32
The instructor fostered a positive learning environment that engaged students.	11.1%	11.1%	0.0%	11.1%	66.7%	9	4.11	4.75	1.54
The instructor provided prompt and meaningful feedback on my work and performance in the course.	11.1%	0.0%	11.1%	0.0%	77.8%	9	4.33	4.86	1.41
The instructor was instrumental to my learning in the course.	11.1%	0.0%	0.0%	22.2%	66.7%	9	4.33	4.75	1.32

Course Evaluation Questions

Course Evaluation Questions

	Strongly Disagree 1	Disagree 2	Neutral 3	Agree 4	Strongly Agree 5	Count	Mean	Interpolated Median	SD
Course content (e.g., readings, activities, assignments) was relevant & useful.	3.0%	3.0%	6.1%	36.4%	51.5%	33	4.30	4.53	0.95
The course fostered regular interaction between student and instructor.	0.0%	0.0%	6.1%	30.3%	63.6%	33	4.58	4.71	0.61
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	0.0%	0.0%	0.0%	36.4%	63.6%	33	4.64	4.71	0.49
Overall, this course was a valuable educational experience.	0.0%	0.0%	0.0%	18.2%	81.8%	33	4.82	4.89	0.39

For additional information and resources in each of these question areas, please visit the GatorEvals Website at <https://gatorevals.aa.ufl.edu/gatorevals-pilot/question-set/>

Instructor Evaluation Overall

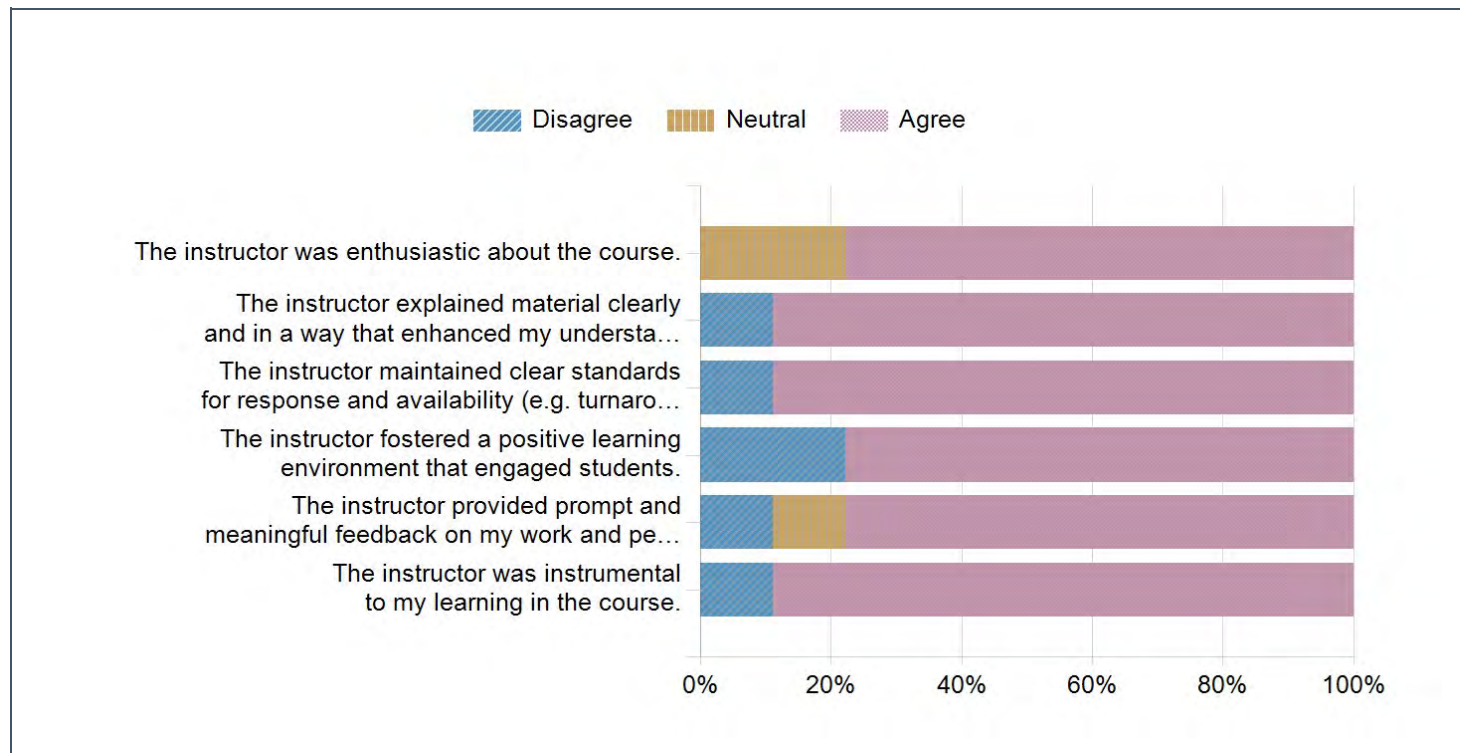
Competency	Your Score	Standard Deviation
Instructor Evaluation Questions	4.33	+/-1.26

Course Evaluation Overall

Competency	Your Score	Standard Deviation
Course Evaluation Questions	4.58	+/-0.67

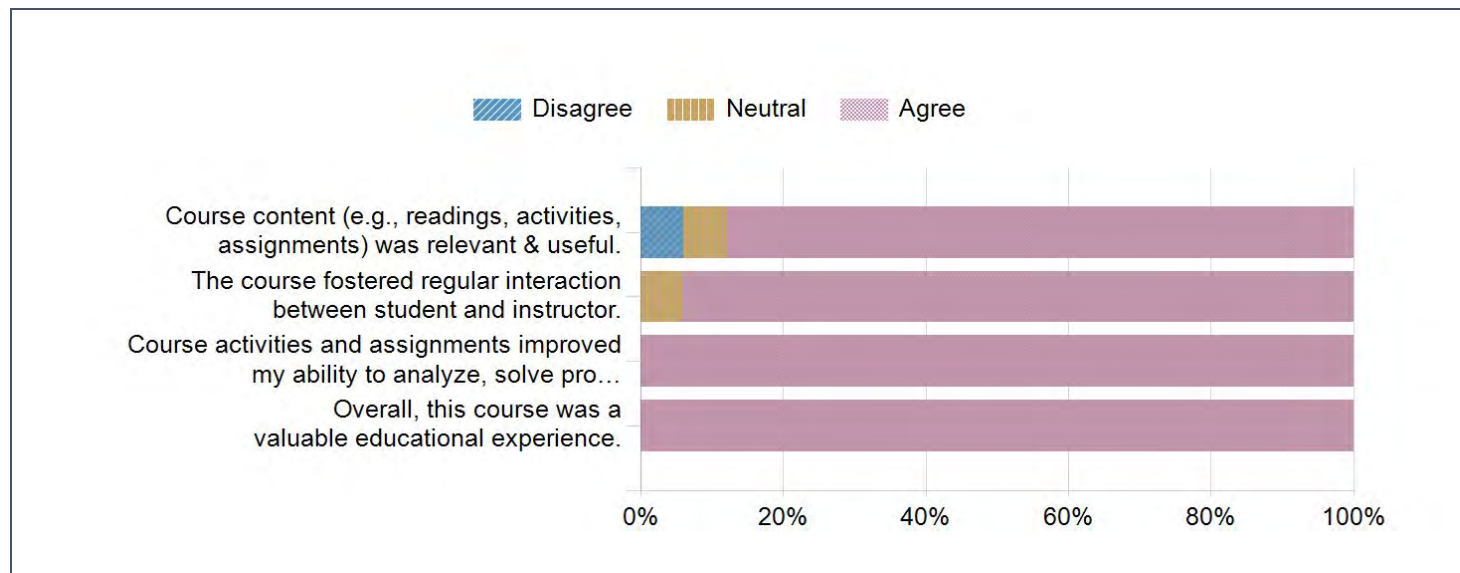
Instructor Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



Course Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



Instructor Evaluation Questions - Comparative Scores

Question	Your Score		Department Average (LAW(LW)-Deans Office)		College Average (College-Law)		University Average	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
The instructor was enthusiastic about the course.	4.44	4.75	4.77	4.88	4.76	4.87	4.49	4.72
The instructor explained material clearly and in a way that enhanced my understanding.	4.44	4.86	4.35	4.64	4.34	4.63	4.22	4.55
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	4.33	4.75	4.51	4.74	4.51	4.75	4.38	4.65
The instructor fostered a positive learning environment that engaged students.	4.11	4.75	4.52	4.77	4.52	4.77	4.34	4.64
The instructor provided prompt and meaningful feedback on my work and performance in the course.	4.33	4.86	4.26	4.63	4.27	4.63	4.18	4.53
The instructor was instrumental to my learning in the course.	4.33	4.75	4.35	4.68	4.35	4.67	4.14	4.53
Overall	4.33	-	4.46	-	4.46	-	4.29	-

Course Evaluation Questions - Comparative Scores

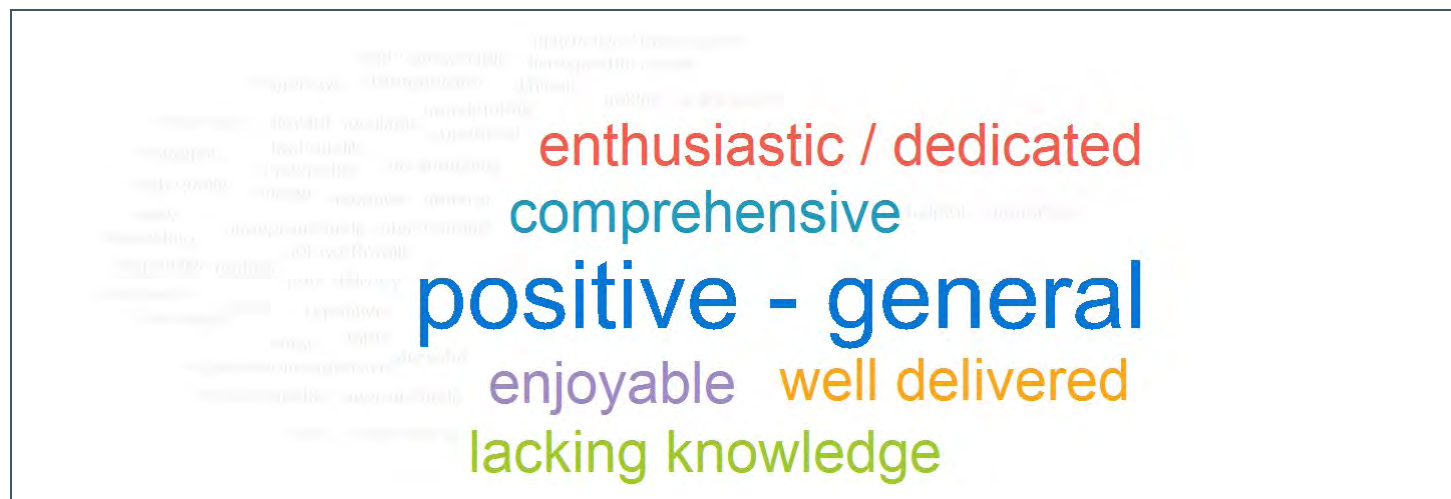
Question	Your Score		Department Average (LAW(LW)-Deans Office)		College Average (College-Law)		University Average	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Course content (e.g., readings, activities, assignments) was relevant & useful.	4.30	4.53	4.26	4.41	4.27	4.41	4.16	4.28
The course fostered regular interaction between student and instructor.	4.58	4.71	4.39	4.58	4.38	4.57	3.94	4.14
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	4.64	4.71	4.20	4.40	4.21	4.40	4.08	4.24
Overall, this course was a valuable educational experience.	4.82	4.89	4.29	4.53	4.29	4.53	4.16	4.35
Overall	4.58	-	4.29	-	4.29	-	4.08	-

Comments

Please identify the instructor's strengths that contributed to your learning in the course.

Comments
Kris did a great job teaching us how to frame the case and make our theories comprehensive. I felt like he really wanted to help us out and was committed to the course. Workshop was definitely where I learned the vast majority of the course.
Unprofessional
Not my instructor.
Kris was awesome all semester. He always made himself available to look over work or answer questions. I really enjoyed his feedback in workshops and have recommended him to many students.
N/A
N/A
N/A
Offers good insight into trials.

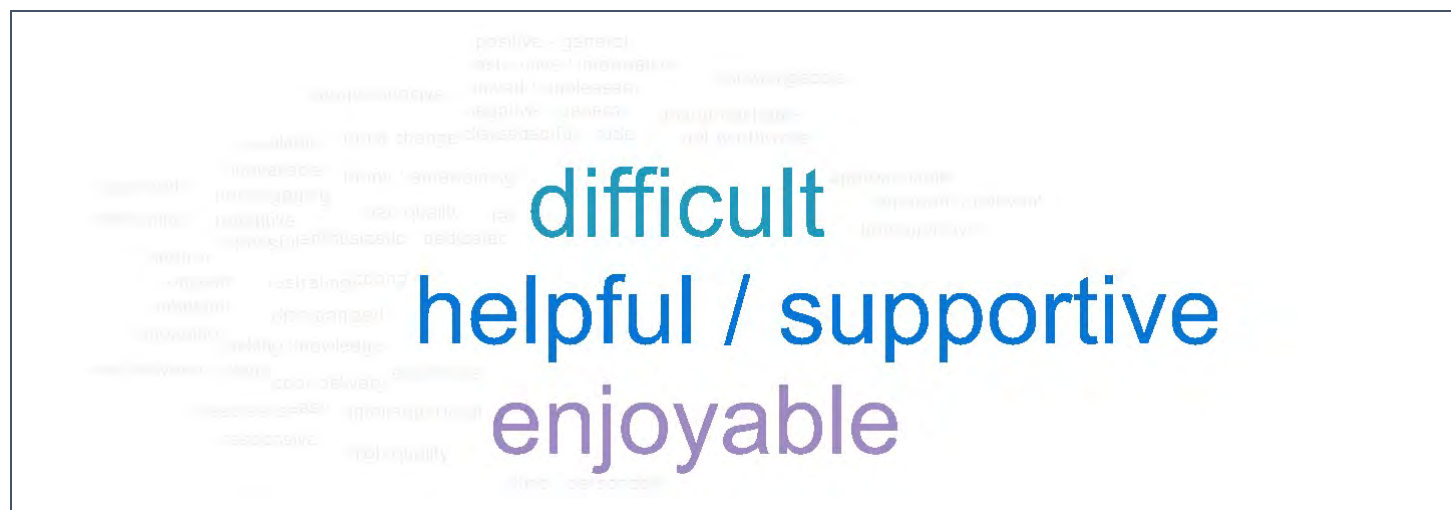
Please identify the instructor's strengths that contributed to your learning in the course.



What additional constructive feedback can you offer the instructor that might help improve the course?

Comments
Can't think of anything. I appreciate the hard work.
Not my instructor.
N/A
N/A
N/A
Be more supportive of students. Even the most unconventional approaches, to you, may be the path to success.

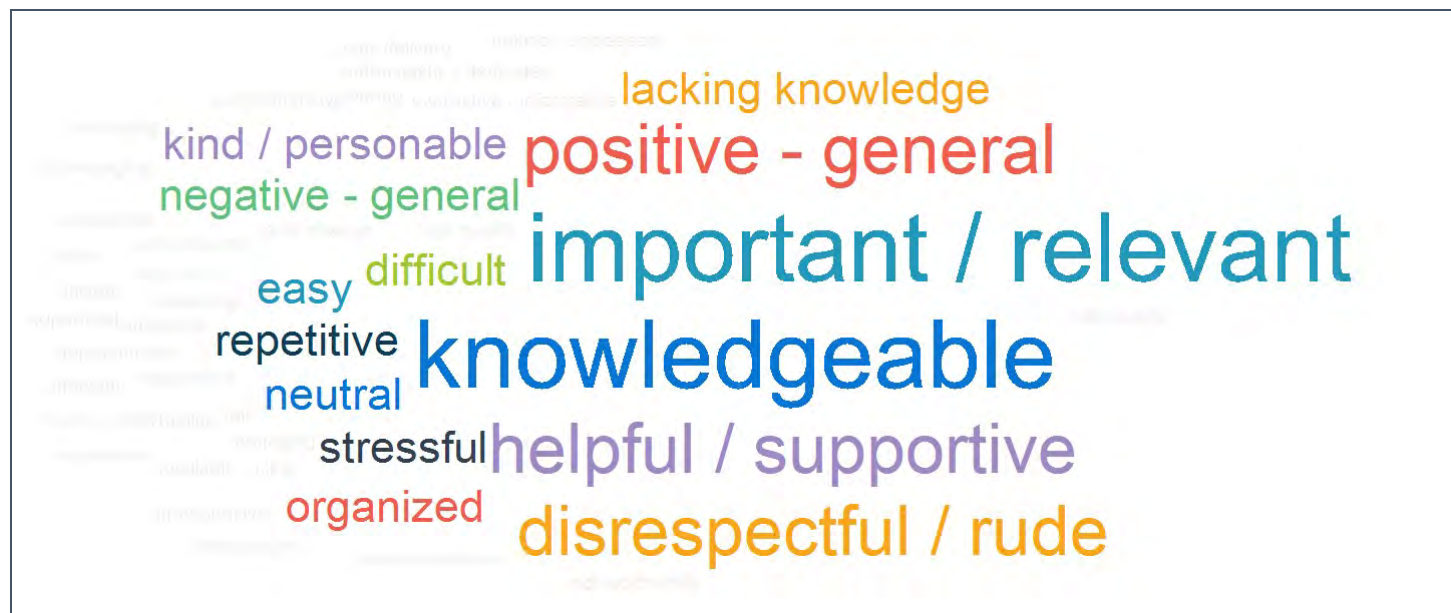
What additional constructive feedback can you offer the instructor that might help improve the course?



What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?

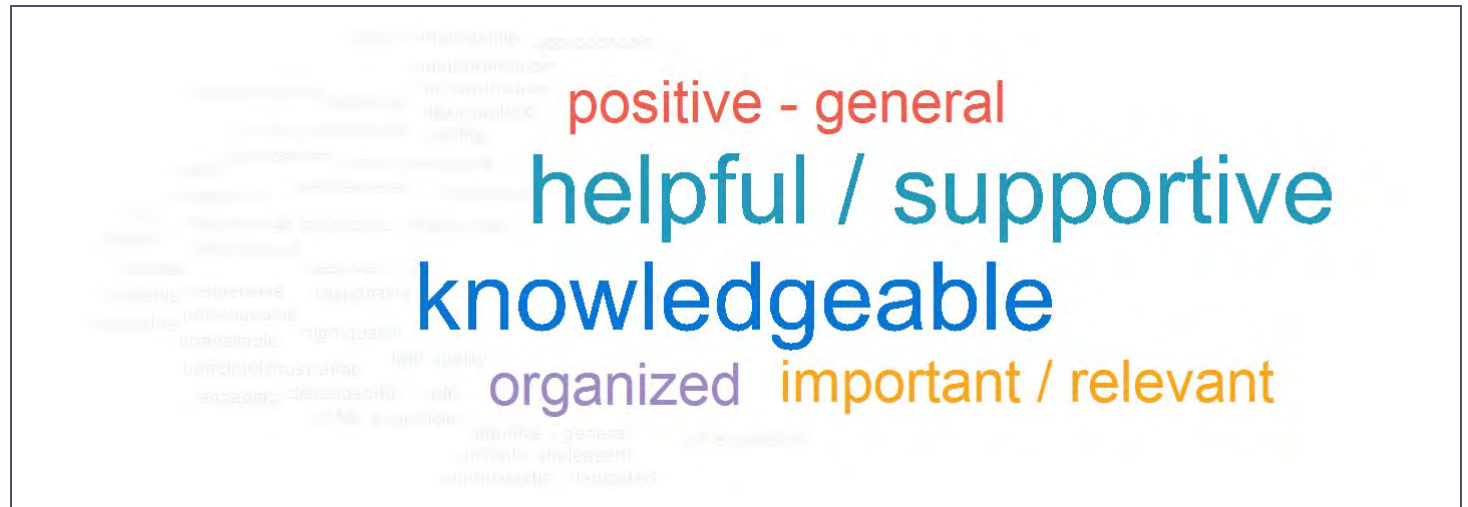
Comments
I wish we'd had the opportunity to practice in workshop direct and cross exam for expert witnesses, but I understand why we couldn't with the hurricane happening.
Put the trials back in the courthouse. The rooms were embarrassing to use for the trials and took away from the whole experience
Using the courthouse for trials, more jurors and better organization of witnesses.
Also the syllabus is long and the dates could be organized in a way that's easier to read.
The weekday classes should teach us more skills and rules.
I would have liked to go over the opening and objections earlier in the semester. I also would have liked to get into small groups in lecture class and do some small problems/assignments.
I wish we got the cases earlier in the semester. When we got them this semester, we only had one week before we were supposed to be doing things in our workshops. This tight turnaround was super stressful and added to the anxiety associated with trial. If we started the first or second week with our cases, we could use our cases in those initial workshops to practice directs, crosses, etc. This would add some extra preparation for the final trials.
I wish we did more interactive things in class. A lot of the time it was just the instructor talking about something. I think it would be better for us to practice in class and then the instructor or students that are not in our workshops could give us feedback.
The fact patterns and problems could be updated. It's great that the judges already know the material, and there are demonstratives aids available. But it may be more beneficial if we had different fact patterns that required us to do our research and not rehash past arguments that have been done for years with opening statements passed down semester to semester. Plus, all the scenarios feel dated. Some of the classes were not beneficial: the class couldn't hear the attorney questioning the expert witness. It was too late for students to get a CLI and apply for a clinic when we had that discussion. The "extra" classes were not helpful. Professor Zedalis is great.
There can be smaller assignments during the lecture to encourage more participation during the lectures
I think the hurricane kind of threw us for a loop because sometimes, things felt kind of rushed.
N/A
I would have liked more video examples of opening statements and closing statements, more pre trial conference practice (as opposed to lecture), more preparation in regards to motions and objections (sometimes I felt like trial team students had an advantage and I wanted to practice to do even better), and more emphasis on professionalism. Some students were so unprofessional in the courtroom and used intimidation tactics and even used pre trial conference stipulations against us in trial. Further, I would have liked to know when it is proper for someone to move for mistrial. I also would have liked for our workshop instructor and professor to have seen us in action— those are the people we want to make proud! Most importantly, I think we should have had trials in the courtroom. This adds to the seriousness and preparation put in. I also feel like students should not be allowed to take notes for closing so that they could feel more comfortable in what they've prepared and not read their notes "just in case"— it's so easy to do this when you're allowed to.
Use more visual, example based teaching instead of lecture.
More practice for us during seminar.
Less lectures!!! Less trial team demos – maybe just one or two. Also – please make sure for makeup trials there are jurors scheduled. It was disappointing to have to present our "real trial" to workshop students who were "tainted" in terms of the jury pool.
I strongly believe the trials should be held at the courthouse downtown. I understand if the workshops are held on campus, but in order to really get that "feel" for what it is like to try a case, I think doing so in a courtroom is essential. It would really help get nerves down before trying a case as an attorney because then, you have already done so in a courtroom. The classroom vibe really takes away from the experience.
Would strongly recommend final trials take place at the courthouse.
Eliminate the judge scoring. The feedback I received does not match the quantification of numbers. If judge scoring is not eliminated, have them commit to writing why points were higher or lower than average.

What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?



Please identify the topics and/or skills you learned in the course that you believe will have the highest application for future courses or professional growth.

Comments
Public speaking, understanding rules of evidence, how to analyze real cases for litigation
The procedural aspects of a trial, and trial skills.
I learned the basics of a trial from start to finish (minus interaction with clients).
I now know how to give a direct and cross examination, opening and closing arguments, and some strategy for objections.
Everything! For the most part this class was the most useful course I have taken. From researching for and arguing motions in limine to admitting evidence and impeaching witnesses, this was the most useful course. It should be at the courthouse.
Litigation skills, public speaking
Public speaking and trial advocacy.
I learned so much in the course that I knew nothing about before. This course was extremely practical and I feel very confident going into my career as an attorney. Although I do not plan to do litigation, if I happen to end up doing, I am very confident that I will exceed at it based off of the skills I acquired while taking this course. I think this is one of the best courses I have taken while at law school. Although it is a lot of work that goes into this course, it is absolutely worth it!
Evidence, pre-trial subjects, public speaking skills, and courtroom decorum.
I thought this class was extremely helpful in my professional growth. The class really teaches you to be a trial attorney.
Speaking in front of jurors, objections, trial process, admitting evidence, speaking to the judge, preventing a mistrial, having confidence.
Trial advocacy, professionalism, trial preparation, teamwork skills, pre trial conferences, etc. I loved seeing trial team students perform by the way!
How to get up in front of a room and put on a case. There are so many things I learned its impossible to list them all. I am forever grateful for this course. It should be a requirement for every law student to take.
Trial skills and oral advocacy. Learning how to argue Motions in Limine. TP is one of the best courses at UF Law and should be required. Every lawyer should understand what trial is and what it takes to go to trial.
Absolutely everything! The workshops completely helped develop public speaking skills, trial skills, introducing evidence, cross examination, direct examination, openings and closings.
Organization and preparation for trials



Fall 2020 College of Law Individual Instructor Aggregated Report for LAW6363-15270: Trial Practice (Kristofer Eisenmenger)

Project Title: **University of Florida GatorEvals – Fall 2020**

Courses Audience: **10**

Responses Received: **9**

Response Ratio: **90.0%**

INTRODUCTION

Teaching is a fundamental purpose of the University of Florida and the dissemination of new knowledge in our classrooms, studios, and clinics enables our students and trainees to fully explore their intellectual boundaries. Assessment and evaluation of our courses are designed to enhance instruction and maximize learning to meet the mission of the university. This report contains the results gathered through the new GatorEvals system. Students were invited to share their feedback on the teaching and course material. We invite every faculty member to examine the analysis in the report and utilize the resources provided in the report. Thank you for your continued great work!

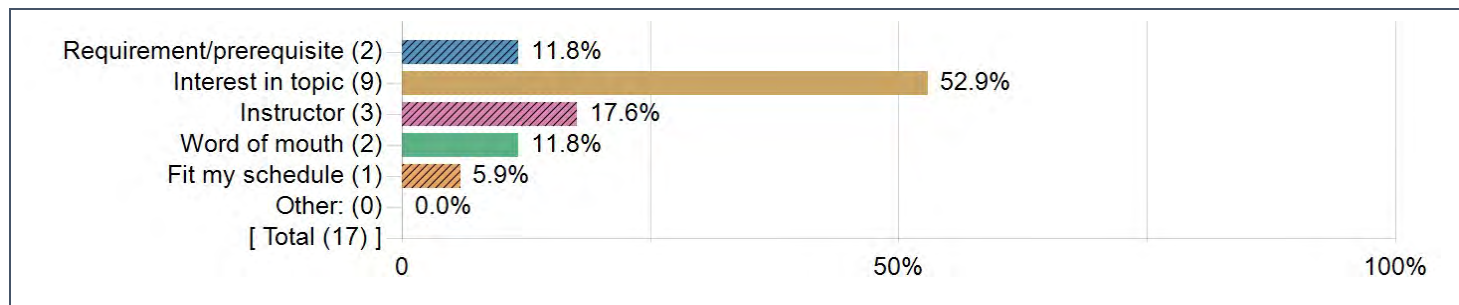
Chris Hass, Ph.D.

Associate Provost for Academic and Faculty Affairs

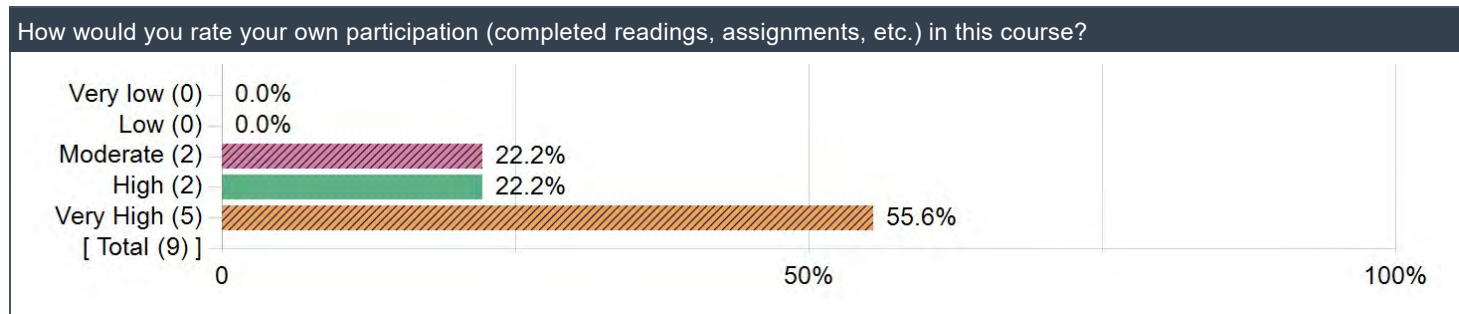


Student Self-Evaluation Questions

Why did you take this course?



How would you rate your own participation (completed readings, assignments, etc.) in this course?



Comparative Evaluation Results

University Core Instructor Evaluation Questions - Comparative Scores

Question	Your Score		DPT Mean (Grad-LAW(LW)- Deans Office)		College Average (College-Law)		University Average	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
The instructor was enthusiastic about the course.	4.78	5.00	4.72	5.00	4.73	5.00	4.51	5.00
The instructor explained material clearly and in a way that enhanced my understanding.	4.67	5.00	4.32	5.00	4.33	5.00	4.29	5.00
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	4.78	5.00	4.52	5.00	4.52	5.00	4.44	5.00
The instructor fostered a positive learning environment that engaged students.	4.89	5.00	4.48	5.00	4.50	5.00	4.38	5.00
The instructor provided prompt and meaningful feedback on my work and performance in the course.	4.89	5.00	4.23	5.00	4.24	5.00	4.23	5.00
The instructor was instrumental to my learning in the course.	4.89	5.00	4.31	5.00	4.33	5.00	4.18	5.00
Overall	4.81	-	4.43	-	4.44	-	4.34	-

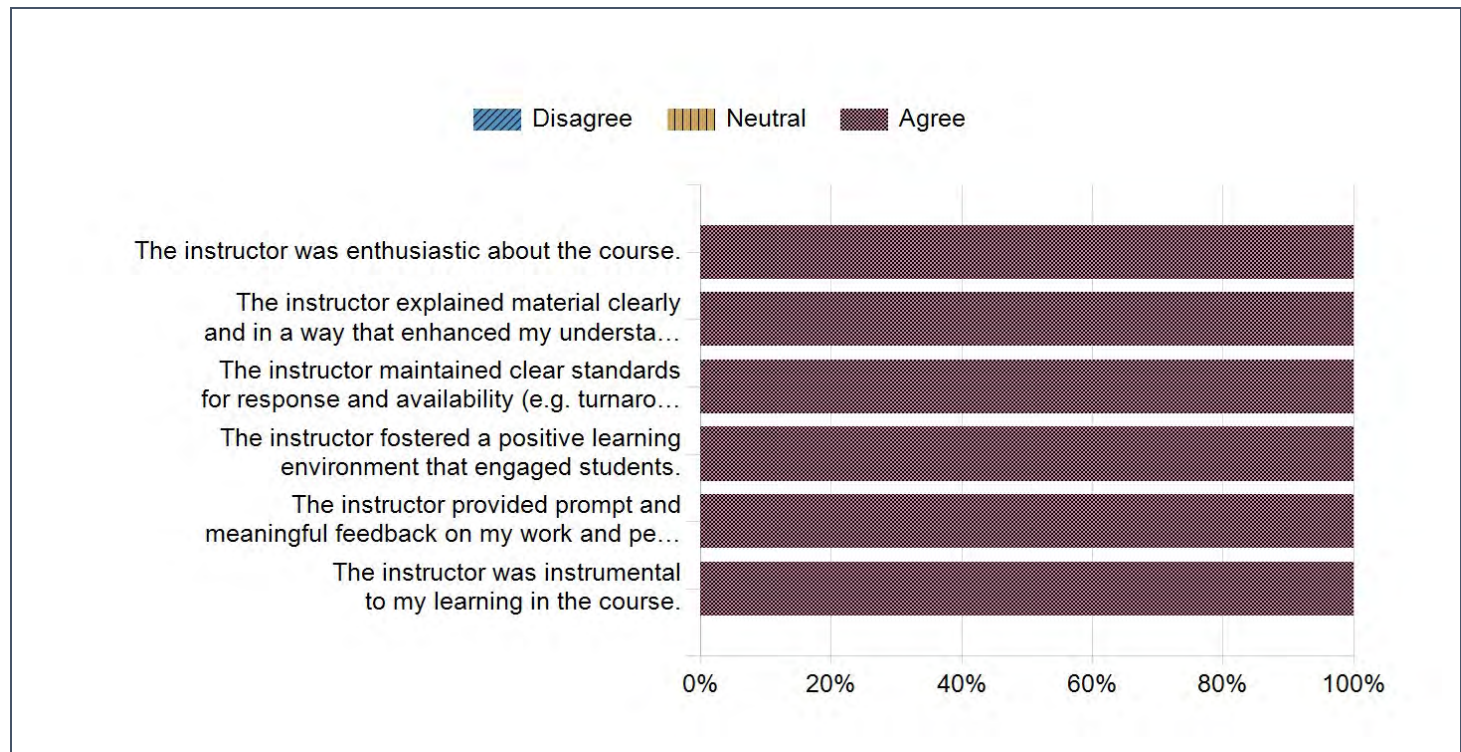
University Core Course Evaluation Questions - Comparative Scores

Question	Your Score		DPT Mean (Grad-LAW(LW)-Deans Office)		College Average (College-Law)		University Average	
	Mean	Median	Mean	Median	Mean	Median	Mean	Median
Course content (e.g., readings, activities, assignments) was relevant & useful.	4.33	5.00	4.33	5.00	4.34	5.00	4.28	4.00
The course fostered regular interaction between student and instructor.	4.67	5.00	4.28	5.00	4.28	5.00	3.97	4.00
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	4.11	5.00	4.22	4.00	4.24	4.00	4.20	4.00
Overall, this course was a valuable educational experience.	4.56	5.00	4.31	5.00	4.32	5.00	4.25	4.00
Overall	4.42	-	4.28	-	4.30	-	4.18	-

Aggregate Evaluation Results

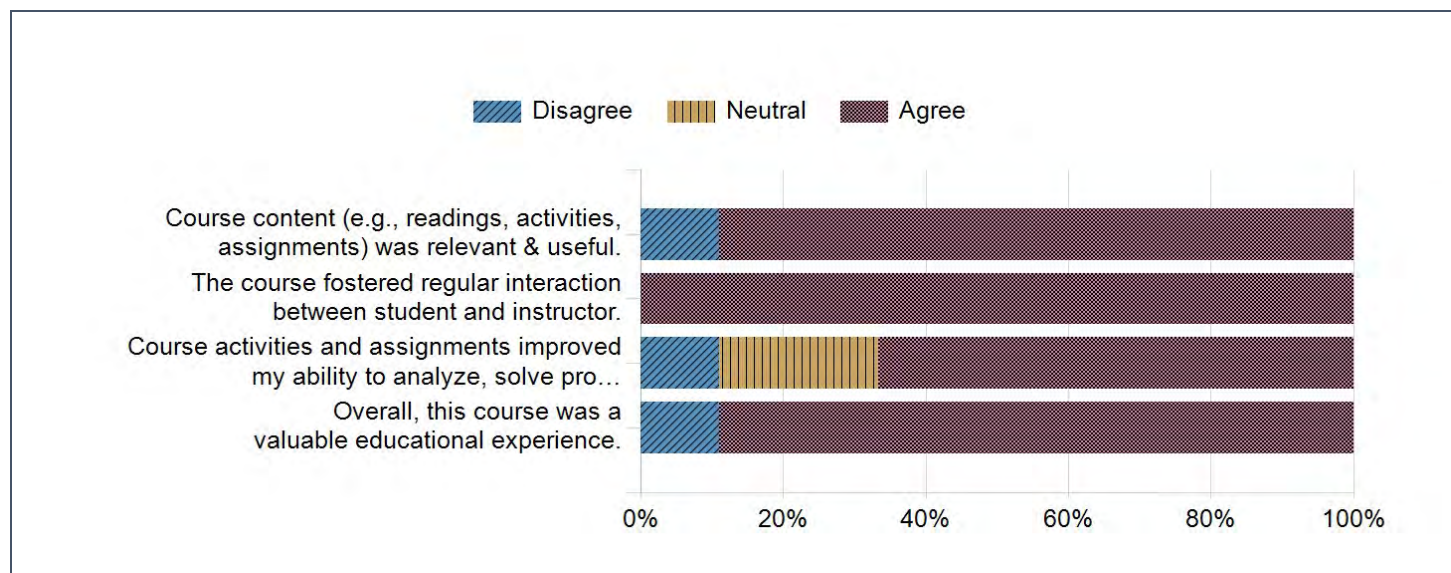
University Core Instructor Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



University Core Course Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



Percentages Evaluation Results

University Core Instructor Evaluation Questions

	Strongly Disagree 1	Disagree 2	Neutral 3	Agree 4	Strongly Agree 5	Count	Mean	Median	SD
The instructor was enthusiastic about the course.	0.0%	0.0%	0.0%	22.2%	77.8%	9	4.78	5.00	0.44
The instructor explained material clearly and in a way that enhanced my understanding.	0.0%	0.0%	0.0%	33.3%	66.7%	9	4.67	5.00	0.50
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	0.0%	0.0%	0.0%	22.2%	77.8%	9	4.78	5.00	0.44
The instructor fostered a positive learning environment that engaged students.	0.0%	0.0%	0.0%	11.1%	88.9%	9	4.89	5.00	0.33
The instructor provided prompt and meaningful feedback on my work and performance in the course.	0.0%	0.0%	0.0%	11.1%	88.9%	9	4.89	5.00	0.33
The instructor was instrumental to my learning in the course.	0.0%	0.0%	0.0%	11.1%	88.9%	9	4.89	5.00	0.33

University Core Course Evaluation Questions

	Strongly Disagree 1	Disagree 2	Neutral 3	Agree 4	Strongly Agree 5	Count	Mean	Interpolated Median	SD
Course content (e.g., readings, activities, assignments) was relevant & useful.	0.0%	11.1%	0.0%	33.3%	55.6%	9	4.33	4.60	1.00
The course fostered regular interaction between student and instructor.	0.0%	0.0%	0.0%	33.3%	66.7%	9	4.67	4.75	0.50
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	11.1%	0.0%	22.2%	0.0%	66.7%	9	4.11	4.75	1.45
Overall, this course was a valuable educational experience.	0.0%	11.1%	0.0%	11.1%	77.8%	9	4.56	4.86	1.01

For additional information and resources in each of these question areas, please visit the GatorEvals Website at <https://gatorevals.aa.ufl.edu/gatorevals-pilot/question-set/>

Comments

Please identify the instructor's strengths that contributed to your learning in the course.

Comments
Kris is extremely professional, cordial, and considerate. He recognizes that, as students new to learning trial skills, it's helpful to criticize our work after giving positive comments, as a way of encouraging students to try again to improve the area that was criticized. I felt a little put off by this at first (because I am not used to receiving meaningful feedback in law school) but found it increasingly refreshing as I moved through the semester and it helped motivate me to continue keeping up with this and other classes.
Kris was very willing to answer questions and follow up questions during our evening class, if students had them, and stayed with the class beyond 8:40 pm multiple times (which is especially impressive to do so consistently after working all day at the PDO, while remaining respectful and constructive). Kris is frank with you when your work needs improvement, but gentle enough that I did not feel insulted when receiving negative feedback. He has found an excellent balance and working with Kris was one of the best parts of the course.
Active attorney with wonderful insight
I liked the concrete examples he gave for how to intro evidence, making sure everyone knew it was just a mechanical routine you memorize. In general, taking the approach of explaining the times when trials are a science and when they're an art worked well for me.
Very knowledgeable and willing to answer questions/give feedback. Awesome!
Incredibly helpful and provided great feedback! Took a ton of time making sure his students felt prepared.
He was super helpful and really cared about helping us understand what we were supposed to do and why.
Kris is very knowledgeable and did a great job teaching us how to do the things required of us in a trial. He did a particularly great job teaching us the foundations for introducing evidence.
Honestly really insightful in all the advice he gave. Knew how to spot where we needed help and extremely responsive.

What additional constructive feedback can you offer the instructor that might help improve the course?

Comments
I struggled with understanding the first part of the course, specifically with the latter half of the Tuesday night workshops (prior to final trial materials being distributed) because it was not clear to me (both in "regular" class and in workshop class) what function the workshop sessions served toward building up to the final trials. It was particularly difficult and frustrating to try to learn how to do witness impeachment and make effective objections while doing small portions of what would happen in a real trial.
I don't think it was Kris' fault, but I definitely I did not realize what the workshops were intended to do for students until several weeks into the semester (when the workshops were almost over), and I feel I would have gotten more out of the workshops and the course overall if the relationship and timeline of the workshops + final trials were made clear on day 1 of class.
During the workshops portion of the course, Kris was excellent at giving prompt feedback before students presented in the workshop that week. During the preparation time for final trials, it was a little harder to know what the turnaround time would be for feedback (though Kris' feedback would still be within a reasonable amount of time) so I would just ask that more definite response times be communicated (even if feedback is not possible immediately, an email giving an anticipated response date/time period goes a long way to preparing for trial and planning one's time).
Personally, I'd have liked a class dedicated to objections. On the one hand, this is largely an issue for evidence class, but I think it would also help students get used to objecting to their classmates. It felt like there was a hesitance to object, especially during opening and closing, that won't be present in the real world.
none.
Sometimes the feedback he gave on assignments was not matched by the feedback he gave for trials. They conflicted.

What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?

Comments
Add in more in-class exercises on impeachment and objections, as these skills are very difficult to cover effectively in a workshop setting.
My TA explicitly told me that she could not and would not answer questions regarding the final trials, which struck me as very strange because I saw other course TAs attend and also comment on students' performance in the final trials. As this behavior obviously can disparately impact students depending on what style of TA they have, it's clear that TA guidelines and check-ins are necessary to ensure that students get the feedback and constructive assistance that they need to succeed.
I would seriously reconsider using the Temple case. I had intrusive thoughts of suicide both during and after my involvement in this case, and that should never be the forefront in anyone's mind. Additionally, aside from the scenario of the case itself, there are a number of errors in the Temple packet that ought to be addressed, especially the extremely confusing verdict form.
None really
For the trials, it would be nice to see feedback after each portion. Also, I did not like that the grading of the motions, objections, and professionalism were the cumulative grade for both my partner and me. I would also like more individualized feedback from the trials.
I don't have any.
I think my main suggestion is to ensure we have actual designated jurors. Both of my trials, I did not have any outside students acting as my jury; instead, it was just students from the workshops. They are too familiar with the facts and could not be impartial jurors as a result. As far as organization of the course, I think we should spend more time preparing for the trial during workshops and less on the foundational stuff. It felt like our first practice trial came up so quick from getting assigned to it that we had no significant time to prepare.

Please identify the topics and/or skills you learned in the course that you believe will have the highest application for future courses or professional growth.

Comments
Awareness of how much your case and your success in that case depends on which judge you have, which jury you have, and which opposing counsel you have.
I learned so much about Trial and procedure.
I feel much more prepared to be a litigator after taking this class. Professor Zedalis and Kris Eisenmenger were both so intelligent and great at teaching us what we need to do for direct/cross/motions. I would highly recommend this class to anyone with an interest in litigation.
I became much better at public speaking. I learned trial skills that I did not previously know.
Cross examinations

BARBARA J. EVANS

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LEGAL EDUCATION

J.D., Yale Law School, 1994
LL.M. Health Law, University of Houston, 2003
Admitted to practice: New York (since 1996), Texas (since 2000)

OTHER EDUCATION

Post-doctoral Fellow, Clinical Ethics, M.D. Anderson Cancer Center, 2003 – 2004
Ph.D., Earth Sciences, Stanford University, 1984
M.S., Applied Earth Sciences, Stanford University, 1982
B.S., Electrical Engineering, with Honors, University of Texas at Austin, 1979

CURRENT EMPLOYMENT

University of Florida, Gainesville, FL (2020 – present). Professor of Law and Stephen C. O’Connell Chair, Fredric G. Levin College of Law; Professor of Engineering and Glenn and Deborah Renwick Faculty Fellow in AI and Ethics, Herbert Wertheim College of Engineering. University of Florida (2023 – present).

Classes Taught. Law courses: Torts, Health Law Survey, Biotechnology & Medical AI Policy. Engineering course: EGN 6933/Bio1 (Medical AI)

Research interests. Legal and ethical issues with artificial intelligence/machine learning clinical decision support and diagnostic support software. Data privacy. Financing, governance, and access to data for large-scale medical data commons and the rights of people whose data are held in medical and genomic databases. Regulatory issues with gene-editing technologies and genomic and other diagnostic tests. Food & Drug Administration regulatory matters, especially for medical devices. Health care law.

Sponsored research projects. See pages 3-5

Professional and Federal Advisory Committee Service Activities. See pages 6-9

Publications. See pages 9-20

PRIOR EMPLOYMENT

2007 – 2020 **University of Houston**, Houston, TX
 University of Houston Law Center (2007-2020), Mary Ann and Lawrence E. Faust Professor of Law (2018-2020) and Director, Center for Biotechnology & Law (2007-2020), **University of Houston Cullen College of Engineering** (2017-2020), Professor of Electrical and Computer

Engineering (2017-2020). **Other affiliations within the Texas Medical Center.** Center for Medical Ethics and Health Policy, Baylor College of Medicine, Health Policy Scholar (2016-2020), Affiliated Member (2013-present). **Previous positions at University of Houston.** Alumnae College Professor of Law (2016-2018); George Butler Research Professor (2014-2016); Professor of Law (9/2011-present); Associate Professor (1/2007-8/2011); Co-director, Health Law & Policy Institute (2007-2013).

Courses taught. U.S. Biotechnology Regulatory Framework; Regulating Disruptive Innovation; Medical Devices Law, Regulation, and Ethics (for Electrical and Computer Engineers); Hot Topics in FDA Law; Biotechnology and the Law; Health Industry Basics: Providers-Innovators-Regulators; Law and Genetics; Healthcare Access, Regulation, and Enterprise; Healthcare Finance, Organization, and Quality; and Torts.

- 2004 – 2007 **Indiana University**, Indianapolis, IN
Director, Program in Pharmacogenomics, Ethics, and Public Policy, Indiana University School of Medicine/Center for Bioethics (9/2004-5/2007, 50% commitment); **Senior Scientist** (9/2004-8/2006), then **Research Professor of Medicine** (9/2006-5/2007), **Indiana University Department of Medicine/Division of Clinical Pharmacology; Adjunct Professor of Law** (9/2004-8/2006), **Visiting Professor of Law** (8/2006-12/2006, 50% commitment to law school) **Indiana University School of Law (Indianapolis).** **Courses taught.** Administrative Law; Law and Genetics
- 2004 – 2006 **Counsel, Medical Technology Practice Group, Baker & Daniels, L.L.P.**, Indianapolis (part-time commitment, 2004-2006, when our practice group moved to Epstein, Becker & Green); **Counsel, Health and Life Sciences Practice, Epstein, Becker & Green, P.C.**, Washington, D.C (part-time commitment, 1/2006-9/2006)
- 2003 – 2004 **The University of Texas M.D. Anderson Cancer Center**, Houston, TX
Post-doctoral Fellow in Clinical Ethics (9/2003-6/2004)
- 1996 – 2002 **LeBoeuf, Lamb, Greene & MacRae, L.L.P.**, New York and Moscow
Associate (5/1996-5/1998); **Partner** (6/1998-7/2001); **Of Counsel** (8/2001-2/2002). Advised U.S., U.K., and Russian corporations on regulatory and transactional matters, including major infrastructure asset acquisitions and regulatory compliance. Advised governments on major legal reform projects in energy and infrastructure sectors as a prelude to privatization. Supervised the legal team for the World Bank-funded Russian Federation Electricity Sector Reform Support Project (Project 643/02/98 PDL–101) and, as subcontractor to Andersen Consulting, acted as regulatory advisor to the Kres Commission which President Putin appointed in 2000 to implement reforms in Russia’s electric power sector.

- 1994 – 1996 **International Bank for Reconstruction and Development (The World Bank)**, Washington, D.C., **Senior Energy Economist, Region IV Europe and Central Asia, Infrastructure Division** (9/1994 – 3/1996). Served as project manager or economist on World Bank lending projects to modernize energy infrastructure, address environmental problems, or provide sectoral and macroeconomic support in Region IV nations of the former Soviet Union.
- 1992 – 1994 **Part-time and Temporary Employment While in Yale Law School Economist**, John F. Kennedy School of Government, Harvard University, Project for Economic Reform in Ukraine, Kiev, Ukraine (full-time, 6/1992-8/1992). **Regulatory Consultant** under Contract No. MG498, International Bank for Reconstruction and Development (The World Bank), Washington, D.C.; Kiev, Ukraine; Vilnius, Lithuania; and Kishinov, Moldova, (part-time, 10/1992-8/1994). **Regulatory Consultant** under Contract No. C4220, The European Bank for Reconstruction and Development, London and Kiev, Ukraine (one short project in 1993-1994). **Summer Associate and Consulting Economist**, LeBoeuf, Lamb, Greene & MacRae, L.L.P., New York and Moscow (full-time, 6/1993-8/1993; part-time, 9/1993-1/1994).

Before law school - various positions as an engineer and economist in the energy industry.

GRANTS AND SPONSORED RESEARCH PROJECTS (AWARDED OR COMPLETED)

Module Lead, Ethical and Trustworthy AI (ETAI) legal studies, National Institutes of Health Common Fund's Bridge2AI **Patient-Focused Collaborative Hospital Repository Uniting Standards (CHoRUS) for Equitable AI**. NIH OT2OD0327-01 (9/1/2022-8/31/2026) (Eric S. Rosenthal, PI)

Member, Ethics Advisory Panel, **Engineering Research Center for Advanced Technologies for the Preservation of Biological Systems (ATP-Bio)**. NSF EEC-1941543 (2020-2025) (John Bischof, PI)

Member, Ethics Working Group, **Highly Portable and Cloud-Enabled Neuroimaging Research: Confronting Ethics Challenges in Field Research with New Populations**. NIH1RF1MH123698 (8/7/2020-8/6/2024) (Frances Lawrenz, Francis Shen, and Susan M. Wolf, PIs).

Member, Bioethics Advisory Panel, **Collaborative Research: Booting up a Mirror Cell**. NSF EF 1935372 (9/1/2019-8/31/2023) (Neal Devaraj, PI)

Data Privacy Consultant, **The Genetic Architecture of Human Facial Morphology** (Bioethics Supplement) NIDCR/NIH OD 3R01DE027023-04S1 (7/1/2020 – 7/30/2021) (Weinberg, Claes, and Wagner (PIs))

Member and regulatory/ethics consultant (through 8/2020), **Industry-University Collaborative Research Center for Building Reliable Advances and Innovations in Neurotechnology (BRAIN)**. National Science Foundation CNS-1650536 (3/2017-5/2020) (Jose Contreras-Vidal & Marco Santelli, PIs)

Member, Working Group, **Choice of Law in Precision Medicine Research**, NIH/NHGRI (Leslie Wolf and Laura Beskow, PIs) (2020-2021)

Legal Working Group Member, **Development of Recommendations and Policies for Genetic Variant Reclassification**. NIH/NHGRI R01HG010365 (Wendy Chung, M.D., Ph.D., and Paul Appelbaum M.D., P.I.s) (12/1/2018-11/30/2022)

Privacy Working Group Member and Co-lead, Data Quality Working Group, **LawSeqSM: Building a Sound Legal Foundation for Translating Genomics into Clinical Application**. NHGRI/NCI 1R01HG008605 (Susan M. Wolf, Ellen W. Clayton, Frances Lawrenz, PIs) (06/06/2016-5/31/2019)

Sentinel System (FDA-14-RFP-1127332). Member of Privacy Panel for Harvard Pilgrim-led consortium to operate the U.S. Food & Drug Administration's Sentinel System, a very large-scale distributed pharmacoepidemiological data network. Subcontract between University of Houston (Barbara J. Evans, P.I.) and Harvard Pilgrim Health Care Institute (Richard Platt, M.D., P.I.) (2014-2019)

Member, Working Group, **Addressing ELSI Issues in Unregulated Health Research Using Mobile Devices**. National Cancer Institute/National Human Genome Research Institute/Office of Science Policy and Office of Behavioral and Social Sciences Research, Office of the Director, National Institutes of Health Project 1R01CA207538 (Mark Rothstein and John Wilbanks, PIs).

Advisory Committee Member, **Building the Medical Information Commons: Participant Engagement and Policy**. NIH/NHGRI R01-HG008918 (Amy McGuire & Robert Cook-Deegan, PIs) (9/14/2015-6/30/2018)

Governance Development for FDA-Harvard Catalyst Activities. Subcontract between University of Houston (Barbara J. Evans, P.I.) and Harvard Pilgrim/Harvard Catalyst for studies under agreement between Sentinel Coordinating Center and U.S. Food and Drug Administration (HHS223201400030I), for legal research on privacy and human-subject protection issues in public health uses of FDA's Sentinel System (2017-2018)

Clinical Sequencing in Cancer: Clinical, Ethical, and Technological Studies. NIH U01HG006507 (GPJ). Study of CLIA and HIPAA regulatory issues and First Amendment questions surrounding clinical investigators' disclosure of experimental genetic test results to persons participating in research. Subcontract between University of Houston (Barbara J. Evans, P.I.) and the University of Washington (Gail P. Jarvik, P.I.) (2011-2017)

Regulation of Gene-editing Technologies. National Academy of Sciences NAS Agreement 2000006701 (Barbara J. Evans, PI) (2016). Commissioned paper on national regulatory frameworks for human gene editing

Clinical Sequencing Exploratory Research (CSER) Centralized Support Coordinating Center - HIPAA-CLIA Supplement. NIH 3U01HG007307-02S2. Study of impacts genomic testing laboratories will experience after 2014 changes to the individual data access requirements

of the HIPAA Privacy Rule. Subcontract between University of Houston (Barbara J. Evans, P.I.) and the University of Washington (Gail P. Jarvik, P.I.) (8/1/2014-3/31/2015)

Consultant, **Clinical Integration of Whole Genome Sequencing: A Policy Analysis**, NIH/NHGRI R01-HG006460-03 (Amy McGuire, P.I.) (2015)

Collaborator, **Thematic Study of Research with Biospecimens**, funded by the National Human Genome Research Institute with co-sponsorship of Case Western Research University and the Petrie-Flom Center at Harvard Law School (I. Glenn Cohen, Barbara Bierer, Suzanne Rivera, Holly Fernandez Lynch, co-PIs) (2015)

Commissioned Paper, **Ownership of Data from Mobile and Wearable Health Devices**, for Robert Wood Johnson Foundation Health Data Exploration Project (Kevin Patrick, M.D., M.S. P.I.) (5/2015-5/2016)

Member of Multidisciplinary Panel, **Reframing Consent for Research**, funded by The Greenwall Foundation (Scott Kim, M.D., Ph.D., David Wendler and Neal Dickert, M.D., Ph.D. co-PIs) (2015)

Greenwall Foundation Faculty Scholar in Bioethics. Funding for study entitled *Governance Models to Enhance the Legitimacy and Public Acceptability of Decisions to Allow Nonconsensual Use of Data Held in Large Health Data Networks* (Barbara J. Evans, P.I.) (7/1/2010-6/30/2013)

Mini-Sentinel II. Collaborative study by Harvard Pilgrim Healthcare Institute and the U.S. Food & Drug Administration/Duke Clinical Trials Transformation Initiative to examine randomization techniques in a very large-scale health data network. Subcontract between University of Houston (Barbara J. Evans, P.I.) and Harvard Pilgrim Health Care Institute (Richard Platt, M.D., P.I.) (2013-2014)

Mini-Sentinel Privacy Panel Project. Subcontract between University of Houston (Barbara J. Evans, P.I.) and Harvard Pilgrim Health Care Institute as prime contractor under Department of Health & Human Services Contract No HHSF2232009100061 (Richard Platt, MD, P.I.) (7/1/2010-9/30/2010)

Member of Expert Panel, **Protecting Privacy in Health Research**. NIH Proposal RC1 CA146501-01 (Fred H. Cate, P.I.) (2009-2012)

PROFESSIONAL ACTIVITIES AND AWARDS

Co-chair, Ethical and Trustworthy AI Working Group, NIH Bridge2AI Program (April 2023-April 2024)

Member, Planning and Drafting Committee, Symposium for Responsible AI for Social and Ethical Healthcare (RAISE): An International Meeting (to be held October 2023)

Planning Committee, University of Florida College of Medicine AI4Health Conference (to be held April 2024, Orlando, Florida)

Participant, American Privacy Law Project (to be held September 21, 2023, The University of Arizona DC Center, Washington, DC)

Affiliate Member, American College of Medical Genetics and Genomics (2021-present)

American Law Institute (elected to membership January 2016)

Member, State Bar of Texas (2000 – present) (licensed and in good standing)

Member, State Bar of New York (1996 – present) (licensed and in good standing)
Affiliate, State Bar of Florida (2020 – present) (unlicensed affiliate status in Florida)

Senior Member and Life Member, Institute of Electrical and Electronics Engineers (2006-present); Corresponding Member, IEEE Medical Technology Policy Committee (2006-2008); IEEE member (since engineering school)

Tau Beta Pi engineering honor society (life member)

Order of the Barons Professor of the Year Award (2016-2017)

Professional and Federal Advisory Committee Service Activities

Member, American College of Medical Genetics and Genomics, Working Group on The 21st Century Cures Act Information Blocking Provisions (2023 – 2024)

Advisory Board Member, NIH/NHGRI-funded Center for ELSI Resources and Analysis (CERA) (“ELSI hub”) (co-led by the Stanford Center for Biomedical Ethics and the Division of Ethics at Columbia University in partnership with The Hastings Center and the Personal Genetics Education Project at Harvard University) (May 2022 – April 2024)

Member, National Academies of Sciences, Engineering, and Medicine Standing Committee on Aerospace Medicine and the Medicine of Extreme Environments (12/2018-12/2022, reappointed 12/2022 – 12/2024)

Member, American College of Medical Genetics and Genomics Working Group on the HIPAA Designated Record Set (2021-2023)

Participant, multidisciplinary Expert Advisory Panel convened by the U.S. Government Accountability Office (GAO) and the National Academies of Science, Engineering, and Medicine to advise on report entitled, “Artificial Intelligence in Health Care: Benefits and Challenges of Machine Learning Technologies for Medical Diagnostics” (September 2022) *available at:* <https://www.gao.gov/products/gao-22-104629>

Peer reviewer, Journal of Law & the Biosciences (2022/2023), Stanford Law Review (3/2023), Columbia Law Review Forum (2/2023)

Participant and Lead for multidisciplinary Expert Advisory Panel convened by the U.S. Government Accountability Office (GAO) and the National Academies of Science, Engineering, and Medicine to advise on report entitled, “Artificial Intelligence in Health Care: Benefits and Challenges of Technologies to Augment Patient Care” (November 2020) *available at:* <https://www.gao.gov/products/GAO-21-7SP>

Participant and Lead for multidisciplinary Expert Advisory Panel convened by the U.S. Government Accountability Office (GAO) and the National Academies of Science, Engineering, and Medicine to advise on report entitled, “Artificial Intelligence in Health Care: Benefits and Challenges of Machine Learning in Drug Development” (January 2020) *available at:* <https://www.gao.gov/products/GAO-20-215SP>

Appointee, National Committee on Vital and Health Statistics (2015-2017) and Co-chair, Privacy Subcommittee and De-Identification Working Group (2016-2017); participant in “Beyond HIPAA” expert working group (2019)

Member, Privacy Panel, U.S. Food & Drug Administration Mini-Sentinel and Sentinel System Projects (2010-2019)

Member, National Heart, Lung, and Blood Advisory Council (NHLBAC) Working Group on Emerging Issues in Data Sharing (EIDS) (10/2018)

Member, U.S. National Academies of Science, Engineering, and Medicine Committee on Future Biotechnology Products and Opportunities to Enhance Capabilities of the Biotechnology Regulatory System (2016-2017)

Member, Planning Board for the U.S. Food & Drug Administration’s Center for Devices and Radiological Health’s National Evaluation System for Health Technology (NEST) (2016-2017)

Plenary session moderator; co-lead, breakout session, Return of Results Workshop, Jackson Heart Study Coordinating Center, University of Mississippi Medical Center (Aldolfo Correa, MD, MPH, PhD, PI) (April 4, 2017)

Member, GP-Write Consortium (2016-2017), a multidisciplinary group of about 200 scientists and scholars in 14 nations for preparation of white paper on genome synthesis for testing in cell lines; co-lead, with bioethicist Jonathan Moreno, of the Ethics and Legal Studies Group for /GP-Write (2017); Participant and Panelist, Human Genome Project, Part II (HGP/Write) Kick-Off Meeting, Harvard Medical School (May 10, 2016)

Peer Reviewer, National Academies of Science, Engineering, and Medicine, Making the Living World Engineerable: Science, Practice, and Policy Proceedings of a Workshop (2016)

Member, Institute of Medicine Committee on Accessible and Affordable Hearing Health Care for Adults (2015-2016)

Participant, White House/Stanford Medicine X Design Workshop on Engaging Participants as Partners in Research (June 2, 2016); White House Precision Medicine Initiative Summit (February 25, 2016) and White House Champions of Change in Precision Medicine meeting (July 8, 2015)

Member, U.S. Food and Drug Administration's Sentinel System Patient Engagement Working Group (2015-2016)

Guest Scholar, U.S. Food & Drug Administration, Center for Devices and Radiological Health (August 2016)

Member, Food and Drug Law Institute, Academic Programs Committee (2013-2016)

Participant, International Summit on Human Gene Editing, sponsored by the U.S. National Academy of Science, U.S. National Academy of Medicine, The Chinese Academy of Sciences, and The Royal Society (December 1-3, 2015)

Visiting Scholar, Center for Law, Ethics, and Applied Research (CLEAR) in Health Information, Indiana University (August 2015)

Distinguished Health Scholar, Seton Hall Law School (March 2015)

Faculty mentor, American Society of Law, Medicine, and Ethics (ASLME) Health Law Scholars Program (2015)

Member, Institute of Medicine Committee on Ethics Principles and Guidelines for Health Standards for Long Duration and Exploration Spaceflights (2013-2014)

Member, Texas Medical Center Clinical Research Design Team (2014)

Member, Steering Committee, UH Faculty Senate 15th Annual Scholarship and Community Conference, *Greater Houston's Health: Urban Healthcare in the 21st Century* (2013)

Program Co-chair, Greenwall Foundation Annual Meeting (May 1-2, 2013)

Adjunct Professor of Clinical Pharmacology, Indiana University School of Medicine (2007 – 2015) and Affiliated Investigator, IU Center for Bioethics (2009-2015)

Member, External Advisory Committee, Duke University Clinical and Translational Sciences Institute under NIH Clinical and Translational Sciences Award (Robert Califf, M.D., P.I.) (2008-2012)

Peer reviewer for U.S. Agency for Healthcare Quality and Research publication entitled REGISTRIES FOR EVALUATING PATIENT OUTCOMES: A USER'S GUIDE (2013); peer reviewer,

GENETICS IN MEDICINE (2013, 2016), NEW ENGLAND JOURNAL OF MEDICINE (2013), CHEST (2013); JOURNAL OF GENERAL INTERNAL MEDICINE (2013), PHARMACOEPIDEMIOLOGY & DRUG SAFETY (2011); peer reviewer for genetics-related grant proposals submitted to The Wellcome Trust Biomedical Ethics Research Fellowship Program, United Kingdom (2011-2012)

Member, Program Committee, *Third International Health Privacy Summit* (Georgetown Law Center, June 2013) and *First International Health Privacy Summit* (Georgetown Law Center, June 2011)

Peer reviewer for Institute of Medicine consensus report entitled ETHICAL AND SCIENTIFIC ISSUES IN STUDYING THE SAFETY OF APPROVED DRUGS (Ruth R. Faden & Steven N. Goodman, Co-chairs) (2012)

Member, Institute of Medicine Committee on the Public Health Effectiveness of the FDA 510(k) Clearance Process (2010-2011)

Member, Program Committee for March 8, 2010 *FDA Sentinel Initiative Meeting Series: Legal Issues in Active Medical Product Surveillance*, convened by the Engelberg Center for Health Care Reform at the Brookings Institution under sponsorship of FDA

Member, Oversight Task Force of U.S. Department of Health & Human Services Secretary's Advisory Committee on Genetics, Health, & Society (2007-2008)
Health Law Scholar, ASLME/Saint Louis University Health Law Scholars Workshop (2007)

Member, American Bar Association Special Committee on Bioethics and the Law (2006-2011); Liaison of ABA Administrative Law Section to the Special Committee on Bioethics (2005-2006)

Member, Legal Working Group, Health Information Security and Privacy Collaboration (HISPC) for Indiana (2006)

PUBLICATIONS

Written work is sorted into four categories: (1) legal writing, (2) peer-reviewed scientific and medical journal articles, (3) other writing such as advisory committee reports and comments filed in regulatory proceedings, and (4) theses and doctoral dissertation.

Legal Writing (law articles, book chapters, edited volumes, and white papers)

Barbara J. Evans, *FDA Regulation of Physicians' Professional Speech*, JOURNAL OF FREE SPEECH LAW (2023 forthcoming) available at:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4501746

Barbara J. Evans, *The HIPAA Privacy Rule at Age 25: Privacy for Equitable AI*, 50 FSU LAW REVIEW (forthcoming Summer 2023) available at:
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4316211

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Member, GP-Write Consortium and co-lead, Ethical, Legal, and Social Issues working group for preparation of White Paper entitled, GENOME PROJECT-WRITE: A GRAND CHALLENGE USING SYNTHESIS, GENE EDITING AND OTHER TECHNOLOGIES TO UNDERSTAND, ENGINEER AND TEST LIVING SYSTEMS (November 30, 2016) at <http://engineeringbiologycenter.org/wp-content/uploads/2016/12/GP-Write-WhitePaper.pdf>

Member of National Medical Device Evaluation System Planning Board and co-author, THE NATIONAL EVALUATION SYSTEM FOR HEALTH TECHNOLOGY (NEST): PRIORITIES FOR EFFECTIVE EARLY IMPLEMENTATION (Duke University, Duke - Robert J. Margolis Center for Health Policy, 2016)

Member of National Medical Device Evaluation System Planning Board and co-author, BETTER EVIDENCE ON MEDICAL DEVICES: A COORDINATING CENTER FOR A 21ST CENTURY NATIONAL

MEDICAL DEVICE EVALUATION SYSTEM (Duke University, Duke – Robert J. Margolis Center for Health Policy, 2016)

Member of Committee for preparation of report: INSTITUTE OF MEDICINE, COMMITTEE ON ACCESSIBLE AND AFFORDABLE HEARING HEALTH CARE FOR ADULTS, HEARING HEALTH CARE: PRIORITIES FOR IMPROVING ACCESS AND AFFORDABILITY (National Academies Press, 2016), available at <https://www.nap.edu/catalog/23446/hearing-health-care-for-adults-priorities-for-improving-access-and>

Co-author, Comments dated January 6, 2016 by Individual Members of the National Academy of Medicine Leadership Consortium for Value and Science-Driven Health Care's Clinical Effectiveness Research Innovation Collaborative (CERIC) on U.S. Department of Health and Human Services (HHS) Proposed Rule: Federal Policy for the Protection of Human Subjects (Docket HHS-OPHS-2015-0008), available at <http://www.regulations.gov/comment/HHS-OPHS-2015-0008-1427>

Comments dated January 5, 2016 by Barbara J. Evans on U.S. Department of Health and Human Services (HHS) Proposed Rule: Federal Policy for the Protection of Human Subjects (Docket HHS-OPHS-2015-0008), available at <https://www.regulations.gov/comment/HHS-OPHS-2015-0008-1424>

Platt, R., C. Dezii, B. Evans, J. Finkelstein, D. Goldmann, S. Huang, G. Meyer, H. Pierce, V. Roger, L. Savitz, and H. Selker. 2015. *Revisiting the Common Rule and continuous improvement in health care: A learning health system perspective*. National Academy of Medicine, Washington, DC, at <http://nam.edu/perspectives-2015-revisiting-the-common-rule-and-continuous-improvement-in-health-care-a-learning-health-system-perspective/>

Barbara J. Evans & Gail P. Jarvik, joined by 17 genomics researchers, Public Comments filed in Dockets FDA-2011-D-0360: Framework for Regulatory Oversight of Laboratory Developed Tests; Draft Guidance, 79 Fed. Reg. 59,776 (October 3, 2014) and FDA-2011-D-0357: FDA Notification and Medical Device Reporting for Laboratory Developed Tests; Draft Guidance, 79 Fed. Reg. 59,779 (October 3, 2014), filed February 2, 2015, available at <http://www.regulations.gov/comment/FDA-2011-D-0360-0171>

Member of Committee for preparation of report: INSTITUTE OF MEDICINE, COMMITTEE ON ETHICS PRINCIPLES AND GUIDELINES FOR HEALTH STANDARDS FOR LONG DURATION AND EXPLORATION SPACEFLIGHTS: HEALTH STANDARDS FOR LONG DURATION AND EXPLORATION SPACEFLIGHTS: ETHICS PRINCIPLES, RESPONSIBILITIES, AND DECISION FRAMEWORK (2014) at http://www.nap.edu/catalog.php?record_id=18576

Co-author and Workgroup Leader for report: DEVELOPING APPROACHES TO CONDUCTING RANDOMIZED TRIALS USING THE MINI-SENTINEL DISTRIBUTED DATABASE (Mini-Sentinel Operations Center and Clinical Trials Transformation Initiative, 2014)

Member of Committee for preparation of report: INSTITUTE OF MEDICINE, COMMITTEE ON THE PUBLIC HEALTH EFFECTIVENESS OF THE FDA 510(K) CLEARANCE PROCESS, MEDICAL DEVICES

AND THE PUBLIC'S HEALTH: THE FDA 510(K) CLEARANCE PROCESS AT 35 YEARS (2011), available from the National Academies Press, http://www.nap.edu/catalog.php?record_id=13150

Barbara J. Evans, Human Subjects Research Protection: Enhancing Protections for Research Subjects and Reducing Burden, Delay, and Ambiguity for Investigators (Docket No. HHS OPHS-2011-0005, October 25, 2011), <https://www.regulations.gov/comment/HHS-OPHS-2011-0005-0822> (commenting on proposed amendments to 45 C.F.R. pt. 46 and 21 C.F.R. pts. 50, 56)

Kristen Rosati, Barbara Evans & Deven McGraw, HIPAA and Common Rule Compliance in the Mini-Sentinel Pilot (Mini-Sentinel Operations Center, 2010 & 2013)

Barbara J. Evans, RIN 0991-AB57: Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act (Docket No. HHS-OCR-2010-0016, Sept. 10, 2010) <https://www.regulations.gov/comment/HHS-OCR-2010-0016-0086> (commenting on constitutional constraints affecting implementation of the cost-based fee for preparation and transmittal of data under section 13405(d) of the HITECH Act)

Member of Committee for preparation of report: INSTITUTE OF MEDICINE, COMMITTEE ON THE PUBLIC HEALTH EFFECTIVENESS OF THE FDA 510(K) CLEARANCE PROCESS, MEASURING BPOSTMARKET PERFORMANCE AND OTHER SELECT TOPICS (Theresa Wizemann, ed., 2010)

Member of Committee for preparation of workshop report: INSTITUTE OF MEDICINE, COMMITTEE ON THE PUBLIC HEALTH EFFECTIVENESS OF THE FDA 510(K) CLEARANCE PROCESS, BALANCING PATIENT SAFETY AND INNOVATION (Theresa Wizemann, ed., 2010)

Barbara J. Evans, Issue Brief: Appropriate Human-Subject Protections for Research Use of Sentinel System Data, in FDA SENTINEL INITIATIVE MEETING SERIES: LEGAL ISSUES IN ACTIVE MEDICAL PRODUCT SURVEILLANCE (Engelberg Center for Health Care Reform at the Brookings Institution, 2010)

Member of Oversight Task Force and contributing author, U.S. SYSTEM OF OVERSIGHT OF GENETIC TESTING: A RESPONSE TO THE CHARGE OF THE SECRETARY OF HEALTH AND HUMAN SERVICES, REPORT OF THE SECRETARY'S ADVISORY COMMITTEE ON GENETICS, HEALTH, AND SOCIETY (April 2008)

Evans, Barbara J., Investing in Russian Power, in Power in Eastern Europe, a Special Report of THE FINANCIALTIMES, Issue 59, 16-18 (11 June 2001)

Theses and Dissertation

Thesis for the Degree of LL.M. in Health Law, The University of Houston Law Center (2003) (revised and published under the title Inconsistent Regulatory Protection Under the U.S. Common Rule, cited above)

Mine Capacity Utilization During Recessionary Periods: Operating Strategy for the U.S. Copper Industry. Dissertation for the Degree of Doctor of Philosophy in Earth Sciences with specialization in Mineral Economics, Stanford University (1984)

Statistical Techniques for Subsurface Reservoir Management. Thesis for the Degree of Master of Science in Applied Earth Science with specialization in Applied Hydrogeology, Stanford University (1982)

Legal Writing Award

Second Prize, Sixth Annual Student Health Law Writing Competition (2004) sponsored by Epstein, Becker & Green P.C., for LL.M. student paper, *The Six Enigmas of Bioethical Jurisprudence: Why Bioethics Fails to Produce Constitutional Rights*

PRESENTATIONS

Social licensing of the use of health data in AI systems: What is the right way to decide which uses of health data in AI are permissible and on what terms?, NIH Bridge 2AI Ethics Core Working Group Meeting (August 15, 2023) (webinar)

Unwanted births and Unintended Consequences: How Reproductive Rights Cases Inadvertently Shaped the Future of the AI-enabled Physician-Patient Relationship, Petrie-Flom Annual Writer's Conference (Harvard Law School, June 23, 2023)

A First Amendment Critique of FDA's Guidance on Clinical Decision Support Software, 2023 Tsai Center Summit: Food & Drug Scholars Retreat (Vail, Colorado, June 1, 2023)

A First Amendment Critique of FDA's Guidance on Clinical Decision Support Software, University of Arizona Information as Medicine Workshop (videoconference, May 25, 2023)

Speaker, Privacy and Data Security in UF AI Research and Panelist (with My Thai, Duncan Purves, Jim Hoover, and David Grant), *Building Ethical AI at UF* (Reitz Union Chamber Room, University of Florida, April 28, 2023)

Participant, Software Liability Workshop (in person at Stanford University and remote via Zoom, April 25, 2023)

Speaker, Federal Policies on Safety and Privacy of Clinical Decision Support Tools and Panelist (with Eric S. Rosenthal, Yindalon Aphinyanaphongs, and Richard Frank), *Roundtable on AI Federal Policy and Reimbursement Considerations*, AI4Health: Improving Health Through Artificial Intelligence (Orlando, April 21, 2023)

Participant, ELSIhub/Center for ELSI Resources and Analysis Annual Programming Meeting (videoconference, April 6, 2023)

Sandy Sanbar Annual Lecture: Federal Policies on Safety and Privacy of Clinical Decision Support Tools, American College of Legal Medicine, 63rd Annual Conference: Advancing Legal Medicine in an Era of Change (Orlando, February 24, 2023)

Informational Research Policy, Information as Medicine Workshop, University of Arizona TechLaw (Washington, D.C., November 4, 2022)

Seeking a Remedy: Ethicolegal and Regulatory Aspects of Artificial Intelligence, Crossing the Bridge to Artificial Intelligence Together: A Roadmap to Equitable AI, Neurocritical Care Society Annual Meeting (San Antonio, October 20, 2022)

Panelist, Artificial Intelligence in Medical Diagnosis (public webinar co-hosted by the National Academy of Medicine and U.S. Government Accountability Office, October 6, 2022) at <https://nam.edu/event/artificial-intelligence-in-medical-diagnosis/>

Sustainable AI in Clinical Care: Data Ethics for AI-enabled Clinical Health Care, NIH/Hood College/Frederick National Laboratory Symposium: Artificial Intelligence in Cancer Research and Clinical Care: Turning Promise into Reality (September 22, 2022)

Four Faces of Privacy in Digital Home Health Care, Petrie-Flom 2022 Annual Conference Writers' Workshop, Harvard Law School (June 15, 2022)

Computational Privacy Protections (and what they teach us about the suboptimal ways we've all been thinking about data privacy for the past 50 years), N.I.H. Privacy Protections for Proteomic and Metabolomic Data (P3MD) Workshop (Denver, April 22, 2022)

Ethical and Legal Challenges with AI/ML Medical Tools, University of Florida Medical AI Forum (April 6, 2022)

Privacy for Equitable AI, Harvard Medical School Bioethics & AI Seminar (March 24, 2022, virtual meeting)

Evaluating Real-World Performance of AI/ML SaMD [Software as a Medical Device], Public Webinar on AI/Machine Learning Regulation, Development, and Real-World Performance Evaluation, Duke-Margolis Center for Health Policy (March 22, 2022, virtual meeting)

Regulatory Oversight of Medical Software Under the 21st Century Cures Act, Biomedical Engineering, Law & Policy Colloquium, Penn State University (March 21, 2022, virtual meeting)

Participant and presenter, AI/ML Data Ecosystem Where Models Meet Data, InnovationLab: A Data Ecosystems Approach to Ethical AI for Biomedical and Behavioral Research (NIH/KIstorm, March 14-18, 2022)

Diagnosing Alzheimer's with Alexa?, Harvard Medical School/Harvard Law School Petrie Flom Center Health Policy and Bioethics Consortium (February 11, 2022, virtual meeting)

Reflections on Cryopreservation for Solid Organ Transplants, ATP-Bio Ethics & Public Policy Component Working Group Meeting V (January 24, 2022, virtual meeting)

Special Challenges and Legal Opportunities for Governance of AI/ML Clinical Decision Support Software, Stanford University AI + Health Conference (December 8, 2021)

Gender Bias and Erasure of Transgender Patients in Medical AI Tools, M.I.T. Feminist Data Ethics Colloquium (November 22, 2021, virtual meeting)

FDA's Role + Privacy, Bias, and Access to HIPAA-regulated Data for AI/ML Software, UF Health Imaging Core/Federated Learning Meeting (October 28, 2021)

Regulation of Foundries Computer-Aided Design of Gene Constructs, GP-Write/Center for Excellence in Engineering Biology Annual Conference (October 22, 2021, virtual meeting)

CLIA Regulation and FDA's Regulation of Software in the Clinical Laboratory Bioinformatics Pipeline, University of Maryland Direct-to-Consumer Microbiome-Based Tests Multidisciplinary Working Group Meeting (June 17, 2021, virtual meeting)

Panelist, Ethics and Public Policy Component, NSF Engineering Research Center for Advanced Technologies for the Preservation of Biological Systems (ATP-Bio), Working Group Meeting III (June 16, 2021, virtual meeting)

Participant, University of Florida Townhall: Bridge to AI Data Generation Projects (June 11, 2021, virtual meeting)

Participant, National Academies of Science, Engineering, and Medicine and Government Accountability Office, Expert Meeting on Machine Learning Technologies in Medical Diagnostics, Day 3 (June 8, 2021, virtual meeting)

Participant, National Academies of Science, Engineering, and Medicine and Government Accountability Office, Expert Meeting on Machine Learning Technologies in Medical Diagnostics, Day 2 (June 3, 2021, virtual meeting)

Working Group Member and participant, Ethical, Legal, and Social Issues of Portable Imaging Working Group Meeting 3 (June 2, 2021, virtual meeting)

Participant, National Academies of Science, Engineering, and Medicine/Government Accountability Office, Expert Meeting on Machine Learning Technologies in Medical Diagnostics, Day 1 (June 2, 2021, virtual meeting)

Advisory Panel Member and participant, Mirror Cells Bioethics Advisory Panel Meeting, University of California, San Diego (May 25, 2021, virtual meeting)

Member, Legal Working Group, Variant Reinterpretation – Third Annual Expert Advisory Committee Meeting, Columbia University Irving Medical Center (May 24, 2021, virtual meeting)

Member, Working Group, The Ethics of Big Data for AI in Health Research and Healthcare, NYU Langone Health and NYU Grossman School of Medicine Division of Medical Ethics (May 20, 2021, virtual meeting)

Participant, Choice of Law in Precision Medicine Research Workshop, Day 3 Georgia State University (May 7, 2021, virtual meeting)

Working Group Member and participant, Designated Record Set Working Group, American College of Medical Genetics and Genomics (May 6, 2021, virtual meeting)

Participant, Choice of Law in Precision Medicine Research Workshop, Day 2 Georgia State University (April 30, 2021, virtual meeting)

Conditions for sharing of protected health information (PHI) by covered entities under the HIPAA Privacy Rule, Presentation to State Attorneys General Privacy Officers (April 29, 2021)

Participant, Choice of Law in Precision Medicine Research Workshop, Day 1 Georgia State University (April 23, 2021, virtual meeting)

Rules for Robots, and Why AI/ML Medical Software Breaks Them, The Johns Hopkins University Berman Institute of Bioethics 2020-21 Seminar Series (March 22, 2021)

Speaker, Seminar for Hecht-Levi Bioethics Post-Doctoral Fellows, The Johns Hopkins University Berman Institute of Bioethics (March 22, 2021)

Artificial Intelligence in Health Settings Outside the Hospital and Clinic, A Joint Web Conversation Hosted by the NAM Leadership Consortium: Collaboration for a Value & Science-Driven Health System and United States Government Accountability Office (January 21, 2021)

Regulation of Big Data in Health Care in the United States, NYU Langone Health, The Hastings Center, Hasso Plattner Institut & University of Cologne Virtual Meeting on Ethical Challenges Posed by Big Data and AI in Healthcare (December 14-15, 2020).

Issues in FDA Regulation of Genomic Analysis and Reporting in Research and Clinical Settings, Webinar on LawSeqSM: Facing the Legal Barriers to Genomic Research & Precision Medicine (University of Minnesota Consortium on Law and Values in Health, Environment & the Life Sciences, December 2, 2020)

Accessing Real-World Data to Evaluate Postmarket Performance of AI-enabled Clinical Decision and Diagnostic Support Software: Can the required data be accessed ethically? (Duke-Margolis Center for Health Policy Virtual Meeting (July 22, 2020)

Product Liability Risks and Defenses for FDA-Regulated AI/ML Software, Petrie-Flom Annual Conference Podcast (June 5, 2020)

Liability, Regulatory Compliance, and First Amendment Protections for Scientific Speech, American College of Medical Genetics and Genomics Annual Conference Webcast entitled “The Genetics Hotline: Responsibility and Liability When Handling Unsolicited Patient Communications” (May 20, 2020)

Panelist, The Ethical, Legal, and Social Implications of Return of Results in Deep Phenotyping Research (McLean Institute for Technology in Psychiatry, Harvard Medical School, May 8, 2020).

Participant, GAO Meeting on Artificial Intelligence and Health Care Services (Washington, D.C., April 1-2, 2020)

Panelist, Challenges of Regulating AI in Health Care, Symposium: The Law and Policy of Artificial Intelligence in Health Care (University of Minnesota, March 27, 2020)

Panelist, Conference/Webcast on Legal Barriers to Genomic Research and Precision Medicine (Boston, March 27, 2020)

Panelist, *The Genetics Hotline: Responsibility and Liability When Handling Unsolicited Patient Communications*, American College of Medical Genetics and Genomics Annual Meeting (San Antonio, March 18, 2020)

Participant, Annual Meeting of Legal Working Group on Variant Reinterpretation (Columbia Medical School, February 24, 2020)

Resolving legal, regulatory, and economic barriers to clinical translation of innovative biomedical technologies, Herbert Wertheim College of Engineering Colloquium (University of Florida, February 7, 2020)

Protecting the Rights of People Whose Data Are Used in Research: Is Anonymization of Genomic Information and Other Big Data a Fallacy?, American Health Lawyers Association, Academic Medical Centers and Teaching Hospitals Institute (Washington D.C., January 30, 2020)

Regulatory Programming for Neurotechnology Researchers, Winter Meeting, NSF-funded BRAIN Industry-University Collaborative Research Consortium (Tempe, Az., December 13, 2019)

Regulatory Structures for Access to Health Data: Privacy and the Ethics of Data Use, Ethical, Legal, and Regulatory Issues address to Computational Health Informatics students (University of Houston, November 5, 2019)

Participant, University of Houston NSF I/U CRC BRAIN Center Roadmap Meeting (Houston, September 30, 2019)

Participant and Lead, Expert Meeting on AI in Drug Discovery and Development convened by , U.S. Government Accountability Office and National Academies of Science, Engineering, and Medicine (Boston, July 18-19, 2019)

Panelist, Roundtable on Balancing Privacy with Health Data Access, U.S. Department of Health & Human Services (Washington, D.C., July 15, 2019)

Co-reporter, Regulatory & Legal Working Group, National Institutes of Health, *All of Us* Research Program Ethical, Legal, and Social Issues Workshop (Rockville, Md., June 24-25, 2019)

Adequacy of Existing Regulatory Structures for Health Data: The Law and Ethics of Unconsented Data Use, Multidisciplinary Workshop on the Future of Health Data, sponsored by Media Freedom & Information Access Clinic and Information Society Project, Yale Law School and the Collaboration for Research Integrity and Transparency of Yale School of Medicine and Yale School of Public Health (June 13, 2019)

Panelist and Speaker, Results of the NIH LawSeq Project. ASLME 2019 Health Law Professor's Conference (Chicago, June 6, 2019)

Participant, University of Houston – Baylor College of Medicine Workshop on Data Analytics: Applications to Health-Related Research (Houston, May 23, 2019)

Programming the Genome, Programming Ourselves. Petrie-Flom Annual Conference on Consuming Genomics, Harvard Law School (May 17, 2019)

Balancing Stakeholder and Developer Needs: Challenges in FDA Regulation of Machine Learning Medical Software. Duke University/Greenwall Foundation Conference on AI in Healthcare (Washington, D.C., May 13, 2019)

Moderator, Panel on Genomic Data Quality. University of Minnesota Consortium on Law and Values in Health, the Environment, and the Life Sciences, National Conference/Webcast on Law, Policy, and Genomic Medicine (Minneapolis, April 25, 2019)

Individual Access as a Foundational Data Privacy Right, University of Minnesota Consortium on Law and Values in Health, the Environment, and the Life Sciences, National Conference/Webcast on Law, Policy, and Genomic Medicine (Minneapolis, April 25, 2019)

Expert Panelist, "Beyond HIPAA" Actions Working Session, National Committee for Vital and Health Statistics, Subcommittee on Privacy, Confidentiality, and Security (Silver Spring, Md., March 21, 2019)

Democratizing Medicine in a Tech-Driven World, Jaharis 2019 Symposium on Health and Intellectual Property Law, DePaul Law School (Chicago, March 14, 2019)

Expert Advisory Committee Member, Legal and Regulatory Issues in Genetic Variant Interpretation, Columbia University School of Medicine (February 15, 2019)

Individual Data Access as a Civil Right, Law and Biomedicine Colloquium, The Center for Law and Biomedical Sciences, University of Utah S.J. Quinney College of Law (February 13, 2019)

Participant, National Academies of Sciences, Engineering, and Medicine Standing Committee on Aerospace Medicine and the Medicine of Extreme Environments Meeting (Washington, D.C., December 13-14, 2018)

Panelist, *The Need for New Regulation: Privacy Law, the FDA, and Beyond*, Information Society Project & the Solomon Center for Health Law and Policy at Yale Law School, The Law & Policy of Robotics & Telemedicine in Health Care, New Haven (November 2, 2018)

Panelist, *Data Privacy*, New York Academy of Sciences, Healthcare in the Era of Big Data: Opportunities and Challenges (October 24-25, 2018)

Panelist (with Dr. Erika Petersen), *Privacy Concerns in New Paradigms for Neuromodulation with Downloadable Data*, Congress of Neurological Surgeons' Annual Meeting, Houston (October 6, 2018).

Redoubling Our Efforts to Protect Research Participants' Privacy Rights, National Heart, Lung, and Blood, Institute Workshop: Defining the NHLBI's research priorities in the ethical, legal, and social implications (ELSI) of genomics (September 12-13, 2018)

Ethical and Financial Implications of Patient Data Ownership, National Academy of Medicine Digital Learning Collaborative, Patient Ownership of Health Data: Implications for a Learning Health System (June 27-28, 2018)

The Genomic Glass House: Data Sharing, Individual Data Access, and Civil Rights, Opening Plenary Address, Curating the Clinical Genome 2018 Conference, Wellcome Genome Campus Conference Center, Cambridge University (May 23, 2018)

Participant and Speaker, Health Data, AI, and Health Informatics Workshop, Frontiers e.g., Carmel (May 2, 2018)

FDA Regulation of Mobile Health Apps, Addressing ELSI Issues in Unregulated Health Research Using Mobile Devices Project, Working Group Meeting #2, Chicago (April 24, 2018)

Participant, *Land Trusts for Data Governance*, Sage Assembly 2018: Algorithms and the Role of the Individual, Seattle (April 20, 2018)

The Ethics of Unconsented Data Use and other Big Data Bioethics Oxymorons, National Academy of Science, Engineering, and Medicine Committee for Science, Technology, and Law, 2018 Meeting, California Institute of Technology (March 15, 2018)

The Challenge of Regulating Clinical Decision Support Software After 21st Century Cures, American Journal of Law & Medicine Symposium: The 21st Century Cures Act: A Cure for the 21st Century, Boston University (January 26, 2018)

Regulating Advanced Neurotech Brain/Computer Interfaces, National Science Foundation Industry/University Collaborative Research Center, Building Reliable Advances and Innovation

in Neurotechnolog (BRAIN) Project, Arizona State University (December 8, 2017)

Understanding Genomic Data Access as a Civil Right, Symposium: Refining Privacy to Improve Health Outcomes, Triangle Privacy Research Hub/Duke University/University of North Carolina, (October 25-26, 2017)

Research Data, Clinical Data, Your Data: Individual Data Access as a Civil Right, Symposium: All Data is Health Data, Indiana University McKinney School of Law (October 20, 2017)

Regulatory Alternatives for In Vivo Somatic Gene Editing Products Using CRISPR-Cas9 RNA-Protein Complexes, MedGen Seminar, University of Washington, Division of Medical Genetics (June 16, 2017)

Individual Data Access Rights, Patients as Partners in Research, Broad Institute of Harvard/MIT, the Biden Cancer Initiative, and the Emerson Collective (June 12-13, 2017)

Special Regulatory Session: Regulatory Alternatives for Human Gene Editing, American Society of Gene and Cell Therapies Annual Convention, Washington (May 11, 2017)

Opening plenary address on Ethical and Legal Frameworks for GP-Write and closing remarks on Working Group Roadmap: Ethical, Legal, and Social Issues, GP-Write Annual Meeting, NYU Langone Medical Center (May 9-10, 2017)

Current Regulatory Frameworks for Biotechnology Products, Congressional Research Service Disruptive Technology Series Session for Members of Congress and Congressional Staff: Advances in Gene Editing – Balancing Promise and Risk (April 28, 2017)

Regulatory Alternatives for Human Genome Surgery (presentation with Dr. Bruce Conklin), BioLawLaPalooza Conference, Stanford University (April 20, 2017)

Consumer-driven Data Commons and the Transformation of Citizen Science, Benjamin N. Cardozo School of Law Intellectual Property + Information Law Symposium (March 20, 2017)

Plenary Session 1 - HIPAA and CLIA Considerations in Return of Results to Participants, Jackson Heart Study Workshop on Return of Results from Genetic and Genomic Studies, University of Mississippi Medical Center (April 4, 2017)

Keynote address, Critical Studies of Citizen Science, Department of Global Health and Social Medicine, King's College London (March 2, 2017)

Reflections on Solidarity as a Principle in Bioethics, Book Launch Event for Biomedicine and Beyond (Barbara Prainsack & Alena Buyx), Wallace Meeting Space, Covent Garden, London (March 1, 2017)

Special Challenges of Data Sharing and Access Under the Revised Common Rule, Seton Hall University (February 24, 2017)

Special Challenges of Data Sharing and Access in the 21st Century, NIH/NHGRI e-MERGE and CSER meeting, Bethesda, Md. (February 3, 2017)

How Patients are Creating the Future of Medicine: From Citizen Science to Precision Medicine, Dienard Memorial Lecture, University of Minnesota (December 6, 2016)
Regulation of Gene Editing Technology, Symposium on Health Care and Policy, Loyola University Chicago (October 28, 2016)

Consumer-driven Data Commons, Maurer School of Law, Indiana University (October 24, 2016)

Concepts of Patient Engagement, Luncheon address for staff of FDA's Center for Devices and Radiological Health (August 17, 2016)

Update on HIPAA Individual Access Rights and Impacts of the Genetic Information Nondiscrimination Act, Interpreta, Inc. Advisory Board Meeting (August 11, 2016)

Patient/Consumer Protection in the National Evaluation System for health Technology (NEST), Seminar: Using Real World Evidence for Regulatory Decision-Making and Patient Protection in the 21st Century, FDA Center for Devices and Radiological Health (August 16, 2016)

Participant, Design Workshop on Engaging Participants as Partners in Research, co-hosted by the White House Office of Science and Technology Policy and Stanford Medicine X (June 2, 2016) (see <http://www.law.uh.edu/news/summer2016/0606Evans.asp> and the "Navigating Privacy in Biomedical Research and Open Science" resource initiated at that meeting blog.jasonbobe.net/privacy-resources/)

Oxford Union Debating Society, appearing in opposition to the motion, "This House Believes the Manipulation of Human DNA is an Ethical Necessity," Oxford University (May 26, 2016), at <https://www.youtube.com/watch?v=O4uyXpBAmXQ>.

Consumer-driven Data Commons, Health Data Exploration Project Annual Meeting, University of California at San Diego (May 18, 2016)

Panelist, Ethics and Policy Considerations, HGP/Write meeting Harvard Medical School (May 10, 2016), at <https://www.youtube.com/watch?v=9xgm4U6E-CU> (starting at 19 min., 30 sec.).

Big Data and Individual Autonomy in a Crowd, Petrie-Flom Annual Conference on Big Data, Health Law, and Bioethics, Harvard Law School (May 6, 2016), at <https://vimeo.com/166555664> (starting at 5 min., 25 sec.).

Consumer-driven Data Commons, National Medical Device Evaluation System Planning Board Meeting (May 5, 2016)

Biotechnology: Getting the Legal Framework Right, Texas Center for Superconductivity, Meeting with Distinguished Visitors from National Chung Hsing University (April 7, 2016)

Consumer-driven Genomic Information Commons, Seminar on Ethical, Legal and Social Implications of Genetics, Center for Research on Ethical/Legal/Social Implications of Psychiatric, Neurologic & Behavioral Genetics, Department of Psychiatry, Columbia University Medical Center (March 14, 2016)

Building Sustainable Information Commons for Neurotechnology Research and Regulatory Science: Charting the Legal Pathways, NSF Industry/University Collaborative Research Center Planning Meeting (Tempe, March 10-11, 2016)

Participant, Roundtable on Privacy and Data Security, White House Precision Medicine Initiative Summit (Washington, February 25, 2016) (see <http://www.law.uh.edu/news/spring2016/0229Evans.asp>)

Big Data in Genomics and Precision Medicine, BioLaw Session, Association of American Law Schools Annual Meeting (New York, January 8, 2016)

Participant and Speaker, International Summit on Human Gene Editing, sponsored by the U.S. National Academy of Sciences, National Academy of Medicine, the Royal Society, and the Chinese Academy of Sciences (Washington, DC, December 1-3, 2015), at <https://vimeo.com/album/3704161/video/149196322>)

Current Controversies in Biotech and Law, University of Houston Health Law Speakers Series (November 4, 2015)

First Amendment Issues with FDA Regulation of Genomic Testing, FDLI/Georgetown Law School Symposium: Constitutional Challenges to the Regulation of Food, Drugs, Medical Devices, Cosmetics, and Tobacco Products (October 30, 2015)

Appearance before National Academy of Sciences, Engineering, and Medicine's ad hoc study committee on Federal Research Regulations and Reporting Requirements, in session at Rice University (October 29, 2015)

Big Data, Big Headaches: Cultivating Public Trust in an Age of Unconsented Access to Identifiable Data, University of Wisconsin Center for Predictive Computational Phenotyping Symposium: Big Data: Policy Meets Data Science (October 15, 2015)

Panelist, Genomics, University of California Santa Cruz DataLex Conference: Privacy, Big Data & The Law (October 13, 2015)

Participant, White House Champions of Change in Precision Medicine (July 8, 2014) (see <http://www.law.uh.edu/news/summer2015/0715Evans.asp>)

Participant, Precision Medicine Initiative Brainstorming Session, Harvard Medical School (June 25, 2015)

Reconciling Patient Access to Data with Quality Oversight, Precision Medicine Conference, Harvard Medical School (June 24, 2015)

Panelist, Engaging Patients: Building Trust and Support for Safety Surveillance Brookings Institution (June 23, 2015)

Individual Access to Health Data, Fifth International Summit on Health Information Privacy at Georgetown Law School (June 4, 2015)

Impact of Recent HIPAA-CLIA Amendments, Fifth International Summit on Health Information Privacy at Georgetown Law School (June 3, 2015)

Ownership of Data From Mobile and Wearable Health Devices, Health Data Exploration Project Meeting, U.C. San Diego (May 13, 2015)

2015 Distinguished Health Scholar Lecture Series, Seton Hall Law School (March 16 -19, 2015)

The Food and Drug Administration's Expanding Role in the Regulation of Genomic Research, National Aeronautics and Space Administration Genetics Meeting (February 24, 2015)

Participant, Robert Wood Johnson Foundation-funded Creative Commons Health Privacy and Data Sharing Workshop (February 18, 2015).

Recent Developments in Regulation of Genomic Testing, Baylor College of Medicine Genetics Seminar (February 2, 2015)

The Latest Legal Issues in Genomic Medicine, University of Washington Medical Genetics Colloquium (January 16, 2015)

Impact of CLIA-HIPAA Amendments and FDA Regulation on Return of Results, PRIM&R Advancing Ethical Research Conference (December 6, 2014)

Legally Engineering: Legal Aspects of Biotechnology, University of Houston Hispanic Professional Engineers Student Organization (December 4, 2014)

Privacy, Access, and Governance Issues Affecting Large Networked Health Information Systems, University of Maryland Preeminence as an Innovator Fall Forum (October 28, 2014)

The Limits of FDA's Authority to Regulate Clinical Research Involving High-Throughput DNA Sequencing, Petrie-Flom and Food and Drug Law Institute Symposium: Emerging Issues in FDA Regulation (October 20, 2014)

FDA & Regulation of Genomic Sequencing: Implications for Return of Results, NIH Clinical Sequencing Exploratory Consortium Meeting, Bethesda, Md. (October 8, 2014)

Genomic Data Commons as a Patient Safety Imperative, Second Thematic Conference on

Knowledge Commons: Governing Pooled Knowledge Resources, sponsored by the Engelberg Center on Innovation Law & Policy at New York University Law School (September 5, 2014)

Policy Issues in Next Generation Sequencing: Economic Regulation of Data Access, ASLME Health Law Professors' Conference (June 6, 2014)

Preventing Harm to Patients Who Know Too Much about Their Own Genomes, Petrie-Flom Annual Conference at Harvard Law School: Behavioral Economics, Law, and Health Policy, Harvard Law School (May 3, 2014)

Genomic Data Access after Myriad, Spring Advisory Council Dinner, Institute of Intellectual Property and Information Law (April 17, 2014)

Novel Liability Problems in Next Generation Sequencing, Roundtable on Personalized Medicine and Malpractice Liability, Arizona State University (April 4, 2014).

Participant, Workshop on Innovation in Evidence Development for Molecular Diagnostics, Scottsdale, Az. (April 3, 2014)

The Current Legal Framework of U.S. Privacy Protections, Institute of Medicine Public Workshop: Strategies for Responsible Sharing of Clinical Trial Data - Open Session (February 4, 2014)

Barriers to Genomic Communication, University of Houston Law Center Student Symposium on Recent Policy Developments in Biotechnology and Law (October 30, 2013)

Plenary speaker, First Amendment Issues with Access to Genetic Information, ASLME Health Law Professors' Conference (June 7, 2013)

Plenary speaker, Patients' Rights of Access to their Own Health Information, Third International Summit on Health Information Privacy at Georgetown Law School (June 6, 2013)

Regulating the Return of Results Without Triggering First Amendment Problems, National Institutes of Health/Clinical Sequencing Exploratory Research Consortium (Rockville, May 23, 2013)

The Future of Prospective Medicine After FDAAA, Annual Conference of the Petrie-Flom Center at Harvard Law School (May 3, 2013)

Nonconsensual Access to Data and Biospecimens for Research and Public Health, Greenwall Foundation Annual Meeting (May 1, 2013)

EMR Use for Postmarketing Medical Product Safety Surveillance, Case Western Reserve University Law School Symposium: Balancing Privacy, Autonomy and Scientific Progress: Patients' Rights and the Use of Electronic Medical Records for Non-Treatment Purposes (April 5, 2013)

Panelist, Privacy Law Panel, Careers in Information Law, University of Houston Intellectual Property Student Organization (Feb. 27, 2013)

Investigators' First Amendment Right to Return Results to Research Participants, University of Washington Division of Medical Genetics Seminars (February 15, 2013)

Client Misperceptions and the HIPAA Privacy Rule, Indiana University CLEAR Health Information Continuing Legal Education Program, Health Information and Ethical Representation (December 6, 2012)

Is Return of Individual Research Results Protected Speech Under the First Amendment? Greenwall Foundation Faculty Scholars Program (November 30, 2012)

Biospecimens and Medical Information: Ownership, Access, and Privacy, T.T. Chao Symposium, From Base Pairs to Bedside: What Happens When Genomics-Based Therapies Enter Our Clinics? (October 25, 2012)

Human Subjects Research Regulations: Statutory Constraints on Amendments to the Common Rule, ASLME Health Law Professors' Conference (June 8, 2012)

In Search of Sound Policy on Nonconsensual Uses of Identifiable Health Data,,Petrie-Flom Center, Harvard Law School, Annual Conference: The Future of Human Research Regulation (May 18, 2012)

Fallon Lecture, University of Chicago Center for Health and The Social Sciences (May 14, 2012)

Getting Past the "Terrible Twos" in Health Data Access, Benjamin Cardozo School of Law Symposium, Anonymity and Identity in the Information Age (May 4, 2012)

Informational Research for Medical Product Safety, Indiana University Robert H. McKinney School of Law Symposium, Imagining the Next Quarter Century of Health Care Law (April 12, 2012)

Data Access for 21st-century Biomedical Discovery, New York University School of Law Colloquium on Innovation Policy (February 23, 2012)

Nonconsensual Access to Identifiable Health Data, Association of American Law Schools 2012 Annual Meeting, Joint Session of the Sections on BioLaw and Defamation & Privacy (January 6, 2012)

The U.S. Food and Drug Administration Amendments Act of 2007 and its Impact on Clinical Translation of Pharmacogenomics, University of Toronto Health Law, Ethics and Policy Seminar Series (November 24, 2011)

Proposed Changes to the Common Rule, Texas Medical Center Council of Research Directors Meeting (August 24, 2011)

Panelist, *Control of Patient Data—Health Information Exchanges*, First International Summit on the Future of Health Privacy, Georgetown Law Center (June 13, 2011)

Public Use of Private Health Data, ASLME Health Law Professors' Conference (June 10 – 11, 2011)

Panelist, *Legal & Ethical Obligations*, Clinical Translation of Pharmacogenomics: Management of Incidental Findings and Related Issues, Duke Institute for Genome Sciences & Policy (June 8 – 9, 2011)

Work-in-Progress Presentation, *Data Ownership*, Greenwall Foundation Annual Meeting (May 23, 2011)

Panelist, *Planning Meeting for Summit on the Future of Health Privacy* sponsored by the LBJ School of Public Affairs and Patient Privacy Rights with support of the U.S. Army Telemedicine and Advanced Technology Research Center (November 19-20, 2010)

New Scholars Presentation, Greenwall Faculty Scholars Meeting (November 17 – 19, 2010)

Panelist, *Overview of the Legal & Regulatory Environment*, National Institutes of Health-funded Critical Issues Workshop, Protecting Privacy in Health Research (August 10, 2010)

Panelist, *Alternatives or Supplements to Consent: Existing Regulatory Models*, National Institutes of Health-funded Critical Issues Workshop, Protecting Privacy in Health Research (August 10, 2010)

Panelist, *Ethical Considerations*, National Institutes of Health-funded Critical Issues Workshop, Protecting Privacy in Health Research (August 10, 2010)

Ethical and Legal Issues in Pharmacogenetic Research and Application, Duke Clinical Research Institute Think Tank: Pharmacogenomics in Cardiovascular Disease: Balancing Scientific Promise with Clinical Reality (August 2, 2010)

Medical Device Legislation and FDA's Regulatory Authority: Legal Authorities to Develop Evidence and Manage Risks in the Postmarket Period for Drugs, 510(k) and PMA Devices, Institute of Medicine Committee on the Public Health Effectiveness of the FDA 510(k) Clearance Process (Closed Session, June 27, 2010)

Moving Pharmacogenomics into the Clinic, AARP Board of Directors/Management Retreat, Special Session on Personalized Medicine (June 10, 2010)

Ethical and Privacy Issues in Large Pharmacoepidemiological Data Networks, American Society of Law, Medicine & Ethics Health Law Professors' Conference (June 5, 2010)

Recent Developments in Genetic Screening and Medical Privacy, Annual Convention of TxCOEM, the Texas Chapter of the American College of Occupational and Environmental Medicine (May 21, 2010)

Panelist, *Public Policy Session*, American Society of Clinical Pharmacology and Therapeutics Annual Convention (March 19, 2010)

Pathways for Clinical Translation of Pharmacogenomics after FDAAA, Personalized Medicine in the Clinic, sponsored by Arizona State University/Mayo Clinic/AAAS/Food & Drug Law Institute (March 9, 2010)

Appropriate Human Subject Protections for Research Use of Sentinel System Data, Legal Issues in Active Medical Product Surveillance, convened by the Engelberg Center for Health Care Reform at the Brookings Institution with sponsorship of FDA (March 8, 2010)

Keynote Address: Health Technology, Privacy, and Process, Center for Cybersecurity Research Workshop: A Research Agenda for Privacy and Security of Healthcare Technologies (October 26-27, 2009)

Building Capacity Within Post-FDAAA Data Network Infrastructure, Institute of Medicine Forum on Drug Discovery, Development, and Translation, Community Update: Improving the Science of Drug Safety (September 2, 2009)

Update on Privacy and Governance Issues with FDA's 100-million-person Sentinel Data Network, American Society of Law, Medicine & Ethics Health Law Professors' Conference (June 5, 2009)

Ethical Framework for Pharmacogenomics Implementation (Including Economics), Mayo Clinic Pharmacogenetics Research Network Analysis Workshop and Scientific and Steering Committee Meetings (April 17, 2009)

Panelist, ABA Special Committee on Bioethics and the Law Roundtable on Hot Topics in Bioethics and Law, ABA Midyear Convention (February 14, 2009)

Panelist on Data Network Privacy Issues, FDA Public Workshop (Docket No. FDA-2008-N-0612) Sentinel Initiative: Structure, Function, and Scope (December 16, 2008)

Legal and Ethical Issues in Personalized Medicine: Making Therapies Safe for the Individual Patient Rather than the Average Patient, Houston Bar Association Health Law Section (September 10, 2008)

FDA's Sentinel System for Drug-safety Surveillance, Personalized Therapeutics Seminars, Indiana University School of Medicine (August 5, 2008)

Legal and Regulatory Issues Affecting Clinical Use of Personalized Medicine, American

Association for Cancer Research, Translational Medicine 2008 Conference (July 21, 2008)

Pharma-provider Interactions and Ethical Guidelines, University of Houston Continuing Legal Education, Health Care Law (July 10, 2008)

FDA's Sentinel Initiative and Regulation of Medical Products with Predictive and Preventive Uses, American Society of Law, Medicine, and Ethics Annual Health Law Professors' Conference (June 7, 2008)

Ethical and Legal Challenges in Bioengineering, Rice University Lecture Series: New Developments in Bioengineering Technology (March 20, 2008)

Making Personalized Medicine Work: The Legal and Regulatory Paradigm Shift, New York Academy of Sciences, Predictive Toxicology Discussion Group Meeting on Toxicogenomics and Personalized Medicine (February 4, 2008)

Cornerstones of Postmarket Considerations in Personalized Medicine: Label Updates, Surveillance, Clinical Practice, and Legal Liability (panelist), FDA/DIA 4th Annual Pharmacogenomics Workshop (December 11, 2007)

HIPAA Privacy Rule Reform Alternatives for Research Use of Human Biological Materials and Health Data, Roundtable on Personalized Medicine, Privacy, and Ethics (November 7, 2007)

Why Bioethics Fails to Produce Constitutional Rights, American Society of Law, Medicine, & Ethics/Saint Louis University Health Law Scholars Workshop (September 7, 2007)

Interactions Between Medical Product Manufacturers and Health-care Providers (Including Ethical Guidelines), University of Houston Continuing Legal Education, Health Care Law (Dallas, July 12, 2007 and Houston, July 19, 2007)

Use of Genetic Information to Guide Treatment Decisions, American Society of Law, Medicine, and Ethics 30th Annual Health Law Professors' Conference (June 1, 2007)

Individualized Medicine: Ethical Principles and Considerations. Individualized Therapy Lectures, Indiana University School of Medicine (April 13, 2007)

Protecting Patients from Invalid and Excessive Claims in Personalized Medicine, Personalized Medicine and Molecular Diagnostics: Legal, Regulatory, and Ethical Perspectives, Arizona State University (March 2, 2007)

Access to Human Biological Materials and Data in Cancer Research. American Society of Clinical Oncology HIPAA Workshop (February 23, 2007)

Regulatory Barriers to Clinical Introduction of Targeted Cancer Therapies, National Institute of General Medical Sciences, Pharmacogenetics Research Network—Consortium on Breast Cancer Pharmacogenomics Biannual Meeting (November 2, 2006)

Regulatory Barriers to Clinical Introduction of Genetically Targeted Drug Therapies, GenomeCanada International Conference, 2020 Vision: Variation and Function in the Genome (October 25, 2006)

Ethical and Regulatory Issues in New Product Development, Purdue University BIOMEDSHIP Program on Entrepreneurship in Biotechnology (April 20, 2006)

Genetic Studies in Hematological Malignancy: Ethical and Legal Considerations, Horizons in Diagnostics and Therapeutics: Developing Patient-Targeted Therapy, CME Corporate Friday Symposium at 47th American Society of Hematology Annual Meeting (December 9, 2005)

Intellectual Property and Regulatory Issues Affecting Targeted Therapies, Indiana University Department of Medicine, Presentation to Clinical Pharmacology Researchers (May 31, 2005)

Pharmacogenomics and its Implications for the Future of the Health Care Industry, Indiana University Medical Humanities Rounds (April 5, 2005)

Creating Incentives for Genomics Research to Improve Targeting of Therapies, Presentation to Eli Lilly Clinical Research Managerial Personnel (November 23, 2004)

Cultural and Economic Factors in Clinical Ethics, Presentation to Delegation of Japanese Oncologists, The University of Texas M.D. Anderson Cancer Center (May 19, 2004)

Should Prenatal Identification of Inherited Cancer Syndromes be Offered? Multidisciplinary Conference on Parenthood After Cancer: Today's Options and Tomorrow's Hopes, Sponsored by the National Cancer Institute (NCI), National Institute of Child Health and Development, Office of Women's Health at NCI, Office of Women's Health at the Department of Health and

Human Services, and the Lance Armstrong Foundation, held at The University of Texas M.D. Anderson Cancer Center (March 7, 2004)

Ethical Considerations of Genetic Testing and Screening for Cancer, Institutional Grand Rounds, The University of Texas M.D. Anderson Cancer Center (February, 2004)

Part II: Therapeutic Misconception and the Ethics of Phase I Clinical Trials, Clinical Ethics Didactic Presentation for M.D. Anderson Personnel (May 11, 2004) (with co-presenter Valerie Olson of Rice University Department of Anthropology)

Part I: Therapeutic Misconception and the Ethics of Phase I Clinical Trials, Clinical Ethics Didactic Presentation for M.D. Anderson Personnel (March 17, 2004) (with co-presenter Valerie Olson)

Emerging Issues in Clinical Application of Genetic Testing, Clinical Ethics Didactic Presentation for M.D. Anderson Personnel (January 16, 2004)

Professional Independence and the Ethics of Clinical Ethics Practice, Clinical Ethics Didactic Presentation for M.D. Anderson Personnel (December 9, 2003)

Patients' Decision-making Styles and Desire for Information When Making End-of-Life Decisions: Insights from Recent Empirical Studies, Clinical Ethics Didactic Presentation for M.D. Anderson Personnel (October 17, 2003)

HEALTH LAW SURVEY

Spring 2023

Law 6930/20088

Professor: Barbara J. Evans (FACULTY)

Credits: 3 **Course Area:** Health Law

Time: MT 9-10:25, **Room:** Hol 355C

SYLLABUS (pages 1-7) and COURSE POLICIES (see p. 8)

Professor Barbara J. Evans

Office: HH 312J, (352) 273-0915

E-mail: evans@law.ufl.edu

Office Hours: MT 10:30-11:30 and by request

Mobile Phone/Text: (713) 446-7576

Please make sure to identify your name in texts

This Syllabus and Reading List (pages 1 – 6 of this document) focuses on substantive course content and readings. The **Resources and Course Policies** document, starting on page 7, offers additional information about the conduct of the class, testing, resources for students, and the rules and norms of civility expected in class.

Note: Topics to be covered are as shown in this syllabus and will be covered in the order shown. The pace at which we move through topics may be adjusted as the course progresses, because I sometimes adjust the pace to ensure your mastery of the material. Any adjustments or revisions will be announced in class or electronically on Canvas.

Brief course description. This course provides a practice-oriented introductory tour of key state/federal laws governing health-sector businesses, which together account for 18% U.S. Gross Domestic Product. The course covers traditional 20th-century healthcare institutions such as hospitals, but also introduces the expanding array of new players that supply innovative products and services (clinical laboratories; medical software vendors, biobanks; academic medical centers which conduct research as well as providing patient care) These latter entities are a vibrant and growing part of the health industry and students entering the health law workforce of today need to know the laws that affect them.

The broader goals of this course are to acquaint students with the core corporate client base for large-firm and in-house health lawyers; to introduce major regulatory frameworks that struggle to safeguard consumers' rights vis-à-vis commercial health-sector enterprises; and to identify big, unsettled questions likely to generate opportunities for practical, solution-oriented lawyers as this staid and troubled industry gropes for new business models in the era of big data and 21st-century genomic and "informational" medicine.

Specific learning objectives are noted in each section of the syllabus.

Prerequisites. No prerequisites are required other than completion of 1L courses. This course is suitable as an overview for students aiming to specialize in health law. It also is suitable as an elective for anybody who may – whether as an employer or as a patient – have future dealings with insurers and healthcare providers, or who may wish to be a more informed participant in the ongoing policy debates about the structure and cost of health care in the United States.

Evaluation/Grading. There will be one in-class, open book/open notes 75-minute-long midterm, at mid-semester that counts for 40% of your grade, and a 1 hour, 45-minute- long Final that counts for the other 60%. The final will focus primarily on the materials covered in the second half of the course.

The midterm will be held on a date, during weeks 6-8 of the semester, to be chosen in consultation with the class to minimize conflicts with your other activities. Since it is a graded assignment, students with bona fide conflicts or illnesses can arrange make-ups. The law school policy on exam delays and accommodations can be found [here](#). Absent a prolonged illness, make-up midterms should be scheduled within one week after the in-class midterm date, in order to keep all class members on an equal footing in terms of study time. Material tested on the midterm is not generally tested again on the take-home final.

Materials. There is no assigned book. All reading materials (including cases, key statutes and regulations, and policy documents) will be posted on Canvas, along with problem sets and copies of any powerpoint slides presented in class. All posted materials used in this course are non-copyrighted (e.g., government documents or open-access articles and reports) or will be copies of materials to which you have access rights under your Westlaw subscription (However, I will post them in sequence to Canvas for your convenience). In particular, this course relies on:

THE AMERICAN HEALTH LAWYERS ASSOCIATION HEALTH LAW PRACTICE GUIDE (Thomson-West) Syllabus abbreviation: **HLPG** (*available free via your student Westlaw account*). This excellent treatise, written by leading practitioners, provides a clear, straightforward, practice-oriented, and surprisingly interesting introduction to the complex tangle of laws and regulations that makes our healthcare system work the way it does (or does not) work today

Institute of Medicine and governmental reports: These provide excellent sources of information about specific topics in the healthcare industry

READING LIST

I. Introductory Matters

Objectives: After this unit, you will be able to describe

1. Who are the main players that provide healthcare and how is healthcare financed?
2. What are the basic tension between cost containment and quality of care

Class 1. First Day (Tuesday, Jan. 17)

Before class read R1 and R2

R1. Atul Gawande, *The Cost Conundrum*, NEW YORKER, June 1, 2009, www.newyorker.com/reporting/2009/06/01/090601fa_fact_gawande

R2. **Wickline v. State (California)**

Also: read course policies for this course at end of this Syllabus

Class 2. Intro to Health Policy Challenges

Before Class 2, read R3

R3. IOM Best Care at Lower Cost Summary (Read pages 5 – 32 only)

R4. No need to look at these Powerpoints before class

Class 3. Intro to Players in the Health Care Industry

Before Class 3, read R5, R6

R5. AHLA HLPG Sec. 1 Healthcare Providers

R6. AHLA HLPG Sec. 18 – 20 Payers and Medicare

II. Evolution of relationships between Physicians and Hospitals and Liability of Hospitals for a Physician's Tort

Objectives. After this unit, you will be able to:

1. Explain the traditional relationship between healthcare professionals and healthcare institutions (hospitals) and how it has evolved.
2. Described the Corporate Practice of Medicine doctrine that is still followed in a minority of states, but they are big states that have a large impact on the healthcare industry (e.g., California, Texas)
3. Sidestep the deal-destroying impact the Corporate Practice of Medicine doctrine can have on modern healthcare transactions, even when your own state that does not follow it.
4. Understand why doctors usually are not employees of the hospitals where they work
5. Apply modern concepts for holding hospitals and managed care organizations accountable for deficiencies in care caused by physicians.
6. Describe the governance and oversight arrangements that are in place for managing the safety and quality of non-employee physicians in healthcare organizations.

Classes 4, 5. Corporate Practice of Medicine Doctrine

R7. Chase Lubitz 40 Vanderbilt Law Review 445 (1987) (excerpts)

R8. Modern Trend: Berlin v. Sarah Bush Lincoln Health Center

R9. Traditional CPM: Flynn Bros. v. First Medical Associates

R10. CPM In-class practice problem for Class 5.

Class 6. Medical Staff and Bylaws; Hospital Liability for Physicians' Torts

R11. AHLA HLPG Sec. 2 Medical Staff and Bylaws

R12. Supplement on Institutional Liability

R13. Adamski v Tacoma General Hospital (1978)

R14. Roessler v. Novak (2003)

Class 7. Hospital Liability for Physicians' Torts, cont'd

R15. Baptist Memorial Hospital v. Sampson (1998) (example of state rejecting apparent agency theory)

R16. St. Joseph's Hospital v. Wolf (example of complex multi-hospital suits) This is a hard case, but it provides a laundry list of the various doctrines state courts apply in complex cases involving claims and counterclaims among multiple healthcare

organizations over the alleged malpractice of a physician associated with more than one of the healthcare institutions involved.

Class 8. Credentialing of Staff, Peer Review, and Liabilities Related to Credentialing

- R17 AHLA HLPB Sec. 2 Medical Staff, Bylaws, Hospital Accreditation & Licensure, Health Care Quality Improvement Act (HCQIA)
- R18 SUPPLEMENT: Basic Defamation Law
- R19 Johnson v. Misericordia excerpts (classic example of negligent credentialing)

Class 9. Suits for negligent credentialing, cont'd. Immunities under HCQIA

- R20 Poliner case – 5th circuit appeal
- R21 SUPPLEMENT – HCQIA 42 USC Sec. 11101-11152
- R22 In-class problems for analysis

Class 10. Reporting Bad Physicians: The National Practitioner Data Bank (NPDB)

- R23 NPDB Guidebook – 2018 ed. (Look through Ch. A – E before class)
- R24 In class NPDB problem-solving

Class 11. Standardizing Clinical Practice Through Guidelines

- R25 Clinical Practice Guidelines-Mello-van Tassel-IOM excerpts
Readings from: Michelle Mello on customary vs. reasonable standard of care; Katharine Van Tassel, *Harmonizing the Affordable Care Act with the Three Main National Systems for Healthcare Quality Improvement: The Tort, Licensure, and Hospital Peer Review Hearing Systems*, 78 Brook. L. Rev. 883 (2013) *excerpt*; and Institute of Medicine Report on conflicts of interest in the development of Clinical Practice Guidelines
- R26 IOM COI standards and quality measures
- R27 In class problem on COI standards for Practice Guideline Development

Class 12. Reform Efforts under the Affordable Care Act

- R28 Barry Furrow: Regulation of Patient Safety

This concludes the materials to be covered on the midterm examination

REVIEW. R29 Work through the sample Midterm problems posted on Canvas

Class 13. Intro to Waste, Corruption, and Fraud in Health Care

You don't need to look at these slides ahead of class. Just bring these slides if you want a copy to refer to, and we will discuss them in class. They tee up the issues we will be studying after the midterm.

- R34: Slides on problematic interactions between pharmaceutical companies and health care providers

Class 14. The “soft law” approach to corruption: industry self-regulation

R36: New York Times, “Gimme an Rx! Cheerleaders Pep Up Drug Sales”

R37: PhRMA Code on Interactions with Health Care Providers

R38: Questions on the PhRMA Code – We’ll work these in class

Question to discuss in class: How much faith do you have in the “soft law” approach?

R39: Fraud and Abuse Overview – bring this with you. We will mention it to orient you to the “hard law” approach to corruption and fraud in health care.

Midterm: March 7

Spring Break March 13 - 17

Topic: Fraud and Abuse

March 20: Intro to False Claims Act

See assignment list in R40 on Canvas

Readings and things to bring to class are at R39, R41, R42, R43 on Canvas

March 21: False Claims Act, cont’d + Intro to Antikickback Statute

See assignment list in R44 on Canvas

Readings and things to bring to class are at R39, R45, R46, R 47 on Canvas

March 27: Anti-kickback Statute, cont’d

See assignment list in R48 on Canvas

Readings and things to bring to class are at R39, R49, R50 on Canvas

March 28: Stark Law (which is different from the Starks case!)

See assignments in R51 on Canvas

Readings and things to bring to class are at R39, R52

Topic: Privacy and Human Subject Protections

April 3: Overview of Data Privacy Generally (in Health Care and in Society)

See assignments in R53 on Canvas

Reading: Skim R54 and bring the homework “thought piece” described in R53.

April 4: How Medical Data Privacy Differs from Data Privacy Generally

See assignments in R55 on Canvas

Readings and things to bring to class: Read R56, R57, bring R58 to class

April 10: Activities that Use Data; Intro to Human Subject Protections/Common Rule

See assignments in R59 on Canvas

Readings and things to bring to class: Read R60, Scan R61, Bring 62, 63, 64

April 11: Getting Deeper into the HIPAA Privacy Rule

See assignments in R65 on Canvas

Readings and things to bring to class: Read highlighted passages in R66, R66a.

Bring R67, R68. We will allocate these problems for individual/group problem-solving exercises, so look at them ahead of class to see which ones you might like to work on.

April 17, 18: Simulated real-world problem solving

Class will not meet. Instead, you will work individually or in groups (however you choose) on the practical problem-solving exercises in R67, 68. Then, we will schedule zoom problem-solving sessions where you will report results of the problems you worked.

April 24: Review. Last day of class is dedicated to review of post-Spring Break topics, which are the only materials to be covered on the final.

Continue to resources and course policies, next page

Resources and Course Policies

Health and wellness: Law school can be a little daunting at times, and I am always happy to act as a sounding board on strategies to make it feel less stressful. If you or a friend is in distress, there are also other resources available on our campus:

- *U Matter, We Care:* If you or someone you know is in distress, please contact umatter@ufl.edu, 352-392-1575, or visit [U Matter, We Care website](#) to refer or report a concern and a team member will reach out to the student in distress.
- *Counseling and Wellness Center:* [Visit the Counseling and Wellness Center website](#) or call 352-392-1575 for information on crisis services as well as noncrisis services.
- *Student Health Care Center:* Call 352-392-1161 for 24/7 information to help you find the care you need, or [visit the Student Health Care Center website](#).
- *University Police Department:* [Visit UF Police Department website](#) or call 352-392-1111 (or 9-1-1 for emergencies).
- *UF Health Shands Emergency Room / Trauma Center:* For immediate medical care call 352-733-0111 or go to the emergency room at 1515 SW Archer Road, Gainesville, FL 32608; [Visit the UF Health Emergency Room and Trauma Center website](#).
- Any student who has difficulty accessing sufficient food or lacks a safe place to live is encouraged to contact the Office of Student Affairs. If you are comfortable doing so, you may also notify me so that I can direct you to further resources.

Other helpful resources: E-learning center technical support, 352-392-4357 (select option 2).

Academic honesty: Academic honesty and integrity are fundamental values of the University community. Students should understand the UF Student Honor Code located [here](#).”

UF students are bound by The Honor Pledge which states, ‘We, the members of the University of Florida community, pledge to hold ourselves and our peers to the highest standards of honor and integrity by abiding by the Honor Code. On all work submitted for credit by students at the University of Florida, the following pledge is either required or implied: “On my honor, I have neither given nor received unauthorized aid in doing this assignment.”’

The Honor Code specifies a number of behaviors that are in violation of this code and the possible sanctions. Click [here](#) to read the Honor Code. Furthermore, you are obligated to report any condition that facilitates academic misconduct to appropriate personnel. If you have any questions or concerns, please consult with the instructor.

Grading information and grading scale: This course follows the Levin College of Law's grading policies found [here](#). The below chart describes the specific letter grade/grade point equivalent in place:

Letter Grade	Point Equivalent
A	4.0
A-	3.67
B+	3.33
B	3.0
B-	2.67
C+	2.33
C	2.0
C-	1.67
D+	1.33
D	1.0
D-	0.67
E (Failure)	0.0

A student's grade can be adjusted by one "notch" (e.g., from an A minus to a B plus) for issues with class participation, preparation, or habitual lateness.

Accommodations: Students requesting accommodations for disabilities must first register with the Disability Resource Center (<https://disability.ufl.edu/>). Once registered, students will receive an accommodation letter, which must be presented to the Assistant Dean for Student Affairs (Assistant Dean Brian Mitchell). Students with disabilities should follow this procedure as early as possible in the semester."

Students with disabilities who experience learning barriers and would like to request academic accommodations should connect with the Disability Resource Center. Click [here](#) to get started

with the Disability Resource Center. It is important for students to share their accommodation letter with their instructor and discuss their access needs as early as possible in the semester.

Conduct of classes

Naming and pronominal preferences: I go by “Professor Evans” or “Barbara” and I use she/her/hers as my pronouns, although it won’t upset me if you use something else. I care about making sure I use your preferred name and pronouns, too. Please feel free to reach out to me in person, by phone, via text message, or by e-mail to make sure I know your preferences. Thereafter, if I ever fail to get it right, please kindly attribute it to defects of memory, and never feel awkward about correcting me gently in front of other people if I make a mistake.

You may also change your “Display Name” in Canvas. Canvas uses the "Display Name" as set in myUFL. The Display Name is what you want people to see in the UF Directory, such as "Ally" instead of "Allison." To update your display name, go to one.ufl.edu, click on the dropdown at the top right, and select "Directory Profile." Click "Edit" on the right of the name panel, uncheck "Use my legal name" under "Display Name," update how you wish your name to be displayed, and click "Submit" at the bottom. This change may take up to 24 hours to appear in Canvas. This does not change your legal name for official UF records.

Recommendations for supplemental reading: Students often ask me to recommend supplemental readings. Whether to use supplemental books is largely a matter of individual preference and study habits. Everything you need to know to do well in this class is in the Syllabus and in our class discussions. I don’t really have any recommendations, but if there is a particular topic you would like to delve into further, ask me and I’ll try to help you identify some useful resources.

Contacting me with questions: Never feel hesitant about e-mailing me, phoning me, texting me, or visiting office hours with a question if you have made a good-faith effort to understand something and it still is not clear. Please make sure to identify yourself if you text. It’s good to struggle a bit with new ideas and try to master them oneself, because the ability to read carefully and reason things out is a key skill one needs as a lawyer. However, if something just is not clear after a reasonable effort, you need to get it cleared up as soon as possible. Your knowledge of health law builds cumulatively. Things that are not clear early on can make the later phases of the course harder. It’s better to get things cleared up promptly if something just isn’t making sense. Don’t wait till the end of the semester to seek help.

Course Requirements

Preparation: It is anticipated that you will spend approximately 2 hours out of class reading and/or preparing for in-class assignments for every 1 hour in class.

Class participation and attendance: Attendance will be taken at each class meeting. Students are allowed two absences during the course of the semester. Students are responsible for

ensuring that they are not recorded as absent if they come in late. A student who fails to meet the attendance requirement will be dropped from the course. The law school's policy on attendance can be found [here](#).

Attendance in class is required by both the ABA and the Law School. If you miss more than four classes, your grade for the semester may be adversely affected. If you have a legitimate reason for missing class, you should contact me before or soon after class ends for your absence to be excused.

It is your responsibility to locate and initial the sign-in sheet for each class session (or to complete electronic sign-in if that is in effect). I will “call the roll” for the first couple of classes, while I learn your name. Thereafter, you are responsible for signing in. It will be considered a violation of the course rules and the Honor Code to falsely indicate that you were present in class, or to assist a classmate in such misrepresentation.

Punctuality shows respect for your colleagues and professors and is part of the professionalism expected of you as future lawyers. Please arrive at school early enough to allow yourself enough time to be in your seat ready to begin. Any student not in class within the first fifteen minutes of class (or leaving more than fifteen minutes early) is not permitted to sign the attendance sheet.

The best thing to do, if you know you are going to miss a class, is to ask a fellow student for notes. Student notes often are the best record of the give and take of questions and answers that actually took place during class. However, I also will be glad to discuss questions with you if you have been ill and need to go over any concepts that are still not clear.

Lateness: Notwithstanding the prior rules, I understand that lateness sometimes happens despite students’ best efforts. Never feel embarrassed to join my class because you are slightly late. You’ve paid for the class, and I want you to get the benefit of any portion of it you are able to attend. However, you must be considerate of your fellow students, and follow any social distancing requirements that may be in effect to protect their health, if you are arriving late. When arriving late, sit in a free seat closest to the door to avoid disturbing other students, but maintain social distancing if required. Also, please don’t slam the door when you come in and make sure the door is closed behind you.

What to do if circumstances require you to exit a class while it is in session: From time to time in life, we all have a sudden illness or other emergency that requires us to enter or leave a class while it is in session. If this should happen to you, simply enter or leave as quietly and unobtrusively as you can, observing all social distancing requirements to protect others. Obviously, it is understood that you will do this only when there is a pressing need to do so.

What good class participation means: One of the goals of this class is to teach you lawyerly communication skills. It is surprising but true that the most important communication skill for lawyers is not talking and saying clever things, but listening and getting a sense of what other people think. If that other person is the opposing counsel, listening is the way you analyze the weakness in his or her arguments and thought processes. If that person is your client, listening is

how you learn what the client's problem is and how the client feels about various approaches for solving it. If that person is a regulator or judge, you had better listen!

If you have previously asked to be recognized twice in a single class, I am very unlikely to call on you again until all other persons in the class have had the opportunity to share their views. In that situation, do not continue to hold your hand up for a long time; it will just get tired. This is mainly done for your own learning. Whenever one is waiting to speak, one becomes completely absorbed with planning one's own remarks and loses the opportunity to hear what other people have to say. Beware of being absorbed in your own thoughts, when you could be listening to what other people have to say.

Also, it is not the case that talking a lot leads to a higher class participation credit or makes you look wiser. Sometimes, a few well-chosen, well-prepared words are the most impressive. I particularly like it when students listen to one another's remarks and respond to them, either to amplify or debate them in a tactful, well-reasoned manner.

Be aware of any implicit biases or positions of privilege that you may enjoy and regulate your participation in a way that ensures everybody has an opportunity to express their views and have them heard with respect.

Practice examinations: I do not give out old exams as practice exams. But we will work many class exercises and practice essay problems in class, so you will be well-prepared for the exams in this course.

Final examination: Other than any adjustments for class preparation and participation (see above), the course grade will be based on a three-hour final examination. Because of pandemic procedures (which may or may not be in effect this year during the exam period), the precise procedures for administering the exam will be clarified later in accordance with law school and university policies. The exam will be based on the assigned (required) readings and materials and topics discussed in class. More on the examination format will be discussed in class, or in general policies announced to the law school community, as the semester progresses.

The law school policy on exam delays and accommodations can be found [here](#).

Reading assignments/ Supplements: The Syllabus lists the assigned readings and other materials we will be covering. We will be proceeding straight through the Syllabus in the exact order it shows the readings. The pace at which we move through the materials may vary if I detect a need to slow down or speed up to ensure student mastery of the materials. Therefore, I will announce specific assignments for the coming class periods at the start or end of each class or electronically. If you are unable to attend class for any reason, you are responsible for finding out what your assignments are.

Problem sets: Throughout the course we will be working problem sets. These are strictly learning exercises; they are not graded. The purpose of the problem sets is to help develop your analytical skills and learn how to apply the sometimes-theoretical course principles to specific

fact situations. Also, the problem sets are intended to give you a taste of the types of questions you might see on the exams and in real health law practice.

Cell phones, pagers, computers: Please make every effort to remember to disable the ringer on your cell phone and to silence any other device you have that makes noise. I understand why carrying these devices in class is necessary. Computers in class are to be used exclusively for taking notes or viewing documents directly relevant to what is then going on in the classroom, and not for otherwise distracting you or your classmates. Sanctions for violating these rules are at my complete discretion.

Class Recording Policy: The Office of Student Affairs will continue to record all classes via Mediasite in case students must miss class for health reasons. The Office of Student Affairs will determine when students may have access to these recordings, and the recordings will be password protected. These recordings will be retained only for a short period of time and it is the student's responsibility to contact the Office of Student Affairs as soon as possible after an absence.

Under Florida law, students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor.

For this purpose, a "class lecture" is an educational presentation intended to inform or teach enrolled students about a particular subject, including any instructor-led discussions that form part of the presentation, and delivered by any instructor hired or appointed by the University, or by a guest instructor, as part of a University of Florida course. A class lecture does not include lab sessions, student presentations, clinical presentations such as patient history, academic exercises involving solely student participation, assessments (quizzes, tests, exams), field trips, private conversations between students in the class or between a student and the faculty or lecturer during a class session.

Publication without permission of the instructor is prohibited. To "publish" means to share, transmit, circulate, distribute, or provide access to a recording, regardless of format or medium, to another person (or persons), including but not limited to another student within the same class section. Additionally, a recording, or transcript of a recording, is considered published if it is posted on or uploaded to, in whole or in part, any media platform, including but not limited to social media, book, magazine, newspaper, leaflet, or third party note/tutoring services. A student who publishes a recording without written consent may be subject to a civil cause of action instituted by a person injured by the publication and/or discipline under UF Regulation 4.040 Student Honor Code and Student Conduct Code.

Also be aware that classes may be recorded by the Law School for the benefit of any students who need to be quarantined or otherwise miss class. By taking the class, you consent to any

recording that proves necessary as part of these class-recording policies.

Informal feedback for me: My goal is to help you learn health law as thoroughly and enjoyably as possible. I welcome any comment or suggestion you may have regarding teaching style, topic coverage, class presentation, ways to make the class sessions more useful for you, or any other issue. I may not always implement every suggestion that is offered, but I will certainly give it careful consideration, and I would never be offended by any good-faith suggestion on how to make this class more engaging and productive for you. If something isn't working for you, then let me know. Please feel free to provide me with any comments during the semester that you think will improve the overall learning experience.

Formal course evaluations: Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Click [here](#) for guidance on how to give feedback in a professional and respectful manner. Students will be notified when the evaluation period opens and may complete evaluations through the email they receive from GatorEvals, in their Canvas course menu under GatorEvals, or via <https://ufl.bluer.com/ufl/>. Summaries of course evaluation results are available to students [here](#).”

New Course Proposal Form

To: Curriculum Committee

From: _____

Date: _____

Type of Proposal (check one)	<input type="checkbox"/> Provisional course offering (2 offerings within 4 years) _____ Semester of 1 st proposed offering: <input type="checkbox"/> Proposal to make provisional offering permanent _____ Enrollment for prior offering:
Course Title	
Number of credits	_____ hours _____ I have reviewed the proposed syllabus and other course materials and I believe that the proposed course requires _____ hours of in-class instruction and at least _____ hours of out-of-class work on the part of the students.*
Brief Course Description (50 words or less; for public posting on the UF Law website)	
Pre-requisites or Co-Requisites?	
Educational Objectives Why are you proposing this course? Why should it be added to the UF Law curriculum?	
Enrollment cap requested? If requested, what is pedagogical justification?	

Method of evaluation	_____ % Final exam _____ % Skills assessment _____ % Paper	_____ % Classroom participation _____ % Other
Casebook or other source of readings? (If casebook, include title, author, publisher, edition)		
Have you discussed this proposal with members of the UF Law faculty or administration? If so, please detail the date and substance of your discussions to streamline the Curriculum Committee's deliberations.		
Attachment checklist	<p>_____ <u>Detailed course syllabus</u> Include topic for each class session; if possible, designate also the assigned readings for each session. Full-time faculty members proposing a one-time offering may substitute a general description of course coverage for each class session.</p> <p>_____ The syllabus meets the requirements of the UF Policy on Course Syllabi (syllabus.ufl.edu), i.e. it includes all required components. _____ The syllabus includes student learning outcomes, per the UF Law Faculty Policy on Student Learning Outcomes.</p> <p>*The syllabus and/or other information submitted in support of this course proposal must demonstrate to the committee that for every one credit hour sought, the course will provide 15 hours of classroom instruction and will require at least 30 hours of out-of-class work. See ABA Standard 310.</p> <p>_____ <u>Casebook</u> Include photocopy of condensed table of contents</p> <p>_____ <u>CV and qualifications to teach proposed course</u> (N/a for full-time faculty members)</p> <p>_____ <u>Teaching evaluations</u> If this is a proposal for a permanent course, please supply teaching evaluations from previous course offering. N/a for full time faculty members.</p>	

NOTE from Barbara Evans about reading assignments for her Health Law Survey course and having no casebook: “I curated my own course materials which I put on canvas in 68 files (readings, statutory and regulatory supplements, cases, and problem sets). They are available on Canvas from last spring if you want to look at them, or maybe I could put them in a zip file and send them to you. It's a huge collection of materials, so I can't email them unless a zip file would work. I basically made a casebook specifically for this class that covers just the materials I wanted to teach. I'll be happy to share them if you can't get access to them in Canvas (Spring 2023).”



CIRCUIT JUDGE KENNETH L. GILLESPIE

Broward County Judicial Complex
201 Southeast 6th Street, Room 464 | Fort Lauderdale, Florida 33301
(954) 610-1198 | kn_gillespie@17th.flcourts.org

EDUCATION

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

Master of Laws in Taxation, with Honors

December 2021

Temple University Beasley School of Law, Philadelphia, PA

Master of Laws in Trial Advocacy, Highest Honors conferred

May 2013

Honors: Received Faculty Award

Texas Southern University, Thurgood Marshall School of Law, Houston, TX

Juris Doctor

May 1995

Honors: *Premium Excellentia:* Criminal and Civil Clinical Trial Practice | Environmental Clinical Trial Practice Member of James E. Douglas Mock Team | Moot Court Award | Honor Court

Florida Memorial University, Miami, FL

Bachelor of Science in Accounting, summa cum laude

May 1990

Minor: Business Administration

Honors: Alpha Kappa Mu Honor Society

TEACHING EXPERIENCE

University of Florida, Fredric G. Levin College of Law, Gainesville, FL

Adjunct Professor in LL.M. Taxation Program

January 2022 – Present

Provide instruction Compressed Course: Probate & Estate Administration: Tax Consequences. Develop and implement course curriculum and encourage innovative learning experience.

University of South Florida, Office of Corporate Training and Professional Education Training, Tampa, FL

Instructor

January 2020– Present

Asynchronous and Synchronous Instruction. Lecture on Essential Skills for Paralegals and encourage innovative learning experience.

Temple University Beasley School of Law, Philadelphia, PA

Adjunct Professor/Assistant to Director, LL.M. Trial Advocacy Program

June 2013 – April 2018

Lectured on Advance Evidentiary Topics, and Advance Trial Advocacy Topics. Developed and implemented course curriculum and encouraged innovative learning experience.

University of Miami, Division of Continuing & International Education, Coral Gables, FL

Adjunct Professor Paralegal Program

August 2011 – June 2018

Lectured on Torts, Florida Procedure, and Contracts. Developed and implemented course curriculum and encouraged innovative learning experience.

LEGAL EXPERIENCE

Seventeenth Judicial Circuit of Florida, Fort Lauderdale, FL

Administrative Judge of Probate Division

January 2023-Present

Circuit Court Judge

January 2009 – Present

Appointed by State of Florida Governor and re-elected in 2010, 2016, and 2022. Currently assigned to Probate Division and presiding over Estate, Trusts, and Guardian Proceedings (*January 2019-present*). Previously assigned to and presided over the following: Dependency, Family & Juvenile Cases in the Unified Family Court

Division (*January 2011-December 2018*) and capital murder and other serious felony cases in the Criminal Felony Trial Division (*January 2009-January 2011*).

Florida Fourth District Court of Appeal, West Palm Beach, FL

Associate Judge

October 2011, October 2014 & February 2020

One of three (3) panel judges; conferenced and issued rulings on approximately 50 criminal and civil appeals. Authored seven (7) written appellate opinions (criminal and civil appeals): *4D11-265: Shiloh Toler v. Bank of America* | *4D10-4180: State v. Wilbert Johnson, Jr.* | *4D09-5179: Audra W. Poland v. Susan S. Zaccheo* | *4D12-4457: Elizabeth Chamberlain v. John Elsinger* | *4D13-2224: Bank of New York v. Andrew Calloway* | *4D10-2221: Richard Althouse v. Palm Beach County Sheriff's Office* | *4D19-571: Klein v. Estate of Eleanor H. Klein*.

Seventeenth Judicial Circuit of Florida, Fort Lauderdale, FL

General Magistrate – Dependency & Family Division

November 2004 – January 2009

Gathered and evaluated evidence and testimony from witnesses and experts. Issued findings of fact and prepared reports and recommendations. Ruled on pre-trial and post-judgment motions. Conducted arraignments and accepted pleas in Dependency Court. Calendared and conducted hearings. Coordinated Judicial and Permanent Reviews between Attorney's General Office, Guardian Ad Litem Office, and Special Public Defenders. Reviewed and accepted mediation agreements. Reviewed psychological and psychiatric evaluations, comprehensive behavioral health assessments, and other therapeutic reports. Conducted final judgment hearings in family law cases, including paternity matters.

United States Equal Employment Opportunity Commission, Miami, FL

Senior Trial Attorney

August 1999 – November 2004

Litigated to verdict Title VII (class action), ADEA, EPA, and ADA claims in Federal District Court. Served as legal and policy advisor to District Director of Miami District Office. Served as in-house counsel to federal compliance investigators. Conducted conciliation conferences and assisted in federal investigations. Drafted Motions for Summary Judgments and Responses to Corporate Motions for Summary Judgment. Prepared and responded to discovery requests. Prepared mediation summaries and participated in complex mediation. Served as Government Trainer in providing technical assistance/interpretation of federal EEOC laws to CEO's, managers, supervisors, and employees. Reviewed employment handbooks and provided case law updates.

Broward State Attorney's Office, Fort Lauderdale, FL

Assistant State Attorney, Circuit Court, Felony Unit, Lead Trial Attorney

May 1998 – August 1999

Trained attorneys elevated to felony division. Supervised attorneys in active trial division. Maintained active caseload of hundreds of cases. Reviewed and assigned felony cases in active trial division. Litigated felony jury trials including 2nd Degree Murder.

Assistant State Attorney, County Court, Trial Attorney and Trial Supervisor

August 1996 – April 1998

Served as division prosecutor in County Court. Reviewed probable cause affidavits and determined if charges against defendants should be filed or dismissed. Supervised attorneys in three separate trial divisions. Litigated recidivist DUI cases. Maintained active caseload of hundreds of cases. Appeared at arraignments and conducted probation violation hearings.

United States Equal Employment Opportunity Commission (EEOC), Miami, FL

United States Federal Investigator

June 1990 – August 1992

Investigated employment discrimination under Federal EEOC Laws. Compiled statistical data on private sector companies, state, and local government agencies. Interviewed complainants and witnesses. Prepared investigative reports. Made findings of fact and recommendations to the District Director. Conciliated and mediated charges of discrimination. Researched complex issues under federal EEOC laws. Conducted legal staffings with in-house attorneys.

APPOINTMENTS/BOARDS

Seventeenth Judicial Circuit, Presiding Judge of Grand Jury (January 1, 2023-June 30, 2023 Term), Fort Lauderdale, FL (2023 Term)

Designated and Appointee as Referee for the Florida Supreme Court, Fort Lauderdale, FL (Appointed by Seventeenth Judicial Circuit Chief Judge by designation by the Florida Supreme Court) (March 2023, June 2015, 2016, and June 2012)

Hiring Committee, Fort Lauderdale, FL (Appointed by Seventeenth Judicial Circuit Chief Judge, *Member* (2018-Present) | **Broward County Bar Association**, Fort Lauderdale, FL, *Judicial Liaison* (2019-2021).

Children's Service Council of Broward County, Fort Lauderdale, FL (Appointed by 17th Judicial Circuit Chief Judge), *Vice-Chair* (2021); *Secretary* (2019-2020); *Board Member/Judicial Member* (2018-Present)

Seventeenth Judicial Circuit Hiring Committee, Fort Lauderdale, FL (Appointed by Seventeenth Judicial Circuit Chief Judge, *Member* (2018-Present) | **Broward County Bar Association**, Fort Lauderdale, FL, *Judicial Liaison* (2019-2021).

PROFESSIONAL LEGAL MEMBERSHIPS

The Florida Bar | Broward Bar | Southern District of Florida | Northern District of Florida | Middle District of Florida

PROFESSIONAL SPEAKING EVENTS

Broward County Guardianship Association (BCGA), Seminar/Topic: Guardianship & Legislative Updates (February 2023)

T.J. Reddick Bar Association, Topic: Getting Your House in Order - Estate Planning (January 2022)

T.J. Reddick Bar Association, Topic: Getting Your House in Order - Estate Planning (December 2021)

Broward County Bar Association, Topic: Civil/Probate (November 2021)

South Broward Bar Association, Topic: Professionalism, Conducting Zoom Hearings, and Mindfulness (November 2021)

Minority Lawyer's Seminar, Subcommittee to RPPTL Membership & Inclusion Committee, Topic: Probate (May 2021)

Broward County Bar Association, Webinar/Topic: Probate Roundtable (March 2021)

T.J. Reddick Bar Association, Topic: "Getting Your House in Order" (November 2020)

Broward County Bar Association, Webinar/Topic: Probate Roundtable (February 2020)

Minority Bar Associations, Topic: How to Set up a Successful Estate Planning and Drafting Practice: "Introduction to Wills and Trusts Drafting" (January 2020)

Broward County Guardianship Association (BCGA), Seminar/Topic: A View from The Bench (January 2020)

Broward County Bar & Bench Convention, Topic: Best Practices in the Probate Division/Practicing in the Tri-County Area (October 2019)

Estate Planning Council of Broward County, Seminar/Topic: A Facilitated Discussion on Best Practices for Case Management & Administration of Estates and Guardianships (September 2019)

Broward County Bar Association, Topic: Got Civility? Roundtable Discussion on Professionalism in Broward Courts (May 2019).

North Broward County Alumnae Chapter of Delta Sigma Theta Sorority, Inc., Topic: Setting Your House in Order (May 2019)

Seventh Judicial Circuit Roundtable, Topic: Update on Procedures and Practice (May 2019)

Broward Women's Lawyers' Association, Topic: Informed Voters Workshop for Tomorrow's Leaders (February 2019)

Piney Grove Boys Academy, Topic: Success & Motivation (November 2018)

Heart Gallery of Broward County, Topic: Christmas in July/Adoptions (July 2015)

Voices of Children, LLC, Topic: Perseverance (April 2015)

Broward County Bar Association & T.J. Reddick Association, Topic: Discussion on Judicial Nominating Committee Process (February 2014)

AWARDS AND RECOGNITIONS

Broward County Bar Association, *Stephen Booher Award Judicial Advocate of the Year* (September 2021)

T.J. Reddick Bar Association, *Judicial Advocate of the Year* (June 2021)

Broward Guardian Ad Litem Program, *Judicial Advocate of the Year* (November 2014)

National Association of Social Workers, Florida Chapter/Broward County, *Judicial Advocacy Award* (June 2013)

Equal Employment Opportunity Commission, *Chairperson's Award for Outstanding Performance* (September 2001)

MADD (Mothers Against Drunk Drivers), *Prosecutor Award* (May 1997)

CONTINUING LEGAL EDUCATION

Office of State Court Administrator (OSCA), Faculty Training Course (August 2022)

Office of State Court Administrator (OSCA), Nuts and Bolts of Probate (October 2021)

Florida College of Advanced Judicial Studies, Phase II (Divisional Rotation/Civil Track) (2019)

Florida Legal Education Association (FLEA) Conference: Substantive Law Updates & Emerging Probate Issues (2019)

Florida Legal Education Association (FLEA) Conference: Substantive Law Updates & Emerging Probate Issues (2018)

Florida Department of Children & Families: Child Protection Summit/ Case Law Update and Emerging Issues (2018)

National Center for State Courts: Differentiated Case Management Principles & Practices Workshop (2017)

Florida College of Advanced Judicial Studies, Family & Dependency Track (2017)

Florida Conference of Circuit Judges, Conference (2017)

Early Childhood Development & Parental Substance Abuse: Informing the Court Decision-Making Process (2017)

Seventeenth Judicial Circuit, Communication: Perceptions of Bias and Fairness (2015)

The Florida Bar, Judicial Ethics (2015)

Florida Conference of Circuit Judges, Conference (2014)

Seventeenth Judicial Circuit, 7th Annual Unified Family Summit (2014)

Spring 2022 College of Law Individual Instructor Aggregated Report Cohort 1 for LAW7931: Current Fed Tax Probs (Kenneth Gillespie)

Project Title: **University of Florida GatorEvals – Spring 2022 Main Project**

Courses Audience: **18**
Responses Received: **16**
Response Ratio: **88.9%**

Instructors Audience: **18**
Responses Received: **16**
Response Ratio: **88.9%**

Report Comments

INTRODUCTION

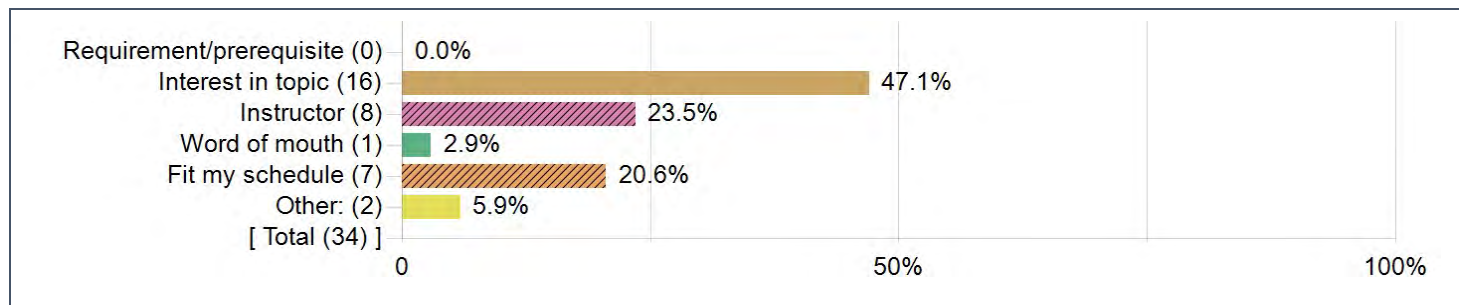
Teaching is a fundamental purpose of the University of Florida and the dissemination of new knowledge in our classrooms, studios, and clinics enables our students and trainees to fully explore their intellectual boundaries. Assessment and evaluation of our courses are designed to enhance instruction and maximize learning to meet the mission of the university. This report contains the results gathered through the new GatorEvals system. Students were invited to share their feedback on the teaching and course material. We invite every faculty member to examine the analysis in the report and utilize the resources provided in the report. Thank you for your continued great work!

Chris Hass, Ph.D.
Associate Provost for Academic and Faculty Affairs

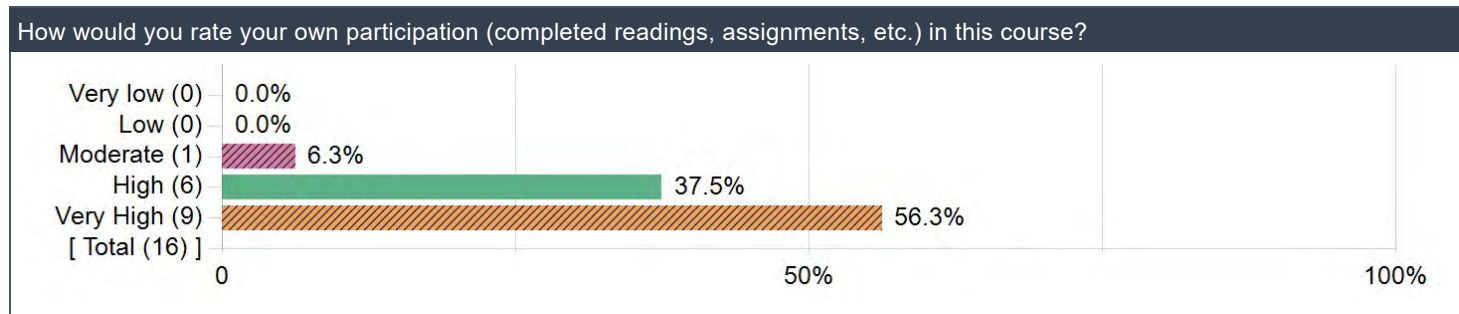


Student Self-Evaluation Questions

Why did you take this course?



How would you rate your own participation (completed readings, assignments, etc.) in this course?



Comparative Evaluation Results

University Core Instructor Evaluation Questions

	Response Rate	Mean	IM	DPT Mean	DPT IM	College Mean	College IM
The instructor was enthusiastic about the course.	88.9%	5.00	5.00	4.91	4.95	4.93	4.97
The instructor explained material clearly and in a way that enhanced my understanding.	88.9%	4.81	4.88	4.74	4.82	4.80	4.88
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	88.9%	4.94	4.97	4.79	4.93	4.81	4.91
The instructor fostered a positive learning environment that engaged students.	88.9%	5.00	5.00	5.00	5.00	4.92	4.96
The instructor provided prompt and meaningful feedback on my work and performance in the course.	88.9%	4.94	4.97	4.88	4.95	4.80	4.91
The instructor was instrumental to my learning in the course.	88.9%	4.94	4.97	4.82	4.91	4.86	4.92

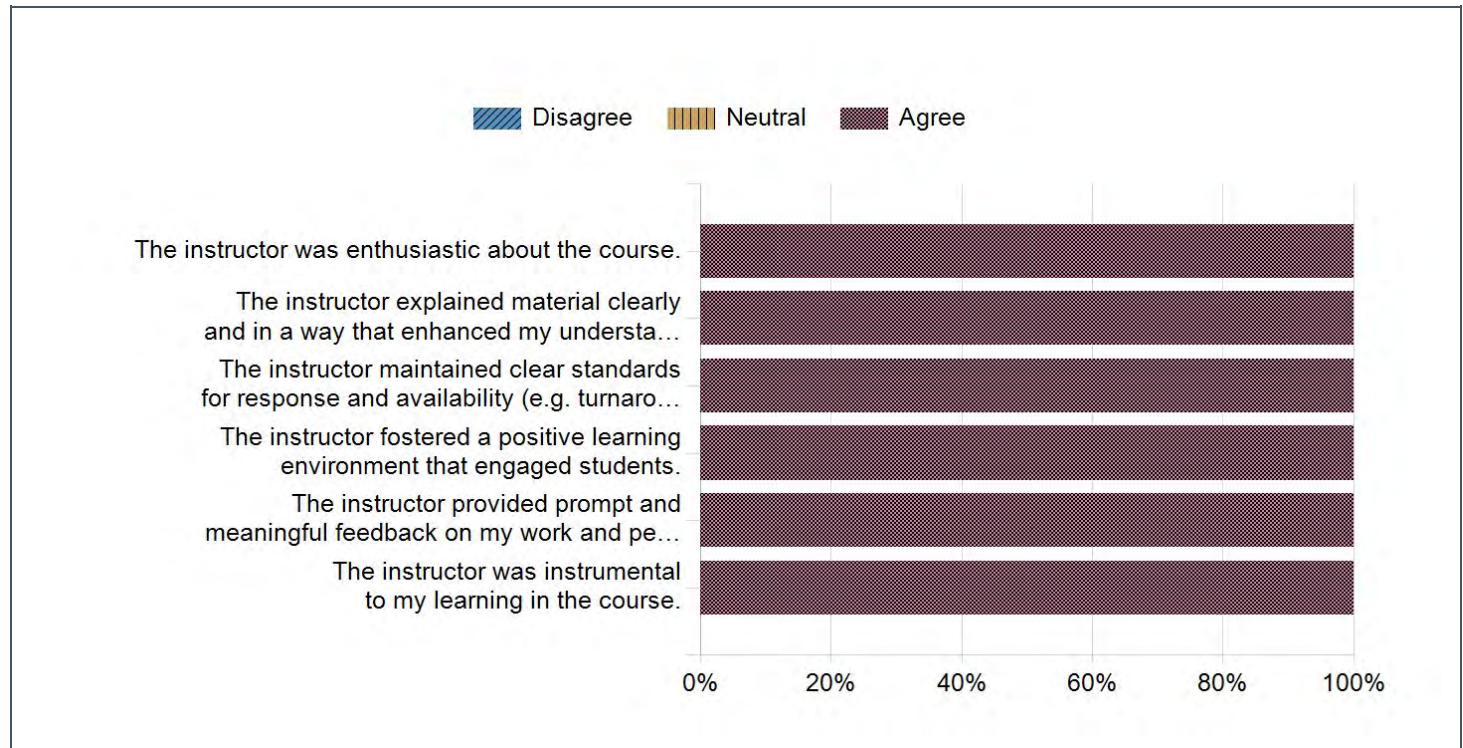
University Core Course Evaluation Questions

	Response Rate	Mean	IM	DPT Mean	DPT IM	College Mean	College IM
Course content (e.g., readings, activities, assignments) was relevant & useful.	88.9%	4.81	4.88	4.71	4.85	4.66	4.80
The course fostered regular interaction between student and instructor.	88.9%	4.94	4.97	4.82	4.91	4.67	4.82
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	88.9%	4.88	4.93	4.79	4.91	4.68	4.85
Overall, this course was a valuable educational experience.	88.9%	4.88	4.93	4.82	4.89	4.79	4.88

Aggregate Evaluation Results

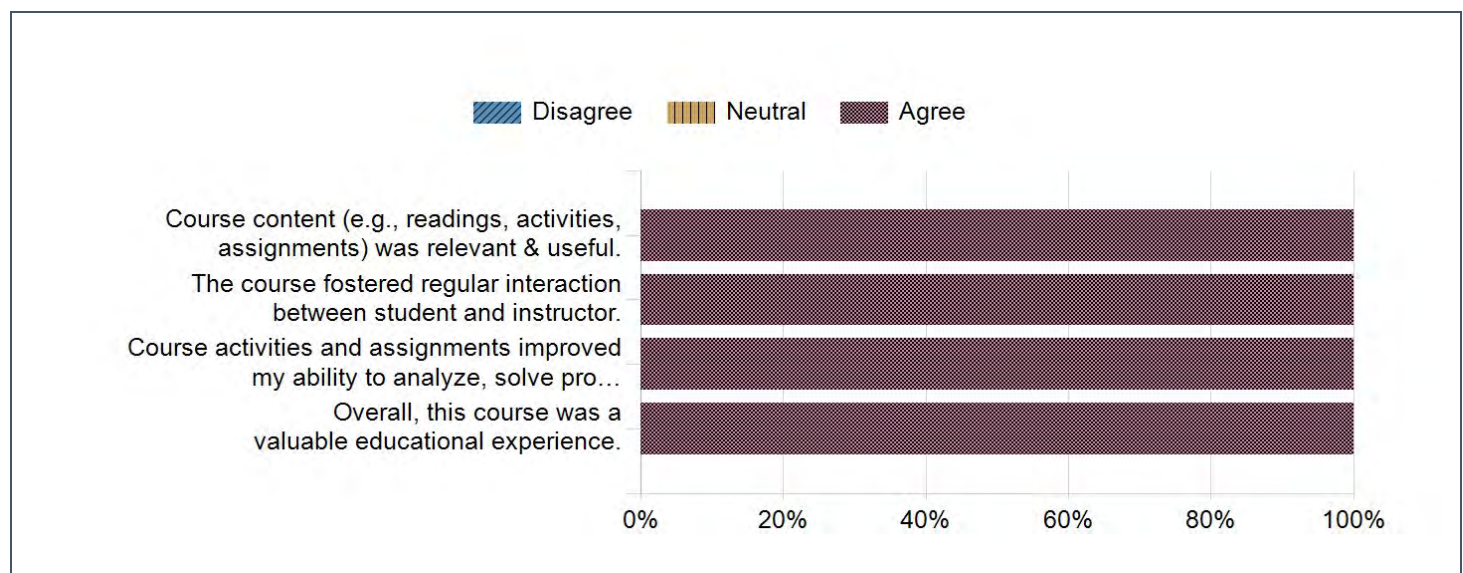
University Core Instructor Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



University Core Course Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



Percentages Evaluation Results

University Core Instructor Evaluation Questions

	%(1)	%(2)	%(3)	%(4)	%(5)	Count	Mean	Median	SD
The instructor was enthusiastic about the course.	0.0%	0.0%	0.0%	0.0%	100.0%	16	5.00	5.00	0.00
The instructor explained material clearly and in a way that enhanced my understanding.	0.0%	0.0%	0.0%	18.8%	81.3%	16	4.81	5.00	0.40
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	0.0%	0.0%	0.0%	6.3%	93.8%	16	4.94	5.00	0.25
The instructor fostered a positive learning environment that engaged students.	0.0%	0.0%	0.0%	0.0%	100.0%	16	5.00	5.00	0.00
The instructor provided prompt and meaningful feedback on my work and performance in the course.	0.0%	0.0%	0.0%	6.3%	93.8%	16	4.94	5.00	0.25
The instructor was instrumental to my learning in the course.	0.0%	0.0%	0.0%	6.3%	93.8%	16	4.94	5.00	0.25

University Core Course Evaluation Questions

	%(1)	%(2)	%(3)	%(4)	%(5)	Count	Mean	Median	SD
Course content (e.g., readings, activities, assignments) was relevant & useful.	0.0%	0.0%	0.0%	18.8%	81.3%	16	4.81	5.00	0.40
The course fostered regular interaction between student and instructor.	0.0%	0.0%	0.0%	6.3%	93.8%	16	4.94	5.00	0.25
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	0.0%	0.0%	0.0%	12.5%	87.5%	16	4.88	5.00	0.34
Overall, this course was a valuable educational experience.	0.0%	0.0%	0.0%	12.5%	87.5%	16	4.88	5.00	0.34

For additional information and resources in each of these question areas, please visit the GatorEvals Website at <https://gatorevals.ua.ufl.edu/resources--policies/question-set/>

Free Response Section

Please identify the instructor's strengths that contributed to your learning in the course.

Comments
Judge Gillespie did a fantastic job of engaging students and fostering participation. He made sure we understood a topic before moving on and explained things extremely well.
Judge Gillespie is a very approachable and engaging professor. Each step of the probate process was thoroughly explained with examples and real life application. No question was left unanswered and he assured everyone was ready to move to the next topic before leaving the last
Very knowledgeable and passionate about the information. Wanted all of us to know how to practice in this area. Engaging class discussion. Took the time to learn names and asked how we were understanding the material.
Judge Gillespie was interactive with students and constantly kept us engaged. The class was enjoyable and he taught practical procedure for the probate process which made it easier to understand and follow.
Professor Gillespie was able to teach the material in a practical real–life manner. He is one of the best professors I have had.
Judge Gillespie's enthusiasm for the subject was evident. He fostered a great learning environment that kept all students included and engaged. This course has furthered my interest in the subject and solidified my decision to go into this field.
Very knowledgeable in the area. Seems to not leave much out while explaining rules, processes, and procedures. Emphasizes what is most important.
I enjoy this area but Judge Gillespie makes it a lot of fun.
Very knowledgeable.
Judge Gillespie is one of the best professors I have ever had. He explains concepts clearly and discusses the practical aspect of every concept. He solidified my interest in probate and estate administration and trusts and estates. He is also flexible, approachable, and easy to talk to.
Judge Gillespie was enthusiastic about his course and making sure we learned. He was engaging and enjoyed discussions with students.
Professor Gillespie is a sitting probate judge on a Florida Circuit Court in a large and wealthy county. As a result, he has invaluable opinions about how he wishes to see a probate administration, including the tax component, handled by practitioners. Professor Gillespie has also taken the same tax LL.M. course at UF law as we are taking; therefore, he has a sufficient knowledge base from which to communicate with us on tax topics. Professor Gillespie is also positive and energetic, and respectful to the students, encouraging them often.
Whoever thought probate was this exciting? Judge Gillespie is very passionate about this topic and made sure to involve everyone in the class – including the online students – and explained things very clearly. The Judge also listened to everyone's comments and questions. It was a very comfortable , professional, and respectful learning environment.
Very approachable and a great teacher.
The instructor's practical knowledge was priceless. His enthusiasm keep me engaged and continually learning. The instructor's continual recaps kept all the material fresh in my mind while building on the foundation with additional information.
Amazing professor

What additional constructive feedback can you offer the instructor that might help improve the course?

Comments
Maybe having the short name of the statutes on the syllabus would be helpful. But students can do that themselves.
Sometimes using names got to be a bit much and sometimes a bit repetitive. Overall a great, engaging course.
I wish we would have had maybe one more day to go over the 706 in detail but I believe that is covered in another course in more detail.
No feedback except keep it up. It was a wonderful class and I wish I could take another course of yours.
None. My only regret is this was a compressed course. Wish we could spend the entire semester on the subject material. If Judge Gillespie has any interest in leaving the bench UF Law and the LLM program need to bring him on as a full time professor!
Perhaps some more examples of how a hearing, or other interactions, look in the real world.
N/A
I suggest that Professor Gillespie slow down when covering the material. I know he has a lot of material to cover given that the course period is only 1 week long; however, I believe we could take a bit more surface level approach to more of the topics while covering them a bit more slowly, while still covering the same amount of material. Personally, I enjoy the deep dives into detail on a given topic but, as he has noted in class, there is so much material to cover in 1 week.
Maybe nametags the next time (at least for the first day or two)?
Nothing to improve. 10/10 would recommend for other students.
None really. If there had to be anything, I would suggest speaking a little slower. Wasn't a major issue because of the recordings.
Amazing professor

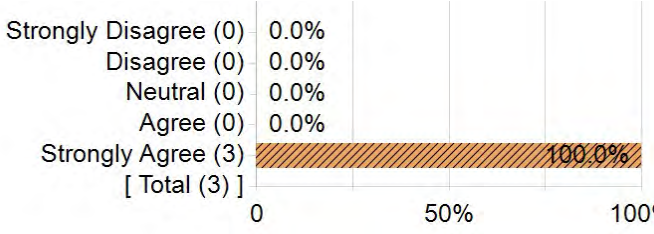
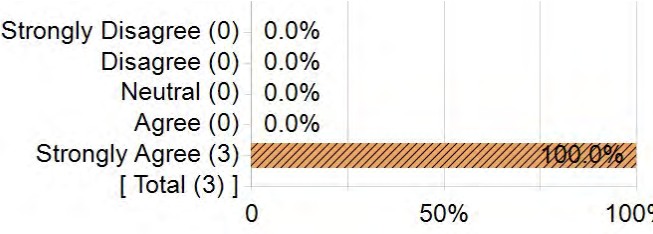
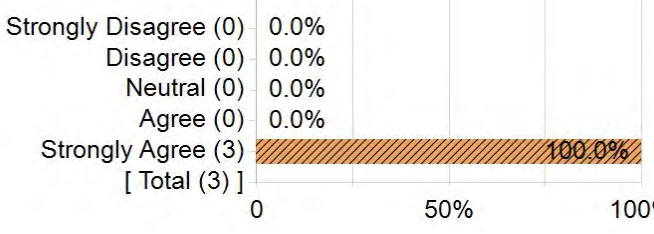
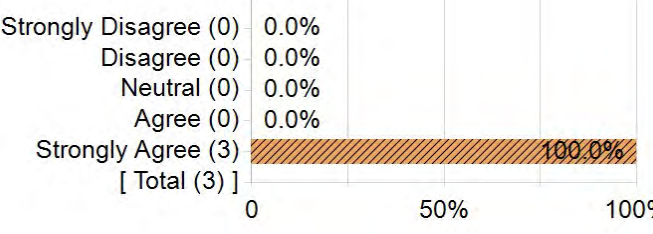
What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?

Comments
It was a great class, very informative and I'm glad I decided to take it. The course covers just enough information for a one credit, week long course.
Perhaps some materials that are not only Florida specific.
I enjoyed it the way it was. It left me wanting to learn more.
none
None
I think the class received a good amount of relevant and useful material.
Maybe make the class a touch longer to better incorporate the material and the learning stories the Judge had. Also, maybe work a little more on the course structure to make it flow a little better. I sort of felt like we were all over the place
Judge Gillespie should teach a semester-long course!
Only that I wish it was a longer course so we could more fully cover everything.
I suggest that the Professor assign less sections in the Probate Code and Probate Rules to read, specifying only the sections which he intends to cover. For example, he assigned us to read, I estimate that at least 50% of the Probate Code and Rules which he assigned, we did not cover in class. It was a lot of reading to prepare for what was not taught upon.
This was a one week long compressed class and we covered lots of materials, but it did not seem overwhelming. As someone who will practice in Florida, this course was extremely helpful, and I appreciate the forms and checklists (which will be invaluable), along with the practical advice and real world examples!
None.
None. It was great and thorough.
Amazing professor

Please identify the topics and/or skills you learned in the course that you believe will have the highest application for future courses or professional growth.

Comments
I feel confident in using forms and thinking about taxes during probate administration.
I was on the fence about taking this course because I do not plan on practicing in the state of Florida but I am glad I decided to take it. The Code sections may focus on the Florida statute but the information can be translated to any jurisdiction and really helps the overall understanding of the process that is going to happen at least once in everyone's life.
how to administer an estate
Explanation of the probate process in Florida as well as analyzing various tax issues associated therewith and advising clients accordingly.
As a beginner practitioner of probate, I am going to take all that I learned into my practice.
At a very high level I feel equipped to begin administering an estate. Have a much better understanding of the process overall, required forms, and timeline/dates in administering an estate. Again, this course has solidified my interest in pursuing a career in this field.
I look forward to working in this area with personal representatives, probate administration and proceedings, and anything else that leads me too. After taking this course I will feel comfortable starting practice and working within the Florida court system.
The probate process, the forms that need to be filed, and the practitioner tips.
Hearing about the probate administration process both in depth and from a bird's eye view was incredibly valuable. In addition, hearing the Judge's point of view on how the process does and/or ought to work was exceptionally valuable for practical, professional growth.
Tax elections and other choices by a fiduciary and surviving spouse as to tax returns and use of tax benefits, such as standard deduction, personal exemptions, joint tax returns, deduction carryforwards existing upon a person's death, and DSUE portability.
I read all the Fla Stat and Probate Rules before class this week, but I think it might be helpful to include a few more articles (perhaps as untested "FYI"), and maybe an article or two about homestead. I read the cases but the topic of putting homestead property into a trust is very complicated and I didn't understand the cases well.
The checklist was very helpful and will be practical to make sure I don't miss anything in the future.
the probate process from beginning to end
Amazing professor

Supplemental Questions (Online)

<p>1. The online environment of this course contributed to my ability to learn the material.</p>  <p>Strongly Disagree (0) 0.0% Disagree (0) 0.0% Neutral (0) 0.0% Agree (0) 0.0% Strongly Agree (3) 100.0% [Total (3)]</p> <p>0 50% 100%</p> <table border="1"> <thead> <tr> <th>Statistics</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>5.00</td> </tr> <tr> <td>Standard Deviation</td> <td>0.00</td> </tr> </tbody> </table>	Statistics	Value	Mean	5.00	Standard Deviation	0.00	<p>2. Student learning objectives were connected to course activities and assignments.</p>  <p>Strongly Disagree (0) 0.0% Disagree (0) 0.0% Neutral (0) 0.0% Agree (0) 0.0% Strongly Agree (3) 100.0% [Total (3)]</p> <p>0 50% 100%</p> <table border="1"> <thead> <tr> <th>Statistics</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>5.00</td> </tr> <tr> <td>Standard Deviation</td> <td>0.00</td> </tr> </tbody> </table>	Statistics	Value	Mean	5.00	Standard Deviation	0.00
Statistics	Value												
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<p>3. Course content is presented and structured in a logical, consistent, and organized manner.</p>  <p>Strongly Disagree (0) 0.0% Disagree (0) 0.0% Neutral (0) 0.0% Agree (0) 0.0% Strongly Agree (3) 100.0% [Total (3)]</p> <p>0 50% 100%</p> <table border="1"> <thead> <tr> <th>Statistics</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>5.00</td> </tr> <tr> <td>Standard Deviation</td> <td>0.00</td> </tr> </tbody> </table>	Statistics	Value	Mean	5.00	Standard Deviation	0.00	<p>4. There were a variety of assignments appropriate for an online course.</p>  <p>Strongly Disagree (0) 0.0% Disagree (0) 0.0% Neutral (0) 0.0% Agree (0) 0.0% Strongly Agree (3) 100.0% [Total (3)]</p> <p>0 50% 100%</p> <table border="1"> <thead> <tr> <th>Statistics</th> <th>Value</th> </tr> </thead> <tbody> <tr> <td>Mean</td> <td>5.00</td> </tr> <tr> <td>Standard Deviation</td> <td>0.00</td> </tr> </tbody> </table>	Statistics	Value	Mean	5.00	Standard Deviation	0.00
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Free Response Section

Project Title: **University of Florida GatorEvals – Spring 2023 Main Project**

Courses Audience: **10**
Responses Received: **10**
Response Ratio: **100%**

Instructors Audience: **10**
Responses Received: **10**
Response Ratio: **100%**

Report Comments

INTRODUCTION

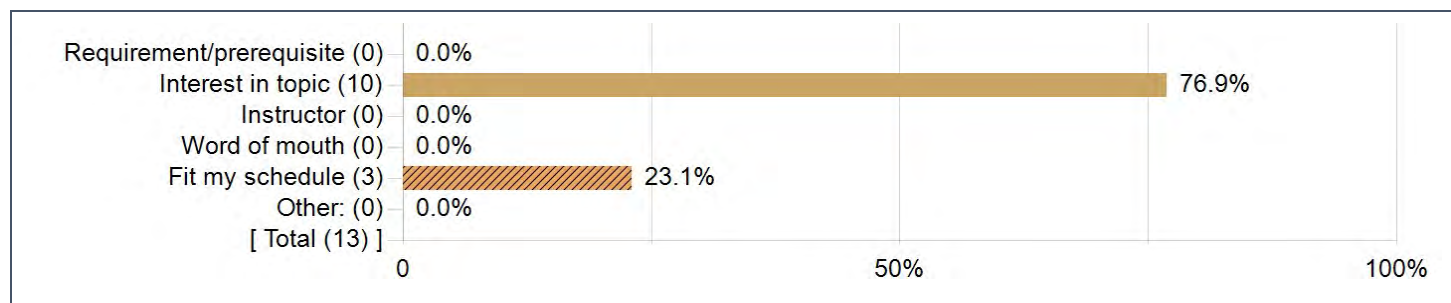
Teaching is a fundamental purpose of the University of Florida and the dissemination of new knowledge in our classrooms, studios, and clinics enables our students and trainees to fully explore their intellectual boundaries. Assessment and evaluation of our courses are designed to enhance instruction and maximize learning to meet the mission of the university. This report contains the results gathered through the new GatorEvals system. Students were invited to share their feedback on the teaching and course material. We invite every faculty member to examine the analysis in the report and utilize the resources provided in the report. Thank you for your continued great work!

Chris Hass, Ph.D.
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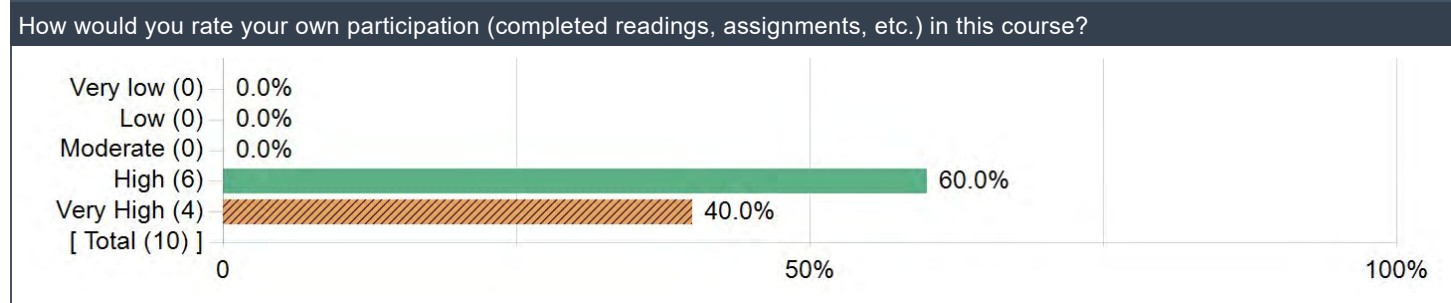


Student Self-Evaluation Questions

Why did you take this course?



How would you rate your own participation (completed readings, assignments, etc.) in this course?



Comparative Evaluation Results

University Core Instructor Evaluation Questions

	Response Rate	Mean	IM	SD	DPT Mean	DPT IM	College Mean	College IM
The instructor was enthusiastic about the course.	100.0%	5.00	5.00	0.00	4.73	4.87	4.78	4.89
The instructor explained material clearly and in a way that enhanced my understanding.	100.0%	4.90	4.94	0.32	4.57	4.82	4.49	4.75
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	100.0%	4.90	4.94	0.32	4.75	4.88	4.60	4.81
The instructor fostered a positive learning environment that engaged students.	100.0%	5.00	5.00	0.00	4.65	4.85	4.63	4.83
The instructor provided prompt and meaningful feedback on my work and performance in the course.	100.0%	5.00	5.00	0.00	4.60	4.82	4.42	4.74
The instructor was instrumental to my learning in the course.	100.0%	5.00	5.00	0.00	4.62	4.85	4.51	4.78
Overall	100.0%	4.97	-	0.18	4.65	-	4.57	-

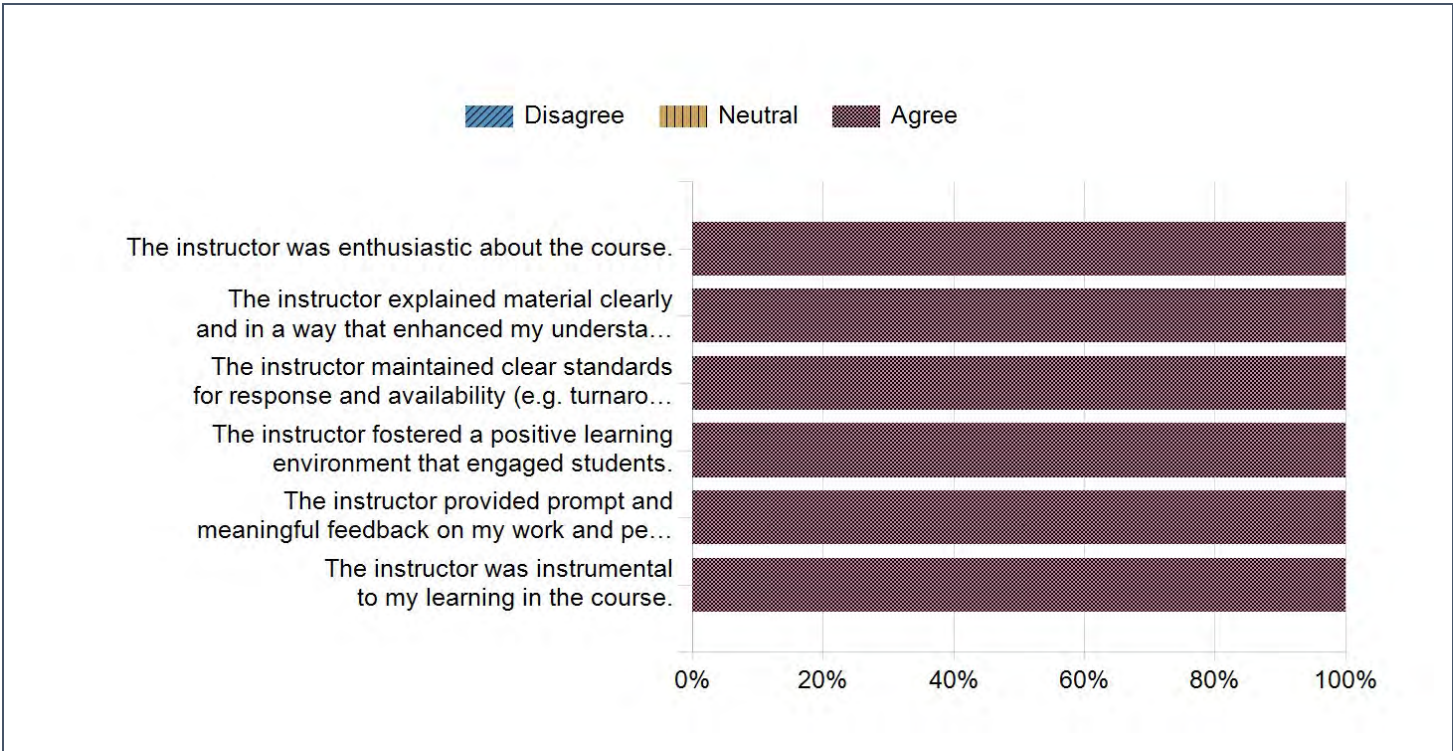
University Core Course Evaluation Questions

	Response Rate	Mean	IM	SD	DPT Mean	DPT IM	College Mean	College IM
Course content (e.g., readings, activities, assignments) was relevant & useful.	100.0%	4.90	4.94	0.32	4.50	4.68	4.39	4.58
The course fostered regular interaction between student and instructor.	100.0%	5.00	5.00	0.00	4.51	4.72	4.46	4.67
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	100.0%	4.90	4.94	0.32	4.46	4.69	4.39	4.62
Overall, this course was a valuable educational experience.	100.0%	5.00	5.00	0.00	4.49	4.71	4.44	4.67
Overall	100.0%	4.95	-	0.23	4.49	-	4.42	-

Aggregate Evaluation Results

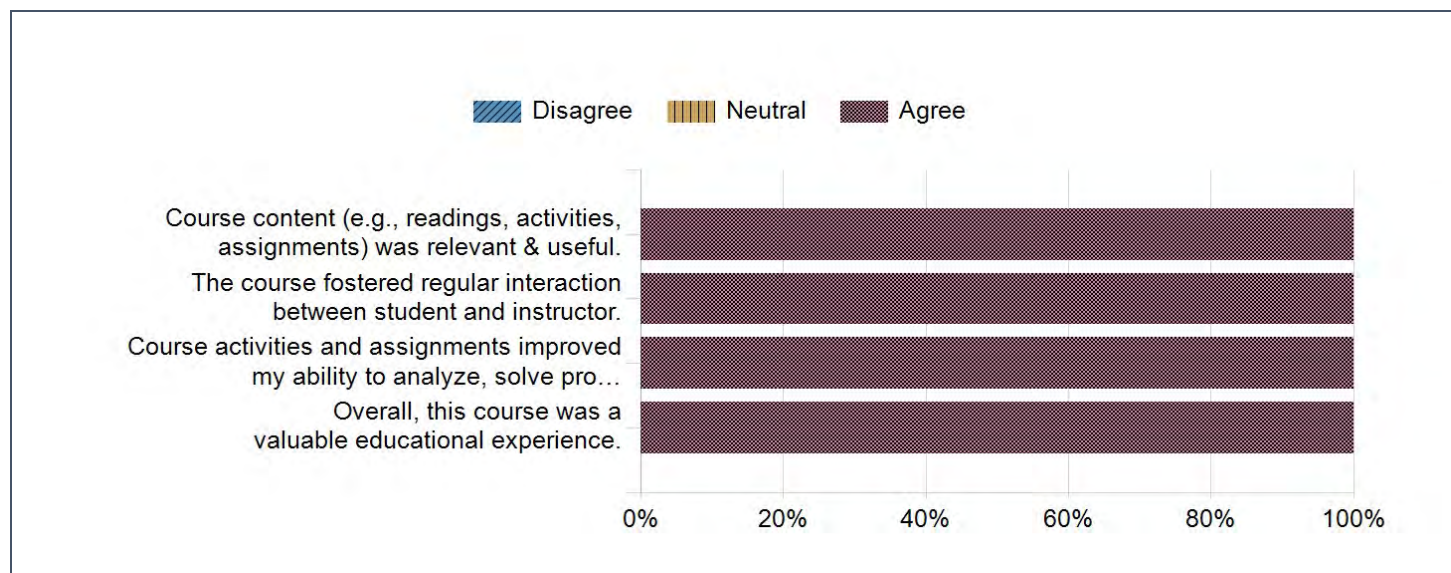
University Core Instructor Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



University Core Course Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



Percentages Evaluation Results

University Core Instructor Evaluation Questions

	%(1)	%(2)	%(3)	%(4)	%(5)	Count	Mean	Median	SD
The instructor was enthusiastic about the course.	0.0%	0.0%	0.0%	0.0%	100.0%	10	5.00	5.00	0.00
The instructor explained material clearly and in a way that enhanced my understanding.	0.0%	0.0%	0.0%	10.0%	90.0%	10	4.90	5.00	0.32
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	0.0%	0.0%	0.0%	10.0%	90.0%	10	4.90	5.00	0.32
The instructor fostered a positive learning environment that engaged students.	0.0%	0.0%	0.0%	0.0%	100.0%	10	5.00	5.00	0.00
The instructor provided prompt and meaningful feedback on my work and performance in the course.	0.0%	0.0%	0.0%	0.0%	100.0%	10	5.00	5.00	0.00
The instructor was instrumental to my learning in the course.	0.0%	0.0%	0.0%	0.0%	100.0%	10	5.00	5.00	0.00

University Core Course Evaluation Questions

	%(1)	%(2)	%(3)	%(4)	%(5)	Count	Mean	Median	SD
Course content (e.g., readings, activities, assignments) was relevant & useful.	0.0%	0.0%	0.0%	10.0%	90.0%	10	4.90	5.00	0.32
The course fostered regular interaction between student and instructor.	0.0%	0.0%	0.0%	0.0%	100.0%	10	5.00	5.00	0.00
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	0.0%	0.0%	0.0%	10.0%	90.0%	10	4.90	5.00	0.32
Overall, this course was a valuable educational experience.	0.0%	0.0%	0.0%	0.0%	100.0%	10	5.00	5.00	0.00

For additional information and resources in each of these question areas, please visit the GatorEvals Website at <https://gatorevals.ua.fl.edu/resources--policies/question-set/>

Free Response Section

Please identify the instructor's strengths that contributed to your learning in the course.

Comments
Created a fun and engaging learning environment
Judge Gillespie was AMAZING! Super nice, energetic, knowledgeable.... you name it. I wish he taught more classes I could take!
The Judge is a great teacher. He is so knowledgeable about the subject and it was invaluable to learn from his real-life experience.
Great care for the students and emphasis on class participation. Kept the class very engaged and discussion on topic. Was respectful both ways. Highly recommend.
Judge Gillespie did a fantastic job of getting each person involved and did a great job of communicating exactly what he thought was important about the topics we discussed.
Energetic, informative, knowledgeable, and passionate about this course. Relayed complex material in a manner that was easily digestible.
Judge Gillespie is energetic and open. He is kind and cares about students understanding the course content! He is very knowledgeable.
Judge Gillespie brings a positive, no stress, learning environment that allows students to really focus on taking the material in and asking any questions that arise. He repeats himself which is very helpful and emphasizes the high points. Finally, he gives the practical pointers too.
Judge Gillespie is the best type of law school professor: a profession who bring their own practical knowledge and perspectives to the classroom. This is a relative rarity in a law school classroom, and I would hazard to guess that a traditional law school academic could not have taught this class as well as Judge Gillespie did.

Please identify the instructor's strengths that contributed to your learning in the course.

Attributes - t&l [No. of comments]	Overall [9]
UNSPECIFIC FAVORABLE	66.7 %
KNOWLEDGEABLE	44.4 %
ENTHUSIASTIC	33.3 %

What additional constructive feedback can you offer the instructor that might help improve the course?

Comments
Just keep being great!
There is nothing that I can think of that he could have done better. Thoroughly enjoyed the course and would recommend to anyone.
NA
I wish he could be here all year long!
I feel like there is not enough time to cover all the material in this course. I see probate and tax consequences as two separate areas. I think we could have spent the whole week purely on the administrative side because the tax items we learned in Grat Tax (don't get me wrong, it was a good review).
Judge brought up the possibility of holding hearings via zoom from the classroom for the class to observe; this sounds highly beneficial.

What additional constructive feedback can you offer the instructor that might help improve the course?

Attributes - t&l [No. of comments]	Overall [6]
UNSPECIFIC FAVORABLE	33.3 %
POORLY DELIVERED	16.7 %
ENJOYABLE	16.7 %

What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?

Comments
None.
NA
The class problem was helpful and I think we could have done more examples and used them to fill out forms in conjunction.

What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?

Attributes - t&l [No. of comments]	Overall [3]
HELPFUL/SUPPORTIVE	33.3 %
CHALLENGING	0.0 %
FRUSTRATING	0.0 %

Please identify the topics and/or skills you learned in the course that you believe will have the highest application for future courses or professional growth.

Comments
The practical knowledge of how to start the probate process
An understanding of the probate system and how estate administration works.
navigating probate administration (easier said than done) statutory interpretation
Probate admin process and the tax consequences. As a tax attorney, this directly relates to the work I will be doing. Additionally, this course provides an opportunity to be an asset to my firm in an area that will grow our wealth management practice!
How to begin the probate process, which forms to file, and resources to turn to for complex topics, such as homestead.
Exceptional practical knowledge of the probate process and tax procedure related to it.

Please identify the topics and/or skills you learned in the course that you believe will have the highest application for future courses or professional growth.

Attributes - t&l [No. of comments]	Overall [6]
EASY	16.7 %
UNSPECIFIC FAVORABLE	16.7 %
COMPLEX	16.7 %

Project Title: **University of Florida GatorEvals – Spring 2023 Main Project**

Courses Audience: **6**
Responses Received: **6**
Response Ratio: **100%**

Instructors Audience: **6**
Responses Received: **6**
Response Ratio: **100%**

Report Comments

INTRODUCTION

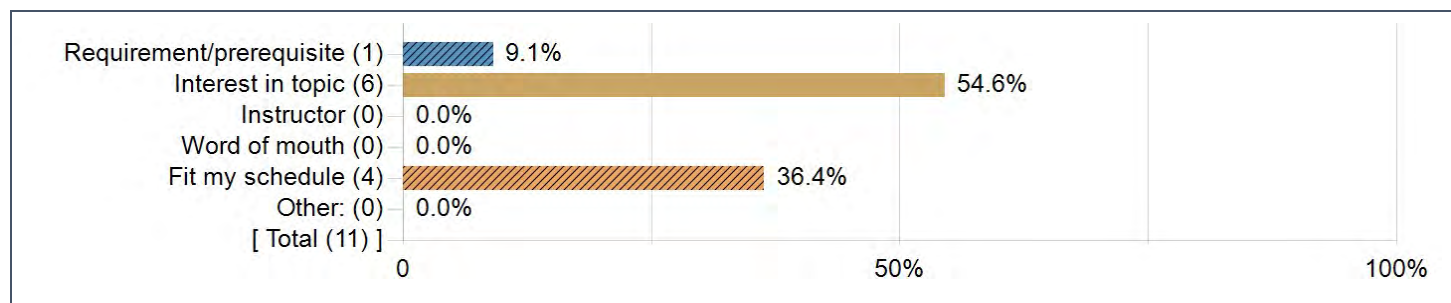
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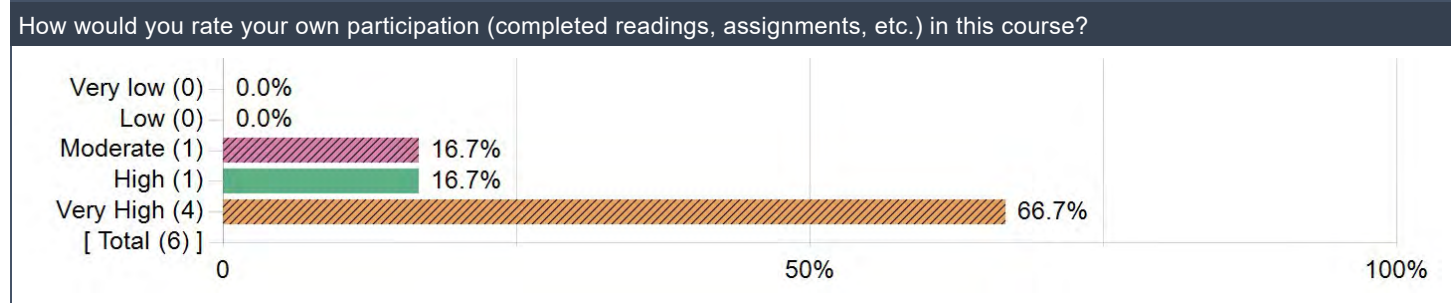


Student Self-Evaluation Questions

Why did you take this course?



How would you rate your own participation (completed readings, assignments, etc.) in this course?



Comparative Evaluation Results

University Core Instructor Evaluation Questions

	Response Rate	Mean	IM	SD	DPT Mean	DPT IM	College Mean	College IM
The instructor was enthusiastic about the course.	100.0%	4.83	4.90	0.41	4.73	4.87	4.78	4.89
The instructor explained material clearly and in a way that enhanced my understanding.	100.0%	4.67	4.75	0.52	4.57	4.82	4.49	4.75
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	100.0%	4.83	4.90	0.41	4.75	4.88	4.60	4.81
The instructor fostered a positive learning environment that engaged students.	100.0%	4.83	4.90	0.41	4.65	4.85	4.63	4.83
The instructor provided prompt and meaningful feedback on my work and performance in the course.	100.0%	4.67	4.90	0.82	4.60	4.82	4.42	4.74
The instructor was instrumental to my learning in the course.	100.0%	4.83	4.90	0.41	4.62	4.85	4.51	4.78
Overall	100.0%	4.78	-	0.52	4.65	-	4.57	-

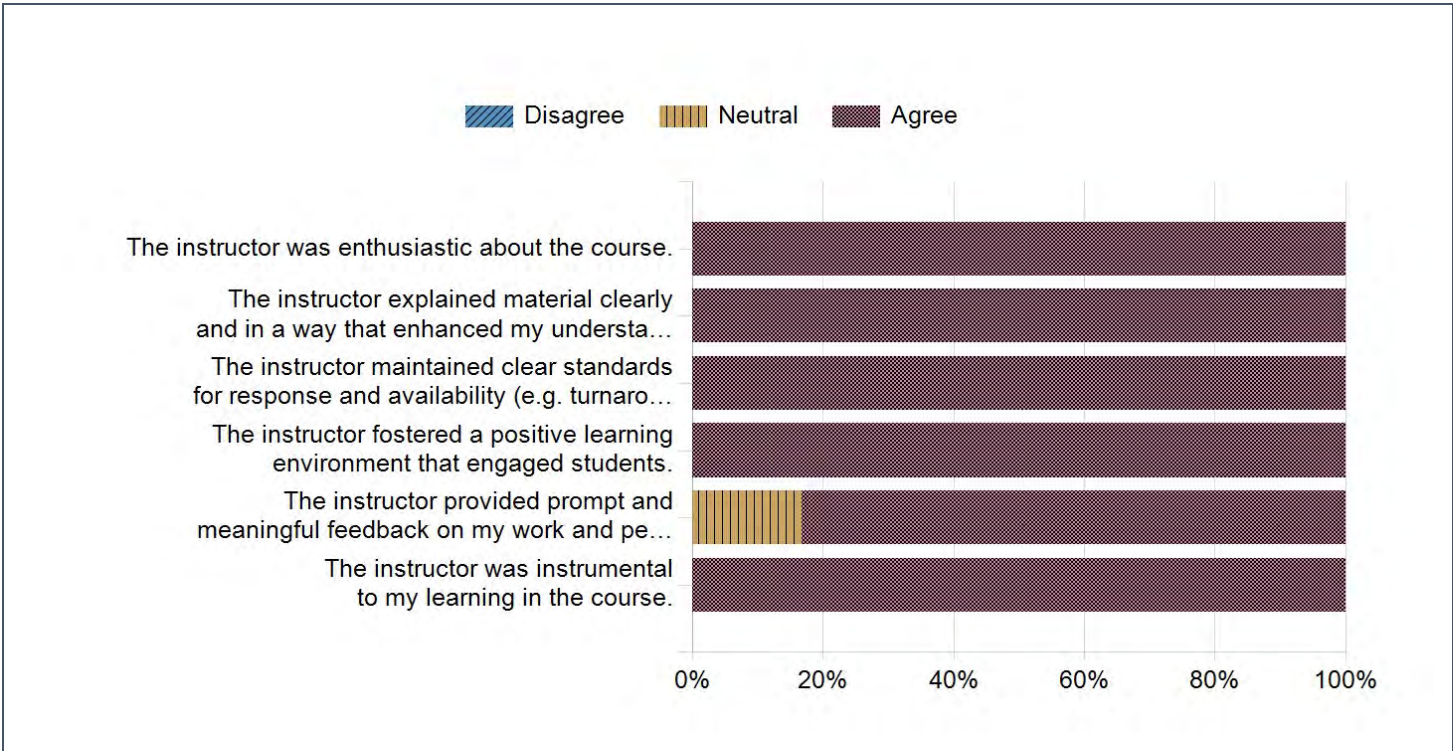
University Core Course Evaluation Questions

	Response Rate	Mean	IM	SD	DPT Mean	DPT IM	College Mean	College IM
Course content (e.g., readings, activities, assignments) was relevant & useful.	100.0%	4.50	4.50	0.55	4.50	4.68	4.39	4.58
The course fostered regular interaction between student and instructor.	100.0%	4.67	4.75	0.52	4.51	4.72	4.46	4.67
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	100.0%	4.50	4.50	0.55	4.46	4.69	4.39	4.62
Overall, this course was a valuable educational experience.	100.0%	4.67	4.75	0.52	4.49	4.71	4.44	4.67
Overall	100.0%	4.58	-	0.54	4.49	-	4.42	-

Aggregate Evaluation Results

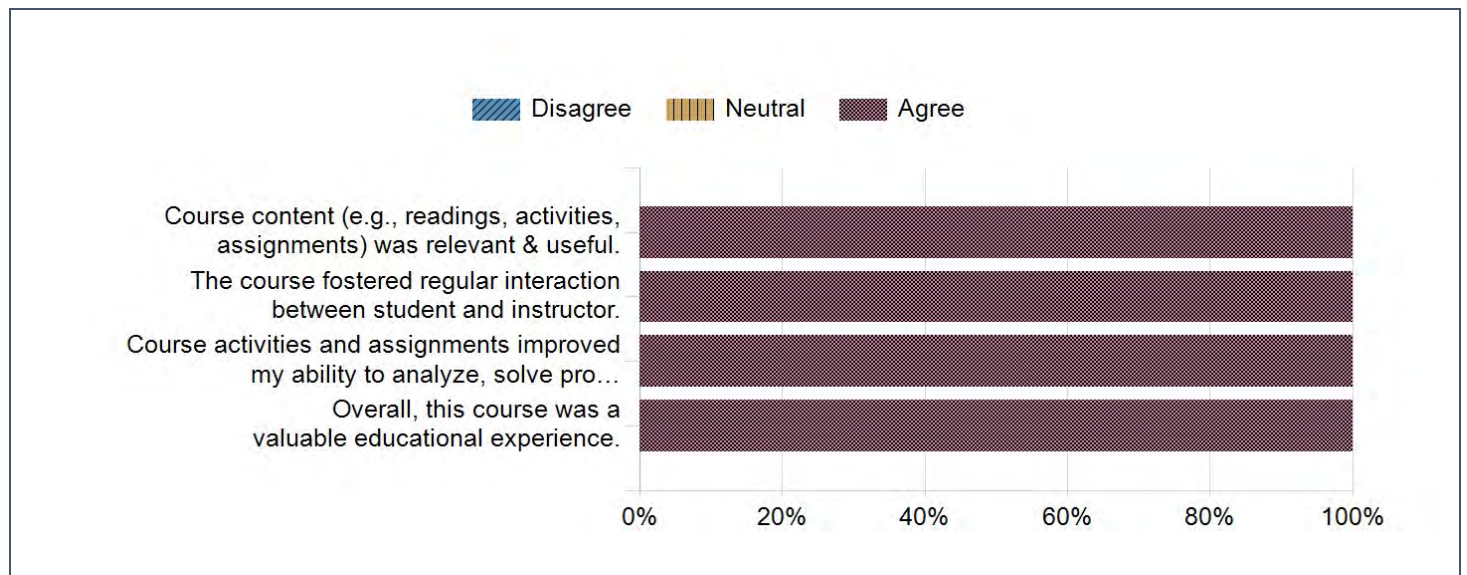
University Core Instructor Evaluation Questions - Aggregate Chart

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University Core Course Evaluation Questions - Aggregate Chart

Note that in the following aggregate chart "Strongly Agree" and "Agree" have been grouped together as "Agree" while "Strongly Disagree" and "Disagree" have been grouped together as "Disagree".



Percentages Evaluation Results

University Core Instructor Evaluation Questions

	%(1)	%(2)	%(3)	%(4)	%(5)	Count	Mean	Median	SD
The instructor was enthusiastic about the course.	0.0%	0.0%	0.0%	16.7%	83.3%	6	4.83	5.00	0.41
The instructor explained material clearly and in a way that enhanced my understanding.	0.0%	0.0%	0.0%	33.3%	66.7%	6	4.67	5.00	0.52
The instructor maintained clear standards for response and availability (e.g. turnaround time for email, office hours, etc.)	0.0%	0.0%	0.0%	16.7%	83.3%	6	4.83	5.00	0.41
The instructor fostered a positive learning environment that engaged students.	0.0%	0.0%	0.0%	16.7%	83.3%	6	4.83	5.00	0.41
The instructor provided prompt and meaningful feedback on my work and performance in the course.	0.0%	0.0%	16.7%	0.0%	83.3%	6	4.67	5.00	0.82
The instructor was instrumental to my learning in the course.	0.0%	0.0%	0.0%	16.7%	83.3%	6	4.83	5.00	0.41

University Core Course Evaluation Questions

	%(1)	%(2)	%(3)	%(4)	%(5)	Count	Mean	Median	SD
Course content (e.g., readings, activities, assignments) was relevant & useful.	0.0%	0.0%	0.0%	50.0%	50.0%	6	4.50	4.50	0.55
The course fostered regular interaction between student and instructor.	0.0%	0.0%	0.0%	33.3%	66.7%	6	4.67	5.00	0.52
Course activities and assignments improved my ability to analyze, solve problems, and/or think critically.	0.0%	0.0%	0.0%	50.0%	50.0%	6	4.50	4.50	0.55
Overall, this course was a valuable educational experience.	0.0%	0.0%	0.0%	33.3%	66.7%	6	4.67	5.00	0.52

For additional information and resources in each of these question areas, please visit the GatorEvals Website at <https://gatorevals.ua.ufl.edu/resources--policies/question-set/>

Free Response Section

Please identify the instructor's strengths that contributed to your learning in the course.

Comments
Judge Gillespie is a dynamic speaker, engages students throughout the course time, and gives thoughtful responses that answer student inquiries.
He is such a positive and engaging professor. He really makes his students feel heard and respected.
Very good at getting class participation and students wanting to learn together
Passionate, welcoming. Good professor!
The instructor is very passionate about this subject matter. He was also very happy to answer student questions and had a great ability to summary the material in a concise and understandable way.
Extremely engaging and very thorough

Please identify the instructor's strengths that contributed to your learning in the course.

Attributes - t&l [No. of comments]	Overall [6]
UNSPECIFIC FAVORABLE	66.7 %
ENGAGING	50.0 %
ENTHUSIASTIC	33.3 %

What additional constructive feedback can you offer the instructor that might help improve the course?

Comments
I am the type that learns really well with structured slides. Consider preparing slides for every topic!
I enjoyed the guest speakers. I would encourage to get the creditor fight so we can see how contentious it gets.
Honestly this course should be longer than one week.
Awesome. Keep teaching this course. Thank you much!

What additional constructive feedback can you offer the instructor that might help improve the course?

Attributes - t&l [No. of comments]	Overall [4]
UNSPECIFIC FAVORABLE	50.0 %
ORGANIZED	25.0 %
TOO MUCH OR TOO LITTLE	25.0 %

What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?

Comments
More concrete information regarding tax consequences of certain elections; e.g., tell students the dollar amount consequences of failing to make a DSUE election.
Again, consider slides.
creditor fight; real example
This course should be offered for an entire semester because it is extremely useful to take.

What constructive suggestion(s) do you have for improving the course materials, organization, and assignments?

Attributes - t&l [No. of comments]	Overall [4]
NOT WORTHWHILE	25.0 %
WORTHWHILE	25.0 %
NOT ENGAGING	0.0 %

Please identify the topics and/or skills you learned in the course that you believe will have the highest application for future courses or professional growth.

Comments
Filing of certain forms with the IRS that are required throughout the probate administration process.
Learning all of the required tax filings for probate and estate administration was incredibly useful.
I feel way more comfortable going into court with anything probate related after having this course.

Please identify the topics and/or skills you learned in the course that you believe will have the highest application for future courses or professional growth.

Attributes - t&l [No. of comments]	Overall [3]
PLEASANT/SAFE	33.3 %
WORTHWHILE	33.3 %
COMPLEX	0.0 %

Supplemental Questions (Online)

<p>1. The online environment of this course contributed to my ability to learn the material.</p> <table><tr><td>Strongly Disagree (0)</td><td>0.0%</td></tr><tr><td>Disagree (0)</td><td>0.0%</td></tr><tr><td>Neutral (1)</td><td>16.7%</td></tr><tr><td>Agree (2)</td><td>33.3%</td></tr><tr><td>Strongly Agree (3)</td><td>50.0%</td></tr><tr><td>[Total (6)]</td><td></td></tr></table>	Strongly Disagree (0)	0.0%	Disagree (0)	0.0%	Neutral (1)	16.7%	Agree (2)	33.3%	Strongly Agree (3)	50.0%	[Total (6)]		<p>2. Student learning objectives were connected to course activities and assignments.</p> <table><tr><td>Strongly Disagree (0)</td><td>0.0%</td></tr><tr><td>Disagree (0)</td><td>0.0%</td></tr><tr><td>Neutral (0)</td><td>0.0%</td></tr><tr><td>Agree (2)</td><td>33.3%</td></tr><tr><td>Strongly Agree (4)</td><td>66.7%</td></tr><tr><td>[Total (6)]</td><td></td></tr></table>	Strongly Disagree (0)	0.0%	Disagree (0)	0.0%	Neutral (0)	0.0%	Agree (2)	33.3%	Strongly Agree (4)	66.7%	[Total (6)]	
Strongly Disagree (0)	0.0%																								
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Agree (2)	33.3%																								
Strongly Agree (4)	66.7%																								
[Total (6)]																									
<p>3. Course content is presented and structured in a logical, consistent, and organized manner.</p> <table><tr><td>Strongly Disagree (0)</td><td>0.0%</td></tr><tr><td>Disagree (0)</td><td>0.0%</td></tr><tr><td>Neutral (0)</td><td>0.0%</td></tr><tr><td>Agree (2)</td><td>33.3%</td></tr><tr><td>Strongly Agree (4)</td><td>66.7%</td></tr><tr><td>[Total (6)]</td><td></td></tr></table>	Strongly Disagree (0)	0.0%	Disagree (0)	0.0%	Neutral (0)	0.0%	Agree (2)	33.3%	Strongly Agree (4)	66.7%	[Total (6)]		<p>4. There were a variety of assignments appropriate for an online course.</p> <table><tr><td>Strongly Disagree (0)</td><td>0.0%</td></tr><tr><td>Disagree (0)</td><td>0.0%</td></tr><tr><td>Neutral (0)</td><td>0.0%</td></tr><tr><td>Agree (2)</td><td>33.3%</td></tr><tr><td>Strongly Agree (4)</td><td>66.7%</td></tr><tr><td>[Total (6)]</td><td></td></tr></table>	Strongly Disagree (0)	0.0%	Disagree (0)	0.0%	Neutral (0)	0.0%	Agree (2)	33.3%	Strongly Agree (4)	66.7%	[Total (6)]	
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PROBATE & ESTATE ADMINISTRATION: TAX CONSIDERATIONS

Compressed Course - Spring 2022

(January 10-14, 2022)

Instructor: Circuit Judge Kenneth L. Gillespie
Probate Division (17th Judicial Circuit)
Phone: 954-610-1198
E-mail: gillespiek@ufl.edu
Office hours: (1) In-person: Tuesday [1/11/22] & Thursday [1/13/22] 1:30 p.m.-2:30 p.m.
(2) Zoom: By appointment during compressed week

Course Meeting Times and Location:

Monday, Tuesday, Wednesday, and Thursday (9:00 a.m.-11:50 a.m.)
Friday, 9:00 a.m. -10:50 a.m.

Location: Rm/Bldg.

Required Text:

Online Florida Probate Statutes & Rules, Internet.

Reference Material: Below is reference material that will enhance your knowledge, especially if you plan to practice probate and estate administration or if you plan to incorporate it into/make it part of your practice:

Practice Under Florida Probate Code, The Florida Bar Continuing Legal Education, Tenth Edition.

Litigation Under Florida Probate Code, The Florida Bar Continuing Legal Education, Twelfth Edition.

Attendance And Participation:

Attendance is required by both the ABA and the University of Florida Law School. Notably, student attendance is essential to gain a workable knowledge of probate and estate administration given the compressed structure of this course. Participation is encouraged and will consist of 20% of your overall grade, which is based on in-class participation. **Because this is a compressed course, no unexcused absences are permitted; your participation grade will be reduced by 5 points per unexcused hour you are absent from class.** Requirements for class attendance, make-up exams, and assignments consistent with the University's policies can be found at: <https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

If you intend to be absent for observance of a "major" religious holiday, please coordinate with me as early as possible to schedule a make-up assignment. Further, if an unforeseen circumstance arises (sickness, family emergency, etc.), the absence **may** be excused at the professor's discretion after you have provided adequate documentation of the requested information and you have also completed a make-up assignment.

Canvas:

Please become familiar with **Canvas**. All class information and announcements will be posted on Canvas. You are encouraged to check canvas regularly for postings and announcements. Should you experience any technical issues with Canvas, please contact UF Help Desk at helpdesk@ufl.edu or (352) 392-HELP. Any requests for make-ups due to technical issues **MUST** be accompanied by the ticket number received from LSS when the problem was reported to LSS. The ticket number will document the time and date of the problem. You **MUST** e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up.

Course Description and Preparation Time:

The primary objective of this compressed course is to provide students with a workable knowledge of the fundamental concepts of probate and estate administration, and consideration of tax-related consequences in administering estates. Topics include discussion of selected provisions of the Florida Probate Code (Chapter 733) and the Florida Probate Rules governing the administration of estates and probate procedure. Additionally, students will gain on-hands experience in the preparation of probate documents, e-filing portal procedures, the role and duties of personal representative, estate management, creditor claims, special provisions for distributions, and closing procedures. Finally, this compressed course will conclude with a discussion of the fiduciary responsibility requirements for resolving the final tax of a decedent's estate with an emphasis on the Estate's Income Tax Form 1041, Estate and or Gift Tax Returns (Forms 706 or 709).

This compressed course is "1 credit." Students should spend at least 2 full hours preparing for each hour of class meeting. This is the minimum preparation time needed for students to develop a workable knowledge and mastery of the course concepts and objectives.

Course Expectations and Learning Outcomes:

Upon the successful completion of this course, students should be able to:

- Read and understand the Florida Probate Code and the Florida Probate Rules.
- Navigate the e-filing Portal.
- Discuss and explain the difference between probate and estate administration.
- Identify and explain the steps in formal probate procedures and the preparation of documents for administering a decedent's estate, both testate and intestate.
- Identify and explain the steps in summary probate procedures and the preparation of documents for administering a decedent's estate, both testate and intestate.

- Understand the roles, duties, and potential liability of the personal representative.
- Understand and manage creditors' claims.
- Gain a workable knowledge of special provisions relating to distribution
- Understand the procedures of closing an estate.
- Identify, determine, and prepare decedent's income, gift tax and estate tax returns, and to
- Access/assess Probate Court Checklists by Circuit/Jurisdiction.

Class Conduct And Recording of Class Discussions

Students are expected to treat colleagues/others with respect at all times. With respect to the recording of class lectures, students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. Notably, students failing to follow these rules will be referred to the College of Law's Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

Computation of Course Grade:

20 percent: Participation

80 percent: Final Exam

Final Exam

The final exam will be 90 minutes and will be administered on January 28, 2022. The exam will be open book. Communication is strictly prohibited and will violate the Honor Code (an exception is permitted when communicating with Student Affairs or UF IT to resolve technical issues, or to report an illness).

Exam delays and accommodations must be arranged through the Student Affairs Office.

See <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>; also, see same link below "UF's Policy Accommodating Disability." Additional time will be provided to students whose first language is not English.

Grade Scale And Grading Policies:

<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67

D+	1.33
D (Poor)	1.00
D-	0.67
F (Failure)	0.00

The Law School's grading policy applies to this course and is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>. **Note: The mandatory mean grade policy does not apply to LL.M. students.**

UF's Policy on Accommodating Students with Disabilities:

Students requesting classroom and/or testing accommodations must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation. Student Affairs will then communicate with the professor as needed to assure the accommodation is provided. Referenced link at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-student-handbook-and-academic-policies>.

Honor Code and Instructor Evaluation:

Students are required to follow the Honor Code. To review its requirements see <http://www.law.ufl.edu/student-affairs/additional-information/honor-code-and-committee>. Students who fail to follow UF safety protocols or the prohibition on circulating or posting class material will be referred to the College of Law's Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to provide feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. **Student anonymity is preserved during and after the evaluation process.** Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>."

TOPICS AND CLASS ASSIGNMENTS:

Class 1: Monday, January 10, 2022

Part I. Overview of Probate and Estate Administration

REQUIRED READING:

Fla. Prob. R. 5.020(a) and (e); Fla.R.Jud.Admin. 2.515(b); Fla. Prob. R. 5.030(a)-(c); Fla. Prob. R. 5.110(a)-(b); Fla. Prob. R. 5.170 (2021); Fla. Prob. R. 5.240(a); Fla. Prob. R. 5.040-5.041; **Fla. Prob. R. 5.200; Fla. Prob. R. 5.201; Fla. Prob. R. 5.205; Fla. Prob. R. 5.210; Fla. Prob. R. 5.215; Fla. Prob. R. 5.235; Fla. Prob. R. 5.240; Fla. Prob. R. 5.2405; Fla. Prob. R. 5.241; and Fla. Prob. R. 5.320.**

731.102, Fla. Stat. (2021); 731.105, Fla. Stat. (2021); **Skim 731.201, Fla. Stat. (2021) (“General Definitions”)**; 731.1035, Fla. Stat.; 731.301(3), Fla. Stat. (2021); 733.6175, Fla. Stat. (2021); 732.501-732.507, Fla. Stat. (2021); 733.201; Fla. Stat. (2021); 733.202, Fla. Stat. (2021); 733.207, Fla. Stat. (2021); 733.208, Fla. Stat. (2021); 733.212 Fla. Stat. (2021); 733.2121, Fla. Stat. (2021)

Consumer Pamphlet: Probate in Florida, The Florida Bar,
<https://www.floridabar.org/public/consumer/pamphlet026/>

Florida Courts: <https://help.flcourts.org/Other-Resources/Probate>

Optional/Additional Readings:

Cornell Law School, Actions In Rem: *Estates, Trusts, Corporations*,
<https://www.law.cornell.edu/constitution-conan/amendment-14/section-1/actions-in-rem-estates-trusts-corporations>.

*Part II: Considerations of Opening Formal vs. Summary Administration
Ancillary Administration*

*Part III: Cooperative Introduction of Initial Estate Administration Forms
Various Probate Circuits’ Checklists (posted on Canvas).*

REQUIRED READING:

Mary Randolph, *NOLO Florida Probate: An Overview*
<https://www.nolo.com/legal-encyclopedia/florida-probatean-overview.html>

REQUIRED READING:

733.201, Fla. Stat. (2021); 733.207, Fla. Stat. (2021); 734.102, Fla. Stat. (2021); 734.1025, Fla. Stat. (2021); 735.201, Fla. Stat. (2021); 735.203; Fla. Stat. (2021); 735.301, Fla. Stat. (2021); 735.302 Fla. Stat. (2021); 733.208, Fla. Stat. (2021); Fla.

Prob. R. 5.200; Fla. Prob. R. 5.420; Fla. Prob. R. 5.470, Fla. Prob. R. 5.510; Fla. Prob. R. 5.530.

Review Selected *FLSSI Probate Forms* (posted on Canvas).

Optional/Additional Readings:

Mary Randolph, *NOLO Steps in the Probate Process: An Overview*,
<https://www.alllaw.com/articles/nolo/wills-trusts/steps-probate.html>

Class 2: Tuesday, January 11, 2022

*Part I. Primary Role and Responsibilities of Personal Representative
Role of Attorney in Probate & Estate Administration*

REQUIRED READING:

Seventeen Judicial Circuit, *Personal Representative's Handbook*, revised 2021 (posted on Canvas).

REQUIRED READING:

733.301, Fla. Stat. (2021); 733.302; Fla. Stat. (2021); 733.303, Fla. Stat. (2021); 733.304, Fla. Stat. (2021); 733.307, Fla. Stat. (2021); 733.308, Fla. Stat. (2021); 733.3101, Fla. Stat. (2021); 733.402; Fla. Stat. (2021); 733.403, Fla. Stat. (2021); 733.404, Fla. Stat. (2021); and 733.405, Fla. Stat. (2021); 733.501, Fla. Stat. (2021); 733.502, Fla. Stat. (2021); 733.503; Fla. Stat. (2021); 733.504, Fla. Stat. (2021); 733.506, Fla. Stat. (2021); 733.5061, Fla. Stat. (2021); 733.508, Fla. Stat. (2021); 733.509, Fla. Stat. (2021); 733.604, Fla. Stat. (2021); 733.608, Fla. Stat. (2021); 733.609; Fla. Stat. (2021); 733.613, Fla. Stat. (2021); 733.616, Fla. Stat. (2021); 733.617, Fla. Stat. (2021); 733.6171, Fla. Stat. (2021); 733.619, Fla. Stat. (2021); Fla. Prob. R. 5.320; Fla. Prob. R. 5.330; Fla. Prob. R. 5.340; Fla. Prob. R. 5.342; Fla. Prob. R. 5.3425; Fla. Prob. R. 5.345; Fla. Prob. R. 5.346; Fla. Prob. R. 5.385; Fla. Prob. R. 5.395; Fla. Prob. R. 5.400; Fla. Prob. R. 5.401; Fla. Prob. R. 5.405; Fla. Prob. R. 5.406; Fla. Prob. R. 5.407; Fla. Prob. R. 5.430; and Fla. Prob. R. 5.440.

Optional/Additional Readings:

Sandra F. Diamond, Esq. & Laird A. Lile, Esq., *Ethics in Estate and Trust Administrations: "The Obvious and Oblivious,"* <https://lairdalile.com/wp-content/uploads/2017/02/187012-74759.nov-5-2014-cle-presentation.pdf> (posted on Canvas).

*Part II. Addressing and Managing Creditors' Claims
Homestead and Exempt Property*

REQUIRED READING:

Art X, § 4, Fla. Const.; 732.102, Fla. Stat. (2021); 732.103, Fla. Stat. (2021); 732.401, Fla. Stat. (2021); 732.4015, Fla. Stat. (2021); 732.402, Fla. Stat. (2021); 732.403, Fla. Stat. (2021); 732.401, Fla. Stat. (2021); 732.514, Fla. Stat. (2021); 733.705; Fla. Stat. (2021); 733.706, Fla. Stat. (2021); 733.707, Fla. Stat. (2021); 733.708, Fla. Stat. (2021); Fla. Prob. R. 5.340; Fla. Prob. R. 5.405; Fla. Prob. R. 5.406; Fla. Prob. R. 5.407; Fla. Prob. R. 5.490; Fla. Prob. R. 5.496; Fla. Prob. R. 5.498; Fla. Prob. R. 5.499.

James R. Wilson and E. Martin McGehee, Probate Claims in Florida, 1 Fla. L. Rev. 1 (2021). Available at: <https://scholarship.law.ufl.edu/flr/vol1/iss1/1/>

Optional/Additional Readings:

Wilson v. Florida Nat. Bank & Trust Co. at Miami, 64 So. 2d 309, 313 (Fla. 1953); Hubert v. Hubert, 662 So.2d 1049 (Fla. 4th DCA 1993); Jones v. Federal Farm Mortg. Corp., 182 So. 226 (Fla. 1938); McKean v. Warburton, 919 So.2d 341 (Fla. 2006); Engelke v. Estate of Engelke, 921 So.2d 693 (Fla. 4th DCA 2006); Elmowitz v. Estate of Zimmerman, 647 So.2d 1064 (Fla. 3d DCA 1994); In re Estate of Donovan, 550 So.2d 37 (Fla. 2nd DCA 1989).

Class 3: Wednesday, January 12, 2022

Part I. Discharge

REQUIRED READING:

733.602(2), Fla. Stat. (2021); 733.612(26), Fla. Stat. (2021); 733.801, Fla. Stat. (2021); 733.802, Fla. Stat. (2021); 733.811, Fla. Stat. (2021); 733.812, Fla. Stat. (2021); 733.901, Fla. Stat. (2021); 733.903, Fla. Stat. (2021); Fla. Prob. R. 5.385; Fla. Prob. R. 5.400; Fla. Prob. R. 5.401.

Part II: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Determination & Responsibility of Person Preparing Final Forms 1040, 1041, and the 706 (Securing the Tax I.D. Numbers for the Estate, and Revocable Trust/Sub-Trusts).

Topic Area B: Accessing Prior Tax Returns/Exploring Unused Capital and Passive Losses/Carryovers (Generating Capital Gains and Ordinary Income to Avoid Wasting of Losses.).

Topic Area C: Whether Form 706 Will Be Filed (Estate Exceeds Exemptions) or Filed for Portability Purposes.

Topic Area D: Selection of Taxable Year.

Class 4: Thursday, January 13, 2022

Cont. Part I: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Read and Analyze Will/Trust in Context of Exploring Judicial Modification, Non-Judicial Modifications, Revisions Permitted by Trustees or Trust Protectors, and/or Decanting.

Topic Area B: Whether a 645 Election Should Be Made

Topic Area C: Administration Expenses & Taking Deductions on the Proper Return

Cursory Review of Decedent's Final Income Tax Return (Form 1040)

Cursory Review of Decedent's Estate Income Tax Return (Form 1041)

Class 5: Friday, January 14, 2022

Cont. Part I: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Disclaimers/Tax Consequences

Topic Area B: Penalties and Extensions

Estate Tax Form 706 & Issues)

REQUIRED READING:

IRS Publications, *Deceased Persons-Probate, Filing Estate and Individual Returns, Paying Taxes Due*, <https://www.irs.gov/businesses/small-businesses-self-employed/deceased-taxpayers-probate-filing-state-and-individuals-returns-paying-taxes-due>.

Download I.R.S. Forms 1040, 1041, 706 and 709.

Part 2: An Overview of Estate and Gift Forms

An IRS Examiner's Prospective on Selected Estate Tax Issues

GUEST SPEAKER: Terrence Holly Frazier, Senior Estate Tax Attorney
Estate & Gift Tax Division, Internal Revenue Service
New York, New York

PROBATE & ESTATE ADMINISTRATION: TAX
CONSIDERATIONS Compressed
Course - Spring 2023
(January 9-13, 2023)

Instructor: Circuit Judge Kenneth L. Gillespie
Probate Division (17th Judicial Circuit)
Phone: 954-610-1198
E-mail: gillespiek@ufl.edu
Office hours: (1) In-person: Tuesday [1/10/23] and Thursday [1/12/23] 2:15-3:15 p.m.
(2) Zoom: By appointment only during compressed week

Course Meeting Times and Location:

Monday, Tuesday, Wednesday, and Thursday (10:00 a.m.-11:50 a.m. & 1:00 p.m.-1:50 p.m.); Friday, 10:00 a.m. -11:50 a.m.

Location: HH 359

Required Text:

Online Florida Probate Statutes & Rules, Internet.

Reference Material: Below is reference material that will enhance your knowledge, especially if you plan to practice probate and estate administration or if you plan to incorporate it into/make it part of your practice:

Practice Under Florida Probate Code, The Florida Bar Continuing Legal Education, Eleventh Edition.

Litigation Under Florida Probate Code, The Florida Bar Continuing Legal Education, Thirteenth Edition.

Attendance and Participation:

Both the ABA and the University of Florida Law School require attendance. Notably, student attendance is essential to gain a workable knowledge of probate and estate administration given the compressed structure of this course. Participation is encouraged and will consist of 20% of your overall grade, which is based on in-class participation. **Because this is a compressed course, no unexcused absences are permitted; your participation grade will be reduced by 5 points per unexcused hour you are absent from class.** Requirements for class attendance, make-up exams, and assignments

consistent with the University's policies can be found at:
<https://catalog.ufl.edu/ugrad/current/regulations/info/attendance.aspx>.

If you intend to be absent for observance of a "major" religious holiday, please coordinate with me as early as possible to schedule a make-up assignment. Further, if an unforeseen circumstance arises (sickness, family emergency, etc.), the absence **may** be excused at the professor's discretion after you have provided adequate documentation of the requested information and you have completed a make-up assignment.

Canvas:

Please become familiar with **Canvas**. All class information and announcements will be posted on Canvas. You are encouraged to check canvas regularly for postings and announcements. Should you experience any technical issues with Canvas, please contact UF Help Desk at helpdesk@ufl.edu or (352) 392-HELP. Any requests for make-ups due to technical issues **MUST** be accompanied by the ticket number received from LSS when the problem was reported to LSS. The ticket number will document the time and date of the problem. You **MUST** e-mail your instructor within 24 hours of the technical difficulty if you wish to request a make-up.

Course Description and Preparation Time:

The primary objective of this compressed course is to provide students with a workable knowledge of the fundamental concepts of probate and estate administration, and consideration of tax-related consequences in administering estates. Topics include discussion of selected provisions of the Florida Probate Code (Chapter 733) and the Florida Probate Rules governing the administration of estates and probate procedure. Additionally, students will gain on-hands experience in the preparation of probate documents, e-filing portal procedures, the role and duties of personal representative, estate management, creditor claims, special provisions for distributions, and closing procedures. Finally, this compressed course will conclude with a discussion of the fiduciary responsibility requirements for resolving the final tax of a decedent's estate with an emphasis on the Estate's Income Tax Form 1041, Estate and or Gift Tax Returns (Forms 706 or 709).

This compressed course is "one (1) credit." Students should spend at least two (2) full hours preparing for each hour of class meeting. This is the minimum preparation time needed for students to develop a workable knowledge and mastery of the course concepts and objectives.

Course Expectations and Learning Outcomes:

Upon the successful completion of this course, students should be able to:

- Read and understand the Florida Probate Code and the Florida Probate Rules. – Navigate the e-filing Portal.
- Discuss and explain the difference between probate and estate administration.
- Identify and explain the steps in formal probate procedures and the preparation of documents for administering a decedent’s estate, both testate and intestate.
- Identify and explain the steps in summary probate procedures and the preparation of documents for administering a decedent’s estate, both testate and intestate.
- Understand the roles, duties, and potential liability of the personal representative.
- Understand and manage creditors’ claims.
- Gain a workable knowledge of special provisions relating to distribution – Understand the procedures of closing an estate.
- Identify, determine, and prepare decedent’s income, gift tax and estate tax returns, and to – Access/assess Probate Court Checklists by Circuit/Jurisdiction.

Class Conduct and Recording of Class Discussions

Students are expected to treat colleagues/others with respect at all times. With respect to the recording of class lectures, students are allowed to record video or audio of class lectures. However, the purposes for which these recordings may be used are strictly controlled. The only allowable purposes are (1) for personal educational use, (2) in connection with a complaint to the university, or (3) as evidence in, or in preparation for, a criminal or civil proceeding. All other purposes are prohibited. Specifically, students may not publish recorded lectures without the written consent of the instructor. Notably, students failing to follow these rules will be referred to the College of Law's Honor Code Council and the University’s Office of Student Conduct and Conflict Resolution.

Computation of Course Grade:

20 percent: Participation
80 percent: Final Exam

Final Exam:

The format of the final exam will consist of a comprehensive fact pattern and subparts. Your responses will be in the form of short answers and essays. The exam will be open book. The date and time of the final exam will be announced in the following weeks.

Communication is strictly prohibited and will violate the Honor Code (an exception is permitted when communicating with Student Affairs or UF IT to resolve technical issues, or to report an illness).

Exam delays and accommodations must be arranged through the Student Affairs Office. See <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-lawstudent-handbook-and-academic-policies>; also, see same link below “UF’s Policy

Accommodating Disability.” Additional time will be provided to students whose first language is not English.

Grade Scale and Grading Policies:

<u>Grade</u>	<u>Points</u>
A (Excellent)	4.0
A-	3.67
B+	3.33
B (Good)	3.00
B-	2.67
C+	2.33
C (Satisfactory)	2.00
C-	1.67
D+	1.33
D (Poor)	1.00
D-	0.67
F (Failure)	0.00

The Law School's grading policy applies to this course and is available at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/current-students/uf-law-studenthandbook-and-academic-policies>. **Note: The mandatory mean grade policy does not apply to LL.M. students.**

UF's Policy on Accommodating Students with Disabilities:

Students requesting classroom and/or testing accommodations must first register with the Office of Disability Resources. The UF Office of Disability Resources will provide documentation to the student who must then provide this documentation to the Law School Office of Student Affairs when requesting accommodation. Student Affairs will then communicate with the professor as needed to assure the accommodation is provided. Referenced link at <https://www.law.ufl.edu/life-at-uf-law/office-of-student-affairs/currentstudents/uf-law-student-handbook-and-academic-policies>.

Honor Code and Instructor Evaluation:

Students are required to follow the Honor Code. To review its requirements, see <http://www.law.ufl.edu/student-affairs/additional-information/honor-code-andcommittee>. Students who fail to follow UF safety protocols or the prohibition on circulating or

posting class material will be referred to the College of Law's Honor Code Council and the University's Office of Student Conduct and Conflict Resolution.

Students are expected to provide professional and respectful feedback on the quality of instruction in this course by completing course evaluations online via GatorEvals. Guidance on how to provide feedback in a professional and respectful manner is available at <https://gatorevals.aa.ufl.edu/students/>. **Student anonymity is preserved during and after the evaluation process.** Students will be notified when the evaluation period opens and can complete evaluations through the email they receive from GatorEvals in their Canvas course menu under GatorEvals or via <https://ufl.bluera.com/ufl/>. Summaries of course evaluation results are available to students at <https://gatorevals.aa.ufl.edu/public-results/>."

TOPICS AND CLASS ASSIGNMENTS:

Class 1: Monday, January 9, 2023

Part I. Overview of Probate and Estate Administration

REQUIRED READING:

Fla. Prob. R. 5.020(a) and (e); Fla.R.Jud.Admin. 2.515(b); Fla. Prob. R. 5.030(a)-(c); Fla. Prob. R. 5.110(a)-(b); Fla. Prob. R. 5.170 (2021); Fla. Prob. R. 5.240(a); Fla. Prob. R. 5.040-5.041; Fla. Prob. R. 5.200; Fla. Prob. R. 5.201; Fla. Prob. R. 5.205; Fla. Prob. R. 5.210; Fla. Prob. R. 5.215; Fla. Prob. R. 5.235; Fla. Prob. R. 5.240; Fla. Prob. R. 5.2405; Fla. Prob. R. 5.241; and Fla. Prob. R. 5.320.

731.102, Fla. Stat. (2021); 731.105, Fla. Stat. (2021); *Skim* 731.201, Fla. Stat. (2021) ("General Definitions"); 731.1035, Fla. Stat.; 731.301(3), Fla. Stat. (2021); 733.6175, Fla. Stat. (2021); 732.501-732.507, Fla. Stat. (2021); 733.201; Fla. Stat. (2021); 733.202, Fla. Stat. (2021); 733.207, Fla. Stat. (2021); 733.208, Fla. Stat. (2021); 733.212 Fla. Stat. (2021); 733.2121, Fla. Stat. (2021)

Consumer Pamphlet: Probate in Florida, The Florida Bar,
<https://www.floridabar.org/public/consumer/pamphlet026/>

Florida Courts: <https://help.flcourts.org/Other-Resources/Probate>

Optional/Additional Readings:

Florida Probate Blog, *The Complete Guide to Florida Probate-2022*:
<https://floridaprobatelawgroup.com/blog/the-complete-guide-to-florida-probate/>.

*Part II: Considerations of Opening Formal vs. Summary Administration
Ancillary Administration*

*Part III: Cooperative Introduction of Initial Estate Administration Forms
Various Probate Circuits' Checklists (posted on Canvas).*

REQUIRED READING:

733.201, Fla. Stat. (2021); 733.207, Fla. Stat. (2021); 734.102, Fla. Stat. (2021);
734.1025, Fla. Stat. (2021); 735.201, Fla. Stat. (2021); 735.203; Fla. Stat. (2021);
735.301, Fla. Stat. (2021); 735.302 Fla. Stat. (2021); 733.208, Fla. Stat. (2021); Fla.
Prob. R. 5.200; Fla. Prob. R. 5.420; Fla. Prob. R. 5.470, Fla. Prob. R. 5.510; Fla. Prob. R.
5.530.

Review Selected *FLSSI Probate Forms* (posted on Canvas).

Optional/Additional Readings:

Mary Randolph, *NOLO Steps in the Probate Process: An Overview*,
<https://www.alllaw.com/articles/nolo/wills-trusts/steps-probate.html>

Class 2: Tuesday, January 10, 2023

*Part I. Primary Role and Responsibilities of Personal Representative
Role of Attorney in Probate & Estate Administration*

REQUIRED READING:

About Publication 559, Survivors, Executors and Administrators,
<https://www.irs.gov/forms-pubs/about-publication-559> (posted on Canvas).

Seventeen Judicial Circuit, *Personal Representative's Handbook*, revised 2021 (posted
on Canvas).

REQUIRED READING:

733.301, Fla. Stat. (2021); 733.302; Fla. Stat. (2021); 733.303, Fla. Stat. (2021);
733.304, Fla. Stat. (2021); 733.307, Fla. Stat. (2021); 733.308, Fla. Stat. (2021);
733.3101, Fla. Stat. (2021); 733.402; Fla. Stat. (2021); 733.403, Fla. Stat. (2021);
733.404, Fla. Stat. (2021); and 733.405, Fla. Stat. (2021); 733.501, Fla. Stat. (2021);
733.502, Fla. Stat. (2021); 733.503; Fla. Stat. (2021); 733.504, Fla. Stat. (2021);
733.506, Fla. Stat. (2021); 733.5061, Fla. Stat. (2021); 733.508, Fla. Stat. (2021);

733.509, Fla. Stat. (2021); 733.604, Fla. Stat. (2021); 733.608, Fla. Stat. (2021); 733.609; Fla. Stat. (2021); 733.613, Fla. Stat. (2021); 733.616, Fla. Stat. (2021); 733.617, Fla. Stat. (2021); 733.6171, Fla. Stat. (2021); 733.619, Fla. Stat. (2021); Fla. Prob. R. 5.320; Fla. Prob. R. 5.330; Fla. Prob. R. 5.340; Fla. Prob. R. 5.342; Fla. Prob. R. 5.3425; Fla. Prob. R. 5.345; Fla. Prob. R. 5.346; Fla. Prob. R. 5.385; Fla. Prob. R. 5.395; Fla. Prob. R. 5.400; Fla. Prob. R. 5.401; Fla. Prob. R. 5.405; Fla. Prob. R. 5.406; Fla. Prob. R. 5.407; Fla. Prob. R. 5.430; and Fla. Prob. R. 5.440.

Optional/Additional Readings:

Sandra F. Diamond, Esq. & Laird A. Lile, Esq., *Ethics in Estate and Trust Administrations: “The Obvious and Oblivious,”* (posted on Canvas).

Seventeen Judicial Circuit, *Personal Representative’s Handbook*, revised 2021 (posted on Canvas).

Part II. Addressing and Managing Creditors’ Claims
Homestead and Exempt Property

REQUIRED READING:

Art X, § 4, Fla. Const.; 732.102, Fla. Stat. (2021); 732.103, Fla. Stat. (2021); 732.401, Fla. Stat. (2021); 732.4015, Fla. Stat. (2021); 732.402, Fla. Stat. (2021); 732.403, Fla. Stat. (2021); 732.401, Fla. Stat. (2021); 732.514, Fla. Stat. (2021); 733.705; Fla. Stat. (2021); 733.706, Fla. Stat. (2021); 733.707, Fla. Stat. (2021); 733.708, Fla. Stat. (2021); Fla. Prob. R. 5.340; Fla. Prob. R. 5.405; Fla. Prob. R. 5.406; Fla. Prob. R. 5.407; Fla. Prob. R. 5.490; Fla. Prob. R. 5.496; Fla. Prob. R. 5.498; Fla. Prob. R. 5.499.

James R. Wilson and E. Martin McGehee, Probate Claims in Florida, 1 Fla. L. Rev. 1 (2021). Available at: <https://scholarship.law.ufl.edu/flr/vol1/iss1/1/>

Optional/Additional Readings:

Wilson v. Florida Nat. Bank & Trust Co. at Miami, 64 So. 2d 309, 313 (Fla. 1953); Hubert v. Hubert, 662 So.2d 1049 (Fla. 4th DCA 1993); Jones v. Federal Farm Mortg. Corp., 182 So. 226 (Fla. 1938); McKean v. Warburton, 919 So.2d 341 (Fla. 2006); Engelke v. Estate of Engelke, 921 So.2d 693 (Fla. 4th DCA 2006); Elmowitz v. Estate of Zimmerman, 647 So.2d 1064 (Fla. 3d DCA 1994); In re Estate of Donovan, 550 So.2d 37 (Fla. 2nd DCA 1989).

Class 3: Wednesday, January 11, 2023

Part I. Discharge

REQUIRED READING:

733.602(2), Fla. Stat. (2021); 733.612(26), Fla. Stat. (2021); 733.801, Fla. Stat. (2021); 733.802, Fla. Stat. (2021); 733.811, Fla. Stat. (2021); 733.812, Fla. Stat. (2021); 733.901, Fla. Stat. (2021); 733.903, Fla. Stat. (2021); Fla. Prob. R. 5.385; Fla. Prob. R. 5.400; Fla. Prob. R. 5.401.

Part II: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Determination & Responsibility of Person Preparing Final Forms 1040, 1041, and the 706 (Securing the Tax I.D. Numbers for the Estate, and Revocable Trust/Sub-Trusts).

Topic Area B: Accessing Prior Tax Returns/Exploring Unused Capital and Passive Losses/Carryovers (Generating Capital Gains and Ordinary Income to Avoid Wasting of Losses.).

Topic Area C: Selection of Taxable Year.

Topic Area D: Election to File Joint Return

Topic Area E: Discharge from Personal Liability of Decedent's Income Taxes

REQUIRED READING:

IRC §6903(a); *Treas.Reg.* §301.6903-1(b)(2); *IRC* §6109(a)(1); *Treas.Reg.* §301.6109-1; *Treas.Reg.* §601.503(b)(1); *IRC* §6012(b)(1); *IRC* §6072(a); *Treas.Reg.* §1.6072-1(b); *IRC* §6501(d); *Treas.Reg.* §301.6501(d)-1(a); *Treas.Reg.* §1.6081-4(a); *IRC* §6905(a); *Treas.Reg.* §301.6905-1(a); and *IRC* §6013(a)(2); *Treas.Reg.* §1.6013-1(d)(1).

IRS Forms: Form 56; Form 1127; Form 2848; Form 4768; Form 4810; Form 4868; Form 5495; and Form 8892.

Download I.R.S. Forms 1040, 1041, 706 and 709.

Class 4: Thursday, January 12, 2023

Cont. Part II: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Topic Area C: Whether Form 706 Will Be Filed (Estate Exceeds Exemptions) or Filed for Portability Purposes.

Topic Area B: Whether a 645 Election Should Be Made

Topic Area C: Administration Expenses & Taking Deductions on the Proper Return

Cursory Review of Decedent's Final Income Tax Return (Form 1040)

Cursory Review of Decedent's Estate Income Tax Return (Form 1041)

REQUIRED READING:

IRC §6018; IRC §6018(a)(1); IRC §6903(a); IRC §6075(a); Treas.Reg. §20.6075-1.

Class 5: Friday, January 13, 2022

Cont. Part III: Survey of Selected Taxable Considerations in the Administration of Estates

Topic Area A: Disclaimers/Tax Consequences

Topic Area B: Penalties and Extensions

REQUIRED READING:

IRS Publications, *Deceased Persons-Probate, Filing Estate and Individual Returns, Paying Taxes Due*, <https://www.irs.gov/businesses/small-businesses-selfemployed/deceased-taxpayers-probate-filing-state-and-individuals-returns-payingtaxes-due>.

Part 2: An Overview of Estate and Gift Forms

An IRS Examiner's Prospective on Selected Estate Tax Issues

GUEST SPEAKER: Terrence Holly Frazier, Senior Estate Tax Attorney
Estate & Gift Tax Division, Internal Revenue Service
New York, New York

New Course Proposal Form

To: Curriculum Committee

From: Hon. Kenneth Gillespie

Date: Sept. 20, 2023

Type of Proposal (check one)	<input type="checkbox"/> Provisional course offering (2 offerings within 4 years) Semester of 1 st proposed offering: <input checked="" type="checkbox"/> Proposal to make provisional offering permanent Enrollment for prior offering: Spring 2022: 18; Spring 202
Course Title	Probate & Estate Administration: Tax Considerations
Number of credits	1__ hours <input checked="" type="checkbox"/> I have reviewed the proposed syllabus and other course materials and I believe that the proposed course requires <u>14</u> hours of in-class instruction and at least <u>28</u> hours of out-of-class work on the part of the students.*
Brief Course Description (50 words or less; for public posting on the UF Law website)	This compressed course provides an overview of the fundamental concepts of probate and estate administration and the tax-related consequences in administering estates. Topics include discussion of selected provisions of the Florida Probate Code (Chapter 733) and
Pre-requisites or Co-Requisites?	LLM level tax course
Educational Objectives Why are you proposing this course? Why should it be added to the UF Law curriculum?	Many LLM tax students have a strong interest in private client and estate work. This course not only provides students with an overview of the substantive law but also provides the students with hands-on experience in the preparation of probate documents, e-filing portal procedures, the role and duties of personal representative, estate
Enrollment cap requested? If requested, what is pedagogical justification?	no

Method of evaluation	80 % Final exam % Skills assessment % Paper	20 % Classroom participation % Other
Casebook or other source of readings? (If casebook, include title, author, publisher, edition)	(1) West's Florida Probate Code with Related Laws & Rules (students access via Westlaw). (2) Florida Bar, Practice Under Florida Probate Code (11th ed.) (recommended reference text). (3) Florida Bar, The Florida Probate Bar System (recommended)	
Have you discussed this proposal with members of the UF Law faculty or administration? If so, please detail the date and substance of your discussions to streamline the Curriculum Committee's deliberations.	Yes; this course was developed in consultation with Charlene Luke.	
Attachment checklist	<div> <input checked="" type="checkbox"/> Detailed course syllabus Include topic for each class session; if possible, designate also the assigned readings for each session. Full-time faculty members proposing a one-time offering may substitute a general description of course coverage for each class session. <input checked="" type="checkbox"/> The syllabus meets the requirements of the UF Policy on Course Syllabi (syllabus.ufl.edu), i.e. it includes all required components. <input checked="" type="checkbox"/> The syllabus includes student learning outcomes, per the UF Law Faculty Policy on Student Learning Outcomes. *The syllabus and/or other information submitted in support of this course proposal must demonstrate to the committee that for every one credit hour sought, the course will provide 15 hours of classroom instruction and will require at least 30 hours of out-of-class work. See ABA Standard 310. </div> <div> <input checked="" type="checkbox"/> Casebook Include photocopy of condensed table of contents </div> <div> <input checked="" type="checkbox"/> CV and qualifications to teach proposed course (N/a for full-time faculty members) </div> <div> <input checked="" type="checkbox"/> Teaching evaluations If this is a proposal for a permanent course, please supply teaching evaluations from previous course offering. N/a for full time faculty members. </div>	

Please find the resources I generally use for the course:

Primary Source:

1. WEST'S FLORIDA PROBATE CODE WITH RELATED LAWS & COURT RULES (2023 ed.), (ISBN/ISSN: 9781731985446; <https://store.legal.thomsonreuters.com/law-products/Statutes/Wests-Florida-Probate-Code-with-Related-Laws--Court-Rules-2023-ed/p/106853011>; students access via Westlaw)

Referenced:

Chapters 731 through 735 of the Florida Statutes
Florida Probate Rules, Part I and Part II (Rules 5.010-5.530).

2. FLORIDA BAR, PRACTICE UNDER FLORIDA PROBATE CODE (11th ed.), (ISBN/ISSN: 9781663342140; <https://store.lexisnexis.com/products/practice-under-florida-probate-code-skuusSku13265>) (recommended reference text)

Table of Contents:

Chapter 1 Important Preliminary Administration Issues

Sandra Graham Sheets and Craig A. Mundy

Chapter 2 Practice And Procedure

Kit Van Pelt

Chapter 3 Jurisdiction

Jay L. Kauffman

Chapter 4 Functions Of Lawyers And Personal Representatives

Shane Kelley and Jenna Rubin

Chapter 5 Initial Steps In Probate And Administration

Rachel Barlow Oliver

Chapter 6 Inventory And Appraisal

Rose M. La Femina

Chapter 7 Elective Share

Daniel A. Hanley, William T. Hennessey, and Cristina Papanikos

Chapter 8 Creditors' Claims And Family Allowance

Frank T. Pilotte

Chapter 9 Management Of Decedent's Property

Kathleen A. Kadyszewski

Chapter 10 Sales And Transfers Of Estate Assets

Tami F. Conetta

Chapter 11 Determination Of Beneficiaries And Their Interests

Pamela O. Price

Chapter 12 Fiduciary Accountings

Sandra Graham Sheets and Craig A. Mundy

Chapter 13 Partial Distributions

Pamela O. Price

Chapter 14 Final Distribution And Discharge

Jeffrey S. Goethe

Chapter 15 Compensation Of Personal Representatives And Lawyers And Other Expenses Of Administration

Richard Sherrill

Chapter 16 Curators

Robert F. Iseley, Jr.

Chapter 17 Ancillary Administration

Robert A. Dawkins and Kateena E. Manners

Chapter 18 Small Estates And Summary Administration

Frank T. Pilotte

Chapter 19 Homestead And Exempt Personal Property

Tae Kelley Bronner and Rohan Kelley

Chapter 20 Pitfalls In Estate Administration—A View From The Bench

Hon. Mark A. Speiser

Chapter 21 Probate Litigation

Stacy B. Rubel and J. Eric Virgil

3. FLORIDA BAR, THE FLORIDA PROBATE BAR SYSTEM, (ISBN/ISSN: 9781632846129, <https://store.lexisnexis.com/ahla/products/the-florida-bar-probate-system-skuSKU13247/details>) (recommended reference text)

Table of Contents:

1. CaseManager
2. Preliminary Information List and Summary of Assets
3. AlertSystem
4. Practice Forms
5. Furnished Forms
6. Office Forms
7. Letters
8. Law Notes
- 9. Tax Notes** (This chapter is heavily relied upon)
10. General Notes

MEMORANDUM

TO: Voting Faculty

FROM: Donna Erez-Navot, Co-Chair, Curriculum Committee
Timothy McLendon, Chair, International Programs Committee

DATE: 16. October 2023

RE: Three suggested changes to LLM in U.S. Law Program

The three proposed changes to the LLM in U.S. Law Program described in the attached memo come with the unanimous support of both the Curriculum and International Programs Committees. Both committees met individually to hear about these changes and discuss them. The committees then held a joint meeting on Monday, 16. October for final discussion and to consider the changes. Prof. Charlene Luke participated in the discussions, but she recused herself from voting on the proposals.

Both of our committees endorse these three changes and believe that they will offer needed flexibility to the LLM in U.S. Law Program. We look forward to discussing these proposals with you.

Regards,

Donna Erez-Navot
Co-Chair, Curriculum Committee

Timothy McLendon
Chair, International Programs Committee

Memorandum & Proposals

To: Curriculum & International Committees

From: Charlene Luke, Associate Dean for Institutional Affairs

Date: October 16, 2023

Re: First Steps Toward Re-invigorating U.S. Law LLM program

This memorandum suggests three proposals aimed at facilitating the recruitment of highly qualified international students to UF's U.S. Law LL.M. program and enhancing the career opportunities of international student graduates from the U.S. Law LL.M. program.

In preparing these proposals, I gathered information and ideas from the International Committee and the Curriculum Committee. I also discussed the program with two past directors of the U.S. Law LL.M. program (Pedro Malavet and Joshua Alter).

The Committees expressed that the Admissions team needs to ensure students arrive with the necessary English fluency and background competency to succeed in their coursework and in seeking employment. The Committees further expressed the importance of having individualized counseling and faculty mentorship for the success of the students.

Admissions to the U.S. Law LL.M. program were paused last year to allow time to evaluate the program. I recommend the proposals below as initial first steps in re-invigorating the program and recommend that admissions to the program be re-opened for Fall 2024 start.

Summary of Recommended Proposals

- Remove writing project requirement from the degree.
- Retain and clarify the option allowing U.S. Law LL.M. students to substitute (with instructor's advance permission) completing a writing project in place of taking a final exam.
- Add four to six specialization tracks that are initially created at the law school after faculty input; the goal would be to seek formal university approval for certificates after an initial period of experimentation.

Current Degree Requirements

The LL.M. in U.S. Law degree (formerly titled the LL.M. in Comparative Law) requires students to complete 26 credits and graduate with a cumulative GPA of 3.0 or higher. JD grading policies do not apply to U.S. Law LLM students.

Students are required to take two courses. First is the Introduction to the Legal System of the United States: Part I (2 credits). In 2021, the faculty voted to remove the requirement that students take Introduction to the Legal System of the United States: Part II (two credits).

The second required course is Legal Writing and Research for LL.M. in Comparative Law (LL.M. Writing class) (2 credits). The LL.M. Writing class ensures that the U.S. Law students have competency in legal

research and writing, and the class is designed to be rigorous; this class, not the writing requirement, helps ensure our students' competency in writing.

Students must also complete a paper requirement. The policy governing the U.S. Law LL.M. paper requirement was most recently amended in 2013 and provides as follows:

The 26 semester hours of work for the LL.M. in Comparative Law degree also include a significant research writing project supervised by a faculty member at the Levin College of Law while the student is registered in an appropriate class for a minimum of two credit hours and a maximum of four credit hours.

An LL.M. student may choose to pursue the writing project in any class offered at the College of Law that includes a letter-graded advanced research paper requirement or option. This includes, but is not limited to, seminars, J.D. courses, advanced courses, independent study, directed or supervised research.

When the student is enrolled in an independent study, supervised or directed research class, the supervising faculty member may require the student to audit a regular class in order to provide a classroom component as well as structure and substantive context for the research project.

The research paper may be produced by registering in the two-credit LAW 7906, "Directed Research for LL.M. in Comparative Law" course that is supervised by the program director. The Directed Research registration may be required by the program director when needed to meet Graduate Catalog rules.

The "option" referred to in the second paragraph has been administered as meaning that, with the permission of the instructor, a U.S. Law LL.M. may substitute writing a paper instead of taking an exam in a doctrinal class.

Writing Requirement & Writing Option Retention

Removing the writing project requirement from the U.S. Law LL.M. degree would offer greater flexibility for the students. Many of the U.S. Law LL.M. students pursue the degree with the goal of taking the N.Y. Bar. Both of the required courses count toward meeting the eligibility requirements, but the writing requirement does not. As a result, U.S. Law LL.M. students whose main goal is the N.Y. Bar would prefer to focus their attention on meeting its eligibility requirements. The complete N.Y. Bar eligibility rules are available at <https://www.nycourts.gov/ctapps/520rules10.htm#B18>. Other states that provide a path for LL.M. students to sit for the bar similarly do not have a writing requirement.

Removal of the writing requirement would also better align our program with the majority of peer law schools offering a similar degree. In a survey of 39 schools (the top 35 law schools per U.S. News), all but one of the law schools had a general LL.M. for foreign-educated lawyers. Of those, 16 (including UF) had a writing requirement. Considerable administrative time must be spent on ensuring that the U.S. Law LL.M. students fulfill the writing requirement. That is time that could be better spent supporting and advising these students about matters that are more important to the students' goals.

U.S. Law LL.M. students who want to complete writing projects would remain able to do so through taking seminars or completing independent studies. This memo recommends retaining the ability of U.S. Law LL.M. students to substitute a writing project for taking the final exam, with the instructor's permission. This would be up to each individual instructor whether to grant this option.

Specialization Tracks

Many general LL.M. programs provide opportunities for students to specialize in areas of the law. The programs vary in terms of what these specializations are called (e.g., "areas of emphasis," "tracks," "certificates"). When prospective students reach out about the U.S. Law program, they frequently ask whether UF Law has any specializations, and current students express that they would prefer to have the ability to indicate to future employers that they have completed a specialization.

At this stage, the proposal is framed as a request for approval to design 4-6 specializations with input from the faculty, the Admissions office, and U.S. Law LL.M. graduates. The specializations would be 9-12 credits, which would facilitate seeking a formal university "certificate" designation once there has been time to experiment at the law school level (see <https://approval.ufl.edu/start-new-request/new-professional-certificate/#d.en.983874> for the university process; see <https://approval.ufl.edu/policies/certificate-policies-ugradpro/> for general UF policy about "certificate" programs or specializations). Students would also be able to choose not to specialize.

The success of adding specializations will depend on there being seats for U.S. Law LL.M. students in J.D. courses as well as on there being in place a program administrator dedicated to assisting the students with the specializations. If there is sufficient demand, consideration could also be given to creating LL.M.-only sections of classes that are important to meeting bar eligibility requirements (e.g., Professional Responsibility).

MARGIE ALSBROOK

479.313.7764
alsbrook_m@law.mercer.edu

TEACHING & RESEARCH INTERESTS

Primary: Legal Research & Writing, Civil Procedure, Professional Responsibility, Food and Agricultural Law, Non-Profit Organizations & Governance, Pretrial Document Drafting and Discovery Skills

Additional: Business Organizations, Law as a Business, Practice Management, Elder Law, Insurance Law, Construction Law

ACADEMIC APPOINTMENTS

Visiting Assistant Professor, Mercer University School of Law

Macon, Georgia; August 2023 – present

- First Year Courses: Legal Research & Writing I, Intro to the Study of Law.
- Upper-Level Courses: Legal Research & Writing II, Food and Agricultural Law.

Visiting Assistant Professor, University of Arkansas School of Law

Fayetteville, Arkansas; August 2022 – May 2023

- First Year Courses: Legal Research & Writing I & II.
- Upper Level Courses: Legal Writing for First Year Practitioners.
- One of only 25 new faculty across campus to receive a “Rapport Badge” for rapport-building talents with students and staff.

PUBLICATIONS

Strong Democracies Need Reliable Citations (in progress).

Reinforcing Rural Resilience (in progress).

Untangling Unreliable Citations in the Age of Artificial Intelligence; forthcoming in the GEORGETOWN JOURNAL OF LEGAL ETHICS (2023).

What’s the Rush? An Examination of FDA’s Push to Introduce Genetically Engineered and Cloned Animal Products into the Food Supply, 13 DRAKE JOURNAL OF AGRICULTURAL LAW 457 (2008).

Margie Alsbrook & Michael T. Roberts, *United States Food Law Update*.

1 JOURNAL OF FOOD LAW & POLICY 187 (2005)

2 JOURNAL OF FOOD LAW & POLICY 138 (2006)

Contracting Away an Honest Day’s Pay: An Examination of Conditional Payment Clauses in Construction Contracts, 58 ARKANSAS LAW REVIEW 353 (2005).

ACADEMIC & PROFESSIONAL SERVICE

Certified Mental Health First Aid Responder by the National Council for Mental Wellbeing and the Judges and Lawyers Assistance Program (JLAP); 2022 – 2026

ALWD (Association of Legal Writing Directors); Member, 2022 – present;
Leadership Academy, 2023

Legal Writing Institute (LWI); Member, New Member Outreach Committee 2022 – present;
Committee Co-Chair, 2023 – present

National Center for Faculty Development & Diversity; Member, 2022 – present

Deputy Editor, *2022 International Law Year in Review*; ABA Section on International Law

United Nations' FAO Presidents United to Stop Hunger Campaign (PUSH); 2014 – 2016

Board of Directors, Arkansas Law Review & Bar Association Journal Inc.; 2012 – 2016

Continuing Legal Education Committee, Arkansas Bar Association; 2014 – 2016

Uniform Laws Committee, Arkansas Bar Association; 2013 – 2015

Arkansas Bar Association Leadership Academy; 2013

Founding Editor-in-Chief of JOURNAL OF FOOD LAW & POLICY; 2003 – 2005

SELECTED TALKS & PRESENTATIONS

“The Starting is the Hardest Part: Using ChatGPT to Overcome Writer’s Block,”
Presentation for *Incorporating ChatGPT in the Legal Research & Writing Classroom*, a virtual
conference hosted by William & Mary Law School (August 4, 2023).

“The Rise of ‘Cleaned Up’ and What it Means For First Year Writing Programs,” Moderator
of discussion at *SEALS 2023* (Southeastern Association of Law Schools) (July 29, 2023).

“Legal Writing Primer for Administrative Adjudicators,” Teaching Presentation for the
Arkansas Association of Administrative Judges Annual Conference (ArkAAA) (Nov. 18, 2022).

“Patent Prosecution and Patent Prosecutor Ethics: Key Steps, Major Challenges, Common
Mistakes,” Moderator of discussion at *Patent Bootcamp 2022 for Women & Minorities in STEM*
at University of Arkansas (Sept. 30, 2022).

“What are the Real Barriers to Feeding People, From the Viewpoint of Real Farmers: An
Honest Conversation,” Introductory remarks for a special panel at Harvard University’s
John F. Kennedy School for Government (Apr. 24, 2015).

“Role of Indigenous Peoples in Fighting Hunger: Past, Present & Future,” Remarks for
Indigenous Peoples Day Symposium at University of Arkansas (Oct. 13, 2014).

“Effectively Raising Awareness for the Hunger Crisis,” Presentation at the *First Collegiate
Food Waste & Hunger Summit* at Northwestern University (April 6, 2014).

“The HungerU Food Forum: A Conversation with U.S. Ambassador Eric Bost and Invited
Guests,” Panelist for a Special Panel at the Norman Borlaug Institute at Texas A&M
University (April 4, 2014).

“Communicating About Food, Agriculture & Innovation: An Open Discussion,” Moderator
for a Special Panel at the Earth Institute at Columbia University (Feb. 6, 2014).

“The Future of Hunger,” Panelist for a Special Panel at the University of Florida College of Agriculture & Life Sciences (Nov. 14, 2013).

“An Overview of Genetically Engineered & Genetically Modified Foods,” Presenter at the *Best of CLE* for Arkansas Bar Association in Bentonville, Arkansas (June 27, 2013).

“Regulation of GM and GE Foods for Legal Practitioners, Producers and Retailers,” Course at Arkansas World Trade Center (Apr. 11, 2013).

“The Law and Politics of GM and GE Foods,” Address at the *Hendrix College Awareness Week Annual Dinner* (Apr. 1, 2013).

“From Test Tubes to Tongues: Regulatory Issues Related to Genetically Engineered Animals in the Food Supply,” Talk at *Sourcing Food: Finding Common Ground in an Age of Agricultural Competition and Conglomeration* at Hamline University School of Law (Apr. 15, 2011).

“The Future of Food Regulations for Food Scientists,” Keynote Address for Regional Institute of Food Technologists Spring Dinner (March 10, 2011).

“Pay When Paid and Pay if Paid Clauses in Construction Contracts,” Presentation at the *Annual Construction Industry Conference* at Clinton Presidential Library (March 20, 2008).

EDUCATION

Masters of Law (LL.M.), Food & Agricultural Law; University of Arkansas

Juris Doctorate (J.D.); University of Arkansas School of Law

Bachelor of Arts (B.A.), History; Hendrix College

PROFESSIONAL LEGAL EXPERIENCE

Legal Writing & Research Support, Alsbrook Legal Services

Fayetteville, Arkansas; 2017 – 2023

Wrote briefs and persuasive reports for law firms involved in complex litigation.

Of Counsel, Hoeller Law Firm

National Parks of the American West; 2016 – 2017

Consulted on policy issues for this prestigious food law firm. Performed this work remotely while also training personnel on policies and safety procedures in America’s national parks.

Director of Operations & HungerU Education Exhibit, Farm Journal Foundation

Washington D.C. and Mexico, Missouri; 2013 – 2015

Strengthened a dynamic public policy exhibit from its initial pilot effort; HungerU visited over 60 university campuses and interacted with over 160,000 students in 2.5 years.

Successfully advocated for including HungerU in FAO’s Presidents United to Stop World Hunger (PUSH) cause and petition, which was introduced at the United Nations in

December 2014 and continues to make an impact on university campuses around the world.

Co-managed a demanding capacity-building grant from the world’s largest NGO funder that resulted in increased grant funding upon renewal.

Principal Attorney, Alsbrook Legal Services

Springdale, Arkansas; 2010 – 2013

Litigated claims for clients while managing staff, contractors, finances, and operations. Negotiated contractual matters and leasing disputes for large development client that was internationally recognized for their LEED Platinum buildings; other clients included restaurants, architects, small businesses and individuals.

Justice of the Peace, Washington County Quorum Court

Fayetteville, Arkansas; 2011 – 2012

Appointed by to represent 13,538 citizens and cooperatively govern the third-largest county in Arkansas. The Quorum Court oversaw a budget of \$62 million plus reserve funds. Formulated and voted on local laws, determined building and zoning decisions, oversaw personnel and financial issues, discussed policy and operational concerns, conducted marriage ceremonies, and performed other duties for constituents and county personnel.

Litigation Attorney, Cottrell Law Office

Rogers, Arkansas; 2007 – 2009

Spearheaded multi-state litigation for specialty law office focused on wrongful death, personal injury, and nursing home negligence claims.

Case Manager & Attorney Advisor, U.S. Office of Disaster Assistance

Dallas, Texas; 2006

Untangled complicated claims portfolio of over \$25 million in disaster assistance loans for farms, businesses and individuals during the intense need for increased personnel following the environmental and economic devastation from Hurricanes Katrina, Rita and Wilma. Awarded Top Producer Award for exceptional work amongst a group of over 130 attorneys and paralegals.

Research Attorney, National Agricultural Law Center

Fayetteville, Arkansas; 2005 – 2006

Performed forward-focused research and analysis of agricultural law developments, food labeling regulations and international trade issues.

COMMUNITY SERVICE

Alumni Board of Governors, Hendrix College; 2011 – 2015

EnergizeNWA Regional Advisory Council; 2012 – 2014

City Vision & Planning Commission, Columbia, Missouri; 2013

Regional Food System Development Committee, NWA Planning Commission; 2012 – 2013

Executive Board of Directors, CASA of Northwest Arkansas; 2005 – 2009

Junior League of Northwest Arkansas; 1999 – 2006

Outstanding Volunteer Award, Fayetteville Public Schools; 2000

AFFILIATIONS & INTERESTS

Admitted to Practice in Arkansas; 2005 – present

Audie Awards Judge, Audio Publishers Association; 2020 – present

Artist for Various Fiber Art Museum Exhibits, 2019 – present

Washington County Fair Needle Arts Co-Chair; 2018 – 2023

Telephone conversations with Dean Karen Sneddon (Mercer University School of Law) and Honorable Amy Dunn Johnson (6th Judicial Cir. Of Arkansas) by Sarah H. Wolking:

10/16/23

Dean Karen Sneddon

Mercer University School of Law

Dean Sneddon said that from the moment she first interviewed Margie on Zoom, she knew she wanted to hire her! Her time at Mercer has only confirmed this sentiment. Sneddon hired Margie as a visitor for one year because of her expertise in legal writing, but was also very interested in utilizing her expertise in agricultural law. Margie has developed a seminar in agricultural law which she's teaching in spring 2024. This "dirt to plate" course addresses a great need at Mercer Law.

Dean Sneddon describes Margie as a "student-centered educator" and noted that being "student-centered is not something you can fake." She says that Margie's instinct is to focus on students. Additionally, Dean Sneddon says, "she's a good citizen of the law school. We just celebrated our 150th anniversary and Margie was there throughout—talking at the student org meetings, presenting to alumni, attending tailgates, etc."

Acknowledging that law schools aren't generally the most positive places, Dean Sneddon said that Margie "is a really positive person. The lightness she brings is very valuable to the institution." Sneddon notes that the Dean at Arkansas said the same thing when Sneddon stole Margie from them, and implored Sneddon to "take care of Margie" because she was so valuable.

Margie is open to collaboration and learning from doctrinal and legal skills faculty. She talks about and is eager to learn about different approaches. At SEALS, she demonstrated her interest in collaboration. Sneddon says, "She's open to ideas of others—people say this a lot and aren't really open, but Margie truly is. She's curious and eager to learn." Sneddon says that Margie is very thoughtful, "she's in the building a lot and wants to share her ideas and learn from others." Margie visits at the Dean's suite and checks in — wants to talk over ideas and approaches. Margie says, "we did it this way at Arkansas, how does Mercer want to do it?" Sneddon says Margie doesn't have the limiting mindset of "this is the way I've always done it," but instead is eager to learn, collaborate, and do." Additionally, Margie shows up at faculty meetings with a smile on her face!

At Mercer, Margie been teaching Legal Writing 2 which is not a continuation course. The students who came to her this semester had one of five separate writing professors who brought a mixture of different teaching strategies (they don't have a coordinated program like we do). It can be challenging in this class to help students flip the page and start something new, especially after a summer of work. Dean Sneddon says Margie excelled at this and was creative in her approach to have students do an assignment which focused on goal setting and reflection and which helped Margie do a baseline assessment of each student. Margie is interested in getting feedback from her students to see how her approaches are being received. Dean Sneddon says, "she's always looking to improve and get buy-in from students."

Weaknesses? Dean Sneddon couldn't identify any, and notes that Margie is only in her second year of full-time teaching. Margie is enthusiastic and works, like all of us, to have balance. Dean Sneddon says she'll have to continue to work on balancing teaching (which can be all-consuming in legal writing), with her own professional development and research. Dean Sneddon notes that there's a "high rate of burnout with legal writing professors, but I'm confident that Margie can balance it well."

Dean Sneddon says, "you would be fortunate to hire her. I'd hate to lose her, but I'd hate more to have her leave legal education or not take a job that's best for her." *Margie is "the whole package: teaching, scholarship, service."* Dean Sneddon says, "you meet great people and know they'll have great careers. Margie is top among them in my book!" Finally, Dean Sneddon emphasized that she doesn't want to lose Margie and notes that the Mercer Law faculty will vote on making Margie a permanent offer next Wednesday 10/25/23.

10/16/23

Honorable Amy Dunn Johnson
Sixth Judicial Circuit of Arkansas

Judge Johnson has known Margie Alsbrook for over 30 years—since they were undergraduates together. As young lawyers, they were both involved in the Arkansas Bar Association Leadership Academy. They worked on several joint projects and Judge Johnson says that Margie continues to enjoy a tremendous reputation in the legal community in Arkansas. She describes Margie as "a delightful human being who is thoughtful and sharp." Judge Johnson says that Margie would be great at one-on-one feedback in that she's able to balance being direct and clear about expectations while listening and meeting students where they are. Judge Johnson included, among Margie's many professional strengths, that she thinks deeply about things and offers insight and perspective on issues that others haven't considered. She describes Margie as creative—coming at things from a different perspective—and says that, on a personal level, she's loyal and compassionate. She was hard pressed to identify a single weakness.

While running a solo law practice, Margie's father was diagnosed with a terminal illness. She was his dedicated caregiver and had to transform her law practice by focusing on appellate work and brief writing and less on client-facing work. Judge Johnson was impressed with the way Margie figured out a path during this challenging time and pushed through to create a sustainable practice. The Judge observed that Margie was stronger for this experience and was proud of the way she fulfilled her personal and professional obligations.

Judge Johnson said that teaching Legal Writing is "exactly the type of position that Margie will excel at" and added that UF Law would be "very fortunate to have her!" She was enthusiastic in her recommendation.

From: [Kolinsky, Heather M](#)
To: [Wolking, Sarah Horn](#); [McIlhenny, Ruth M.](#)
Subject: Reference call with Ann Killenbeck
Date: Monday, October 16, 2023 5:21:16 PM
Attachments: [image001.png](#)

Sarah,

Ann gave Margie a glowing reference. She said Margie is such a catch. She worked with Margie during the year she taught at Arkansas. Ann knew of her before that because Margie did all the leg work to get the Agriculture Law Review up and running when she was a student at Arkansas. Margie came early to get settled before her first year of teaching, hit the ground running, and was a wonderful colleague and collaborator within the department. She had good relationships with her students who loved her. She was widely respected and the student body actually voted to have her speak at graduation. Her biggest strength is she is a doer. She will always go above and beyond. To the extent she has a weakness it is the same though, she does so much. Ann said she has great positive energy, and that she immediately engaged with scholarship, and with the national legal writing community, when she started teaching at Arkansas.

That's all I have.

Best,

Heather

Heather M. Kolinsky
Legal Skills Professor
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Untangling Unreliable Citations

Margie Alsbrook*

It sounds so simple, the idea of verifying the contents of sources before citing them. But copying and pasting citations has become an accepted practice, and citations are becoming increasingly unreliable as a result. This was true before 2017, when a new citation known as “(cleaned up)” was introduced, and before 2023, when artificial intelligence technology began to rapidly influence the way legal professionals approach writing projects. Until these new developments are stabilized and trustworthy then lawyers will need to devote even more time double-checking sources and citations.

This article discusses the danger of simply relying upon another lawyer’s paraphrased language, a danger that escalates as the way we obtain information and sources continues to shift. Through an in-depth look at a cautionary tale from Kansas this article illustrates how one judge used two words to create the myth of a higher standard for discovery that has been repeatedly – and incorrectly – applied to opponents of corporations in litigation. Because people are not checking the original sources for accuracy, Kansas now has a split in the way it interprets a crucial rule and that ambiguity could have been avoided with increased precision.

Until technology stabilizes and rules are updated then this article pleads for increased prudence when it comes to citation practices. It also promotes a relatively simple solution and return to simplicity: writers should actually read the case they are citing to, and the case being cited there, and on down the line. In addition to increasing the reliability of citations, this “back to the basics” approach also has the potential positive of increasing the trust lawyers and judges have in each other and our work. And

if the legal profession can restore some of the faith we have in each other then perhaps some of the faith the public has lost in our profession and our courts might be restored as well.

INTRODUCTION

- I. (CLEANED UP) CITATIONS ARE A WARNING TO THE UNWARY
 - II. AN IN-DEPTH EXAMPLE FROM MODERN PRACTICE: THE MYTH THAT FRCP 30(B)(6) REQUIRES “PAINSTAKING SPECIFICITY”
 - A. *Brief Overview of Rule 30(b)(6)*
 - B. *How Rule 30(b)(6) Depositions Impact Litigation*
 - C. *How One Kansas Judge Used Two Words to Create a Myth*
 - III. A PLEA FOR SANITY AND WARNINGS FOR THE FUTURE
- #### CONCLUSION

INTRODUCTION

Even before the recent avalanche of artificial-intelligence-based legal products, the modern American justice system was arguably being destabilized by the erosion and dilution of precedent,¹ and the erosion of reliability in the citations we use to help our legal system rely upon that precedent. Cases such as the United States Supreme Court

* Visiting Assistant Professor, Mercer University School of Law; formerly with the University of Arkansas School of Law whose faculty and students also contributed to this effort. Special appreciation to all of the professors who gave comments and encouragement during the process of writing and editing this article, including Robert Brain, Joe Fore, Billie Jo Kaufmann, Ann Killenbeck, Amelia McGowan, Suzanne Rowe, Karen Sneddon, and Emily Zimmerman; also many thanks to all of the faculty who provided thoughts during the “cleaned up” discussion panel at the 2023 Southeastern Association of Law Schools Conference (SEALS) and the civil procedure discussion during the Association of Legal Writing Directors (ALWD) Scholars Workshop at the 2022 Western Legal Writing Conference. Gratitude also goes to the research assistance provided by University of Arkansas students Caitlin Robb, Jake Stringer and Ellen Womack. Sach Oliver and Ryan Scott of Bailey & Oliver in Rogers, Arkansas are the talented practitioners who brought attention to the increasingly combative nature of Rule 30(b)(6) depositions. Special gratitude to Em Wright who saved the portions of this article focused on painstaking specificity from being painfully boring. None of the author’s words in this article were generated by a generative language program or any other form of artificial intelligence.

¹ See, e.g., *With Roe Overturned, Legal Precedent Moves to Center Stage*, ABA JOURNAL, June 24, 2022, <https://www.americanbar.org/news/abanews/aba-news-archives/2022/06/stare-decisis-takes-centerstage>; see also Daniel B. Rice and Jack Boeglin, *Confining Cases to Their Facts*, 105 VA. L. REV. 865 (2019) (analyzing the potential threat to stare decisis when courts confine cases to their facts, and how this practice emboldens judges to disregard precedent).

decisions in *Dobbs v. Jackson Women's Health Organization*² and *Shelby County v. Holder*³ may get extensive coverage, but they are not the only recent examples of appellate opinions disrupting long-held precedent⁴ often while using negligent or misleading citations. Sometimes these opinions are buried in the tyranny of minutia of the modern information age, or ignored because they are too complicated for the average reader (or reporter) to quickly understand.⁵ But these often-overlooked examples can have large consequences in people's lives while simultaneously unraveling citizens' faith in the American justice system. Thus, the devil's work of killing our democracy is done in the darkness of inattention, often through an avalanche of tiny details.

This article examines the increasing unreliability of citations in three parts, through the lens of three separate trends. All three of these trends have their own impact on the increasing distrust that members of the legal profession have in each other's citations and legal writing as a whole, and thus in their own way contribute to the current distrust the public has in our legal system. The first section examines the rise in the use of (cleaned up) citations, a new citation form that began on social media and is now widely

² 142 S.Ct. 2228 (2022); *see also* Nina Varsava, *Precedent, Reliance and Dobbs*, 136 HARV. L. REV. 1835 (2023) (joining the chorus of legal commentary on the United States Supreme Court's decision to ignore precedent in forming this famous majority opinion, which removed the right to certain medical procedures from American citizens).

³ 133 S.Ct. 2612 (2013); *see also* Christopher S. Elmendorf and Douglas M. Spencer, *Administering Section 2 of the Voting Rights Act After Shelby County*, 115 COLUMBIA L. REV. 2143 (2015) (adding to the multiple concerns from legal commentators that the majority opinion in this case will make it easier for states to dilute American citizens' right to vote in elections).

⁴ *See, e.g.*, Richard M. Re, *Personal Precedent at the Supreme Court*, 136 HARV. L. REV. 824 (2023) (exploring the tendency of Supreme Court justices to place personal beliefs over judicial precedent, especially in cases with wide-spread societal implications).

⁵ *See, e.g.*, Neil Weinstock Netanel, *Mandating Digital Platform Support for Quality Journalism*, 34 HARVARD J. L. & TECH. 473 (2021); *compare id.* at 475 with 482 (detailing the financial reasons why detailed journalism has declined dramatically in the past three decades even as many people get their news from internet platforms because "[t]he platforms' overriding incentive is to keep their users engaged on the platform as long as possible in order to sell more micro-targeted advertising ... not from presenting informative, quality journalism").

used by courts around the country in ways that go beyond the original proposal and intended impact. The second section looks at the way that judicial and practitioner negligence when it comes to citing precedent can have a real impact on litigation, litigant's rights, and the application of the rules of civil procedure. The third section looks at unreliable citations through the intersection of the rise of artificial intelligence sources for legal research and the decrease in availability of databases to practitioners. All three of these issues contribute to the decrease in reliability of citations in their own ways, and to the quagmire of issues that result. In this way seemingly small citation issues create larger problems for the legal system and for society as a whole, contributing to the exhausting tyranny of minutia that is modern life.

This article also promotes a relatively primitive solution for increasing reliability in this age of unease and uncertainty: read the case your opponent is citing to, and then read the case that that case is citing to as well, and on down the line. Yes, it is extra work. And yes, hopefully, most of the time you will find no issues. But sadly, you will also find multiple citations where language has been misquoted or twisted, or perhaps even made up. By returning to an age when we take care in our sources and the days when members of the legal profession can rely on each other's assertions, perhaps we can increase the overall sanity of our profession as well.

I. (CLEANED UP) CITATIONS ARE A WARNING TO THE UNWARY

The modern American legal system has been facing a dangerous erosion of integrity and public respect for at least a decade now,⁶ and much of this relates to the

⁶ See, e.g., NATIONAL CENTER FOR STATE COURTS, STATE OF THE STATE COURTS 2022, https://www.ncsc.org/_data/assets/pdf_file/0019/85204/SSC_2022_Presentation.pdf (reporting poll data showing the steady decline in public trust related to the court system from 2012 to 2022).

tendency of judges and lawyers to allow their zeal for persuasive writing to overtake their better judgements about citation accuracy. Perhaps the best example of the vulnerability of the modern citation system⁷ is the recent debate over “(cleaned up)” citations. As originally envisioned, a (cleaned up) citation was supposed to be a mere format change, a way avoid “the clutter that quotations gather as they are successively requoted and altered from court opinion to court opinion.”⁸ As a tool for cosmetic alteration, “(cleaned up)” citations were quickly lauded as a great idea, but then the citation evolved into a tool for obscuring the origins of precedent and/or misstating the important minutia of the law.

It is commonly believed that the idea for (cleaned up) citations started with a tweet from an appellate attorney named Jack Metzler⁹ on the social media platform Twitter¹⁰ in 2017. While these words first appeared in an unreported Maryland case the year before,¹¹ they did not gain traction until Metzler’s call to action on social media. Metzler’s initial proposal suggested (cleaned up) as a tool for appellate lawyers. It was

⁷ See, e.g., Alexa Chew, *Citation Literacy*, 70 ARK. L. REV. 869 (2018) (reminding readers that citations are a tool of communication and persuasion, and lamenting the way they are often taught to law students who as it creates a life-long association between citations and drudgery); Darby Dickerson, *Reducing Citation Anxiety*, 11 SCRIBES J. OF LEG. WRITING 85, 86 (2007) (admitting that “most people detest, fear, or at best barely tolerate” dealing with citation formats).

⁸ Jack Metzler, *Cleaning Up Quotations*, 18 J. APP. PRAC. & PROCESS 143, 153 (2017),

⁹ See *id.* at 143 (documenting “this essay began as a tweet” and thanking the online community of #AppellateTwitter for its support “which led to a quick justification for the idea and eventually to this more formal proposal”); see also Andrew H. Friedman, LIT. EMP. DISC. CASES § 8:59.6 (15th ed. 2020) (“In 2017, Jack Metzler, an attorney in Washington, D.C. specializing in Supreme Court practice, wrote a tweet that began a movement to make quotations from legal citations easier to read”).

¹⁰ See, e.g., Elizabeth Thornburg, *Twitter and the #So-CalledJudge*, 71 S.M.U. L. REV. 249, 254 (2018) (explaining the cultural dominance of Twitter in 2017 and noting the social media platform had over 328 million active users that year while processing an average of over 6,000 tweets per second); cf. Willy Staley, *What Was Twitter, Anyway?*, N.Y. TIMES, Apr. 18, 2023, <https://www.nytimes.com/2023/04/18/magazine/twitter-dying.html> (likening the state of Twitter in 2023 to the final hours of a really fun party, “a little emptier, though certainly not dead ... eventually we will scrape the plates, load the dishwasher, and leave the pans to soak”).

¹¹ *Ogunde v. Johnson*, 2016 Md. App. LEXIS 1610 at *5 (2016), citing *Shields v. Wagman*, 350 Md. 666, 672, 714 A.2d 881 (1998).

quickly adopted by appellate lawyers in the Twitter community, who recognized it as a great tool for appellate practice.

Appellate practice is different from trial practice,¹² and the nature of appellate practice makes it a good match for (cleaned up) citations. Appellate courts often have more time to spend on each case and more resources than the typical local trial court. Appellate courts also have the skilled personnel to apply to the detailed task of verifying the claims of the advocates who appear in front of them, and to checking their citations for reliability and accuracy.¹³ The higher the appellate court, the more likely that the judges have careful law clerks who can help them research issues and clarify any questions or ambiguities that may arise.¹⁴ These law clerks are usually former members of a law review and have at least two years of experience with ensuring the reliability of citations. Appellate practice also has different timelines and deadlines, and those timelines are make it more likely that the clerks, judges, and lawyers involved will have the time to become familiar with the issues and precedent before rendering a decision. Thus, in the appellate context a (cleaned up) citation seems like a great idea, and perhaps

¹² See, e.g., Daniel J. Knudsen, *Institutional Stress and the Federal District Courts: Judicial Emergencies, Vertical Norms, and Pretrial Dismissals*, 2014 UTAH L. REV. 187, 189 (2014) (“Federal district judges rule multiple times in the course of a lawsuit on numerous motions that affect the outcome. They also engage in fact finding more often than the federal circuit-court judges.”).

¹³ See, e.g., JEAN-CLAUDE ANDRE AND SARAH ERICKSON ANDRE, *FEDERAL APPEALS JURISDICTION AND PRACTICE* § 1:5 (2023 ed.) (explaining that the trial court setting is one where issues move quicker and judges have less time for consideration than at the appellate court level: “Many issues in the trial court arise suddenly, shift form and focus, and require impromptu argument and resolution. On appeal, the issues are largely static, the record is complete, and the advocate usually has the luxury of time for research, reflection and refinement of the arguments.”)

¹⁴ Much scholarship has been written on the subject of law clerks in federal courts. See, e.g., Todd C. Peppers, Michael W. Giles, and Bridget Tainer-Perkins, *Inside Judicial Chambers: How Federal District Court Judges Select and Use Their Law Clerks*, 71 ALBANY L. REV. 623, 629-632 (2008) (performing a literature review on the subject of federal clerks); J. Daniel Mahoney, *Law Clerks: For Better or For Worse?*, 54 BROOKLYN L. REV. 321 (1988) (weighing in on the subject from the perspective of a circuit court justice); but see Maggie Gardner, *Dangerous Citations*, 95 N.Y.U. L. REV. 1619, 1674-75 (2020) (arguing that the increase in the quantity of clerks and the corresponding increase in citations has not led to the expected increase in quality of opinions or citations).

even a beacon of hope for attorneys who would rather focus on ensuring the clarity of their ideas than the minutia of the punctuation marks within their nested citations.

Trial courts do not have these types of resources, particularly state trial courts and local county jurisdictions. Even federal district courts move faster than appellate courts, and do not have the clerks or the timetables of appellate judiciary.¹⁵ There is even less time and even fewer resources at the state and county trial court level, where a judge may have a local law clerk for a few hours a week every few months.¹⁶ These jurisdictions and their stretched-thin judges are not a good match for (cleaned up), especially in these early days when the citation itself lacks firm boundaries and does not have an official definition.

Thus the idea of a (cleaned up) citation was a good idea when viewed in the context of its original intended use in federal appellate courts. Metzler's original concept proposed (cleaned up) citations as a way to increase the readability of the resulting work while also keeping readers focused on the substance of the writing.¹⁷ While Metzler's original proposal said he intended for the idea of (cleaned up) to be used by "all legal writers," the way the rule was described and adapted meant that the early fans of the

¹⁵ See *supra* note 14; see also WILLIAM F. SHUGHART, II AND GOKHAN R. KARAHAN, STUDY OF THE DETERMINANTS OF CASE GROWTH IN U.S. FEDERAL DISTRICT COURTS, Feb. 2004, <https://www.ojp.gov/pdffiles1/nij/grants/204010.pdf> (exploring the causes for an "explosion" in cases).

¹⁶ Douglas L. Molde, Esq., *In These Times*, VT. B.J., Winter 2008/2009, at 5 ("These are difficult times. Legal services programs are facing extensive budget cuts which threaten programs and staff. The judiciary has had to close our courts for a portion of each week, and is anticipating more drastic economics-based cuts.").

¹⁷ See Metzler, *supra* note 7 at 153 ("I propose that all legal writers adopt the parenthetical (cleaned up) to avoid the clutter that quotations gather as they are successfully requoted from court opinion to court opinion, as well as the citation baggage that accumulates along the way.").

citation form were largely from the smaller group of practitioners and academics who focus their efforts on appellate cases.¹⁸

The original proposal also meant to confine the application of (cleaned up) concept to the stylistic and grammatical aspects of a quotation and citation. This citation innovation was not intended to be used to delete or disinform. Consider Metzler’s descriptions of the purpose of (cleaned up), where he says “the new citation form signals to the reader that the author has removed extraneous, non-substantive material like brackets, quotation marks, ellipses, footnote reference numbers, and internal citations,” as well as changing capitalization.¹⁹ The whole idea is to “affirmatively represent that the alterations were made solely to enhance readability and that the quotation otherwise *faithfully reproduces the quoted text.*”²⁰

Metzler even proposes two entirely new rules for *The Blue Book*,²¹ which he envisioned would become part of Rule Five:²²

Cleaning up. When language quoted from a court decision contains material quoted from an earlier decision, the quotation may, for readability, be stripped of internal quotation marks, brackets, ellipses, internal citations, and footnote reference numbers; the original sources of quotations within the quotation need not be cited parenthetically; and the capitalization may be changed without brackets. Indicate these changes parenthetically with (cleaned up). Other than the changes specified, the text of the quotation after it has been cleaned up should match the text

¹⁸ The original idea was published in the University of Arkansas at Little Rock’s specialty journal, THE JOURNAL OF APPELLATE PRACTICE AND PROCESS. See *supra* note 7.

¹⁹ See *id.* at 154.

²⁰ *Id.* (cleaned up) (emphasis added).

²¹ THE BLUE BOOK: A UNIFORM SYSTEM OF CITATION (Columbia Law Rev. Ass’n et. al., eds., 21st ed. (2020)); see also Michael Bacchus, *Strung Out: Legal Citation, The Bluebook, and the Anxiety of Authority*, U. PENN. L. REV. 245, 251-53 (2002) (giving the history of how *The Blue Book* came to become the dominant source for proper citation forms in American legal writing, and detailing the short-lived signal changes in the controversial sixteenth edition); David Ziff, *The Worst System of Citation Except for All Others*, 66 J. OF L. ED. 668 (2017) (discussing the various criticisms of *The Blue Book* and concluding that it works quite well for its fundamental purpose in spite of all of its flaws).

²² See Metzler, *supra* note 7, at 154. Rule Five of *The Blue Book* explains the proper mechanisms for citing quotations. See THE BLUE BOOK, *supra* note 21 at 83 – 87.

used in the opinion cited. If the quotation is altered further, indicate the changes or omissions according to Rule 5.2 and 5.3.

Cleaning up intermediary case citations. In addition to the alterations described in [the previous rule], when a quoted passage quotes a second case quoting a third case, the citation to the middle case may be omitted to show that the first court quoted the third. To indicate this change, retain the quotation marks around the material quote from the third case and any alterations that were made to the quotation, and insert (cleaned up) before the “quoting” parenthetical citation to the third case. Indicate any alterations that were made to the language quoted from the third case according to Rule 5.2 and 5.3.²³

Although a new version of *The Blue Book* was published in 2020,²⁴ that edition declined to adopt Metzler’s proposed rules for (cleaned up) citations.²⁵ Nor were Metzler’s proposals included in the *ALWD Guide to Legal Citation*.²⁶ A brief discussion of the growing popularity of (cleaned up) appears in *The Indigobook*,²⁷ a free source for citation rules, but that source does not adopt a formal rule either.

Given the proliferation of the use of (cleaned up) citations described in the subsequent paragraphs, any future suggested rules for the formal adaptation of (cleaned up) citations will likely need to address how to cite a citation that has been (cleaned up) in the previous opinion. As Metzler himself explained in his original published proposal, quotations that layer upon other quotations are the central issue that led to cleaned up in the first place.²⁸ Thus it is logical to expect that these quotations will continue to

²³ *Id.* at 154-55. This version of a proposed rule for (cleaned up) citations does not address what happens when the omitted source is one that is traditionally given more weight than the two sources that are bookended in the original text; this is a situation that happens fairly often due to the rhythms of the language of citation and the exact situation that occurred in the first time the United States Supreme Court used a (cleaned up) citation. *See infra* notes 39 – 43.

²⁴ *See THE BLUE BOOK*, *supra* note 15.

²⁵ *See, e.g.,* Ashley Caballero-Daltrey, *What Are You Signaling? The Changing Landscape of Citation Culture*, JDSUPRA, Apr. 5, 2022, <https://www.jdsupra.com/legalnews/what-are-you-signaling-the-changing-3927983/> (noting that (cleaned up) is increasing in popularity in spite of being excluded from *The Blue Book*).

²⁶ Carolyn Williams, *ALWD GUIDE TO LEGAL CITATIONS* (7th ed. 2021).

²⁷ Jon Sprigman et al., *The Indigo Book: A Manual of Legal Citation*, Public Resource (2d ed. 2021).

²⁸ Compare *supra* note 8 with *infra* note 201.

proliferate and the references will continue to stack on to themselves in the proliferation of quotations. As more quotations build on opinions with (cleaned up) quotations, ambiguity follows. Until a rule is adopted by a resource that is widely accepted within the legal writing community, then this new citation will only create more ambiguity and unreliability.

(Cleaned up) has leapt forward in popularity and controversy with exponential speed in the years since Metzler first tweeted his proposal. Metzler made his tweet on March 15, 2017²⁹ and the citation form appeared in a federal court opinion before the end of the month.³⁰ Metzler’s law review article containing his proposed rules for *The Blue Book* appeared later in 2017, and (cleaned up) appeared in fifty-eight court opinions throughout that first year.³¹

The number of federal court opinions using (cleaned up) escalated to eight hundred thirty nine (839) in 2018,³² a quick acceptance for the traditionally change-resistant world of legal writing. In 2019 the number of court opinions using (cleaned up) was even higher: 1,792.³³ By 2021 this “mini-revolution in legal citation”³⁴ had appeared in over 4,000 court opinions.³⁵ The following chart is based on original research and illustrates the growth in popularity of (cleaned up):³⁶

²⁹ See Metzler, *supra* note 7, at 154.

³⁰ Wolz v. Auto-Club Prop. Cas. Ins. Co., 2017 U.S. Dist. LEXIS 50094 (W.D. Ky. 2017).

³¹ Number based on original research on file with the author.

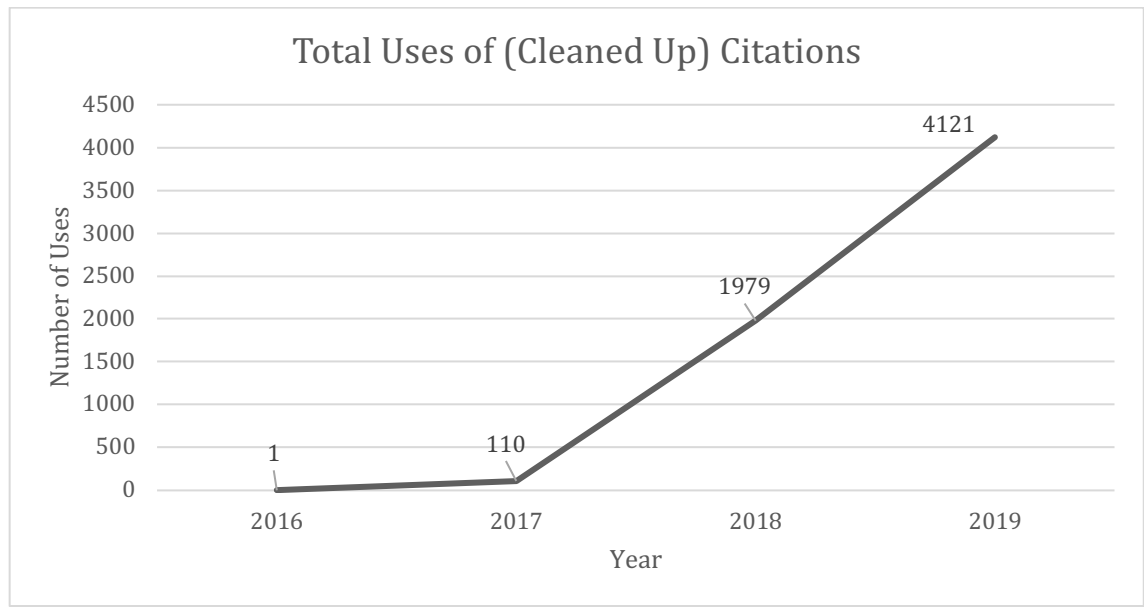
³² Number based on original research on file with the author.

³³ *Id.*

³⁴ See *id.*; see also Debra Cassens Weiss, *Justice Thomas goes rogue on The Bluebook with ‘cleaned up’ citation – to the delight of appellate lawyers*, ABA JOURNAL DAILY NEWS (Feb. 25, 2021); citing *Rogue High Court Citation May Spark Legal Writing Changes*, Law360.com (March 11, 2021).

³⁵ See *id.*

³⁶ Data gleaned over several months during 2022-2023; original chart on file with author.



Metzler’s proposed solution to readability problems in citations could be of great benefit to the profession if a formal rule were to be adopted by a source of authority, particularly if that rule made it clear that (cleaned up) should only be used in appellate cases. This legitimization would help courts and lawyers to deal with dignity those inevitable situations where zealous legal advocates push an undefined rule beyond the scope of the original intended boundaries, or accidentally misquote and miscite the original text. This proposal would allow lawyers to gain the purported benefits of (cleaned up) citations while also increasing reliability because lawyers would be confined to using (cleaned up) within the boundaries of its original intended use. That codification of a rule would make it easier to quote, and read, precedent that was accurately referencing even more precedent than (cleaned up) seems like the brilliant idea that it was originally hailed as in 2017.

But like so many new ideas, the formality of the rule was delayed and in the meantime the application was quickly expanded well beyond what was originally

intended. Like the mythical Pandora's Box,³⁷ the application of (cleaned up) was quickly pushed beyond the original intended implications. (Cleaned up) citations are now being used in swiftly-flowing litigation waters of federal district courts, and even more disturbingly in county and city courts around the nation. These courts usually do not have the staff, the time, or the resources³⁸ to check all of an attorney's (cleaned up) citations; much less all of the (cleaned up) citations in another judge's precedent. This issue is amplified because (cleaned up) is being used for more than simply removing brackets and ellipses from quotes: it is being used to remove some helpful information all together.³⁹ This is a situation set up for abuse, and indeed abuse is already happening.

One of the most famous uses of (cleaned up) occurred in 2021 when United States Supreme Court Justice Clarence Thomas used the new parenthetical form to transform a distinction into a definition⁴⁰ in his *Brownback v. King* opinion.⁴¹ Interestingly in the context of this article, Justice Thomas was arguing that Supreme Court justices are not completely bound by precedent when he used (cleaned up) to cite the 2001 case of *Semtek International v. Lockheed Martin Corporation*.⁴² *Brownback* was a police

³⁷ See, e.g., William Hansen, *Can Interpretations of the Pandora Myth Tell Us Something About Ourselves*, OUPBlog, Sept. 27, 2021, <https://blog.oup.com/2021/09/can-interpretations-of-the-pandora-myth-tell-us-something-about-ourselves/> (explaining the origins of the Pandora myth and pondering how some of the conflicting interpretations of its meaning reflect on society as a whole). The reference to Pandora and her mythical container are very popular with legal scholars and judges, and the word Pandora appears in hundreds of law review articles and judicial opinions. See original research on file with the author.

³⁸ See generally Michael J. Graetz, *Trusting the Courts: Redressing the State Court Funding Crisis*, 143(3) DAEDALUS 96 (2014).

³⁹ See *infra* notes 78 – 79.

⁴⁰ Katrina Robinson, *Teaching Law Students Not To Make a Mess of (cleaned up)*, THE SECOND DRAFT at *3 (Dec. 2021), citing *Brownback v. King*, 141 S. Ct. 740, 748 (2021) (“Notably, Justice Thomas used (cleaned up) to transform a distinction into a definition”).

⁴¹ See, e.g., Debra Cassens Weiss, *Justice Thomas Goes Rogue on The Bluebook with ‘Cleaned Up’ Citation – To the Delight of Appellate Lawyers*, ABA JOURNAL, Mar. 15, 2021, <https://www.abajournal.com/news/article/justice-thomas-goes-rogue-on-the-bluebook-with-cleaned-up-citation-to-the-delight-of-appellate-lawyers>; and Robinson, *supra* note 40.

⁴² 141 S. Ct. 740, 748; citing 531 U.S. 497, 501-02 (2001).

brutality case, and Thomas was arguing that a man who had been beaten by officers did not have the right to sue under the Federal Tort Claims Act because his case would have failed “on the merits.”⁴³ While the direct quote that Thomas used can be sourced⁴⁴ and is thus defensible, *Semtek* was part of a lengthy series of cases related to the *Erie* doctrine⁴⁵ and the (cleaned up) citation left out the type of important nuances in the recitation of precedent that the American public expects from a jurist operation at the highest level of the American legal system. Thus, returning to the thesis of this article, a current lawyer working through these precedents would be ill-served by relying on Thomas’ writing alone.⁴⁶ A dive into the actual source of the quotation would find a wealth of citations that could provide substantive sources for opposing opinions.⁴⁷ This is yet another example of how lawyers are doing a disservice to themselves and their clients by simply relying on someone else’s citations and not reading the source materials themselves, and a (cleaned up) citation is a strong warning that additional investigation is necessary.

As the popularity of (cleaned up) has risen, so has its use in federal court opinions:

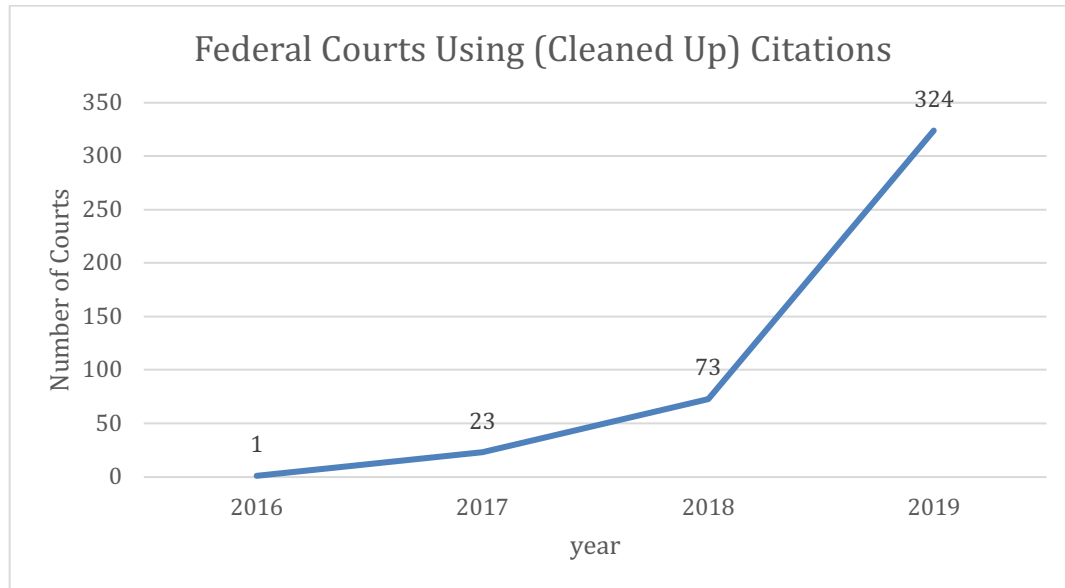
⁴³ *See id.*

⁴⁴ Scott Moise, *Dear Scrivener*, S. CAROLINA LAW., May 2021, at 60 (comparing Justice Thomas’ quotation and (cleaned up) citation with the original source).

⁴⁵ *See* Diane P. Wood, *Back to the Basics of Erie*, 18 LEWIS & CLARKE L. REV. 673 (2014) (offering her perspective on the *Erie* doctrine as chief justice of the United States Court of Appeals for the Seventh Circuit and giving a helpful basic breakdown of related concepts).

⁴⁶ *See, e.g.*, Earl C. Dudley, Jr. and George Rutherglen, *Deforming the Federal Rules: An Essay on What’s Wrong With the Recent Erie Decisions*, 92 VA. L. REV. 707 (2006); Thomas Sciacca, *Has the Supreme Court Sacrificed Stare Decisis to Clarify Res Judicata? An “On the Merits” Evaluation of Federal Common Law Jurisprudence After Semtek*, 23 PACE L. REV. 313 (2002).

⁴⁷ *See, e.g.*, Alan M. Trammell, *Toil and Trouble: How the Erie Doctrine Became Structurally Incoherent, (and How Congress Can Fix It)*, 82 FORDHAM L. REV. 3249 (2014); Wendy Collins Perdue, *The Sources and Scope of Federal Procedural Common Law: Some Reflections on Erie & Gasperini*, 46 U. KAN. L. REV. 751, 768 – 75 (1998).



Some courts have even shown a particular fondness for this citation format, using it over and over again – sometimes even within the same opinion. For example, in 2019 the Court of Appeals of Utah used (cleaned up) over thirty times in the opinion of *State v. Heath*,⁴⁸ and over twenty times in the opinions of *State v. Squires*,⁴⁹ *Martin v. Kristensen*,⁵⁰ and *State v. Escobar-Florez*.⁵¹ In 2018 the Court of Appeals of Maryland used (cleaned up) eighteen times in the opinions of *Ford v. State*⁵² and *Ademuliyi v. Md. St. Bd. of Elections*.⁵³ There are many other examples of courts using (cleaned up) ten or more times in a single opinion.⁵⁴ The list of courts who have repeatedly used (cleaned up) in 2018 and 2019 includes the United States Courts of Appeals for the Fourth, Fifth and Eighth Circuits, numerous district courts, and courts of appeals from states around the

⁴⁸ 2019 Utah App. 186, 453 P.3d 955 (2019).

⁴⁹ 2019 Utah App. 133, 446 P.3d 581 (2019).

⁵⁰ 2019 Utah App. 127, 450 P.3d 66 (2019).

⁵¹ 2019 Utah App. 135, 450 P.3d 98 (2019).

⁵² 462 Md. 3, 197 A.3d 1090 (2018).

⁵³ 458 Md. 1, 181 A.3d 716 (2018).

⁵⁴ Original research on file with the author.

nation. Here is a list of some of the courts who used (cleaned up) in multiple cases since its introduction into the legal vernacular:

United States Court of Appeals for the Fourth Circuit⁵⁵
United States Court of Appeals for the Fifth Circuit⁵⁶
United States Court of Appeals for the Sixth Circuit⁵⁷
United States Court of Appeals for the Seventh Circuit⁵⁸
United States Court of Appeals for the Eighth Circuit⁵⁹
United States District Court for the District of Columbia⁶⁰
United States District Court for the Central District of California⁶¹
United States District Court for the District of Delaware⁶²
United States District Court for the Southern District of Florida⁶³
United States District Court for the Northern District of Illinois⁶⁴
United States District Court for the District of Minnesota⁶⁵
United States District Court for the District of New Jersey⁶⁶
United States District Court for the District of South Dakota⁶⁷
United States District Court for the Western District of Texas⁶⁸
Court of Appeals of Maryland⁶⁹

⁵⁵ The United States Court of Appeals for the Fourth Circuit used (cleaned up) in at least fifteen cases in 2019. *See* original research on file with the author.

⁵⁶ The United States Court of Appeals for the Fifth Circuit used (cleaned up) in at least one hundred and fifteen cases in 2018 and 2019. *See* original research on file with the author.

⁵⁷ The United States Court of Appeals for the Sixth Circuit used (cleaned up) in at least thirty-five cases in 2018 and 2019. *See* original research on file with the author.

⁵⁸ The United States Court of Appeals for the Seventh Circuit used (cleaned up) in at least fifteen cases in 2018 and 2019. *See* original research on file with the author.

⁵⁹ The United States Court of Appeals for the Eighth Circuit used (cleaned up) in at least one hundred forty cases in 2018 and 2019. *See* original research on file with the author.

⁶⁰ The United States District Court for the District of Columbia used (cleaned up) in at least one hundred twenty-five cases in 2018 and 2019. *See* original research on file with the author.

⁶¹ The United States District Court for the Central District of California used (cleaned up) in at least sixty-five cases in 2018 and 2019. *See* original research on file with the author.

⁶² The United States District Court for the District of Delaware used (cleaned up) in at least thirty-nine cases in 2019. *See* original research on file with the author.

⁶³ The United States District Court for the Southern District of Florida used (cleaned up) in at least twenty-five cases in 2018 and 2019. *See* original research on file with the author.

⁶⁴ The United States District Court for the Northern District of Illinois used (cleaned up) in at least fifty cases in 2018 and 2019. *See* original research on file with the author.

⁶⁵ The United States District Court for the District of Minnesota used (cleaned up) in at least eighty-five cases in 2018 and 2019, with the vast majority of the case citations occurring in 2019. *See* original research on file with the author.

⁶⁶ The United States District Court for the District of New Jersey used (cleaned up) in at least fifteen cases in 2018. *See* original research on file with the author.

⁶⁷ The United States District Court for the District of South Dakota used (cleaned up) in at least forty cases in 2018 and 2019. *See* original research on file with the author.

⁶⁸ The United States District Court for the Western District of Texas used (cleaned up) in at least fifteen cases in 2018 and 2019. *See* original research on file with the author.

⁶⁹ The Court of Appeals of Maryland used (cleaned up) in at least sixty cases in 2018 and 2019. *See* original research on file with the author.

Court of Appeals of Michigan⁷⁰
Court of Appeals of Utah⁷¹
Court of Special Appeals of Maryland⁷²

It is also worth noting that when they use (cleaned up), even for the first time, most courts do not explain what they think a (cleaned up) citation is or why they are using it.⁷³ Given that there is not an official source for the boundaries of how to use a (cleaned up) citation, this lack of explanation from courts only adds to the ambiguities surrounding (cleaned up) applications in application. Only a handful of court opinions provided an explanation for (cleaned up) when it first became popular in 2017,⁷⁴ and that number has not proportionally risen in the years since.⁷⁵ This lack of explanation is not seen at the federal circuit court level, where most of the courts explained (cleaned up) when they first used it – usually with a citation to Metzler’s article.⁷⁶

The growing issue with (cleaned up) is not the use of this citation, or the aesthetically pleasing pages that often result from the (cleaned up) process. The problem is that when courts are using (cleaned up) in this volume, at this level, the resulting jurisprudence makes it more difficult for future legal readers and writers to trace the

⁷⁰ The Court of Appeals of Michigan used (cleaned up) in at least sixty-five cases in 2018 and 2019. *See* original research on file with the author.

⁷¹ The Court of Appeals of Utah used (cleaned up) in at least sixty cases in 2018 and 2019. *See* original research on file with the author.

⁷² The Court of Special Appeals of Maryland used (cleaned up) in at least one hundred fifty cases in 2018 and 2019. *See* original research on file with the author.

⁷³ Four of the fifty-eight opinions that used (cleaned up) in 2017 gave an explanation for the new citation by referring to Metzler’s original article on (cleaned up) in the *Journal of Appellate Practice and Process*. *See supra* note 8. All four of the opinions were published by the Maryland Court of Special Appeals, which developed a strong fondness for (cleaned up) citations. *See supra* note 66. That court used (cleaned up) at least twice times before providing an explanation. *Compare Office of Admin. Hearings v. RoadRunner Title Pawn LLC*, 2017 Md. App. LEXIS 1077 (2017) and *Dominguez v. Rawlings*, 2017 Md. App. LEXIS 1171 (2017) with *Sang Ho Na v. Gillespie*, 234 Md. App. 742 (2017) (“Use of (cleaned up) signals that to improve readability but without altering the substance of the quotation, the current author has removed extraneous, non-substantive clutter such as brackets, quotation marks, ellipses, footnote signals, internal citations or made un-bracketed changes to capitalization.”).

⁷⁴ *See supra* note 67.

⁷⁵ Original research on file with the author.

⁷⁶ *See, e.g., United States v. Reyes*, 866 F.3d 316 (2017).

original precedents that form the basis for the resulting court opinions. And as noted earlier, there is no actual rule yet for the boundaries of using cleaned up⁷⁷ which leads to a natural ambiguity in the application of this already ambiguous citation. Hopefully most litigants and courts are not using (cleaned up) as an opportunity to alter the meaning and interpretation of the original source and precedent, but using (cleaned up) makes it harder for the reader to trace the origins and use them for future reference.⁷⁸ These types of gaps will become inevitably more problematic as future cleanings become more like scrubblings, with layers of (cleaned up) citation references layering upon themselves to create citations that act more like unwelcome soap scum. The inevitable disturbing level of opacity will likely delete any of the original clarity and create citations that obscure the vital origins of the relevant legal thoughts.

At least one court has made note of the potential for (cleaned up) citations to do more harm than good. For example, in 2021 the United States Court of Appeals for the Eleventh Circuit chastised the defendant in *Callahan v. United Network for Organ Sharing* for using (cleaned up) in a way that manipulated the meaning of the original citation.⁷⁹ “A (cleaned up) parenthetical has limited utility at most,” wrote Judge Britt C.

⁷⁷ See *supra* notes 19 – 22.

⁷⁸ See, e.g., Sara Wolff, *Happy 40th Birthday UMC! Onward!*, University of Maine School of Law Blog, Aug. 11, 2022, <https://mainelaw.maine.edu/faculty/happy-40th-birthday-umc-onward/> (explaining that evolutions in the language of citations is expected, but pondering whether the ease of using (cleaned up) may be sacrificing accuracy and credibility because the citation “produces more questions than answers: What was “cleaned up;” should it have been “cleaned up;” was anything lost that the legal reader might want to know about; something that might signal something of value to the reader about the weight given the cited material or its provenance?”

⁷⁹ *Callahan v. United Network for Organ Sharing*, 17 F.4th 1356, 1362 (2021).

Grant. “And whatever utility that innovation may have will vanish entirely if it used to obscure relevant information.”⁸⁰

(Cleaned up) may promise increased simplicity, but that simplicity comes at the potential expense of accuracy.⁸¹ Thus, a prudent legal reader will treat a (cleaned up) citation as a signal that extra attention and careful reading should be applied to those citations. And a prudent legal writer will understand that they are signaling to their reader to add extra scrutiny to this source, which suggests that the time reportedly saved by using (cleaned up) may be false advertising. If this new citation form actually creates *more* work, does it offer increased simplicity after all? This ambiguity in usefulness may be appeased once a version of a rule is inevitably adopted by a citation authority, but until then legal writers overuse this citation at their own risk.

II. AN IN-DEPTH EXAMPLE FROM MODERN PRACTICE: THE MYTH THAT FRCP 30(B)(6) REQUIRES “PAINSTAKING SPECIFICITY”

Even before the rise of (cleaned up), judges and legal advocates were taking language out of context to create their arguments and citing to unpublished cases that were not easily verified as related precedent. In this section we look at the implications of not checking your citations through an important example. By tracing a line of cases from Kansas that has had a long-term impact on litigation involving corporations and other types of organizations we can see that simply trusting a citation on these cases is doing disservice to clients and cases.

⁸⁰ See *id.* (chastising the defendant for omitting relevant text from the *cf.* portion of a relevant quotation); see also Ira P. Robbins, *Semiotics, Analogical Reasoning, and the cf. Citation: Getting Our Signals Uncrossed*, 48 DUKE L. J. 1043 (1999) (explaining that the history of the *cf.* citation is confusing and complicated, and the citation is somewhat disfavored among judges as a result).

⁸¹ Katrina Robinson, *Teaching Law Students Not To Make a Mess of (cleaned up)*, THE SECOND DRAFT at *5 (Dec. 2021) (“(cleaned up) offers simplicity at the expense of accuracy” and noting that this citation should be a sign to a legal reader that extra “detective work” is needed, so it may not save anyone any time after all).

When it comes to litigation, many of those tiny yet influential details are centered around the rules of civil and criminal procedure. While the average citizen may not be aware of the existence of the rules of civil procedure, lawyers and judges know they are vitally important to the practice of law.⁸² The basis for much of modern civil procedure is the Federal Rules of Civil Procedure, an inarguably influential⁸³ if slightly antiquated⁸⁴ collection of rules that govern how cases move through most courts around the United States. As trials have become increasingly rare, discovery practice has become increasingly important – and the rules that govern pre-trial litigation have become dizzyingly complex.

Discovery is almost always painful, but modern organizational discovery is frequently excruciating.⁸⁵ The discovery process in litigation is based on the rules of civil procedure, and vitally important because this is how lawyers discover evidence of

⁸² See, e.g., Katrin Marquez, *Are Unpublished Opinions Inconsistent With the Right of Access?*, CASE DISCLOSED BLOG, Yale Law School Media Freedom and Information Access Clinic, Nov. 19, 2018, <https://law.yale.edu/mfia/case-disclosed/are-unpublished-opinions-inconsistent-right-access> (“By the end of their first week in law school, law students have all learned at least one thing: the Federal Rules of Civil Procedure (“FRCP”) are very important. The FRCP lay out the structure through which civil cases are litigated in the federal court system.”).

⁸³ See, e.g., Stephen C. Yeazell, *The Misunderstood Consequences of the Modern Civil Process*, 1994 WIS. L. REV. 631, 632 n.1 (1994) (noting that over thirty-five states have adopted the Federal Rules of Civil Procedure for their trial courts, and the majority of the rest of the states allow the citation of federal interpretations of their rules of civil procedure when the rules are “the same of substantially similar”).

⁸⁴ See, e.g., J. Maria Glover, *The Federal Rules of Civil Settlement*, 87 N.Y. L. REV. 1713, 1716 (2013) (arguing that the Federal Rules of Civil Procedure should be revamped because “the drafters of the Federal Rules placed the mechanisms for robust merits adjudication at the end of the litigation process, [so] those mechanisms are largely unavailable to influence settlement outcomes in a world without trials”); see also Robert G. Bone, *Improving Rule 1: A Master Rule for the Federal Rules*, 87 DENVER UNIV. L. REV. 287 (2010) (“Over the past three decades, many courts and commentators have expressed concern about federal civil litigation. One hears frequent complaints about the high costs of discovery, strategic abuse of the litigation process, huge case backlogs, litigation delays, and frivolous suits.”).

⁸⁵ See Gordon W. Netzorg & Tobin D. Kern, *Proportional Discovery: Making It the Norm, Rather Than the Exception*, 87 DENVER UNIV. L. R. 513, 515 (2010) (“Judges and litigants now routinely describe modern discovery as a ‘morass,’ ‘nightmare,’ ‘quagmire,’ ‘monstrosity’ and ‘fiasco’”), citing PSEG Power N.Y., Inc. v. Alberici Constructors, Inc., No. 1:05-CV-657 (DNH/RFT), 2007 WL 2687670, at *1, 8, 12 (N.D.N.Y. Sept. 7, 2007); AM. COLL. OF TRIAL LAWYERS TASK FORCE ON DISCOVERY & INST. FOR THE ADVANCEMENT OF THE AM. LEGAL SYS., INTERIM REPORT & 2008 LITIGATION SURVEY OF THE FELLOWS OF THE AMERICAN COLLEGE OF TRIAL LAWYERS, B-1 to B-2 (2008), <http://www.du.edu/legalinstitute/pubs/Interim%20Report%20Final%20for%20web1.pdf>.

wrongdoing and/or vital defenses. However, modern discovery is increasingly expensive – largely because of the games lawyers play with the existing rules of civil procedure, which were developed for a different era in the practice of law. The current rules of civil procedure were largely developed with the end-goal of trial in mind, and thus the rules presume that each litigant is heading towards a courtroom where a judge will have the opportunity to resolve any discovery disputes. But almost no one goes to trial anymore, and the modern legal practitioner gathers evidence for trial in theory while often displaying this evidence outside the courtroom at a mediation, arbitration or settlement instead.

As many an experienced lawyer will explain, these rules can be your best friend or your worst enemy and are largely responsible for the drastic increase in litigation expenses for all parties involved.⁸⁶ The attorney who understands the most procedure is also the attorney who likely has the most victories,⁸⁷ or as one of my early legal mentors once told me: “Often, the number of zeros in the check will be dependent on the nuances of the rules of procedure.”

One of the discovery rules that tends to influence a lot of zeros in checks is Federal Rule of Civil Procedure⁸⁸ Rule 30(b)(6),⁸⁹ a tactical tool of “great power”⁹⁰ that

⁸⁶ See Glover, *supra* note 64 n. 72 (explaining that defendants often use the rules to “financially exhaust their opponents in the initial discovery stages of a complex case long before ever reaching the point at which discovery of key material information becomes imminent and inevitable”).

⁸⁷ See generally Andrew S. Pollis, *Busting Up the Pre-Trial Industry*, 85 FORDHAM L. REV. 2097-98 (2017) (discussing the increasingly complex Federal Rules of Civil Procedure and their impact on the modern practice of law).

⁸⁸ This article focuses on the nuances of Federal Rule of Civil Procedure 30(b)(6), but it is anticipated to have larger applicability. When a state rule of civil procedure is the “same or substantively similar” to the accompanying Federal Rule of Civil Procedure, then the state court will consider arguments that include federal court interpretations of the rule in question. See, e.g., Yeazell, *supra* note 63, n.1.

⁸⁹ For an explanation of Rule 30(b)(6), its purposes and its common uses, see *infra* Part II.A.

⁹⁰ Kent Sinclair & Roger P. Fendrich, *Discovering Corporate Knowledge & Contentions: Rethinking Rule 30(b)(6) and Alternate Mechanisms*, 50 ALA. L. REV. 651, 653 (1999) (“the tactical use of Rule 30(b)(6) against entities has become recognized as a tool of great power”).

allows a litigant to depose an organization. The reason for the nexus of dollars and depositions regarding Rule 30(b)(6) is that these recorded conversations bind the organization as a whole in most jurisdictions, and in the process sometimes revealing the type of systematic organizational negligence (or worse, malicious intent) that can unlock larger damages, increase settlement demands, and influence overall verdicts. With stakes this high it is understandable why litigation surrounding Rule 30(b)(6) has become something of a cottage industry, with some lawyers using unreliable precedents to argue that the notice language for these depositions must go well beyond the requirements of the actual Federal Rule. This article explains some of the reasons why we arrived at this divide in understanding, why it matters, and ultimately argues for a return to an adherence to the actual rule while musing that we might perhaps see a return to a bit of sanity in corporate litigation as a result.

This article also pleads for some collective relief from the overall burdensome and minutia-focused modern practice of law, and posits that some of the faith that the general public has lost in our courts⁹¹ and our profession might be regained with a return to a reverence for good citations – especially in these chaotic early days when artificial intelligence is being implemented as a practice assistant before the information it provides is reliable. And in an age when so many people feel lost and uncertain that their

⁹¹ See, e.g., Janet Berry, *Maintaining and Improving the Public's Trust in the Judiciary*, 46 JUDGE'S J. 1 (2007) ("Absent a strong mutual understanding between the courts and the media, public confidence in the entire system erodes, and democracy as we know it is imperiled."). Admittedly, even with the current concerns about the public's eroding trust in the judiciary, the public's displeasure with the courts is not a new concept. Compare Mark Sherman & Emily Swanson, *Trust in Supreme Court Fell to Lowest Point in Fifty Years After Abortion Decision, Poll Shows*, APNEWS, May 17, 2023, <https://www.apnews.com/article/supreme-court-poll-abortion-confidence-declining-0ff738589bd7815bf0eab804baa5f3d1>, with Edward J. White, *The Judiciary and Public Sentiment*, 15 THE AM. LAWYER 219, 220 (1907) ("But the federal judiciary is not exempt from attacks by other public servants or politicians, under our system of government any more of the different courts of the various states. It is quite frequent that their motives are also drawn in question ...").

efforts make an impact, every lawyer can defend our democracy by using good citations. Because the little things really do make a big difference.

A. Brief Overview of FRCP 30(b)(6)

In these modern times when corporations are also people, the rules of civil procedure for federal courts and most states also allow corporations to speak for themselves. They do this through human representatives who testify under Federal Rule of Civil Procedure 30(b)(c), and the litigation around this has become a very expensive cottage industry.

Federal Rule of Civil Procedure 30(b)(6)⁹² gives a party who is in litigation with a corporate entity the right to depose the organization itself.⁹³ The general purpose of a Rule 30(b)(6) deposition is to “permit the examining party to discover the organization’s position via a witness designated by the organization to testify on its behalf.”⁹⁴ To do this, the rule requires the organization to be served with notice of the subjects to be discussed at the deposition, and requires those subjects be described with “reasonable particularity.”

Notice or Subpoena Directed to an Organization. In its notice or subpoena,⁹⁵ a party may name as the deponent a public or private

⁹² While this article discusses the federal version, most state rules of civil procedure have rules that are very similar or identical. When the state version of a rule of civil procedure is identical to the federal version, most state courts will accept authorities interpreting that rule as persuasive evidence. *See, e.g.,* Yeazell, *supra* note 63.

⁹³ This right is an additional right that adds to the right of litigants to depose employees of an organization and other fact witnesses. These other rights are addressed in other places within the rules of civil procedure.

⁹⁴ *See, e.g.,* Rosenruist-Gestao E Servicos LDA v. Virgin Enters., Ltd., 511 F.3d 437, 440 n. 2 (4th Cir. 2007); *see also* Nat’l R.R. Passenger Corp. v. Cimmaron Crossing Feeders LLC, 2017 W.L. 4770702, at *7 (D. Kan. Dec. 29, 2017) (denying Amtrak’s motion for a protective order and allowing questions that “specifically ask for the railroad’s positions ... positions that may or may not be the same as its expert opinions”). This opinion is one of at least three federal court opinions in this case related to the parties extended disputes over 30(b)(6) depositions. *See also* 2017 WL 4770702 (D. Kan. Oct. 19, 2017) and 2017 WL 5970848 (D. Kan. Dec. 1, 2017).

⁹⁵ *See, e.g.,* STEVEN BAICKER-MCKEE, ET. AL, A STUDENT’S GUIDE TO THE FEDERAL RULES OF CIVIL PROCEDURE 820 (2011 ed.) (“If the corporation or organization is not a party, then one must issue a

corporation, a partnership, an association, a governmental agency,⁹⁶ or other entity and must describe with **reasonable particularity** the matters for examination. The named organization **must** designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination.⁹⁷ A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.⁹⁸

Rule 30(b)(6) was added to the Federal Rules of Civil Procedure in 1970.⁹⁹ Prior to this addition organizations would often engage in a practice called “bandying” in which corporate officers would often claim they had no knowledge of the deposition

subpoena to compel attendance. If the corporation or organization is a party, a notice of deposition is sufficient.”).

⁹⁶ Over the years many governments and government agencies have attempted to argue they are immune to the obligations of Rule 30(b)(6), but this has largely been unsuccessful. *See, e.g.*, *S.E.C. v. Kramer*, 778 F. Supp. 2d 1320, 1327 (M.D. Fla. 2011) (explaining that Rule 30(b)(6) applies to government agencies, and those agencies are not entitled to special exemptions nor special limitations on the scope of discovery); *see also* *McKesson Corp. v. Islamic Republic of Iran*, 185 F.R.D. 70, 79 (D.D.C. 1999) (ruling that Iran had been properly served with a Rule 30(b)(6) deposition notice); *Great Socialist People’s Libyan Arab Jamahiriya v. Moski*, 683 F.Supp.2d 1, 11 – 13 (D.D.C. 2010) (explaining that the diplomatic immunity enjoyed by ambassadors to the United States may not absolve them from their litigation obligations under Rule 30(b)(6), and the government itself is never absolved; in that case the question was not whether the government could be deposed but whether the ambassador himself would need to sit for the deposition).

⁹⁷ The “confer in good faith” language was added in the most recent revision to Rule 30(b)(6), which became effective December 1, 2020. *See, e.g.*, Letter from John G. Roberts, Chief Justice of the U.S. Supreme Court, to Hon. Nancy Pelosi, Speaker of the House of Representatives, and Hon. Mike Pence, President of the Senate (Apr. 20, 2020) (available at <https://www.federalrulesofcivilprocedure.org/latest-updates/>) (explaining the update had been adopted by the U.S. Supreme Court, and including the original report recommending the amendment from Committee on Rules of Practice and Procedure to the Judicial Conference of the United States). There was a lot of discussion about this rule during the amendment process. *See, e.g.*, Gregory L. Schuck, *Stop the Madness: Making Reasonable Amendments to Rule 30(b)(6) Once and For All*, 42 AM. J. TRIAL ADVOC. 269 (Spring 2019).

⁹⁸ FED. R. CIV. P. 30(b)(6) (emphasis added).

⁹⁹ *See, e.g.*, 7 MOORE’S FEDERAL PRACTICE § 30.25 (Matthew Bender 3d. ed.) (“Prior to the 1970 amendments to Rule 30, a party seeking to take the deposition of a corporation, partnership, association, government agency or other entity was required to identify the official to be deposed on behalf of the organization.”). Most states have adopted the right a depose as organization using identical, or similar, language to Federal Rule of Civil Procedure 30(b)(6) into their state rules of civil procedure in the years that followed. *See id.*

subject and then insist someone else was the proper deponent.¹⁰⁰ This cost litigants significant time, resources, and money and often yielded few results: “In many cases this led to a wasteful charade in which the deposing party attempted to guess the appropriate person to provide the information sought and the entity remained silent as to the identity of persons who could actually provide useful testimony.”¹⁰¹ Thus the rule was revised to allow organizations to choose the person to testify on their behalf, and require the opposing party to provide advance notice of the topics so that the representative could prepare accordingly.¹⁰² The rationale for the rule was that it would solve the bandying problem, and the new obligation was similar in nature to the existing rules of discovery so therefore would not create a significant burden.¹⁰³

The modern application of the rule understands that because many corporate entities are large and complex, and the person giving testimony may not have direct knowledge of the topics they will need to testify about. Rule 30(b)(6) also gives the organization the right to receive advanced notice of what questions will be asked during

¹⁰⁰ See *id.*, citing FED. R. CIV. P. 30(b)(6) advisory committee note explaining that the 1970 rule revisions were designed to reduce the difficulty of identifying the correct person to depose, and to reduce the practice of bandying; see also *Memory Integrity, LLC v. Intel Corp.*, 308 F.R.D. 656, 660 (D. Or. 2015) (“Rule 30(b)(6) was enacted to curb use of technique known as ‘bandying’ in which each witness in turn disclaims knowledge of facts that are known to others in the organization”); *Protective Nat’l Ins. Co. of Omaha v. Commonwealth Ins. Co.*, 137 F.R.D. 267, 278, 285 (D. Neb. 1989) (chastising defendant and its counsel for evasiveness during a corporate representative deposition, and holding they were liable for plaintiff’s fees and costs among other sanctions).

¹⁰¹ See MOORE’S FEDERAL PRACTICE, *supra* note 80; see also M. Minnette Massey, *Depositions of Corporations: Problems and Solutions – Fed. R. Civ. P. 30(b)(6)*, 1986 ARIZ. ST. L. J. 81, 82-85 (1986) (describing many of the challenges encountered by litigants who were attempting to depose a corporate representative before the 1970 amendments to Rule 30).

¹⁰² See MOORE’S FEDERAL PRACTICE, *supra* note 80 (“One court explained that an overbroad Rule 30(b)(6) notice subjects the responding party to an impossible task. To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed in the notice. When the responding party cannot identify the outer limits of the area of inquiry noticed, compliant designation is not feasible”), citing *Reed v. Nellcor Puritan Bennett & Mallinckrodt*, 193 F.R.D. 689, 692 (D. Kan. 2000).

¹⁰³ See, e.g., *Memory Integrity LLC*, *supra* note 81 at 660, quoting Fed. R. Civ. P. 30, Advisory Committee Notes (1970 Amendments) (explaining that “[t]he Advisory Committee observed that the burden placed by this rule on a party required to produce a witness or witnesses ‘is not essentially different from that of answering interrogatories under Rule 33’”).

this deposition. This is known as a Rule 30(b)(6) notice, and it can be in the form of a written notice or a formal subpoena. Federal Rule of Civil Procedure 30(b)(6) also states that a party in litigation with an organization has a right to depose the organization itself, in addition to other witnesses;¹⁰⁴ the organization then has a right to designate the person (or persons) will testify on its behalf.

The Rule uses the phrase “the organization must designate”¹⁰⁵ because litigants have a right to depose a corporate representative if the opponent litigant wishes to take that deposition.¹⁰⁶ It is not optional. While it has become common practice for organizational counsel to attempt to prevent or mitigate a Rule 30(b)(6) deposition, this is usually gamesmanship that will simply delay the inevitable:

The Federal Rules of Civil Procedure do not permit a party served with a 30(b)(6) deposition notice or subpoena to request “to elect to supply the answers in a written response to an interrogatory” in response to a Rule 30(b)(6) deposition notice or subpoena request. Because of its nature, the deposition process provides a means to obtain more complete information and is, therefore, favored.¹⁰⁷

An organization cannot dodge the deposition by referring the opposing party to previous discovery or other documents.¹⁰⁸ Courts have been clear that “[w]ritten discovery is not a

¹⁰⁴ See, e.g., *Progress Bulk Carriers v. Am. S.S. Owners Mut. Prot. & Indem. Ass’n, Inc.*, 939 F. Supp. 2d 422, 430 (S.D. N.Y. 2013) (explaining that using a subpoena to instigate a 30(b)(6) deposition does not preclude a litigant from also deposing employees as individuals under Rule 30(b)(1)).

¹⁰⁵ See FED. R. CIV. P. 30(b)(6) (emphasis added).

¹⁰⁶ See, e.g., *S.E.C. v. Merkin*, 283 F.R.D. 689, 694 (S.D. Fla. 2012) (explaining that “just like any party litigating in federal court, Merkin has the right to take a 30(b)(6) deposition from the SEC”).

¹⁰⁷ See generally *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008) (citing *Marker v. Union Fidelity Life Ins.*, 125 F.R.D. 121, 126 (M.D.N.C. 1989)); see also *United States v. Stabl Inc.*, 2018 U.S. Dist. LEXIS 135451, 2018 WL 3758204 (D. Neb. Aug. 8, 2018), citing *Murphy v. Kmart Corp.*, 255 F.R.D. 497, 506 - 07 (D. S.D. 2009) (explaining that 30(b)(6) depositions allow litigants to procure more complete information than written discovery, and proclaiming that “[p]roducing documents and responding to written discovery is not a substitute for providing a thoroughly educated Rule 30(b)(6) deponent”).

¹⁰⁸ See, e.g., *Murphy* at 506-07 (“Kmart has objected to almost every subject ... on the ground that such information is duplicative and unduly burdensome as it has already been produced in other forms or is available elsewhere. If the court were to adopt Kmart’s position, then few Rule 30(b)(6) depositions would ever take place.”).

substitute for a Rule 30(b)(6) deposition.”¹⁰⁹ Nor can a corporation evade its 30(b)(6) duty by claiming it does not have a qualified witness: “[b]ecause Rule 30(b)(6) explicitly requires a company have persons testify on its behalf as to all matters reasonably available to it ... the Rule implicitly requires persons to review all matters known or reasonably available to [the corporation] in preparation for the 30(b)(6) deposition.”¹¹⁰

The 30(b)(6) designee is not giving his or her personal opinion. Rather the designee is presenting the organization’s “position on the topic.”¹¹¹ In a 30(b)(6) deposition there is no distinction between the corporate representative and the organization.¹¹² Moreover, the designee must not only testify about facts within the [entity’s] knowledge, but also its subjective beliefs and opinions. The [entity] must provide its interpretation of documents and events.¹¹³ Courts have been very clear that the Rule 30(b)(6) witness is obligated to represent the corporation in binding testimony, and “[t]his extends not only to facts, but also to subjective beliefs and opinions.”¹¹⁴ The testimony given by the designee is binding and the organization will be held accountable for the designee’s words as the case progresses.¹¹⁵

Because the person being deposed is giving the official opinion of the organization, these depositions carry tremendous importance in the course of litigation.

¹⁰⁹ See *Parker v. United States*, 2020 WL 729211, slip. op. at *17 (D. Neb. Feb. 13, 2020); citing *CitiMortgage, Inc. v. Chicago Bancorp, Inc.*, 2013 WL 3946116 at *1 (E.D. Mo. July 31, 2013).

¹¹⁰ See, e.g., *Sprint Communications Co. L.P. v. TheGlobe.com, Inc.*, 236 F.R.D. 524, 528 (D. Kan. 2006).

¹¹¹ See *Hyde v. Stanley Tools*, 107 F. Supp. 2d 992 (E.D. La. 2000), citing *United States v. Taylor*, 166 F.R.D. 356, 361, *aff’d*, 166 F.R.D. 367 (M.D.N.C. 1996).

¹¹² See *id.*

¹¹³ *Brazos River Auth. v. GE Ionics, Inc.*, 469 F.3d. 416, 433 (5th Cir. 2006).

¹¹⁴ *Estate of Thompson v. Kawasaki Heavy Indus.*, 291 F.R.D. 297 (N.D. Iowa 2013), citing *Lapenna v. Upjohn Co.*, 110 F.R.D. 15, 25 (E.D. Pa. 1986) and 4 J. MOORE, J. LUCAS & G. GROTHEER, *MOORE’S FED. PRAC.* 26.56[3], at 142-43 (2d. ed. 1984).

¹¹⁵ See, e.g., *Starlight v. Herlihy*, 186 F.R.D. 626, 638 (D. Kan. 1999) (holding a corporation has a duty under Rule 30(b)(6) to provide someone who is knowledgeable in order to provide “binding answers on behalf of the corporation”).

The 30(b)(6) witness often gives testimony that is the basis for motions for summary judgment, motions for punitive damages, and other types of pivotal moments that can change the course of a case. This is one of the reasons why a Rule 30(b)(6) notice is something that becomes the center of its own wave of motions.

Companies served with a Rule 30(b)(6) notice “have a duty to make a conscientious, good-faith effort to designate knowledgeable persons of Rule 30(b)(6) depositions and prepare them to fully and unevasively answer questions about the designated subject matter.”¹¹⁶ This preparation includes preparing the designated witness(es) “by having them review prior fact witness deposition testimony as well as documents and deposition exhibits.”¹¹⁷ Unlike other depositions, personal knowledge of the subject matter is irrelevant¹¹⁸ – it is the organization’s knowledge that is being sought, and the organization’s binding testimony that is of value.¹¹⁹ This is one of the primary reasons why the rule places the responsibility on the organization to choose the person or persons who will be deposed, and also allows for sanctions if the deponent cannot or will not answer questions on the day of the deposition: “the purpose underlying Rule 30(b)(6)

¹¹⁶ See *id.* at 639, citing *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 75 (D. Neb. 1995).

¹¹⁷ See *U.S. v. Taylor*, 166 F.R.D. 356, 362 (M.D. N.C. 1996); see also Kelly Tenille Crouse, *An Unreasonable Scope: The Need for Clarity in Rule 30(b)(6) Depositions*, 49 U. LOUISVILLE L. REV. 133 (2010) (discussing different courts’ approaches to the question of whether preparations for Rule 30(b)(6) depositions constitute protected “work product”).

¹¹⁸ See *Memory Integrity LLC*, *supra* note 81, at 661, citing *Covad Commc’ns Co. v. Revonet, Inc.*, 267 F.R.D. 14, 25 (D.D.C. 2010) and quoting *Nutramax Labs, Inc. v. Twin Labs, Inc.*, 183 F.R.D. 458, 469 (D. Md. 1998) (“The testimony of [30(b)(6)] witnesses also is not limited to matters within their personal knowledge, but extends to matters known or reasonably available to the party designating the witness.”).

¹¹⁹ See *Memory Integrity LLC*, *supra* note 81, at 661, citing *McCormick-Morgan, Inc. v. Teledyne Indus., Inc.*, 134 F.R.D. 275, 286-88 (N.D. Cal. 1991) (holding that it is only when a topic Rule 30(b)(6) notice requests testimony so granular that “no human being ... could reliably and completely set forth [the] material” then the court may grant parties permission to testify through interrogatories), *overruled on other grounds* by 765 F.Supp. 611 (N.D. Cal. 1991); see also *A.I. Credit Corp v. Legion Ins. Co.*, 265 F.3d 630, 637 (7th Cir. 2001), citing *Indus. Hard Chrome Ltd. v. Hetran, Inc.*, 92 F.Supp.2d. 82, 94 (N.D. Ill. 2000) (“testimony given at a Rule 30(b)(6) deposition is evidence which, like any other deposition testimony, can be contradicted and used for impeachment purposes”).

would be frustrated [if] a corporate party produces a witness who is unable ... or unwilling to provide the necessary factual information on the entity's behalf.”¹²⁰

Because corporate representative depositions carry so much weight, and because these depositions can have vast implications on a case, there tends to be a lot of litigation and negotiation around the parameters of these types of discovery depositions.¹²¹

Oftentimes this litigation takes the form of attorneys for the organization asking the court for one or more protective orders¹²² hoping to limit the scope of questioning during the deposition or even seeking to eliminate the deposition completely.¹²³ On very rare occasions a court has allowed parties to limit questioning to interrogatories and avoid their Rule 30(b)(6) testimonial obligations; however, these rare occurrences have usually involved highly complex scientific matters, or circumstances when additional questions have been presented late in the litigation process after a deposition has already taken place.¹²⁴

¹²⁰ *Memory Integrity LLC*, *supra* note 81, at 661, *quoting* *Black Horse Lane Assoc. L.P. v. Dow Chem. Corp.*, 228 F.3d 275, 304 (3d Cir. 2000).

¹²¹ See Andrew S. Pollis, *Busting Up the Pre-Trial Industry*, 85 *FORDHAM L. REV.* 2097-98 (2017) (explaining why motion practice and discovery litigation have become increasingly complex as trials have become increasingly rare, because each party is trying “to make litigation as painful and expensive as possible for each other so that settlement becomes the better option. Yet there is a second omnipresent objective: maximization of fees for lawyers who charge their clients by the hour ... it is the worst kept secret in the legal industry.”).

¹²² See generally 8A *FED. PRAC. & PROC. CIV.* § 2035 (3d. ed.). Motions for protective orders and reply briefs are made under Federal Rule of Civil Procedure 26. See, e.g., Reply in Support of Dealership Plaintiffs’ Motion for Protective Order, *In re: Automotive Parts Antitrust Litigation*, No. 12-md-02311 (E.D. Mich. Dec. 23, 2015), 2015 WL 13686885.

¹²³ See, e.g., *General Dynamics Corp. v. Selb Manufacturing Co.*, 481 F.2d 1204, 1212 (8th Cir. 1973) (requiring a moving party “to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact, as distinguished from stereotypes and conclusory statements”); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3rd Cir. 1994) (“Good cause is established on the showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity.”).

¹²⁴ See, e.g., *McCormick-Morgan, Inc. v. Teledyne Indus., Inc.*, 134 F.R.D. 275 (N.D. Cal. 1991) (ruling that a non-lawyer corporate representative could not be expected to testify without the written assistance of counsel because “patent cases turn particularly on a conceptually dense dynamic between physical objects, words in claims, and principles of law”); *aff’d*, *United States v. Taylor*, 166 F.R.D. 356, 362-63 (M.D. N.C.

One tactic organizations use when they attempt to evade their Rule 30(b)(6) duties is claiming that everything is attorney client privilege. This has been tried many times, and courts have acknowledged there are some nuances that could give rise to some confusion¹²⁵ because, unlike other depositions where someone is testifying about their own personal knowledge and understanding, a 30(b)(6) witness is usually testifying about knowledge that has often been gathered and prepared by their legal counsel. However, courts are also clear that this does not qualify for blanket attorney client privilege: “There is simply nothing wrong with asking for facts from a deponent, even though those facts may have been communicated to the deponent by deponent’s counsel.”¹²⁶

Yet another practice attorneys sometimes use is claiming that no one is left at the organization who is qualified or capable of giving Rule 30(b)(6) deposition testimony. It is common to find that an organization no longer employs individuals, or those who are still employed there have fuzzy memories of past events.¹²⁷ None of these circumstances relieves the organization of their deposition obligations under Rule 30(b)(6).¹²⁸ For example, in the North Carolina case of *United States v. Taylor* multiple corporate defendants tried to avoid liability for multiple environmental violations that took place over several decades.¹²⁹ Even though the court recognized that the events in question took place years ago, and almost all of the issues involved acts by a subsidiary organization that had long been sold, the court held the organization was still required to prepare for

1996) (explaining that the shift to interrogatories in complex questions is best made on a case-by-case basis and noting “contention interrogatories of limited scope are proper towards the end of discovery”).

¹²⁵ See generally Crouse, *supra* note 117.

¹²⁶ Protective Nat’l Ins. Co. of Omaha v. Commonwealth Ins. Co., 137 F.R.D. 267, 280 (D. Neb. 1989).

¹²⁷ See, e.g., *Taylor* at 362.

¹²⁸ See *id.* at 361.

¹²⁹ See *id.* at 350 (explaining the case involved multiple defendants who were being accused of long-term violations of CERCLA, also known as the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601-9675).

and participate in a Rule 30(b)(6) deposition.¹³⁰ The court sympathized with the challenge of finding individuals with knowledge given that many of them were deceased, but “these problems do not relieve an organization from preparing a 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.”¹³¹ The disputed events in *Taylor* took place between 1959 to 1981, and the deposition was proposed for 1995. But as the Court explained “[t]he Court understands that preparing for a Rule 30(b)(6) deposition can be burdensome. However, this is merely the result of the concomitant obligation from the privilege of being able to use the corporate form in order to conduct business.”¹³²

While the *Taylor* court does allow for the possibility that an organization may be able to plead lack of memory, the ruling makes it clear that a mere passing of time or change in personnel is not enough to successfully use this excuse.¹³³ Just as importantly, the *Taylor* court explains that if a organization states it has no knowledge or memory of a subject or fact in the Rule 30(b)(6) deposition then the organization will likely be barred from using any evidence related to that inquiry as a defense or claim at trial.¹³⁴ Finally, the *Taylor* court concluded that courts should be vigilant in enforcing the preparation

¹³⁰ See *id.* at 362.

¹³¹ See *id.* at 361.

¹³² See *Taylor* at 362.

¹³³ See *id.* at 361, citing *Dravo Corp. v. Liberty Mut. Ins. Co.*, 164 F.R.D. 70, 76 (D. Neb. 1995); *U.S. v. Mass. Indus. Fin. Agency*, 162 F.R.D. 410, 412 (D. Mass. 1995).

While the Rule 30(b)(6) deposition of a corporation and an individual are similar, there is one factor which can distinguish them. An individual’s personal memory is no more extensive than his or her life. However, a corporation has a life beyond that of mortals. Moreover, it can discharge its ‘memory,’ i.e. employees, and they can voluntarily separate themselves from the corporation. Consequently, it is not uncommon to have a situation, as in the instant case, where a corporation indicates that it no longer employs individuals who have memory of a distant event or that such individuals are deceased. These problems do not relieve a corporation from preparing its Rule 30(b)(6) designee to the extent matters are reasonably available, whether from documents, past employees, or other sources.

¹³⁴ See *Taylor* at 362-363, 365.

requirements for Rule 30(b)(6) “in order to make the deposition a meaningful one and to prevent the ‘sandbagging’ of an opponent by conducting a halfhearted inquiry before the deposition but a thorough and vigorous one before trial.”¹³⁵

When the moving party is seeking to thwart its opponent’s discovery efforts as much as possible,¹³⁶ then they will often move for a blanket protective order.¹³⁷ Simply moving for any type of protective order in advance of a deposition does not excuse a litigant from attending the deposition.¹³⁸ Blanket protective orders are often litigated but not often granted, simply because the barrier for a blanket protection order is high. As the Third Circuit explained, it is not enough to make “[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning” as broad allegations will not be enough to secure the strong protections of a blanket protective order.¹³⁹

By far the most common protest to Rule 30(b)(6) depositions is to complain that the subjects described in the required notice are too vague or too broad, and then when the opposing counsel breaks down the topics in detail it can result in complaints to the

¹³⁵ See *id.* at 362.

¹³⁶ See, e.g. Glover, *supra* note 64 n.72 (quoting an interview with a defense attorney who explained that “the aggressive posture we have taken regarding depositions and discovery is general continues to make these cases extremely burdensome and expensive for plaintiff’s lawyers, particularly solo practitioners” and “to paraphrase General Patton, the way we won these cases was not by spending all of [our client’s] money, but by making the other son of a bitch spend all of his”).

¹³⁷ See 8A FED. PRAC. & PROC. CIV. § 2035 (3d. ed.) (“Whether use of protective orders is expanding is uncertain. At least one district judge believes protective order practice has increased: ‘Protective orders are, obviously, an ever-expanding feature of modern litigation. They have multiplied to the extent that the [c]ourt, itself, has incorporated a model order into its [l]ocal [r]ules.’”); citing *In re Mirapex Prod. Liability Litigation*, 246 F.R.D. 668, 672-73 (D. Minn. 2007).

¹³⁸ Some lawyers wrongly assume that simply filing a motion for protective order excuses them from attending scheduled depositions, but they assume this at their peril: a lawyer is wise to remember that only a court can provide such remedies. See, e.g., *Pioche Mines Consul., Inc. v. Dolman*, 333 F.2d 257, 269 (9th Cir. 1964) (“Counsel’s view seems to be that a party need not appear if a motion under [Federal] Rule 30(b)(6) is on file, even though it has not been acted upon....But unless he has obtained a court order that postpones or dispenses with his duty to appear, that duty remains.”).

¹³⁹ See, e.g., *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108, 1121 (3d. Cir. 1986).

judge that the topics are too numerous.¹⁴⁰ The number of questions is not in itself proof of overreach, as explained by judicial analysis in litigation involving multiple internet dating services: “[t]he majority of the [one hundred thirty four] topics focus on closely related, technical aspects of the operation of Match.com, Tinder, and OkCupid. Those topics, although numerous, do not encompass wide-ranging fields of inquiry ... even though those separately listed topics are numerous, the number of those topics is not, by itself, abusive.”¹⁴¹ Instead, the question often rests on the particularity or specificity of the wording in the notice itself, which is the subject of the next section.

This article does not delve into the many ways that litigants can fight about Rule 30(b)(6) depositions outside of the notice. One of the most popular disputes is whether the party who is conducting the deposition is bound by the topics in the notice.¹⁴² If a litigant wants to fight with the opposing counsel about Rule 30(b)(6) depositions, there are plenty of details to squabble about.¹⁴³

A. How One Kansas Judge Used Two Words to Create a Myth

This brings us to the primary example this article uses to illustrate the dangers of simply using a citation without reading the rooted language. The actual language of Federal Rule of Civil Procedure 30(b)(6) says that the requesting party must describe the subjects of the upcoming deposition with “reasonable particularity”¹⁴⁴ and the Kansas

¹⁴⁰ See, e.g. Section III, Part C; see also *British Telecomms. PLC v. IAC/INTERACTIVE*, No. 18-36-WCB (D. Del. Mar. 4, 2020) (analyzing a simultaneous argument from an internet company that opposing counsel’s Rule 30(b)(6) request was both overly broad and lacking particularity yet also too detailed and burdensome).

¹⁴¹ See *id.* at *4 (rejecting a request for a protective order on this issue).

¹⁴² See, e.g., Kelly Tenille Crouse, *An Unreasonable Scope: The Need for Clarity in Federal Rule 30(b)(6) Depositions*, 49 U. OF LOUISVILLE L. REV. 133 (2010) (explaining some of the leading cases at the time regarding the issue of whether the party taking the deposition is limited to the subjects in the notice).

¹⁴³ See generally *id.*

¹⁴⁴ See *supra* note 98.

Code of Civil Procedure uses those two words as well.¹⁴⁵ However, there is a growing myth, perpetuated by attorneys and courts, that the applicable standard is actually “painstaking specificity,” and the citations used to support that myth all lead back to one case from Kansas: *Sprint Communications Co. v. Theglobe.com Inc.*¹⁴⁶

The *Sprint* case involved a recalled federal magistrate judge¹⁴⁷ who was overseeing a case where Sprint Communications was represented by his former law partners.¹⁴⁸ Although the Sprint lawyers did not raise the notice of deposition as an issue,¹⁴⁹ Judge David Waxse analyzed it anyway.¹⁵⁰ By taking two words out of an earlier

¹⁴⁵ 4 KAN. L. & PRAC., CODE OF CIV. PROC. ANNO. § 60-230 (5th ed. 2022) (“In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental agency or other entity and must describe with reasonable particularity the matters for examination.”).

¹⁴⁶ *Sprint Communications Co. L.P. v. Theglobe.com, Inc.*, 236 F.R.D. 524 (D. Kan. 2006); *cf.* *Espy v. Mformation Tech Inc.*, No. 08-2211-EFM- DWD, 2010 U.S. Dist. LEXIS 36594, 2010 WL 1488555 (D. Kan. 2010) (“Even in Kansas the ‘painstaking specificity’ standard has not received uniform approval and for good reason. It is made from whole cloth and has no basis in the Rule.”).

¹⁴⁷ A “recalled” judge is usually a judge who agrees to continue to serve even though he or she is technically retired. *See* 28 U.S.C. § 375 (2022); *see also* Retirement of the Hon. David J. Waxse, U.S. DISTRICT COURT OF KANSAS (Sept. 24, 2022, 12:10 PM), <http://ksd.uscourts.gov/index.php/2018/01/04/retirement-of-the-honorable-judge-david-j-waxse> (“Judge Waxse was appointed on Oct. 4, 1999 and retired on Oct. 2, 2013, but immediately began a one-year term of recall service. In all Judge Waxse served four years of recall service”). A magistrate judge is a judicial officer of a federal district court who has been appointed by the judges themselves. Federal district court judges may delegate the power to conduct trials and make rulings to magistrate judges. *See generally* MAGISTRATE JUDGES DIVISION OF ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS, THE SELECTION, APPOINTMENT, AND REAPPOINTMENT OF UNITED STATES MAGISTRATE JUDGES, 1-3 (2002).

¹⁴⁸ Judge Waxse was a former partner at Shook, Hardy and Bacon, LLP. Shook represented Sprint in this litigation. *Compare Sprint* at 525 (stating attorneys Adam P. Seitz and Eric A. Buresh of Shook, Hardy and Bacon represented plaintiff Sprint Communications, and attorney Basil Trent Webb of Shook, Hardy and Bacon represented plaintiff Sprint Communications as well as one of the counter defendants) *with* Judge David Waxse, LEGAL TALK NETWORK (Sept. 24, 2022, 12:26 PM), <http://legaltalknetwork.com/guests/judge-david-waxse> (“Prior to his appointment as a Magistrate Judge in 1999, he was a partner at Shook, Hardy and Bacon”). *See also* Eric E. Benson & Rebecca K. Myers, BENSON & MYERS ON LITIGATION MANAGEMENT § III.A.2 (2010) (describing Judge Waxse as “one of the most proactive Judges in the Federal Courts concerning e-discovery issues”).

¹⁴⁹ *Sprint Communications* was a complicated, multi-litigant patent litigation suit that went on for years after this 2006 opinion. *See, e.g., Sprint Commc’ns v. Comcast Cable Commc’ns, Inc.*, 2014 WL 5089402 (D. Kan. Oct. 9, 2014) (explaining the order was part of a series of suits brought by Sprint against various defendants for patent infringement).

¹⁵⁰ *See Sprint* at 527 (“Although counsel likely is familiar with the purpose of a Rule 30(b)(6) deposition, the Court commences its analysis with a brief overview of the unique function served by such a specialized form of deposition.”).

opinion out of context in his analysis language, Judge David Waxse created a monster: a highly-criticized and non-existent new standard for discovery that is being cited over and over again to argue the federal rule has changed and that parties seeking to depose an organization must meet a higher standard.

The *Sprint* case was a complicated and technical patent dispute, and the attorneys for Sprint were trying to argue that Sprint should be released from its Rule 30(b)(6) obligations because the only people knowledgeable enough to testify were the patent attorneys working on the case.¹⁵¹ While Judge David Waxse denied this novel argument, he did go beyond the pleadings to analyze the notice itself and offer Rule 30(b)(6) notice analysis:

[T]o allow the rule to effectively function, the requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issue in dispute. Then, as noted above, the responding party “must make a conscious good-faith endeavor to designate to persons having knowledge of the matters sought by [the interrogator] as to the relevant subject matters.” Once notified as to the reasonably particularized areas of inquiry, the corporation then “must not only produce such number of persons as will satisfy the request, but more importantly, prepare them so that they may give complete, knowledgeable and binding answers on behalf of the corporation.”¹⁵²

Judge Waxse cited the source for the “painstaking specificity” language as *Prokosch v. Catalina Lighting, Inc.*, a Minnesota case where the judge had used “painstaking specificity” while chastising a recalcitrant defendant.¹⁵³ Unlike *Sprint*, the

¹⁵¹ See *Sprint* at 526-27 (“Sprint filed a motion for protective order seeking to prohibit deposition on grounds that the employee inventor died; thus, the only potential corporate designees with knowledge of the subjects listed [in the notice] are former and/or present in-house Sprint attorneys, each of which have extensive involvement in the present litigation”).

¹⁵² See *id.* at 528 (emphasis added).

¹⁵³ See 193 F.R.D. 633, 637 - 38 (D. Minn. 2000). The judge in *Prokosch* was highly irritated at the defendant halogen lighting company, chastising them for misleading the plaintiff numerous times throughout the discovery process: “We find it flatly implausible that a company ... that has been the subject

Prokosch court was focused on manipulative actions by the defendant, so the “painstaking specificity” language was part of an analysis emphasizing the reciprocal intentions of Rule 30(b)(6) and shaming the defendant for not upholding their part of their obligations under the federal rules.¹⁵⁴ So while *Prokosch* was the first opinion to use the words “painstaking specificity,” Judge Waxse’s *Sprint* opinion was the first record of using these words in a way that could be cited to create increased obligations for litigants. And these cases have been cited quite a bit, both by lawyers seeking to perpetuate the myth that there is a new standard and those who are unwittingly aiding their cause.

As subsequent judges have pointed out, words like “painstaking specificity” or “painstaking particularity” create a heightened standard that puts additional burdens on the party seeking the deposition that go beyond what the actual rule requires.¹⁵⁵ But this has not stopped lawyers from proclaiming this higher standard exists, sometimes without any clarification that “reasonable particularity” is the language in the actual federal rule.¹⁵⁶ In some cases these lawyers have successfully persuaded courts that the “painstaking specificity” language from *Sprint* creates an increased layer of obligation on parties wishing to take a corporate representative deposition.¹⁵⁷ Just as worrisome in the

of several products claims, involving a good with which it is associated, would not maintain documentation concerning any such claims, or have ready access to such documentation.” The judge also threatened to sanction the defendant due to misbehavior during their Rule 30(b)(6) deposition because the representative “was both unprepared and unresponsive to Plaintiff’s questioning.” *See id.*

¹⁵⁴ *See id.*

¹⁵⁵ *See, e.g.,* Murphy v. Kmart Corp., 255 F.R.D. 497, 505-06 (D.S.D. 2009) (explaining why painstaking specificity creates a higher burden for litigants than reasonable particularity); *but compare with* Christine Rheinhard and Dylan Farmer, 30(b)(b): *The Procedural and Ethical Idiosyncrasies of Federal Corporate Representative Depositions*, presentation at The Thirtieth Annual Labor and Employment Law Institute, Aug. 23 – 24, 2019, San Antonio, Texas (noting that even though the conflict between these cases creates a frustrating ambiguity, it sometimes makes no difference in practice because discovery disputes are often handled on a case-by-case basis).

¹⁵⁶ *See, e.g.,* Bradley C. Nahrstadt, *Preparing a Witness: Rule 30(b)(6) Depositions in an ESI World*, IN-HOUSE DEFENSE QUARTERLY (Winter 2015).

¹⁵⁷ *See, e.g.,* Memory Integrity, *supra* note 81 at 661 (quoting *Sprint*); Adidas Am., Inc. v. TRB Acquisitions LLC, 324 F.R.D. 389, 395 (D. Or. 2017) (quoting *Sprint*).

modern days of legal research, the “painstaking specificity” language has become a Westlaw headnote that reads as if the federal standard has changed as well.¹⁵⁸

Both *Sprint* and *Prokosch* have come under criticism for applying a standard that does not exist. For example, when the defendants in *Junk v. Terminix International Company Limited Partners* tried to use *Prokosch* and *Sprint* to convince the court to apply the “painstaking specificity” standard, the court let the litigants know they would not be persuaded:

“DAS cites to two reported opinions which say that “the requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned” This should not be taken too literally. **The standard in the rule is a straightforward one of “reasonable particularity,” nothing more.** In this Court's experience many disputes over Rule 30(b)(6) notices are occasioned by over-specificity in atomizing the matter for examination into needless detail.”¹⁵⁹

Further criticism occurred in *Rivas v. Greyhound Lines, Inc.*¹⁶⁰ when Greyhound attempted to persuade the court that “painstaking specificity” was required notice language: “Though Greyhound Defendants argue that a reasonably particular topic for examination must be stated with ‘painstaking specificity,’ no court within the Fifth Circuit has adopted that standard. Further, a careful examination of the cases using that standard show that its purpose is merely to require that a deposing party enable the corporation to adequately prepare.”¹⁶¹

And yet, despite ample evidence that *Sprint* and *Prokosch* are simply using language that can offer an explanation of the rule, the “painstaking specificity” language

¹⁵⁸ See, e.g., Memory Integrity, *supra* note 81 at 661 (“To allow the rule governing the deposition of a corporate representative to effectively function, the requesting party must take care to designate, with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.”).

¹⁵⁹ See 2008 WL 11336773 n.2 (S.D. Iowa 2008) (emphasis added).

¹⁶⁰ 2015 WL 13710122 (W.D. Tex. 2015).

¹⁶¹ See *id.* at *4.

continues to be cited as if the rule has changed. While some judges have reasonably applied the “painstakingly specific” language as it was originally intended, as a tool to help judges bring evasive litigants into compliance with the Federal Rules and the wishes of the bench,¹⁶² others have adopted the standard itself. For example, in April 2023 United States Magistrate Judge Robert M. Illman of the United States District Court of the Northern District of California wrote “[t]he painstaking specificity standard described in *Prokosh* has been adopted by many courts in this Circuit.”¹⁶³ But there was not a new painstaking specificity standard in *Prokosh*, as described in detail above. And only one of the four cases cited by Judge Illman claimed the standard had been changed;¹⁶⁴ two of the four cases simply discussed the rule and its reciprocal obligations in the same manner as *Prokosh*,¹⁶⁵ and one of the cases cited focused on a different federal rule of civil procedure and did not mention Rule 30(b)(6) at all.¹⁶⁶ And yet, the descriptive language of *Prokosh* is still being described in a United States District Court opinion as a new standard, where it will no doubt be quoted by more lawyers going forward. Hopefully at

¹⁶² See, e.g., *British Telecomms. PLC v. IAC/INTERACTIVE*, No. 18-36-WCB at *3 (D. Del. Mar. 4, 2020) (“Rule 30(b)(6) requires that a deposition notice under the rule must describe the matters for examination “with reasonable particularity.” Courts have strictly enforced that requirement, sometimes characterizing the “reasonable particularity” requirement as mandating that the topics be designated “with painstaking specificity.”); see also *Kalis v. Colgate-Palmolive Co.*, 231 F.3d 1049, 1057 n.5 (7th Cir. 2000) (citing the *Prokosh* language as an elaboration on the original rule’s language but not claiming the standard has been changed).

¹⁶³ *Batiste v. City of Richmond*, 2023 WL 2951538 (N.D. Cal. Apr. 14, 2023), citing *Tumbling v. Merced Irrigation Dist.*, No. 1:08cv1801 LJO DLB, 2009 U.S. Dist. LEXIS 122468, at *4-5 (E.D. Cal. Dec. 15, 2009) (lacking any discussion of Rule 30(b)(6) at all); *Littlefield v. NutriBullet, L.L.C.*, No. CV 16-6894 MWF (SSx), 2017 U.S. Dist. LEXIS 222836, at *21 (C.D. Cal. Nov. 3, 2017) (citing *Prokosh* as originally intended, and using the “painstaking specificity” language along with the “reasonable particularity” standard to describe mutual obligations); *Goodman v. Walmart Inc.*, No. 2:19-cv-01707-JCM-EJY, 2020 U.S. Dist. LEXIS 116881, at *3-5 (D. Nev. July 2, 2020) (describing the applicable federal rule without mentioning the actual standard of reasonable particularity at all); *Willy v. Sherwin-Williams Co.*, No. 3:21-cv-00054-AR, 2022 U.S. Dist. LEXIS 88454, at *7 (D. Or. May 17, 2022) (emphasizing the reciprocal nature of the obligations of the parties under Rule 30(b)(6) and using the painstaking language along with the actual standard in an intelligent discussion of the federal rule).

¹⁶⁴ See *Goodman*, *supra* note 163.

¹⁶⁵ See *Willy* and *Littlefield*, *supra* note 163.

¹⁶⁶ See *Tumbling* *supra* note 163.

least some of those lawyers find this law review article, or better yet go back and read *Prokosh* for themselves.

And all of this confusion started with attorneys and judges who cited the *Sprint* opinion without reading the original source – or perhaps, in some cases, cited *Sprint* while knowing that they were stretching the standard beyond its original intent. Thus the *Sprint* opinion and its progeny are great examples of why attorneys should trace citations back to the source, because sometimes the source does not say what the citation is claiming at all. And sometimes, even better, lawyers can find that the actual law fully contradicts the cited meaning in a way that works to the benefit of their client or cause.

III. A PLEA FOR SANITY AND WARNINGS FOR THE FUTURE

The concerns about unreliable citations become even stronger when looked at in the context of the rapid technological changes that have engulfed the legal profession over the past three decades, and the even larger tidal wave of technological changes that are coming with the integration of advanced artificial technology into the legal research and writing process.

Even before artificial intelligence took over the conversation¹⁶⁷ about the future of legal writing¹⁶⁸ and the practice of law,¹⁶⁹ this century was always going to be a period of

¹⁶⁷ See, e.g., John L. Tripoli, *The Not-So-Quiet Revolution: AI and the Practice of Law*, 45 PA. LAW. 26 (July. 2023) (“Artificial intelligence, or AI, is everywhere. Most of us are encountering AI daily, if not hourly ... AI in the practice of law has also expanded and continues to grow with the potential to revolutionize the way legal services are provided”).

¹⁶⁸ See generally Steven R. Smith, *The Fourth Industrial Revolution and Legal Education*, 29 GA. ST. U. L. REV. 337 (2023) (discussing the impact of artificial intelligence on the practice of law and the way future lawyers are trained for the practice of law while they are in law school).

¹⁶⁹ See, e.g., Tripoli, *supra* note 145; see also Jason Moberly Caruso, *The Ethics of Artificial Intelligence in Legal Practice*, 65 ORANGE CO. LAW. 61 (Mar. 2023) (“If you are worried about artificial intelligence (AI) invading the practice of law someday, fear no longer: our robot friends are already a core part of virtually every practice, and this will only increase in the coming years.”); see also Jan Levine, *Forward: Artificial Intelligence: Thinking About Law, Law Practice, and Legal Education*, 58 DUQ. L. REV. 1 (2020) (describing a 2020 legal conference contemplating these impacts on the profession and the resulting scholarly works).

breathhtaking change for lawyers, judges and society as a whole. As one legal commentator explained in 2017, before artificial intelligence became the subject of daily conversation: “The next twenty years are likely to see greater transformation in how the American (and world) legal professions are organized and ply their services than was true for any comparable period in history.”¹⁷⁰ And when massive technological changes occur lawyers often feel the profession has two choices: impede the inevitable changes, or adapt ourselves and the applicable portions of the profession to these new developments.¹⁷¹

This article advocates for calm in the face of inevitable uncertainty. Although lawyers have a reputation for being slow to embrace change, the recent history of the profession shows that lawyers understand that the only thing certain in life is change. The profession looks radically different today than it did ten years ago, twenty years ago, or twenty years before that. And there is every reason to believe the profession will look radically different ten to twenty years from now.¹⁷²

Lawyers have also been anticipating the death of their profession due to technology for decades, with every new development seen by someone as a threat to the usefulness of the legal profession.¹⁷³ The development and implementation of artificial intelligence, and particularly generative character transformers such as ChatGPT, brought

¹⁷⁰ See Michael Thomas Murphy, *Just and Speedy: On Civil Discovery Sanctions for Luddite Lawyers*, 25 GEO. MASON L. REV. 36 (2017).

¹⁷¹ See generally *id.*; see also *CFTC v. McDonnell*, 287 F.Supp. 3d 213 (E.D.N.Y. 2018) (discussing the rapidly changing world of legal finance in the early ages of artificial intelligence, and explaining that “emerging financial technologies are taking us into a new chapter of economic history ... they are transforming the world around us”).

¹⁷² See generally Michael Simon, et. al., *Lola v. Skadden and the Automation of the Legal Profession*, 20 YALE J.L. & TECH. 234, n. 14 (2018).

¹⁷³ See generally *id.* (explaining various predictions of legal “Armageddon” going back to the 1950s that did not pass, and why artificial intelligence is different).

even more warnings about the looming end to the modern practice of law.¹⁷⁴ This article does not tackle whether the profession will adopt artificial intelligence technologies, or whether the impact that artificial intelligence will have on the profession will be good or ill, because the reality is that for most of us that is a question far beyond our control. Instead, the author advises professionals to be even more careful with their work product in these uncertain and ever-changing times. Because the technology lawyers rely on may be changing, but the ethical obligations we hold still remain – including the ethical obligation to use accurate citations.¹⁷⁵

Concerns about the accuracy of citations from artificial intelligence sources are more than mere minutia from legal writing professors and anxiety from luddite lawyers. There is a widely-reported phenomenon in which artificial intelligence writing programs create new information that has no basis in fact.¹⁷⁶ The scientists and philosophers who study these artificial intelligence based programs call these incidents “hallucinations.”¹⁷⁷

¹⁷⁴ See Steve Lohr, *A.I. is Coming for Lawyers, Again*, N.Y. TIMES, Apr. 10, 2023, <https://www.nytimes.com/2023/04/10/technology/ai-is-coming-for-lawyers-again.html> (describing some of the many fears about artificial intelligence and its impact on the legal profession).

¹⁷⁵ See Opinion and Order for Sanctions, *supra* note 30, at 1 (explaining that “technological advances are commonplace and there is nothing inherently improper about using a reliable artificial intelligence tool for assistance. But existing rules impose a gatekeeping role on attorneys to ensure the accuracy of their filings”).

¹⁷⁶ See, e.g., Cade Metz, *How Smart Are the Robots Getting?*, N.Y. TIMES, Jan. 20, 2023, [www.http://ny.times.com/2023/01/20/technology/chatbots-turing-test](http://ny.times.com/2023/01/20/technology/chatbots-turing-test) (“Certainly, these bots will change the world. But the onus is on you to be wary of what these systems say and do, to edit what they give you, to approach everything you see online with skepticism. Researchers know how to give these systems a wide range of skills, but they do not yet know how to give them reason or common sense or sense of truth. That still lies with you.”). For example, the author asked ChatGPT to describe a cleaned up citation since that is the subject of Part I of this article. The program responded that cleaned up citations are citations that have been “edited or formatted in a way that presents the essential information in a clear and consistent manner, while removing any details or clutter” and suggested a good way to accomplish this would be to remove all pinpoint citations in the future. Pinpoint citations are generally considered essential components of reliable citations. A copy of this dialogue is on file with the author.

¹⁷⁷ See Adam Kravitz, *ChatGPT and the Future of Legal Corporate Work: Insights and Hallucinations*, FORDHAM L. NEWS (Mar. 25, 2023) (“One issue with Chat ... is that it ‘sometimes writes plausible-sounding but incorrect or nonsensical answers,’ referred to as hallucinations”); see also Lyndsey M. Wajert, *AI “Hallucinations” Can Inflict Real-World Pain*, NAT. L. REV. (June 13, 2023) (reporting on the

It is an interesting term, because when humans hallucinate they fully believe the experiences their brains are experiencing are real: even if the sights, sounds, smells, etc. do not exist in reality, their brains are perceiving these stimulations as a real part of the environment. Most of the time with humans this is a temporary state that only exists until the brain can right itself – eventually the drug causing the hallucinations wears off, perhaps, or some other stimulus (more sleep, less drugs) realigns the brain’s perceptions so that they are more in line with “reality.” With artificial intelligence the program usually relies on corrections from programmers, or from the public.¹⁷⁸ This has potentially huge implications as artificial intelligence use becomes commonplace in the legal world, where the users are trained advocates pitted against each other in a battle over being “right” about issues that may have wide-ranging consequences for the law and public policy. What will happen when software that is trained to be persuaded comes into contact with millions of trained persuasive writers with competitive personalities, many of whom like to win at any cost? No one knows the answer. And as we move forward into a new world of legal practice based on research from artificial intelligence sources, no one knows what will happen when an artificial intelligence program extrapolates attorney’s arguments into hallucinations – much less what will happen when an artificial intelligence program comes to sincerely believe that one of these new hallucinations is real.

first defamation suit against ChatGPT and its parent company, OpenAI, which was filed after the program gave false information about the parties involved in a different federal lawsuit).

¹⁷⁸ See, e.g., Lance Whitney, *That’s Not Right: How to Tell ChatGPT When It’s Wrong*, PCMag, May 15, 2023, <https://www.pcmag.com/how-to/thats-not-right-how-to-tell-chatgpt-when-its-wrong> (explaining methods for correcting errors and hallucinations within ChatGPT and other artificial intelligence character generation programs).

In the summer of 2023 there was a well-documented saga¹⁷⁹ in which a lawyer relied on citations from ChatGPT,¹⁸⁰ only to be benchslapped¹⁸¹ by the trial judge when his opposing counsel discovered that the cases that were cited did not actually exist. The lawyer was officially sanctioned with a \$5,000.00 fine and unofficially sanctioned with public shaming.¹⁸² The dialogue from the hearing on this issue gives an interesting insight into the lawyer's reasoning for relying on these cases: "My reaction was, ChatGPT is finding that case somewhere. Maybe it's unpublished. Maybe it was appealed. Maybe access is difficult to get. I just never thought it could be made up."¹⁸³

This quote indicates that the problem was not simply due to an artificial intelligence system hallucinating cases that were not real, but the problem was also rooted in the increasing problem of lawyers lacking access to reliable information. Adding to the issue of unreliable citations is the issue of unequal access to information,

¹⁷⁹ See, e.g., Bob Van Voris, *Phony ChatGPT Brief Leads to \$5,000 Fine for New York Lawyers*, BLOOMBERG, June 22, 2023, <https://bloomberg.com/news/articles/2023-06-02/chatgpt-phony-legal-filing-case-gets-lawyers-a-5000-fine-for-ny-lawyers/377052#>; see also Benjamin Weiser, *Here's What Happens When Your Lawyer Uses ChatGPT*, N.Y. TIMES, May 27, 2023, <https://www.nytimes.com/2023/05/27/nyregion/avianca-airline-lawsuit-chatgpt.html> (joking about how a lawyer could submit a ten-page brief with a "half dozen" made up citations, and quoting New York University law professor Stephen Gillers as warning lawyers to be cautious with artificial intelligence chat programs because "You cannot just take the output and cut and paste it into your court filings").

¹⁸⁰ David T. Laton, *In re: the Estate of Bupp: A Cautionary Tale of AI As Research Tool*, 45 PENN. L. 18 (Jul. – Aug. 2023) (detailing the false procedural history and holdings in the *Bupp* case before explaining that *Bupp* did not exist because this is one of the false citations created by ChatGPT; the author noted that the language, look and feel of the *Bupp* description was startlingly realistic and convincing).

¹⁸¹ See, e.g., Joseph Mastrosimone, *Benchslaps*, 2017 UTAH L. REV. 331, 333 (2017) (documenting the rise of public shaming by judges who attempt to "enforce ethical and procedural norms through so-called 'benchslaps,' where the judge, often in a way that is superficially humorous, calls out attorney misconduct in a written order or popular opinion").

¹⁸² See, e.g., Benjamin Weiser and Nate Schweber, *The ChatGPT Lawyer Explains Himself*, N.Y. TIMES, June 8, 2023, <https://www.nytimes.com/2023/06/08/nyregion/lawyer-chatgpt-sanctions.html> (reporting the lawyer was "grilled" for two-hours in a New York federal court and felt "embarrassed, humiliated, and deeply remorseful"); Roy Strom, *Fake ChatGPT Cases Cost Lawyers \$5000 Plus Embarrassment*, Bloomberg Law, June 22, 2023, <https://news.bloomberglaw.com/business-and-practice/fake-chatgpt-cases-costs-lawyers-5-000-plus-embarrassment> ("The embarrassment from the widespread news coverage of the case, coupled with the fines, should be enough to deter the lawyers from again failing prey to ChatGPT's hallucinations, according to legal ethics experts.").

¹⁸³ Opinion and Order for Sanctions at 6, *Mata v. Avianca, Inc.*, Case 1:22-cv-01461-PKC (S.D.N.Y. June 22, 2023).

which is alluded to in the earlier discussion of the unreliability of artificial intelligence.¹⁸⁴ Even before the launch of artificial intelligence products into the for-profit legal information landscape,¹⁸⁵ the current reality is that every judge, law firm, and citizen does not have access to the same sources of information and this means that searches for precedent can bring up different results.¹⁸⁶ Beyond the competing information platforms of Westlaw, Lexis Nexis, FastCase, and others, there are the issues of gatekeeping subscription sources¹⁸⁷ within those platforms which mean not all advocates have access to the same information even when they are subscribing to the same resource.¹⁸⁸ This unequal access issue flows from the chasm of ambiguity related to the practice of citing unpublished opinions,¹⁸⁹ something that is a relatively recent development in the practice of law.¹⁹⁰ Unpublished opinions can contain great information, but they can also create confusion when advocates use citations that are specific to one platform. A citation with a Westlaw indicator will not be easily locatable by a judge or practitioner who only has access to Lexis, and vice-versa. These citations will be even more complicated to a citizen or practitioner who only has access to FastCase, Google, etc. This article does not

¹⁸⁴ See Moran, *supra* note 166.

¹⁸⁵ See, e.g., *supra* note 173.

¹⁸⁶ See generally Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 LEWIS & CLARK L. REV. 797 (2006) (explaining some of the access issues created by the for-profit legal information market).

¹⁸⁷ For-profit legal information platforms such as Westlaw and Lexis are widely-regarded as extremely expensive, and the subscription levels are quite complicated.

¹⁸⁸ These widening fractures of understanding are not helping with the increasing credibility problem the court is experiencing with the public. See, e.g., *supra* note 6.

¹⁸⁹ See, e.g., Patrick J. Schlitz, *Much Ado About Little: Explaining the Sturm Und Drang Over the Citation of Unpublished Opinions*, 62 WASH. & LEE L. REV. 1429 (2005) (explaining some of the various controversies surrounding the intense debate over whether to allow citation to unpublished opinions); compare with Hillel Y. Levin, *Making the Law, Unpublication in the District Courts*, VILLANOVA L. REV. 53 Vill. L. Rev. 973 (2008) (discussing the ongoing controversy from an access-to-justice perspective).

¹⁹⁰ See, e.g., Melissa M. Serfass and Jessie Wallace Cranford, *Federal and State Court Rules Governing Publication and Citation of Opinions*, 6 J. APP. PRAC. & PROCESS 349 (2004) (documenting the state of local, federal court rules twenty years ago regarding the permissibility of citing to unpublished opinions).

seek to reanalyze the long-running debate about citing to unpublished opinions, or the social justice implications of injecting capitalistic concerns into the legal information market. This article keeps its argument to its primary thesis of a warning to be careful since unitarily cited unpublished opinions are not portable or reliable to people without the same subscription and this practice adds to the unreliability crisis in the modern practice of law.

Hopefully anyone who learns about the long, excruciating, and internationally-reported public hearing that resulted from this lawyer's reliance on unverified citations uses that information as a strong motivation to take the advice in this article seriously. Much of that attorney's humiliation could have been avoided if he had verified the information in the citations and then communicated with candor to the court.¹⁹¹

While his trust in artificial intelligence was a subject of morbid fascination in the media,¹⁹² the reality is that many lawyers probably thought "on a bad day that could have been me." Unfortunately the increasing demands of practice, general speed of work life, and rapidly shifting access to costly online platforms¹⁹³ means that lawyers sometimes *do*

¹⁹¹ Opinion and Order, *supra* note 173.

¹⁹² See Weiser & Schweber, *supra* note 28 (quoting a legal commentator who said the case had "reverberated throughout the legal profession" and describing the scene of the hearing where the lawyer was fined as "crammed with close to [seventy] people who included lawyers, law students, law clerks and professors, rippled across the benches. There were gasps, giggles and sighs. Spectators grimaced, darted their eyes around, chewed on pens"). It is worth noting that the presiding judge seemed to feel this shame was well deserved, as he found the lawyer and his firm operated in "bad faith" and increased his error by not admitting his mistake immediately:

But if the matter had ended with Respondents coming clean about their actions shortly after they received defendant's March 15 brief questioning the existence of the cases, or after the reviewed the Court's orders of April 11 and 12 requiring production of the cases, the record would look quite different. Instead, the individual Respondents doubled down and did not begin to dribble out the truth until May 25, after the Court issued an Order to Show Cause why one of the individual Respondents ought not be sanctioned.

See Opinion and Order for Sanctions, *supra* note 30, at 2.

¹⁹³ See Lyle Moran, *Issues Beyond ChatGPT Use Were at Play in Fake Cases Scandal*, LEGALDIVE, June 12, 2023, <https://www.legaldive.com/news/chatgpt-fake-legal-cases-sanctions-generativeai-steven->

cite to cases they have not read themselves, and they were doing this long before the introduction of artificial intelligence. Should they do it? Emphatically, no. But it does happen.

As Chief Justice Tom Parker of the Alabama Supreme Court noted, “it is easy to be lulled into complacency by the power of [artificial intelligence] and forget that the ‘universal search box’ does not have access to the universe of legal information.”¹⁹⁴ Chief Justice Parker also cautioned attorneys against relying on one single source or tool: “No single method, industry practice, or tool defines the outer limit of the source types that may inform attorneys’ arguments and help them fulfill their obligations of effective advocacy and candor to the court.”¹⁹⁵

It was only two decades ago that lawyers were adjusting to using online sources instead of printed books for legal research. Just like now, articles were published wondering if the availability of online research would be the death-knell of the legal profession¹⁹⁶ or the end of reliability in legal citations.¹⁹⁷ While rapid changes did occur, they did not always happen in the way that many people predicted, although the predictions that citations may become increasingly unreliable over time has definitely come to pass.¹⁹⁸

schwartz-open-ai/652731 (explaining the lawyer in the *Mata* case did not have access to Westlaw or Lexis because they were more costly, and instead relied on free web resources or lower cost options such as FastCase).

¹⁹⁴ *Casey v. Beeker*, 321 So. 3d 662 at *21-*22 (Ala. 2020) (Parker, J., concurring).

¹⁹⁵ *See id.*

¹⁹⁶ *See* Simon, *supra* note 150.

¹⁹⁷ *See, e.g.,* Mary Rumsey, *Runaway Train: Problems of Permanence, Accessibility, and Stability in the Use of Web Sources in Law Review Citations*, 94 L. LIBR. J. 27 (2002) (explaining “the dangerous use of citations to Web sources in law review articles” because “law review citations suffer from ‘link rot’ because Web pages disappear or URLs change” and “after four years, only 30% still work”); Raizel Liebler & June Liebert, *Something Rotten in the State of Legal Citation: The Life Span of a United States Supreme Court Citation Containing an Internet Link (1996 – 2010)*, 15 YALE J.L. & TECH. 273 (2013) (using data to show that even citations in United States Supreme Court cases are not immune to “link rot”).

¹⁹⁸ *See generally* Lawrence Lessig, et. al., *Perma: Scoping and Addressing the Problem of Link & Reference Rot in Legal Citations*: 127 HARV. L. REV. F. 176 (2014); *see also* Jake Rapp and Katherine

Similarly, there is no predicting which of the seemingly endless speculations about life after artificial intelligence will come true. If the past is any indication, the some of the most pervasive and influential aspects of modern life that we will rely on in twenty years have yet to be invented. Hopefully reality, however flawed, will remain the bedrock of these programs and the current artificial intelligence hallucinations will become a quirky historical anecdote. Hopefully the practice of law will actually improve for judges, lawyers and clients. But until these technologies stabilize and the information provided becomes more reliable, then judges and lawyers are advised to use extra caution and skepticism.

In 2023 Thompson Reuters, LexisNexis, and other investors who understand the legal space began pouring resources into the development and stabilization of technology for lawyers that is based on artificial intelligence.¹⁹⁹ At the same time, clients are eager for lawyers and firms to embrace the promise of increased efficiency with artificial intelligence, with dreams of lowered legal bills dancing in their eyes.²⁰⁰ Some people have also started to ponder a world in which trustworthy artificial intelligence programs might help overworked law review editors find promising submissions for publication.²⁰¹ Other

Honecker, *Best Practices for Citing Content to Avoid Link Rot*, ABA PRACTICE POINTS, American Bar Association, July 23, 2019, <https://www.americanbar.org/groups/litigation/committees/consumer/practice/2019/best-practices-for-citing-online-content-and-avoiding-link-rot/> (explaining online content can disappear at any minute and suggesting numerous best practices law reviews and other publishers can use to prevent this issue).

¹⁹⁹ See, e.g., Matt Reynolds, *LexisNexis Introduces New Generative Artificial Intelligence Program*, ABA JOURNAL, May 5, 2023, <https://www.abajournal.com/web/article/lexisnexis-announces-new-generative-ai-platform-lexis-ai> (discussing Lexis' new artificial intelligence platform and some of the other technology competitors in this new and developing aspect of the legal research industry).

²⁰⁰ See, e.g., Lyle Moran, *54% of In-House Legal Professionals Support Generative A.I. Usage*, LEGALDIVE, June 30, 2023, <http://www.legaldive.com/news/thompson-reuters-generative-ai-legal-use-cases-legal-corporate-tax/654455> (citing a new report from Thompson Reuters, the company that owns Westlaw and that has invested heavily in legal artificial intelligence products).

²⁰¹ See generally Brenda M. Simon, *Using Artificial Intelligence in the Law Review Submissions Process*, 56 U. CAL. DAVIS L. REV. 347 (analyzing the promise and potential perils of integrating artificial intelligence into the law review publication process and pointing out that it could be a huge benefit for law students but, depending on the programming, only deepen the biases that are already present in legal academia which could have a negative impact on the American legal system).

legal scholars have been updating their work and including wording to incorporate the presumed inevitability of artificial intelligence.²⁰² Given the stakes involved and the constant rapid improvements in artificial intelligence technology, the concerns with artificial intelligence and the way its hallucinations lead to false citations will likely be fixed sooner rather than later. But until then, and probably well afterwards, smart lawyers should approach their advocacy with increased skepticism.

The technology underlying these products is also evolving so quickly it is hard to keep up with the rapid pace of developments.²⁰³ The legal profession as a whole has traditionally been infamously resistant to understanding the way technology works, but we do know we cannot quite trust these sources at this time. But it was not too long ago that the profession was wringing its hands over the dangers and diluted skills that would come from switching our legal research sources from books to databases and citing to sources found on the internet.²⁰⁴ As the infrastructure of the internet stabilized and the world switched to publishing online to save costs the profession also switched to accepting

²⁰² See, e.g., RICHARD S. HAYDOCK, FUNDAMENTALS OF LITIGATION PRAC. § 27.25 (2023 ed.) (“Software writing and editing programs can also be useful when composing a brief, from simple spell checking to grammatical suggestions to composition advice. When using an artificial intelligence resource for composition, it's necessary to confirm its reliability and accuracy.”).

²⁰³ See Pablo Arredondo, *GPT-4 Passes the Bar Exam: What That Means for Artificial Intelligence Tools in the Legal Profession*, SLS BLOGS: LEGAL AGGREGATE, April 19, 2023, <https://law.stanford.edu/2023/04/19/gpt4-passes-the-bar-exam-what-that-means-for-artificial-intelligence-tools-in-the-legal-industry> (using the bar exam as an example of how quickly artificial intelligence technology is evolving: “while GPT-3.5 failed the bar, scoring roughly in the bottom 10th percentile, GPT-4 not only passed but approached 90th percentile. These gains are driven by the scale of the underlying models more than any fine-tuning for law”).

²⁰⁴ See, e.g., Mary Rumsey, *Runaway Train: Problems of Permanence, Accessibility, and Stability in the Use of Web Sources in Law Review Citations*, 94 L. LIBR. J. 27 (2002) (explaining “the dangerous use of citations to Web sources in law review articles” because “law review citations suffer from ‘link rot’ because Web pages disappear or URLs change” and “after four years, only 30% still work”); Raizel Liebler & June Liebert, *Something Rotten in the State of Legal Citation: The Life Span of a United States Supreme Court Citation Containing an Internet Link (1996 – 2010)*, 15 YALE J.L. & TECH. 273 (2013) (using data to show that even citations in United States Supreme Court cases are not immune to “link rot”).

internet sources.²⁰⁵ Similarly, as artificial intelligence technology stabilizes the use of this type of product as an assistive device will likely become widely accepted as well.

Additionally, as with (cleaned up) citations, the use of artificial intelligence technology in legal writing needs to be indicated with a special citation. That citation is needed to indicate the actual source of the information or thought, and also it is needed to signal to prudent lawyers and judges that they need to examine certain passages and sources with additional scrutiny.

Not being able to trust your opposing counsel is a wise mindset as old as the practice of law itself, but over time many lawyers have found themselves trusting their opponent's citations even as they fight against their arguments. Even judges have found themselves in a position where, due to the constraints of time and budget, they have to rely on the citations and assertions of the attorneys appearing before them. Common sense says it should not be that way, and that relying on others' citations and arguments is an error to be avoided whenever possible – especially when those citations and arguments come from an advocate with interests that differ from one's own.

Given the dual constraints on access and time many lawyers and judges have been simply copying and pasting other citations without reading the sources. This is frowned upon, of course, but it has become something of an open secret, something people acknowledge with a wink and a nudge and a bashful smile: the increasingly common practice of legal professionals copying long strings of citations into another document

²⁰⁵ The Twenty-First edition of THE BLUE BOOK, *supra* note 15, contains numerous rules for citing to online sources. Compare, e.g., *id.* at Chapter 18 (“The Internet, Electronic Media and Other NonPrint Resources”) with Rule 17.2.4 (“E-mail Correspondence and Listserv Postings”) and Rule 17.5 (“Electronic Databases and Online Sources”).

without reading any of the original sources.²⁰⁶ Lawyers at every level do it,²⁰⁷ judges do it,²⁰⁸ even some law professors do it. And American jurisprudence is suffering as a result, as we are seeing more and more examples of cases being cited to show foundation for legal principles that were not in the original document.

Sometimes this type of opacity in sources is intentional, motivated by darker forces than simple lack of time, laziness or lack of access to the original document. Misquoting and misrepresenting precedent is supposed to be forbidden under the basic ethical principles of the legal profession. Every lawyer learns the importance of candor to the court, candor to their clients, and candor to each other, especially when it comes to easily verified facts about the law and language from judicial opinions. And when judges misquote precedent or mislead to justify their decisions it is especially worrisome because their misquotes tend to have rippling consequences.

Thus, it is especially important for the modern lawyer to view their opposing counsel's arguments and citations with healthy skepticism – especially when you know they may have come from an artificial intelligence source.²⁰⁹ A wise lawyer will even

²⁰⁶ See generally Eugene Volokh, *Law Reviews, The Internet, and Preventing and Correcting Errors*, 116 YALE L.J., Pocket Part 4 (2006), available at <https://www.yalelawjournal.org/forum/law-reviews-the-internet-and-preventing-and-correcting-errors> (acknowledging that everyone knows that they should read the original source that is cited in the citations themselves, but not everyone does: “busy users of an article are naturally tempted to cut corners by relying on indirect accounts of original sources”).

²⁰⁷ See, e.g., Holly Barker, *‘Plagiarism’ Common in Brief Writing, But When is It Too Much?*, BLOOMBERG LAW, Oct. 25, 2022, <https://news.bloomberglaw.com/litigation/plagiarism-common-in-brief-writing-but-when-is-it-too-much> (acknowledging that lawyers often borrow citations from other lawyers, especially lawyers within the same firm, as a “generally accepted practice” but warning that even borrowing your own previous work can lead to sanctions if a lawyer does not take the time to ensure the information is updated, accurate, and relevant).

²⁰⁸ For a more optimistic view on judges and lawyers, see Aaron S. Kirshenfeld and Alexa Z. Chew, *Citation Stickiness, Computer-Assisted Legal Research, and the Universe of Thinkable Thoughts*, 19 LEGAL COMM. & RHETORIC 1 (2022) (citing new data that indicates that citation stickiness has increased in the digital era in spite of some earlier predictions to the contrary).

²⁰⁹ See, e.g., Hannah Rozear & Sarah Park, *ChatGPT and Fake Citations*, DUKE U. LIB. BLOG (Mar. 9, 2023), <https://blogs.library.duke.edu/blog/2023/03/09/chatgpt-and-fake-citations> (explaining ChatGPT's

view their *own* sources and citations with skepticism in these rapidly evolving times. All citations are based on information, and that information is only as reliable as the humans who research it, cite it, and verify it. Or, in the modern era, that information is only as reliable as the humans who create the technology that makes that information available, and train the technology to learn and relay that information to others. All of these sources have always been fallible, but in these rapidly-evolving and increasingly unstable times more skepticism is needed to forge confidently into the constantly-changing waters of legal writing.

This article promotes a relatively simple solution in this age of unease and uncertainty: read the case your opponent is citing to, and then read the case that that case is citing to as well, and on down the line.²¹⁰ Yes, it is extra work. And yes, hopefully, most of the time you will find no issues. But sadly, you will also find multiple citations where language has been misquoted or twisted, or perhaps even made up.

IV. CONCLUSION

Between citation manipulations, precedent erosions, and an avalanche of new and potentially unreliable technology, these are tough times for careful lawyers and judges. Hopefully with time new technologies will stabilize, lawyers will start behaving better, and trust in the legal profession and courts will return. But until the time when legal profession will be able to take the issue of unreliable precedents and misleading citations

tendency to make up citations to scholarly sources, and noting that while “[T]hese citations may sound legitimate and scholarly, but they are not real ... If you try to find these sources through Google or the library—you will turn up NOTHING.”)

²¹⁰ See, e.g., Metzler, *supra*, note 7:

Judges and lawyers use a lot of quotations in their writing [because] our common-law tradition places a great value on what courts have said in the past ... So it often turns out that the best quotation for a proposition is one in which a judge has quoted some other judge. Not only that, but there’s a pretty good chance that second judge was quoting still another judge. You see where this is going.

very seriously. Because there are large mistakes, and large implications, that come from overlooking the basic practice of checking sources for accuracy.

Until the time when we can start trusting citations again, smart lawyers should view all citations with skepticism, even – unfortunately – those that come from the bench or from within their own law firms. This increased skepticism must be especially strong when the research is coming from opposing counsel, or any other source with opposing our unknown motivations or resources. The profession has seen an alarming increase in the distrust that the general public has for the judiciary and our profession over the past two decades, and the profession will not regain the public's confidence or our professional prestige by ignoring the basics of our business.

Everyone in the profession can do their part by strengthening the accuracy of their advocacy, and by investigating the accuracy of each other's citations. Additionally, the profession needs to develop a standardized way to indicate that work has been developed with the assistance of artificial intelligence technology so that prudent lawyers know to examine those passages and sources with an even higher degree of scrutiny.

Citations should be read with the discerning eye an observant cozy mystery detective, and sources should be investigated accordingly. The legal profession should proceed warily into this next chapter of technological development, and with an increased investigative zeal towards cited sources.

Your Name	Candidate Name	Did you meet with the candidate at a faculty interview or at dinner?	Did you see the candidate's presentation?	Did you read the candidate's paper or writing sample?	What is your overall impression of the candidate?	What are the candidate's strengths?	What are the candidate's weaknesses?	Please add any other comments you would like to share.
Jennifer Zedalis	Margie Alsobrook	No	Yes	No	Very Good.	Excellent ability to present and discuss an important topic. She has confidence without arrogance. I wanted to listen to her-- she will engage students in a positive way.	A little more discussion of the topic in the context of teaching LRW to law students would have been a plus--	
Joan Stearns Johnsen	Margie Alsbrook	No	Yes	No	Fabulous!	Interesting presentation. Intelligent discussion. Thoughtful answers to questions. Loved her!	None that I saw	
Ben Fernandez	Margie Alsbook	Yes	Yes	No	She seems like she would be a good fit.	Speaking presence. Affable.	Connection to Florida.	I had lunch with her. She wants to work with a more collegial group.
Thomas Hawkins	Margie Alsbrook	No	Yes	No	Margie was an engaging and enjoyable speaker. I found the topic of her job talk interesting and her presentation engaging.	Margie answered questions very well. She engaged with members of the audience conversationally and gave a clear response to each comment.	I did not observe any weaknesses.	
Patricia Morgan	Margie Alsbrook	Yes	Yes	No	Personable and enthusiastic about her work, scholarship, and education.	Her enthusiasm and depth of interest in the legal writing field.	I don't know enough to have an opinion.	
Lars Noah	Margie Alsbrook	No	Yes	Yes	Paper and presentation had some flaws but hardly worse than the TT candidates we've gotten to see. Would make for an engaging colleague.	—	—	—
Donna L. Eng	Margie Alsbrook	Yes	Yes	Yes	She seems well qualified and very pleasant.	Prior teaching experience.	None of which I am aware.	
Heather M Kolinsky	Margi Alsbrook	Yes	Yes	Yes	Knowledgeable and competent. Enthusiastic about Legal Skills. Sheâ€™s personable.	Subject matter, good presentation style	Limited experience teaching predictive writing.	
Donna Erez Navot	Margie Alsbrook	No	Yes	Not Applicable (No Paper or Writing Sample)	In regards to her presentation style and answers to questions, I thought she was quite strong. Her research about citations was interesting and I enjoyed the way she organized her presentation. She seemed to command the room and answer questions well. I don't know much about the citation research that she was discussing but it seemed current/interesting.	Her excitement for the topic and research about citations.	Some questions were asking about the validity of this citation style so I thought that might be a weakness.	I really enjoyed meeting Margi and think sheâ€™d be a good addition to our faculty.
Sabrina Lopez	Margie Alsbrook	Yes	Yes	Yes	I wasn't excited about adding her to the team.	She publishes and is passionate about it.	She didn't seem to give very direct responses about her pedagogical techniques or thoughts on the curriculum. That concerned me. This is a Legal Skills position and her main focus is teaching four classes a year.	We encourage publishing, but it isn't a criteria for the job. I wonder if she is better suited for a position on the tenure track since publishing is a criteria for those positions.
Lisa De Sanctis	Margie Alsbrook	Yes	Yes	Yes	Professor Alsbrook is passionate about helping her students meet the high standards she holds for the profession. She is well-rounded with teaching interests in legal writing as well as agricultural law. She has published and is interested in scholarship as well.	Professor Alsbrook enjoys remaining very current-- including keeping up with legal Twitter and legal trends. She is excited to develop curriculum that is relevant to today's legal environment. She seems like she would be an outstanding colleague.	My only concern about hiring Professor Alsbrook as a skills professor is that she is so well rounded that she might leave us one day for a doctrinal position--but that is not a reason not to offer her a position now.	I hope we make an offer to Professor Alsbrook and that she joins our department.
stacey steinberg	Margie Alsbrook	No	Yes	Yes	I think she would be a good addition to our faculty.	Great presentation style. Understands the nuts and bolts of legal writing.	N/A	

Please write a general assessment of the candidate. Some of the information the committee is seeking includes how the candidate interacted with students, perceived interest level in UF Law, thoughtfulness, relatability, potential teaching style if discussed. Please elaborate. This is an open-ended question.		What are the candidate's strengths?	What are the candidate's weaknesses?	Please write any other thoughts or comments about the candidate.
Candidate				
Margie Alsbrook	The candidate was very relatable and forthcoming during our conversation. She related to the students well and engaged us in meaningful conversation. I think this speaks well to her teaching style and ability to engage with her future UF classes.	She explained how she engages with students on an individual basis to ensure that each student reaches their full potential. She ensures that she identifies where the student needs help and works with them to overcome that problem. However, she is also able to hold students accountable if they do not put in the necessary effort to be successful. She also acknowledged that her goal is not to force each student into a cookie-cutter mold but to help each student maximize their individual writing talent and style while ensuring they adhere to legal writing practices and standards.	This is not a weakness; but she expressed potential reservation given Florida's recent academic legislation.	I think she is a strong candidate and UF students would benefit from her teaching.
Alsbrook	Very relatable and candid in her responses. Seems to utilize peer to peer learning through TAs I enjoyed getting to know Prof. Alsbrook. She seemed almost over-qualified for the role of legal writing professor. She was candid about her teaching philosophy and potential ideas for improving the structure of legal writing courses. She stated her style was conversational and hands-on, which I personally appreciate. I believe she would be an excellent addition to our faculty, however I am unsure if the interest will be reciprocated on her part.	Down to earth Understands the relationship between a TA and the students (peer to peer learning) Honest in her opinion about teaching at UF	None noted. Standard professor; I'd have to take the class to get the true experience. Timid about Florida's recent changes to academia. This isn't a true knock on their character, and I appreciated her candor in response to the question asked.	What I expect a professor to be/act. Professional and polite, dedicated to her students.
Margie Alsbrook		She has a strong and demonstrated career in legal writing that will benefit her students. Her teaching style seems clear. She is dedicated to the betterment of the student, and not the adherence to her style of writing or teaching.	None were identified in our 20 minute interview.	
Margie Alsbrook	Well made good eye contact polite	experience, willingness to help students She had a clear teaching philosophy, strong background in writing and passion for teaching law students	Didn't like that she wasn't sure about staying in Florida and at UF Law	
Margie Alsbrook	She seemed really competent and organized		none	She seemed to like and appreciate the culture of UF Law and valued our commitment to progress

STACY BIGGART

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stacybiggart@icloud.com

EXPERIENCE

University of Florida Levin College of Law

Visiting Legal Skills Professor

Gainesville, FL

January 2023 – Present

- Legal Writing I
- Legal Writing II (persuasive writing)
- Pre-Trial Practice

Adjunct Faculty, Trial Practice

Fall Semester 2022

Office of the Capital Collateral Regional Counsel – North Region

Tallahassee, FL

Special Assistant Capital Collateral Regional Counsel (On Contract) *January 2022 – Present*

- Prepare appellate briefs and represent clients in oral arguments before the Florida Supreme Court.
- Prepare petitions for writ of certiorari to the United States Supreme Court.

Assistant Capital Collateral Regional Counsel

February 2016 – April 2021

- Represented clients sentenced to death in post-conviction litigation, including motions for post-conviction relief, habeas petitions, and appeals.
- Represented clients in evidentiary hearings in circuit court.
- Prepared appellate briefs and represented clients in oral arguments before the Florida Supreme Court.
- Prepared petitions for writ of certiorari to the United States Supreme Court.
- Litigated post-conviction document production under Fla. R. Crim. P. 3.852 in circuit court.

Florida State University College of Law Placement Office

Tallahassee, FL

J.D. Advisor

May 2015 – January 2016

- Advised students on job search strategies.
- Conducted mock interviews to help students prepare for job interviews.
- Reviewed and edited student resumes and cover letters.

Supervisor of 1L Judicial Externship

May 2015 – August 2015

- Supervised students enrolled in Summer Judicial Externship.
- Reviewed student journal entries documenting their externship experience.
- Verified student work product with staff attorneys and judges.

Quintairos, Prieto, Wood & Boyer, P.A.

Tallahassee, FL

Associate

June 2012 – July 2014

- Practice focused on first-party insurance, auto and premises liability, medical malpractice, nursing home negligence, appellate and insurance coverage litigation.

Carr Allison

Tallahassee, FL

Associate

January 2012 – June 2012

- Handled caseload in a Trucking/Transportation Practice Group.

Southeastern Freight Lines, Inc.**Lexington, SC***Litigation and Corporate In-House Counsel**April 2007 – December 2011*

- Managed in-house claims adjusters who handled premises liability, property damage and bodily injury trucking accident claims.
- Directed all litigation plans, strategy, and budgets for personal injury claims as in-house counsel for a 7000-employee/2,300 power unit trucking company.
- Selected and managed outside counsel representing the company in trucking accident and premises liability claims and represented the company at trials and mediation.
- Created catastrophic response plan and directed response team of counsel, investigators, adjusters and engineers to investigate accidents and preserve evidence.

Richland County Public Defender's Office**Columbia, SC***Assistant Public Defender**June 2004 – April 2007*

- Litigated hundreds of felony and misdemeanor cases, including over 20 felony jury trials and dozens of misdemeanor jury and bench trials as lead trial counsel.
- Trained new attorneys in trial preparation and advocacy.

Strom Law Firm, LLC**Columbia, SC***Associate**November 2003 – June 2004*

- Litigated family law, social security, class action and multidistrict litigation cases.

EDUCATION

University of South Carolina School of Law**Columbia, SC***Juris Doctor**May 2003***Furman University****Greenville, SC***Bachelor of Arts in Religion**May 1999***ADMISSIONS AND MEMBERSHIPS**

- Member in Good Standing of the Florida Bar
- Member in Good Standing of the Bar of the Federal Court for the Middle District of Florida
- Member in Good Standing of the Bar of the Federal Court for the Northern District of Florida
- Member in Good Standing of the Bar of the United States Supreme Court
- Member in Good Standing of the South Carolina Bar, 2003 –2013

COMMUNITY INVOLVEMENT

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

- Recipient of Jennifer Zedalis Outstanding Mentorship Award *Spring 2023*
- Trial Team Coach, White Collar Crime Invitational, Georgetown Law *Fall 2022*
- Trial Team Coach, Florida Bar Chester Bedell Mock Trial Competition *Spring 2022*
- Guest Judge for Trial Practice (Professor Drake) *April 4, 2022*
- Guest Lecturer for Child, Parent, and the State (Professor Steinberg). *October 20, 2021*
- Trial Team Coach, White Collar Crime Invitational, Georgetown Law *Fall 2021*

Gainesville Women's Giving Circle

- Member

Gainesville, FL*Fall 2021—2023***Tallahassee Women Lawyers**

- Member
- Judicial Reception Chairperson
- Judicial Reception Development Chairperson

Tallahassee, FL*2016 – 2019**2017 – 2019**2016***Girls on the Run of the Big Bend**

- 5K Committee Member
- Running Buddy Coordinator
- Running Buddy
- Coach, DeSoto Trail Elementary School

Tallahassee, FL*Fall 2018—Spring 2019**Fall 2016—Fall 2017**Spring 2016**Fall 2015***CONFERENCES AND TRAINING**

- Legal Writing Institute's New Teacher Training Fall Bootcamp *August 2023*
- Legal Writing Institute's New Teacher Training Spring Bootcamp *January 2023*
- Federal Capital Habeas Project's Seminar on Forensic Evidence & Criminal Law. *April 2019*
- Anthony G. Amsterdam Capital Post-Conviction Skills Seminar *June 2017*
- Federal Capital Habeas Project's Annual National Habeas Corpus Seminar *August 2016*
- National Criminal Defense College Trial Practice Institute *July 2006*
- National Criminal Defense College Advanced Cross Examination *January 2006*

SPEAKING ENGAGEMENTS

- Speaker, "Closing Time: Strategies for Effective & Impactful Closing Arguments," Orlando Public Defendant's Office, Orlando, FL (July 31, 2023).
- Speaker and Panel Moderator, "Between the Rock and a Hard Place: Intersection Between Hiring and Retaining a Driver and the EEOC," ATA Forum for Motor Carrier General Counsel, San Francisco, CA (July 22-25, 2012).
- Speaker, "E-Discovery Issues Unique to Trucking Litigation," DRI Annual Meeting, Washington, D.C. (October 26-30, 2011).
- Speaker, "Strategies for Handling Soft-Tissue Claims," Trucking Industry Defense Association (TIDA) 2011 Industry Seminar, Las Vegas, NV (October 2011).
- Speaker, "Ethical Issues Facing In-House Counsel," Transportation Lawyers Association (TLA) Regional Seminar on Transportation Law and Litigation, Chicago, IL (January 22, 2010).
- Panelist, "Seizing the Moment: Mediation and Negotiation Strategies," Arkansas Trucking Seminar, Fayetteville, AR (September 16-18, 2009).

From: [McIlhenny, Ruth M.](#)
To: [McIlhenny, Ruth M.](#)
Subject: FW: NTT Appointments - Comment Form
Date: Saturday, October 14, 2023 11:12:50 AM

On Oct 13, 2023, at 1:33 PM, Russell, Thomas <russell@law.ufl.edu> wrote:

Dear Professor Wolking:

I'm writing with regard to Professor Stacy Biggart, whom I understand you are considering for appointment at the law school.

As I play no actual role in your process, I will keep my comments brief. I have been a law professor for more than 30 years including earning tenure at The University of Texas at Austin, visiting at this great law school over three semesters, and also visiting Berkeley Law, Washington University in St. Louis, UC Law SF, and other places. My permanent appointment is at the University of Denver.

I have gotten to know Professor Biggart quite well during this semester. She and I have talked often about our shared students and, more importantly, about the actual practice of law. In particular, we talk about personal injury law, as I am teaching Torts here at the Levin College of Law and because I actively engage those who practice law in this area. Last year, for example, I spent some time with Marty Levin. I have also brought Matt Morgan to campus.

Most notably, Professor Biggart is very knowledgeable about practical legal issues across topics ranging from civil to criminal practice and from the trial court to the appellate realm. I admire her knowledge of, for example, the nitty gritty details of insurance practice and criminal investigation.

Professor Biggart has a healthy concern with students learning to pass the bar exam. From day one in Torts, I let the students know that among my goals for the course is that they learn to write essays that will enable them to pass the bar exam. I know that this school is seeing some bar pass issues.

Let me also say that Stacy is very personally engaging, which is a good thing for a law professor.

In short, I think she's a terrific candidate and would be a great permanent addition to this faculty.

Please feel free to call me if you have any questions. 720-841-4665.

Tom Russell

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From: Wolking, Sarah Horn <wolking@law.ufl.edu>
Sent: Wednesday, October 11, 2023 5:50 PM
To: . LAW-Campus Faculty <Law-CampusFaculty@law.ufl.edu>
Cc: McIlhenny, Ruth M. <ruthm@law.ufl.edu>
Subject: NTT Appointments - Comment Form

Dear Colleagues,

Thank you *so* much for your enthusiasm and robust participation in the meetings with **Margie Alsbrook** today! Here is the link to include your comments on both of our Legal Writing candidates: https://ufl.qualtrics.com/jfe/form/SV_6lhcGnpBSFPVIZc

Tomorrow we welcome **Stacy Biggart**. You can meet her from 10-11am in the Faculty Lounge, at her luncheon Job Talk (noon-1pm) in the Bailey Space, and from 2-2:30pm in HOL 368C. For those of you unable to join us in person, here is the Zoom link:
<https://ufl.zoom.us/j/93207620742?pwd=TThmTkRLWDJSYnRpTTc3YDc3YTJFZz09>
Meeting ID: 932 0762 0742
Passcode: 909495

Look forward to seeing you tomorrow!

With gratitude,
Sarah (for Derek, Heather, Jane, Dennis and Danaya)

Sarah H. Wolking
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Biggart: Wheeler Call with Dawn Macready

On October 16, 2023, I spoke with Dawn Macready about Stacy Biggart for approximately 25 minutes. Right off the bat, Dawn could not have been more supportive of Stacy. Dawn and Stacy began working together in around 2015 in capital punishment cases. Stacy began as a second chair to Dawn on multiple cases, and was dependable and supportive in preparation for the many facets of these cases that needed to be handled. She was great working in a team setting and performed her role in these settings very well. Once Stacy, was certified to become a lead, she was very flexible still working in a team setting.

Dawn indicated Stacy's greatest strength is her preparation. Whether it was assisting in preparation as a second chair, or as a lead in hearings, filings and in court, Stacy was always very well prepared and put in a lot of time and energy to ensure every angle was covered. I asked her to provide me a weakness and she was almost apologetic in being unable to find one.

A challenge Stacy underwent and how she handled it provided a lens into how she may deal with students and work in a collaborative space as well. She had a difficult client with mental health issues and the client was not welcoming of her assistance. The client refused to see Stacy and self-sabotaged himself, but she prepared diligently and had her second chair be the sounding board for the client, and despite the client's outburst in court, she worked to ensure that the client's statements would not harm him and mitigate the damage. Eventually, she was able to win over the client and the client, despite his mental health struggles, was able to trust Stacy and work with her on his case.

An additional comment she provided in the end is that Stacy will continue to be dedicated to student support and success. Even as Stacy continues to assist Dawn in her work, Stacy is very cognizant not to have her office hours be affected by any additional meetings. Dawn finished with stating that Stacy will be "a tremendous member of [our] faculty" and an advocate for students.

**IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA**

Case No. 1D19-2457
Lower Court Case No. 2016-CA-1036

TALLAHASSEE HOUSING AUTHORITY,
Appellant,

v.

KENNETH PRATHER,
Appellee.

ON APPEAL FROM THE CIRCUIT COURT OF
THE SECOND JUDICIAL CIRCUIT, IN AND
FOR LEON COUNTY, FLORIDA

APPELLEE'S ANSWER BRIEF

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PRELIMINARY STATEMENT

This is the appeal of the trial court's order granting Mr. Prather's motion for a new trial. Appellant Tallahassee Housing Authority filed its Initial Brief, and this Answer Brief follows in response. Appellee will be called "Appellee" or "Mr. Prather." Appellant will be called "Appellant" or "Authority." The following symbols designate references to the record: "R" refers to the record on appeal to this Court; "IB" refers to Appellant's initial brief. All other references will be self-explanatory.

STATEMENT OF THE CASE AND FACTS

A. The accident

On August 22, 2015, Mr. Prather stepped in a hole obscured by overgrown grass at Appellant's property, the Springfield Apartments in Tallahassee. (R. 397). He fell and fractured his left ankle, requiring open reduction internal fixation surgery with multiple orthopedic plates and screws inserted. *Id.*

B. Procedural history

Mr. Prather sued Appellant for damages for his injuries in the fall. (R. 14–16). Appellant denied liability. (R. 17–20).

The parties selected a jury on June 22, 2018, and the trial was held June 25–27, 2018. Before trial, on May 14, 2018, the parties entered a pretrial stipulation for three hours per side to conduct voir dire. (R. 399). The trial court adopted the parties'

stipulation at the pretrial conference on May 23, 2018. However, the trial court's pretrial order did not include the stipulations.

On the morning of jury selection, without prior notice, the trial court informed the parties they only had one hour each for voir dire. (R. 1033). Mr. Prather's counsel objected to the limitation. (R. 1034). The court overruled his objection. (R.1036). Although counsel had prepared for a three-hour examination of the venire, the court required him to truncate his presentation at the last minute. Mr. Prather's counsel renewed his objection to the jury panel before they were sworn. (R. 1284). On June 27, 2018, the jury returned a verdict that Appellant was not negligent. (R. 473–75).

On July 12, 2018, Mr. Prather filed a motion for a new trial. (R. 1000–11). Mr. Prather argued, among other things, that the trial court's one-hour limit for jury selection was reversible error. After hearing both sides' arguments, the trial court denied Mr. Prather's motion for a new trial without prejudice. The trial court agreed to reconsider Mr. Prather's motion if he "provide[d] a transcript of jury selection demonstrating only one hour was taken by Plaintiff's counsel, and a request was made for more time at the conclusion of jury selection." (R. 1028).

On December 7, 2018, Mr. Prather's counsel provided the trial court with excerpts of the trial transcript, which showed that his voir dire began at 9:46 a.m. (R. 1035), and concluded at 10:54 a.m. (R. 1100). The transcripts included the certificate of the certified real-time reporter that "the foregoing are correct excerpts

from the transcript of the record proceedings in the above-entitled matter.” (R. 1101).

Mr. Prather moved for rehearing. The trial court granted Mr. Prather’s motion for a new trial on June 7, 2019, stating, “Upon review of the trial transcript from the jury selection in this case, as well as a review of *Carver v. Niedermayer*, 920 So. 2d 123 (Fla. 4th DCA 2006), the Court is bound to grant a new trial.” (R. 1105–06).

This appeal follows.

SUMMARY OF THE ARGUMENT

This Court should affirm the trial court’s order granting a new trial based on the arbitrary and unreasonable time limitation placed on jury selection in violation of *Carver v. Niedermayer*, 920 So. 2d 123 (Fla. 4th DCA 2006). The trial court’s order was a proper exercise of judicial discretion based on certified, real-time transcripts with timestamps that proved Mr. Prather was limited to sixty-eight minutes to conduct his voir dire. The trial court’s arbitrary limitation on Mr. Prather’s voir dire forced counsel to condense a three-hour jury selection to one hour, violating Mr. Prather’s fundamental right to a fair and impartial jury. Mr. Prather’s counsel preserved this issue for appeal when he contemporaneously objected to the trial court’s limitation on voir dire and objected again before the jury was sworn.

ARGUMENT

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN GRANTING A NEW TRIAL BECAUSE THE TRIAL COURT'S ARBITRARY ONE-HOUR TIME LIMIT ON APPELLEE'S JURY SELECTION WAS REVERSIBLE ERROR

A. Standard of review

This is an appeal of the trial court's final order granting a new trial. This Court should not disturb the trial court's decision to order a new trial unless the judge abused his discretion. *Smith v. Brown*, 525 So. 2d 868 (Fla. 1988). The abuse of discretion standard is "based on the presumption that the trial judge was the one who presided over the case and is therefore in the best position to determine the propriety and potential impact of the conduct." *Sullivan v. Kanarek*, 79 So. 3d 900, 903 (Fla. 2d DCA 2012). The *Sullivan* court further noted that "[a] court's decision to grant a new trial is given even greater deference than a court's decision to deny a new trial." *Id.* at 905.

B. Mr. Prather preserved his objection to the trial court's arbitrary time limit on jury selection

When a party makes a contemporaneous objection during jury selection, the issue is only preserved for appellate review if he accepts the jury subject to his previous objection or renews his objection. *See Joiner v. State*, 618 So. 2d 174, 176 (Fla. 1993). Mr. Prather's counsel's contemporaneous objection to the trial court's

time limitation on voir dire was properly renewed and preserved for appellate review.

Appellant claims Mr. Prather failed to preserve his objection to the trial court's one-hour limit on voir dire because his counsel only objected once. (IB. 16). However, the record refutes Appellant's allegation. When the trial court announced the one-hour-per-side limit on jury selection, Mr. Prather's counsel objected. (R. 1033). He also objected to the panel before the jury was sworn. (R. 1284).

Appellant further claims that Mr. Prather failed to preserve his objection because he did not proffer specific voir dire questions he would have asked if allowed to continue beyond the trial court's arbitrary cutoff. (IB. 21). Appellant provides no authority to support the notion that a proffer is required to preserve the issue on appeal. Indeed, Appellant's argument ignores the predicament the trial judge created by ordering a one-hour voir dire when three were presumed. Mr. Prather's counsel was forced to present a severely abbreviated examination on each area of potential juror bias to the detriment of his client.

C. The trial court based its order granting Mr. Prather a new trial on controlling case law that states it is an abuse of discretion to arbitrarily limit the time of voir dire when the questions are neither repetitive nor argumentative

1. Applicable law

Jury selection is governed by Fla. R. Civ. P. 1.431, which provides that "the rights of the parties to conduct a **reasonable** examination of **each juror** orally shall

be preserved.” (emphasis added). The purpose of voir dire is to obtain a fair and impartial jury, and “[t]ime restrictions or limits on number of questions can result in the loss of this fundamental right. They do not flex with the circumstances, such as when a response to one question evokes follow-up questions.” *Williams v. State*, 424 So. 2d 148 (Fla. 5th DCA 1982); *see also King v. State*, 390 So. 2d 315, 319 (Fla. 1980). The examination of a juror on voir dire has a twofold purpose: to ascertain whether a “for cause” challenge exists and to determine if it is wise and expedient to exercise peremptory challenges. *Loftin v. Wilson*, 67 So. 2d 185 (Fla. 1953).

Adherence to Florida law governing jury selection is critical in personal injury cases. The court highlighted this issue in *Sisto v. Aetna Cas. and Sur. Co.*, 689 So. 2d 438 (Fla. 4th DCA 1997):

[T]he subject of non-economic damages has received widespread media attention. It is a subject on which an individual may possess strong bias or prejudice. In a personal injury case where the issues of permanent injury and past and future non-economic damages are hotly contested, allowing counsel to inquire about an individual’s views on the sensitive area of non-economic damages is essential to a party’s right to conduct a reasonable examination. Our court has implicitly recognized that a prospective juror’s attitude about personal injury lawsuits is an appropriate subject for inquiry.

Id. at 440.

One result of the overwhelming bias against personal injury cases and personal injury lawyers is that jury selection must take longer and include more jurors in the venire. Although trial judges exercise considerable discretion in

determining the appropriate scope of jury voir dire, they abuse discretion by unreasonably limiting a meaningful examination.

In *Miller v. State*, 785 So. 2d 662 (Fla. 3d DCA 2001), the trial court conducted an extensive examination of the jury panel, and the prosecutor followed with his lengthy questioning. When defense counsel began examining potential jurors, the trial court interrupted to instruct him that these topics had already been covered and not to inquire further. The court reversed the conviction of *Miller* and stated, “Voir dire is the first opportunity the attorneys have to establish personal contact with prospective jurors and the only occasion they have to enter into a dialogue with jurors.” The court reiterated that “the trial court may not impose arbitrary time limits on voir dire.” *Id.* at 663.

Although there is no bright-line rule for the minimum amount of time for voir dire in the rules, statutes, or cases, it is clear that the process will take several hours for a venire of twenty to twenty-five persons. It is an abuse of discretion to arbitrarily limit the voir dire time when the questions are neither repetitive nor argumentative. *See Carver v. Neidermayer*, 920 So. 2d 123 (Fla. 4th DCA 2006)¹ (“We conclude from the record in this case that the trial judge abused his discretion in limiting voir

¹ Appellant urges this Court to disregard the ruling in *Carver* because the case is not “widely-cited.” (IB. 30). However, a quick Westlaw search shows the case has been cited at least 290 times: 19 times in secondary sources, 18 times in appellate courts, and 253 times in trial court documents.

dire examination as he did. There is no showing that counsel's questioning during the time allotted was repetitive or cumulative...counsel was given little more than 2-3 minutes for each prospective juror"). *See also Gosha v. State*, 534 So. 2d 912 (Fla. 3d DCA 1988) ("We hold that as a matter of law, it is unreasonable and an abuse of discretion to limit counsel's voir dire examinations of each potential juror to one-to-three minutes"). It is also an abuse of discretion to terminate voir dire before counsel has had a fair opportunity to question all the potential jurors individually. *Perry v. State*, 675 So. 2d 976 (Fla. 4th DCA 1996).

In *Carver v. Neidermayer*, the trial court imposed a thirty-minute time limit on each party to question potential jurors. The court reasoned that with nineteen potential jurors, the court's limit would allow only one and a half minutes for each juror. Even though the court ultimately extended the time limit to forty-five minutes, the appellate court found that the trial judge abused his discretion in limiting the examination as he did. The court noted that a trial judge could control argumentative and repetitive voir dire. However, the judge should not use that authority to interfere with counsel's legitimate right to ascertain patent or concealed prejudgments by prospective jurors. The court concluded that the time limit imposed by the judge proved to be arbitrary where counsel's questioning during the time allowed was not repetitive or cumulative.

2. The trial court's last-minute, arbitrary time limit on voir dire unduly prejudiced Mr. Prather

Even though the parties stipulated three hours per side for voir dire a month before trial, the trial court advised counsel on the morning of jury selection that each side would be limited to one hour for voir dire. (R. 1129). The court overruled Mr. Prather's objection and request for additional time. (R. 1129–30). Trial counsel had relied on the pretrial stipulation and prepared a three-hour examination of the venire, but the trial court forced him to truncate his inquiry significantly.

Appellant denies that the trial court's arbitrary time limitation negatively affected Mr. Prather's jury selection and that "both sides had a reasonable chance to conform their voir dire examination to the one hour per side limit." (IB. 22). The *Carver* court directly refutes Appellant's argument. The *Carver* court found it was an abuse of discretion for the trial court to inform counsel of the time limit on his voir dire at the beginning of jury selection. The court found "even reasonable limits on juror selection should be made known some fair time before trial begins." 920 So. 2d at 124–25; *see also Rodriguez v. State*, 675 So. 2d 189, 191 (Fla. 3d DCA 1996) (trial court abused its discretion in advising counsel of limit on voir dire during counsel's questioning of jurors).

Indeed, the unexpected limitation prejudiced Mr. Prather. Limiting counsel to one hour when he prepared a three-hour voir dire is like being told you must make a three-hour drive in one hour. It might be possible, but it is reckless and not the best

way to get there. Or imagine having to roast a Thanksgiving turkey that usually takes six hours in only two hours. No matter how good the chef, that turkey will come out raw and inedible. Likewise, no matter how skilled the lawyer is, you can only squeeze a three-hour voir dire presentation into one hour with prejudicial consequences.

The trial court's one-hour time limit restricted Mr. Prather's counsel to less than three minutes per prospective juror (2.85 minutes each). Contrary to Appellant's claims, the trial court clearly said more time would not be allowed. Moreover, Appellant misstated the record in its initial brief. (IB. 36–37). The actual exchange between Mr. Prather's counsel and the trial court was:

Court: [Y]ou are a little bit over your time.

Counsel: Do I need to stop?

Court: Can you wrap it up in two minutes? Do the best you can to wrap it up in two minutes.

Counsel: Yes, sir.

(R. 1243). Appellant's brief omitted the full quote from the trial court, where he *directed* trial counsel to end his voir dire in the next two minutes.

3. Mr. Prather's examination of the venire was not repetitive or cumulative

Mr. Prather's jury selection was presented systematically in eleven separate topics to identify potential juror bias:

- (1) Potential juror bias and analogy (R. 1181);
- (2) Identifying “feelings against” individual areas of concern (R. 1183);
- (3) Feelings against personal injury lawsuits (R. 1184);
- (4) Burden of proof in civil cases (R. 1195);
- (5) Feelings against pain and suffering damages (R. 1207);
- (6) Feelings against slip and fall cases (R. 1211);
- (7) Impact of surveillance videos (R. 1214);
- (8) Feelings against Morgan and Morgan (R. 1216);
- (9) Impact of a felony conviction (R. 1217);
- (10) Individual juror questions regarding personality, social media, and news sources (R. 1219); and
- (11) Identify any juror confusion and offer the opportunity to change answers (R. 1243).

Mr. Prather’s counsel had to rush through questions to identify those jurors with the most substantial biases against Mr. Prather’s case. Indeed, counsel openly admitted to the jury, “I’m trying to move this as quickly as I can.” (R. 1214).

Mr. Prather’s concerns about juror bias were well-founded. Of the twenty-one prospective jurors on the panel, Mr. Prather challenged eleven jurors for cause. The trial court granted eight cause challenges. Mr. Prather was required to use three peremptory challenges on the jurors that the trial court denied cause challenges, even though all three stated strong feelings against personal injury cases, pain and

suffering damages, and slip and fall lawsuits. The prejudice against Mr. Prather is apparent. The jury reached a defense verdict.

4. There is no typographical error in the transcript excerpt of Mr. Prather's jury selection

Appellant's claim that the trial judge granted a new trial based on a "wrong transcript" is also without merit. (IB. 8, 43–48). Appellant alleges that because the complete trial transcript did not contain a timestamp at 9:45 a.m. when Mr. Prather's counsel began his voir dire, there must be a false timestamp in the transcript excerpt Mr. Prather submitted to the trial court. (IB. 2).

Appellant is needlessly concerned that in the full transcript of jury selection, there are timestamps for the following:

8:17 a.m. – Hearing called to order (R. 1129).

8:47 a.m. – Court in recess. (R. 1142).

9:10 a.m. – Court resumed. (R. 1142).

10:54 a.m. – Jury panel retires. (R. 1245).

10:55 a.m. – Court in recess. (R. 1245).

11:07 a.m. – Jury panel returns. (R. 1245).

11:08 a.m. – Court resumed. (R. 1246).

11:45 a.m. – Jury panel retires. (R. 1271).

11:46 a.m. – Court in recess. (R. 1271).

12:10 p.m. – Jury panel returns. (R. 1284).

12:11 p.m. – Jury panel excused. (R. 1285).

Appellant claims the court reporter made an error because the full transcript does not explicitly timestamp 9:54 a.m. as the beginning of Mr. Prather's voir dire. Appellant misunderstands real-time transcription and timestamps. Although timestamps are standard when the court is in recess, returns from recess, and when the jury panel is excused, or returns, one of the benefits of real-time reporting is the technology allows court reporters to add timestamps at any point in the transcript.

In response to the trial court's order denying his motion without prejudice, Mr. Prather submitted the transcript of his voir dire. (R. 1035–101). Mr. Prather did not provide the entire trial transcript because that is not what the judge requested. The excerpt submitted by Mr. Prather had a timestamp when counsel began voir dire because the judge only asked for an excerpt that showed the time Mr. Prather began his voir dire and ended his presentation. The timestamps on the certified transcript excerpt clearly show that Mr. Prather's counsel was allowed sixty-eight minutes to conduct his voir dire examination. There is no error on the part of the court reporter.

5. This Court should disregard Appellant's computation formula of Mr. Prather's jury selection time because it is inaccurate and outside of the record evidence

Appellant also dubiously calculated the time Mr. Prather's counsel was given for voir dire and falsely declared that he was allowed seventy-nine minutes. (IB. 3). Appellant's formula is as follows:

The total number of voir dire transcript pages is 268 pages; the total number of minutes elapsed is 228 minutes. The page per minute is 1.8 pages per minute for the full voir dire transcript. Prather's total time is arrived at by multiplying his total transcript pages-67-by 1.8 pages per minute. Prather's total amount of time is 79 minutes.

(IB. 4 n.3).

This Court should disregard Appellant's incomprehensible formula. A simple way to compute Mr. Prather's total voir dire time is to look at the timestamps on the certified real-time transcript. Mr. Prather's voir dire was 68 minutes: from 9:45 a.m. to 10:54 a.m.

6. This Court should disregard Appellant's meritless allegations of professional misconduct by Mr. Prather's counsel

Finally, Appellant accuses Mr. Prather's trial counsel of "bad litigation conduct" that "had a substantial effect on the court's decision to grant a new trial." (IB. 47). Appellant then inexplicably cites to *Moore v. Gilbert*, 96 So. 3d 933 (Fla. 2d DCA 2012), where the court found that defense counsel's misconduct was insufficient to warrant a new trial. (IB. 47). Appellant also uses this argument to distinguish Mr. Prather's case from *Carter v. Niedermeyer* (see Section C, *supra*), claiming that, unlike this case, "[t]he new trial granted in *Carver* was not due to an erroneous time entry by the court reporter, which the moving party had the burden to confess ...". (IB. 29).

Appellant appears to accuse Mr. Prather's counsel of knowingly submitting erroneous transcripts to deceive the trial court into granting his motion. The record

debunks this unsubstantiated claim of professional misconduct. The trial court did not direct Mr. Prather to produce the complete transcript; it requested only the portions that showed when Mr. Prather's voir dire began and ended. Mr. Prather's counsel submitted the proper excerpts that the real-time court reporter certified, and any suggestion of misconduct is without merit.

CONCLUSION

For the reasons set forth in this Answer Brief, Appellee Kenneth Prather respectfully requests that this Court affirm the lower court's order of a new trial.

Your Name	Candidate Name	Did you meet with the candidate at a faculty interview or at dinner?	Did you see the candidate's presentation?	Did you read the candidate's paper or writing sample?	What is your overall impression of the candidate?	What are the candidate's strengths?	What are the candidate's weaknesses?	Please add any other comments you would like to share.
Jennifer Zedalis	Margie Alsobrook	No	Yes	No	Very Good.	Excellent ability to present and discuss an important topic. She has confidence without arrogance. I wanted to listen to her-- she will engage students in a positive way.	A little more discussion of the topic in the context of teaching LRW to law students would have been a plus--	
Joan Stearns Johnsen	Margie Alsbrook	No	Yes	No	Fabulous!	Interesting presentation. Intelligent discussion. Thoughtful answers to questions. Loved her!	None that I saw	
Ben Fernandez	Margie Alsbook	Yes	Yes	No	She seems like she would be a good fit.	Speaking presence. Affable.	Connection to Florida.	I had lunch with her. She wants to work with a more collegial group.
Thomas Hawkins	Margie Alsbrook	No	Yes	No	Margie was an engaging and enjoyable speaker. I found the topic of her job talk interesting and her presentation engaging.	Margie answered questions very well. She engaged with members of the audience conversationally and gave a clear response to each comment.	I did not observe any weaknesses.	
Patricia Morgan	Margie Alsbrook	Yes	Yes	No	Personable and enthusiastic about her work, scholarship, and education.	Her enthusiasm and depth of interest in the legal writing field.	I don't know enough to have an opinion.	
Lars Noah	Margie Alsbrook	No	Yes	Yes	Paper and presentation had some flaws but hardly worse than the TT candidates we've gotten to see. Would make for an engaging colleague.	—	—	—
Donna L. Eng	Margie Alsbrook	Yes	Yes	Yes	She seems well qualified and very pleasant.	Prior teaching experience.	None of which I am aware.	
Heather M Kolinsky	Margi Alsbrook	Yes	Yes	Yes	Knowledgeable and competent. Enthusiastic about Legal Skills. Sheâ€™s personable.	Subject matter, good presentation style	Limited experience teaching predictive writing.	
Donna Erez Navot	Margie Alsbrook	No	Yes	Not Applicable (No Paper or Writing Sample)	In regards to her presentation style and answers to questions, I thought she was quite strong. Her research about citations was interesting and I enjoyed the way she organized her presentation. She seemed to command the room and answer questions well. I don't know much about the citation research that she was discussing but it seemed current/interesting.	Her excitement for the topic and research about citations.	Some questions were asking about the validity of this citation style so I thought that might be a weakness.	I really enjoyed meeting Margi and think sheâ€™d be a good addition to our faculty.
Sabrina Lopez	Margie Alsbrook	Yes	Yes	Yes	I wasn't excited about adding her to the team.	She publishes and is passionate about it.	She didn't seem to give very direct responses about her pedagogical techniques or thoughts on the curriculum. That concerned me. This is a Legal Skills position and her main focus is teaching four classes a year.	We encourage publishing, but it isn't a criteria for the job. I wonder if she is better suited for a position on the tenure track since publishing is a criteria for those positions.
Lisa De Sanctis	Margie Alsbrook	Yes	Yes	Yes	Professor Alsbrook is passionate about helping her students meet the high standards she holds for the profession. She is well-rounded with teaching interests in legal writing as well as agricultural law. She has published and is interested in scholarship as well.	Professor Alsbrook enjoys remaining very current-- including keeping up with legal Twitter and legal trends. She is excited to develop curriculum that is relevant to today's legal environment. She seems like she would be an outstanding colleague.	My only concern about hiring Professor Alsbrook as a skills professor is that she is so well rounded that she might leave us one day for a doctrinal position--but that is not a reason not to offer her a position now.	I hope we make an offer to Professor Alsbrook and that she joins our department.
stacey steinberg	Margie Alsbrook	No	Yes	Yes	I think she would be a good addition to our faculty.	Great presentation style. Understands the nuts and bolts of legal writing.	N/A	

Candidate	Please write a general assessment of the candidate. Some of the information the committee is seeking includes how the candidate interacted with students, perceived interest level in UF Law, thoughtfulness, relatability, potential teaching style if discussed. Please elaborate. This is an open-ended question.	What are the candidate's strengths?	What are the candidate's weaknesses?	Please write any other thoughts or comments about the candidate.
Stacy Biggart	Would be a great get for UF Law. Has a lot of practical experience and really cares about the students/doing a good job.	Compassion and dedication.	None that I have observed	
Prof. Biggart	A strong candidate, universally admired by UF students. She is gregarious, helpful, honest, and brings a perspectiveâ€”criminal defenseâ€”that is absent from existing faculty in the skills department. She is very relatable and, while I canâ€™t speak to her teaching style per se, she is clearly willing and able to effectively mentor students not only in the material but in career and life in general. This is another big strength. She also brings appellate practice experience, which I think the university could use more of, particularly given her demonstrated willingness to assist the moot court team.	Friendly, diverse experience, passionate, helpful.	I could imagine Prof. Biggart overextending herself in an effort to help students and student groups and remain engaged in her outside work on capital projects.	Please hire her!
Stacy Biggart	Professor Biggart not only has a strong interest in the success of the University of Florida, but more importantly, in her student's future success in the law. In my short tenure at UF, Professor Biggart is the most relatable professor I've had and has provided me with sound career advice multiple times. Her unique teaching style ensures that each student grasps important legal concepts, and are well prepared for their future careers.	Relatability, legal knowledge, teaching style that makes hard concepts easy to grasp, a liberal office hour policy	None noted. Seriously.	UF would be remiss to miss out on hiring Professor Biggart. Anecdotaly, a classmate who had Professor Biggart told me that Professor Biggart went to watch her in the Trial Team Final Four competition last year. It made her very happy to have a professor there to support her outside of the classroom.
Biggart	<p>Prof. Biggart seems very interested in continuing in her role at UF Law. She has an undeniable interest in teaching, and is clearly very passionate about the work that she has and is doing within and outside of the classroom. In addition to legal writing classes, she expressed an interest in sharing her experiences and knowledge related to capital punishment via a compressed course or a seminar. I think this would be a really valuable course offering, especially since Florida still has legalized capital punishment.</p> <p>We also discussed her interactions with students and it is evident that she values a personal approach to teaching, and wants to help mentor students, as well as teach them within the classroom. I think that she will be very engaged as a professor and will foster a positive and engaging learning environment which is rare amongst college professors.</p>	Prof. Biggart's biggest strength is her commitment to her students. She presents herself with a "no one gets left behind" attitude towards teaching and it is clear that she will take extra steps to make sure that every student has an opportunity to succeed. It seems that she does not have many demanding time-commitments outside of teaching, so she has been able to create more opportunities by which her students can engage with her and advance their understanding of the course material, as well as learn about her array of work experiences.	Prof. Biggart clearly cares deeply about all of her students and tries so hard to help them succeed, but I think that in law school, this could lead to resentment from high-scoring students who feel that they are not benefitting from the curve as much because of her "no one gets left behind" attitude. I think this is both a strength and a weakness because it could foster resentment if some students are wanting to move at a faster pace than the rest of the class.	Based on my interactions with Prof. Biggart, I am confident that she would put more time and effort into her students and her work than most professors I have met in my life. She has moved around a lot, but it is clear that she is committed to building a life at UF (evidenced by her willingness to commute from South Carolina to teach here). I truly believe that she fosters a learning environment which is a rarity in higher education and there are many students who would have the unique opportunity to excel because she would provide them with the tools and support they need to find success in law school.
Stacy Biggart	Profesor Biggart, like always, connected well with the students. She walked us through her career path and showed how it made her interest in becoming a professor at UF. From my experience with her as a student, she is extremely thoughtful and reliable. In fact, she is the most accessible professor that I have had in my time at UF Law, as she is constantly available to help students improve on their weaknesses. She discussed her strategy for teaching, which is a form of "walk before you run." Professor Biggart in the first part of the course wants to guide students through the topic to ensure they have the fundamentals down. Then, towards the end of the semester, Professor Biggart challenges you to produce the same quality of work product that you produced under her guidance, but this time, by yourself. Overall, she cares deeply about advancing her students' education.	As mentioned, Professor Biggart is exceptionally caring for her students. On the other hand, she realizes that effort is everything in law school and that not everyone can be helped. For the students who put time and effort into her course, she vastly advances their knowledge of the subject matter. And for the students who need to put forth time and effort into her class, she encourages them to increase their efforts. Overall, Professor Biggart cares more about properly teaching a course and helping students learn than any other professor I have had at UF or in undergrad.	Professor Biggart is not a typical academic, so she has yet to produce the level of scholarship that other candidates likely have. That said, this helps her to better connect with students. Many professors I have had are so entrenched in their academic affairs that they do not form a connection with their students, making it difficult for the students to access them with questions when they need guidance. From personal experience, Professor Biggart is quite the opposite.	

From:
To:
Subject:
Date:

From: "O'Connell,Jane" <janeoconnell@law.ufl.edu>
Subject: Summary of Reference Call
Date: October 16, 2023 at 3:53:48 PM CDT
To: "Wolking,Sarah Horn" <wolking@law.ufl.edu>

Summary of reference call re: Stacy Biggart
10/16/2023

Robert Friedman, Office of Capital Collateral Regional Counsel – North Region
Robert Friedman worked with Stacy for a number of years and she still continues to do some work with the CCRC. He had only glowing things to say about Stacy. According to Mr. Friedman, she is a fantastic lawyer who has worked extensively before the Florida Supreme Court and the United States Supreme Court. She has positive relationships with all her colleagues and has served as a mentor to more junior attorneys. He notes that her breadth of experience is a unique asset as she has litigated both civil and criminal cases and litigated at every level from state trial courts to the Supreme Court. He does not believe that Stacy has any weaknesses, and he gives her his highest recommendation. Any law school would benefit from her presence.

Jane O'Connell [she/hers]

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