IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DAN McCALEB, Executive Editor of THE CENTER SQUARE, Plaintiff, v. MICHELLE LONG, in her official capacity as DIRECTOR of TENNESSEE ADMINISTRATIVE OFFICES OF THE COURTS, Defendant.	No. 3:22-cv-00439 Judge Richardson Magistrate Judge Frensley

PLAINTIFF'S NOTICE AND DISCLOSURE THAT PROFESSOR BENJAMIN H. BARTON WILL PRESENT EVIDENCE AT TRIAL AS AN EXPERT WITNESS UNDER FED. R. EVID. 702, 703, OR 705

Plaintiff Dan McCaleb, Executive Editor of The Center Square, pursuant to Fed. R. Civ. P. 26 (2)(A), hereby notifies and discloses to Defendant Michelle Long the identity of any witness McCaleb may use at trial to present evidence under Fed. R. Evid. 702, 703, or 705, as follows:

BENJAMIN H. BARTON
Helen and Charles Lockett Distinguished Professor of Law
The University of Tennessee College of Law
1505 W. Cumberland Ave.
Knoxville, TN 37996-1810
(865) 974-2331
bbarton@utk.edu

In accordance with Fed. R. Civ. P. 26 (2)(B), Professor Barton's Declaration and Written Report is attached as **Exhibit 1**, and his CV is attached as **Exhibit 2**.

Dated: September 1, 2023

Respectfully submitted,

/s/ M.E. Buck Dougherty III
M.E. Buck Dougherty III, TN BPR #022474
James McQuaid, admitted *pro hac vice*
LIBERTY JUSTICE CENTER
440 N. Wells St., Ste. 200
Chicago, IL 60654
312-637-2280-telephone
312-263-7702-facsimile
bdougherty@libertyjusticecenter.org
jmcquaid@libertyjusticecenter.org

Attorneys for Plaintiff Dan McCaleb,
Executive Editor of The Center Square

CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, a copy of the foregoing *Plaintiff's Notice And Disclosure That Professor Benjamin H. Barton Will Present Evidence At Trial As An Expert Witness Under Fed. R. Evid. 702, 703, Or 705* was filed electronically via the Court's CM/ECF filing system. Notice of this filing will be sent by operation of the Court and served on all parties indicated on the electronic filing receipt, including a copy to the Office of Tennessee Attorney General and Reporter, counsel for Defendant Administrative Director Michelle Long, as follows:

JONATHAN SKRMETTI
Office of the Attorney General & Reporter
Andrew C. Coulam, Deputy Attorney General
Michael M. Stahl, Senior Assistant Attorney General
Public Interest Division
P.O. Box 20207
Nashville, Tennessee 37202-0207
andrew.coulam@ag.tn.gov
michael.stahl@ag.tn.gov

/s/ M.E. Buck Dougherty III
M.E. Buck Dougherty III, TN BPR #022474

Exhibit

1

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

DAN McCALEB, Executive Editor of THE CENTER SQUARE,	)	
v.	)	**Case No. 3:22-cv-00439**
	)	**District Judge Richardson**
MICHELLE LONG, in her official capacity as DIRECTOR of TENNESSEE ADMINISTRATIVE OFFICE OF THE COURTS,	)	**Magistrate Judge Frensley**
Defendant.	)	

DECLARATION OF PROFESSOR BENJAMIN H. BARTON AND WRITTEN REPORT PURSUANT TO FED. R. CIV. P. 26 (2)(B)

Pursuant to 28 U.S.C. § 1746, I, Benjamin H. Barton, declare:

I. My Expert Qualifications.

1. I graduated in 1996 *magna cum laude* from the University of Michigan Law School as a member of Order of the Coif and the Michigan Law Review.
2. I clerked for the Honorable Diana Gribbon Motz on the United States Court of Appeals for the Fourth Circuit in 1996-97.
3. I have been a law professor since 1999. I taught for two years as a visiting Clinical Professor at The Arizona State University College of Law before joining the University of Tennessee College of Law in 2001.
4. I taught in the clinical programs of both Arizona State and Tennessee from 1999 until 2011.
5. As a professor in these clinical programs, I supervised students practicing (and personally practiced) in a great variety of courts. In the state of Tennessee, I have practiced in many types of courts including criminal courts, civil courts, chancery courts, and the courts of appeals. Working with students or on my own I have represented the indigent in Tennessee on issues including housing, debt relief,

juvenile law, disability law, unemployment, veteran's benefits, family law, criminal law, and others.

6. I was the Director of Clinical Programs at the University of Tennessee from 2007-11.
7. In that position I oversaw the entire clinical and externship program at the law school, which included as many as 10 different programs over that period.
8. I have also taught an innovative coding and law class called the A2J Lab. In this class I work with the students to create websites to help poor people in Tennessee. We have designed websites for the Tennessee Alliance of Legal Services, the University of Tennessee's Expungement Clinic, and Adelante Knoxville, an immigration self-help website.
9. From 2001 to the present, I have been the faculty advisor to the University of Tennessee College of Law's Homeless Project.
10. In this project I take a group of student volunteers to a local Knoxville homeless shelter every other week during the semester. The students help me offer legal advice to the homeless and occasionally we take a case that I handle (again with student assistance) on a homeless individual's behalf.
11. I also currently serve as one of the faculty advisors for the Virtual Legal Aid Clinic here at the law school.
12. In this project student volunteers and I work to answer questions from indigent Tennesseans from the ABA's Free Legal Answers website.
13. In all these endeavors I have seen first-hand the acute legal needs of the poor and the middle class in the State of Tennessee. I am also intimately familiar with the legal system and courts in the state, having practiced and supervised students in almost every possible legal and courtroom setting. Through these experiences I have first-hand knowledge and understanding of the *pro se* crisis in our state courts.
14. I have produced multiple works of peer reviewed scholarship on the topic of the access to justice crisis, the growth in *pro se* representation, and how technology and court reform might help ameliorate these difficulties. My books that cover these topics include *Rebooting Justice: More Technology, Fewer Lawyers, and the Future of Law* (co-written with Stephanos Bibas) and favorably reviewed in the *New York Times* and *The Wall Street Journal* and *Glass Half Full: The Decline and Rebirth of the Legal Profession* (Oxford Press 2015).
15. I have also written at length about the relationship between lawyers, bar associations and judges in the 2013 Cambridge University Press book entitled *The Lawyer-Judge Bias in the American Legal System*.
16. I also have written at length on the nature and functioning of state courts in our federal system.
17. I have presented on these topics all over the United States and the world, including presentations in Canada, Brazil, and the United Kingdom. I have also presented on law, technology and courts to the judicial conferences of the states of Michigan, Minnesota, and Georgia.
18. Through my practice and my scholarship, I have extensive experience in, and knowledge of, the legal needs of the poor and middle class.
19. Through my practice and my scholarship, I have extensive experience in, and knowledge of, the challenges most Americans face in receiving access to justice due to challenging economic circumstances.

20. Through my practice and scholarship, I have extensive experience in, and knowledge of, the nature of state judiciaries generally and especially the judiciary of the State of Tennessee.
21. All of my publications are listed in my CV.
22. I have often served as a consultant to law and technology companies. This is the second time that I have served as an expert witness. The first was in Consumer Financial Protection Bureau v. Morgan Drexen, Inc., SACV13-01267 JST (C.D. Ca. 2013).

II. My Assignment.

1. In Summer 2023, I spoke with Buck Dougherty regarding a potential retention as an expert witness in this case.
2. He asked me to render an opinion as to how the opening or closing of the meetings of Tennessee's Advisory Commission on Rules of Practice and Procedure fit under the "experience and logic" test from *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 589 (1980) (Brennan, J. concurring in the judgment) and *Detroit Free Press v. Ashcroft,* 303 F. 3d 681, 682-83, 705 (6th Cir. 2002).

III. The Facts and Data Considered in Rendering My Opinions.

1. The body of work referred to in this Declaration.
2. The body of work set forth in my CV.
3. A full review of the pleadings in this case as well as the website for the Tennessee Administrative Office of the Courts and Tennessee's judiciary.
4. A review of the court and Administrative Office of the Courts (if the state has such a body) websites for the following states: Kentucky, Virginia, North Carolina, Georgia, Alabama, Mississippi, Arkansas, Missouri, Ohio, as well as a general search for public notices for equivalent commissions to Tennessee's Advisory Commission on the Rules of Practice and Procedure in other states.
5. Reviewing the livestreamed videos of the meetings of Tennessee's Advisory Commission on the Rules of Practice and Procedure.

IV. Compensation.

1. I am billing at the rate of $500.00 an hour. Through drafting this declaration, I have worked 20 hours. I have billed $10,000.00 and have already been paid that amount.

V. Considering the Experience of the State of Tennessee, Other States, and the Federal Government, There is a "Tradition of Accessibility" for Rules Commissions or Their Equivalent, Evincing "the Favorable Judgment of Experience," and "The Place and Process" for Tennessee's Advisory Commission on the Rules of Practice and Procedure Has "Historically Been Open to the Press and General Public."

1. The first prong of the experience and logic test asks whether there has been a tradition of accessibility for the meetings of Tennessee's Advisory Commission on the Rules of Practice and Procedure.
2. The short answer is yes. Based on my review of the Tennessee's court websites and my experience as a member of the bar, professor, and practicing lawyer is the state since 2001 these meetings have been open to the public for a decade or longer.
3. The website for the Advisory Commission on the Rules of Practice and Procedure can be found here: https://www.tncourts.gov/boards-commissions/boards-commissions/advisory-commission-rules-practice-procedure.
4. It lists all the members of the Commission. It lists the statute creating the commission (Tenn. Code Ann. § 16-3-601), and it describes the Commission's nature and purpose: "The Advisory Commission on the Rules of Practice and Procedure meets periodically to study and make recommendations as to court rules on practice and procedure. The commission members are appointed by the Supreme Court."
5. It also has a link to a separate webpage listing "Public Meeting Notices." https://tncourts.gov/taxonomy/term/426.
6. Among the recent meetings listed is the June 9, 2023, public meeting of the Advisory Commission on the Rules of Practice and Procedure, livestreamed on YouTube. https://tncourts.gov/calendar/public-meeting-notices/2023/06/09/advisory-commission-rules-practice-procedure.
7. There are multiple past public notices for meetings of the Advisory Commission on the Rules of Practice and Procedure, including meetings from well before this lawsuit in 2016 (https://tncourts.gov/calendar/public-meeting-notices/2016/05/20/advisory-commission-rules-practice-and-procedure), 2014 (https://tncourts.gov/calendar/public-meeting-notices/2014/12/05/advisory-commission-rules-practice-and-procedure), and 2012 (https://tncourts.gov/calendar/public-meeting-notices/2012/06/01/advisory-commission-rules-practice-and-procedure-meeting).
8. As a member of the Tennessee bar and a law professor in the state I cannot remember a time before the Order of February 1, 2022, that these meetings were closed to the public, so I doubt that the 2012 meeting was the first such publicly announced meeting, I suspect it is just the earliest example that is still on the website.
9. Thus, there has been a longstanding tradition of open meetings for this exact Commission.

a. *A Review of These Meetings, as Well As a Review of Other Tennessee Judicial Boards and Commissions Suggests Open Meetings are the Norm and Not Disruptive or Dangerous.*

1. The June 9, 2023, meeting of the Tennessee Advisory Commission on the Rules of Practice and Procedure is available on YouTube here: https://www.youtube.com/watch?v=TCCkGHybsxg.
2. This link displays the entire meeting of the Commission. The video shows a well-run meeting covering proposed changes to Tennessee's Rules of Practice and Procedure. The meeting is not impinged upon whatsoever by being open to the public, and the attendees all appear to be signing in from secure locations of their own choosing on Zoom.
3. The meeting is efficient and crisp, and it is not possible to imagine how allowing the public to observe could hamper the committee's work or any member of the committee's safety.
4. Given that these meetings have been open to the public for years, it is unlikely that past meetings were dangerous or even inconvenient to the attendees.
5. On the "Public Notices" section of the website for Tennessee's courts there are more than a dozen different types of public meetings listed. Each listing includes a location and instructions for attendance, sometimes via zoom, sometimes in person or sometimes by WebEx.
6. The meetings listed in this section of the website include meetings of the TN Board of Judicial Conduct Board (https://tncourts.gov/calendar/public-meeting-notices/2023/07/25/tn-board-judicial-conduct-board-meeting),
7. The Integrated Criminal Justice Steering Committee Meeting (https://tncourts.gov/calendar/public-meeting-notices/2023/06/01/integrated-criminal-justice-steering-committee-meeting),
8. The Bench Bar Committee (https://tncourts.gov/calendar/public-meeting-notices/2023/03/30/bench-bar-committee-meeting),
9. The Governor's Council For Judicial Appointments (https://tncourts.gov/calendar/public-meeting-notices/2022/11/22/governors-council-judicial-appointments),
10. The Trial Court Vacancy Commission Public Hearing And Interview Session –11th Judicial District Criminal Court Vacancy (https://tncourts.gov/calendar/public-meeting-notices/2022/08/05/trial-court-vacancy-commission-public-hearing-and),
11. The Trial Court Vacancy Commission Public Hearing And Interview Session – 6th Judicial District Criminal Court Vacancy (https://tncourts.gov/calendar/public-meeting-notices/2022/08/02/trial-court-vacancy-commission-public-hearing-and),
12. The Governor's Council For Judicial Appointments Virtual Public Hearing And Interview Session – Court Of Appeals (Middle Section) Vacancy (https://tncourts.gov/calendar/public-meeting-notices/2022/03/18/governor's-council-judicial-appointments-virtual-public),
13. The Tennessee Code Commission Meeting (https://tncourts.gov/calendar/public-meeting-notices/2021/11/16/tennessee-code-commission-meeting-virtual),
14. The ADR Commission (https://tncourts.gov/calendar/public-meeting-notices/2020/12/01/adr-commission-quarterly-meeting-teleconference-only),
15. The Advisory Task Force On Composition Of Judicial Districts (https://tncourts.gov/calendar/public-meeting-notices/2019/11/18/advisory-task-force-composition-judicial-districts), and many others.

16. Given that other Commissions under the Tennessee Administrative Office of the Courts ("TAOC") are also open to the public it is unlikely that the Advisory Commission on the Rules of Practice and Procedure is somehow different or more dangerous for the attendees.
17. Nor are the meetings of the Advisory Commission on the Rules of Practice and Procedure less important to the public than these other meetings. To the contrary, the work of the Commission seems especially important to the smooth functioning of Tennessee's courts.

b. Similar Meetings in Other States and For the Federal Government Are Open to the Public.

1. It appears that the Judicial Council of Georgia meets several times a year to act on policy and administrative matters affecting the judiciary. Judges from Georgia's appellate and trial courts at all levels are represented on the Judicial Council, as well as a representative from the State Bar of Georgia. These meetings appear to be announced in advance to the public and livestreamed. (https://georgiacourts.gov/2023/08/16/judicial-council-of-georgia-to-meet-on-august-18-2023/).
2. It appears that the meetings of the North Carolina Rules Advisory Commission are publicly announced ahead of time and are open to the public both in person and via livestream. https://www.nccourts.gov/commissions/chief-justices-rules-advisory-commission/rules-advisory-commission-meeting-information.
3. It appears that the meetings of the Ohio Commission on the Rules of Practice and Procedure are also publicly announced ahead of time and open to the public. https://www.supremecourt.ohio.gov/courts/advisory/commissions/commission-on-the-rules-of-practice-procedure/.
4. It appears that the Arizona Advisory Committee on Rules of Evidence meetings are publicly announced and open to the public. https://www.azcourts.gov/rules/AdvisoryCommitteeonRulesofEvidence.aspx.
5. It appears that the Washington State Court Rules and Procedures Committee announces its meetings publicly and are open to the public. https://www.wsba.org/connect-serve/committees-boards-other-groups/court-rules-and-procedures-committee.
6. It appears that the Connecticut Advisory Committee on Appellate Rules meetings are publicly announced and open to the public. https://www.jud.ct.gov/Committees/ap_rules/.
7. Since 1988, the Federal version of Tennessee's Advisory Commission on the Rules of Practice and Procedure has also been open to the public, with some very narrow exceptions. *See* 28 U.S.C. § 2073(c)(1).
8. Some of these meetings have been shown on CSPAN and a review of these meetings again confirms that being open to the public posed no danger or interruptions to the proceedings.
9. Based on the historical practice in Tennessee, as well as in multiple other states and the federal court system it is my expert opinion that proceedings similar to the meetings of the Tennessee Advisory Commission on the Rules of Practice and

Procedure have historically been open to the public, evincing a tradition of accessibility, which implies the favorable judgment of experience.

10. The fact that these exact meetings have been open to the Public in Tennessee is especially persuasive on that front.

c. Open Meetings Are More Consistent With the Tennessee Judiciary's Exemplary History and Tradition of Openness to the Public.

1. The Tennessee Judicial Conference ("TJC") and TAOC have long traditions of outstanding service to the people of Tennessee as well as to the State's bench and bar. In my 22 years teaching and practicing in Tennessee I have always had a good impression of everyone I have had the pleasure to meet or work with from these organizations.
2. The tncourts.gov website is a treasure trove of information and is one of the finest state court websites in the country, reflecting the courts, the TJC, and the TAOC's dedication to full and open communication with the citizens of Tennessee.
3. In preparing my expert opinion I reviewed the court and administrative office of the court's websites (or the equivalent body in that state) in every state that borders Tennessee. The Tennessee website is easily the finest, clearest, and most open of this group of states.
4. The home page for tncourts.gov is emblematic. It lists upcoming court of appeals and court of criminal appeals arguments, and each date includes a weblink top watch these arguments live. The home page lists recent news as well, including news that might be buried in other states. On August 19, 2023, for example, the top news item was an August 16, 2023, announcement that the "Board of Judicial Conduct Suspends Hawkins County Juvenile Judge Daniel Boyd." Link here: https://www.tncourts.gov/press/2023/08/16/board-judicial-conduct-suspends-hawkins-county-juvenile-judge-daniel-boyd.
5. In other states news of judicial suspensions is often buried or not presented publicly at all. This is to the credit of the TJC and TAOC.
6. The website has an excellent and annotated series of articles and videos explaining the history of the Tennessee court system, including less favorable information about activities pre- and post- civil war and in the Jim Crow era. https://www.tncourts.gov/history. Again, the website excels in its openness to the public.
7. The website also does an outstanding job of listing each of the various boards and commissions that are associated with the Tennessee judicial system here: https://www.tncourts.gov/boards-commissions/boards-commissions.
8. Fifteen different boards and commissions are listed. Each one links to a separate page describing the individual board/commission, the statutory/rules basis for its existence, its membership, and a contact person.
9. As noted above, many of these Boards and Commissions publicize their meetings and allow public access either live or by streaming or both.
10. Again, this is a great credit to the TAOC and the Tennessee Judiciary and shows their dedication to openness to the public.

11. Based on a review of the website and the public notices section, as well as the behavior of the federal equivalent and other states , and most importantly the long tradition of open meetings of the Tennessee Advisory Commission on the Rules of Practice and Procedure, open meetings should be required under the experience prong of the *Detroit Free Press v. Ashcroft* test. In light of the available evidence, it is the recent decision to try to close access to the Commission's meetings that is uncharacteristic, anomalous, and frankly an unfortunate stain on an otherwise long tradition of exceptional openness to the public.

VI. Public Access Would Play "a Significant Positive Role in the Functioning" of the Tennessee Advisory Commission on the Rules of Practice and Procedure and Access to This "Particular Government Process is Important in Terms" the Work of the Commission Itself.

1. The "logic" prong of the *Detroit Free Press v. Ashcroft* test asks, "whether public access plays a significant positive role in the functioning of the particular process in question."
2. Here the answer is clearly yes.
3. In 1953 the General Assembly passed a law creating the TJC. The TJC included all Tennessee Judges from courts of record. TN Code § 17-3-101.
4. The point of the TJC was to "consider all matters to improve the efficient administration of justice in state courts," to "consider laws and rules of procedure to suppress crime and promote peace and good order," to "prescribe rules of official conduct for all judges," and to "appoint committee members to draft legislation and make recommendations to submit to the General Assembly." TN Code § 17-3-104-107.
5. In 1965 the General Assembly established the Advisory Commission on Rules of Practice and Procedure. TN Code § 16-3-601.
6. The point of the Advisory Commission on Rules of Practice and Procedure is "to advise the supreme court from time to time respecting the rules of practice and procedure." Id.
7. The meetings of the Advisory Commission on Rules of Practice and Procedure are in furtherance of this mission.
8. There are multiple reasons why opening these meetings to the public would play a positive role in fulfilling this mission.

a. The Creation and Amendment of the Rules of Civil and Criminal Procedure is Very Important and Should Not Be Hidden from the Public at Large.

1. Tennessee's Rules of Procedure are critically important to the operation of the State's courts and have a large impact on the administration of justice in the state.

2. These rules affect more than just the judges and lawyers in the state of Tennessee. To the contrary, these Rules have a direct effect on every citizen of the state of Tennessee. These sorts of important governmental rules and procedures are uniformly and invariably improved by access to the public.

b. This is Especially So Because Tennessee (Like the Rest of America) Faces an Access to Justice and Pro Se *Crisis.*

1. In 2022 the Legal Services Corporation published a study detailing the unmet legal needs of low-income Americans. 74% of low-income households experienced at least one civil legal problem in 2021 and 39% experienced 5 or more problems. These problems spanned very serious issues, including debt, health care, housing, employment, and government benefits.
2. Legal Aid can only help in roughly *half* of the cases where help is sought. This means that America's poor are going it alone as often as not with very serious legal issues and often to disastrous results.
3. The Tennessee Alliance of Legal Services did a similar study for the State of Tennessee in 2014. It found that for indigent Tennesseans "the average number of problems reported was 2.26. . .. For those households who experienced at least one problem, the average number of problems reported was 3.66." These problems were again quite serious, including medical issues, credit issues, and housing issues. The great majority of these households went forward without legal assistance.
4. Other studies have demonstrated that middle-class Americans similarly face a bevy of legal issues and similarly frequently must go forward without the help of a lawyer.
5. The American Bar Association ("ABA") has noted the prevalence of "legal deserts" in America (areas where there is less than one lawyer per 1000 residents). There are 54 American counties with no lawyers at all and another 182 that have only one or two lawyers. Overall, 40% of all American counties are legal deserts.
6. The study shows that Tennessee has 20 counties with under *ten* lawyers in the entire county, including government lawyers.
7. You can see the lack of access to counsel in the explosion in *pro se* litigants in American courts, often in very important cases dealing with issues like eviction, foreclosure, child custody, or child support enforcement. The rate of self-representation has been growing and spreading into more serious legal disputes since at least 1998, and it has accelerated since 2008.
8. In 2013 the Tennessee Supreme Court Access to Justice Commission released "Meeting the Challenges of Self-Represented Litigants: A Bench Book for General Sessions Judges of the State of Tennessee" This report was an attempt to assist judges with the rise in unrepresented litigants in Tennessee courts.
9. Tennessee has also created a whole series of uniform pleadings meant to be used by unrepresented litigants in court, including forms for divorces with or without children and a bevy of other issues. https://www.tncourts.gov/node/707185
10. The Tennessee Supreme Court Access to Justice Commission has done a spectacular job of trying to address these issues and the Supreme Court is to be commended for the steps they have taken to address the access to justice crisis in the state.
11. Nevertheless, as the Bench Book shows, court processes and procedures are a part of the problem and must be a part of any solution.
12. Given the gravity of the problem it is *critical* to include the public as much as possible and at every step of the process. The public is the eventual audience for these rules and should have every opportunity to witness how they are made.

13. This will increase confidence in the nature of the rules and the courts.

c. Public Confidence in the Judiciary is Waning in America and Closing Meetings Will Not Help.

1. The easiest way to demonstrate America's collapsing faith in its judiciary is to look at the longstanding trends in confidence in the Supreme Court. The Pew Research Center has measured Court approval yearly since the 1980s and has shown that public approval of the Court has fallen from a high of 80% in the 1990s to just 44% in 2023. https://www.pewresearch.org/short-reads/2023/07/21/favorable-views-of-supreme-court-fall-to-historic-low/sr_2023-07-21_scotus_1/.
2. This trend is not limited to the Supreme Court. In 2022 Gallup found that just 47% of Americans have a "great deal" or "a fair amount" of trust in the judicial branch of the federal government. This represented a 20% drop in just two years and a fall from 80% trust and confidence in 1999. https://news.gallup.com/poll/402044/supreme-court-trust-job-approval-historical-lows.aspx.
3. A 2012 Clarus Poll found that only 26 percent of Americans believe the civil justice system provides timely and reliable resolution of disputes.
4. Faith in the criminal justice system is even lower. In 2022 just 14% of Americans expressed a great deal or quite a lot of confidence in the criminal justice system. https://news.gallup.com/poll/1597/confidence-institutions.aspx.
5. State courts have likewise faced a collapse in confidence. In the 2014 National Conference of State Court survey 62% of Americans agreed that state courts provide equal justice to all." That percentage collapsed to 43% in 2022. https://www.ncsc.org/consulting-and-research/areas-of-expertise/court-leadership/state-of-the-state-courts.
6. I could not find similar polls that were limited to Tennessee, but if you speak to ordinary Tennesseans about how they feel about our courts you will find these surveys are not surprising at all.
7. This is a dire emergency and courts of all kinds must pay close attention to these trends and behave accordingly.
8. Obviously closing meetings between the bench and bar that recommend changes to Rules will hardly engender more public trust in these institutions.

d. The Public Already Worries that Judges and Lawyers are Too Cozy. Closing these Meetings Will Make Matters Worse.

1. One of the reasons that Americans of all stripes as well as ordinary Tennesseans have lost faith in the judiciary is because they think that the system is set up to advantage monied interests and the interests of the legal profession.
2. Given that the process for amending the rules in Tennessee is basically run by judges in conjunction with lawyers, it is not irrational to think that the process is dominated by lawyers and former lawyers (and thus the process will consciously or unconsciously favor lawyers).

3. Ordinary citizens also know that every judge on a court of record in Tennessee was a licensed lawyer before joining the bench, so it is only natural that a lawyer's point of view will carry over onto the bench.
4. The access to justice crisis and *pro se* explosion are not lost on ordinary Tennesseans and they are acutely aware that it is harder to proceed in court without a lawyer than with a lawyer and that lawyers are very expensive.
5. When a member of the public is forced to proceed *pro se* they are often frustrated with their ignorance of the relevant rules of procedure. This is especially so if one party is unrepresented and the other is represented by counsel.
6. The represented party has every incentive and opportunity to use their understanding of and expertise in the procedure and rules of the relevant court to their advantage.
7. As the unrepresented party struggles with the rules and procedures they are likely to think that these rules are written by lawyers and judges for the benefit of lawyers and judges, and not for the general public and certainly not for ease of use by *pro se* litigants.
8. Many of these issues are longstanding and structural and well beyond the power of Tennessee's courts to address.
9. Nevertheless, keeping meetings open to the public *is* within the control of the courts and it is extremely unwise to close these meetings in this political and judicial environment.

e. Open Meetings Are More Consistent with the Fundamental Nature of Tennessee Courts than Closed Meetings

1. This is not a state law case and state law does not govern.
2. Nevertheless, in analyzing whether opening these meetings would play a positive role in the functioning of the judiciary, it is important to note the nature and role of Tennessee's courts.
3. The Tennessee courts are created and governed under Article VI of the Tennessee Constitution.
4. Article I, Section 17 of the Tennessee Constitution states that "all courts shall be open."
5. Article I, Section 19 of the Tennessee Constitution states that "every person" has the right "to examine the proceedings of the Legislature; or of any branch or officer of the government, and no law shall ever be made to restrain the right thereof."
6. In 1974 the General Assembly passed Tennessee's Open Meetings Act.
7. In enacting the Tennessee Open Meetings Act, the General Assembly declared it to be "the public policy of the state that the formation of public policy and decisions is public business and shall not be conducted in secret." T.C.A. § 8-44-101.
8. As recognized by the Tennessee Court of Appeals, "Our Open Meetings Law is perhaps one of the most comprehensive and extensive in the nation. There are no exceptions except those situations which may be in conflict with the constitution." *Lakeway Publishers, Inc. v. Civil Service Board*, 1994 WL 315919 (Tenn. Ct. App.).
9. T. C. A. § 8-44-102 states that "[a]ll meetings of any governing body are declared to be public meetings open to the public at all times, except as provided by the Constitution of Tennessee."
10. "Governing body" is defined as "the members of any public body which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public body on policy or administration." Id. The Advisory Commission on Rules of

Practice and Procedure is a public body of 2 or more members that was explicitly created to "advise" the Supreme Court on rules and procedures, *i.e.* to make recommendations to the court.

11. Taken together it is clear that closing the meetings of the Advisory Commission on Rules of Practice and Procedure is out of character with the constitution and statutory law of Tennessee, as well as the nature of the court system and State generally.

f. Open Meetings Would Also Improve Tennessee's Judicial Election System

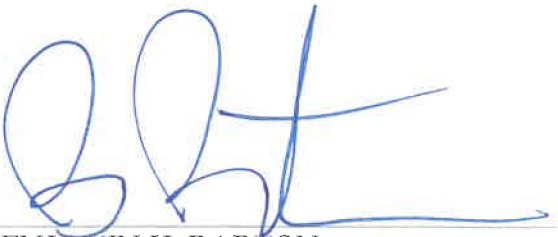
1. Every Tennessee judge is subject to some type of judicial election. Article VI, Section 3 of the Tennessee Constitution states that "Judges of the Supreme Court or any intermediate appellate court shall be appointed for a full term or to fill a vacancy by and at the discretion of the governor; shall be confirmed by the Legislature; and thereafter, shall be elected in a retention election by the qualified voters of the state." Tennessee Constitution Article VI, Section 3.
2. The Tennessee Constitution states that the "Judges of the Circuit and Chancery Courts, and of other Inferior Courts, shall be elected by the qualified voters of the district or circuit to which they are to be assigned." Article VI, Section 4.
3. Studies have shown that members of the public are unlikely to know who their state supreme court justices are. Judicial elections tend to be of "low salience," meaning that voters do not have much interest in or knowledge about the candidates for judicial office. Voter turnout in judicial elections is low.
4. Insofar as judicial elections become higher salience, it is almost always due to either a partisan linkage or a judge's decision in a case or series of cases.
5. The public at large has little understanding of how the Rules of Civil or Criminal Procedure are drafted. The public at large has little understanding of the administrative powers and duties of Tennessee's judges.
6. In an elected system the public would be much better served to know and understand the totality of the work of the judiciary, including their role in the management of the judicial system.
7. Closing these meetings would only enhance the public ignorance of this critical judicial role and make judicial elections worse.

VII. Open Meetings for Tennessee's Advisory Commission on Rules of Practice and Procedure is Consistent with Both the Experience and the Logic Underlying the Commission

1. As a proud member of the Bar of the State of Tennessee and as a law professor who loves this State and its judiciary, I am saddened to have to state what should have been obvious to the TAOC and the TJC. The meetings of the Advisory Commission on Rules of Practice and Procedure are too important to be closed to the public after a long period where they were open to that same public.
2. When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation. The Framers of the First Amendment did not trust any government to separate the true from the false for us.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on September 1, 2023
Knoxville, Tennessee



BENJAMIN H. BARTON
Helen and Charles Lockett Distinguished Professor of Law
The University of Tennessee College of Law

Exhibit

2

BENJAMIN H. BARTON
Helen and Charles Lockett Distinguished Professor of Law
The University of Tennessee College of Law
1505 W. Cumberland Ave.
Knoxville, TN 37996-1810
(865) 974-2331
bbarton@utk.edu

ACADEMIC POSITIONS

The University of Tennessee College of Law, Knoxville TN.
Helen and Charles Lockett Distinguished Professor of Law. 2012-Present.
Professor of Law. 2010-2012.
Director of Clinical Programs. 2007-2011.
Associate Professor of Law. 2001-2010.
Research Fellow, **Center for the Study of Social Justice.** 2008-Present.

- **2011-Present.** Teach Torts I, Torts II, Contracts II, Evidence, A2J Lab, Comparative Law, Conflict of Laws, Advocacy Clinic, and Images of the Law.

- **Director of Clinical Programs, 2007-2011.** Oversee all Clinical and Externship Programs at the University of Tennessee College of Law. Manage five-person staff, seven tenured or tenure-track faculty, and multiple adjunct faculty. Helped found three new clinical programs: environmental clinic, wills clinic, and innocence clinic.

- **2001-2011.** Taught six-credit Advocacy Clinic. Clinic represents indigent clients in criminal and civil matters. Supervise trials, oral arguments, and preliminary hearings.

Faculty of Law, University of Ljubljana. Slovenia.
Fulbright Scholar and Visiting Professor of Law. 2014-15.

Downing College, Cambridge University. Cambridge U.K.
Visiting Professor of Law. Summer, 2011.

Arizona State University College of Law, Tempe, AZ.
Visiting Clinical Professor. 1999-2001.

PUBLICATIONS

Books

- BENJAMIN H. BARTON, THE CREDENTIALED COURT: INSIDE THE CLOISTERED, ELITE WORLD OF AMERICAN JUSTICE (Encounter Press 2022). Featured in an hour long CSPAN interview. Excerpted in The Spectator and reviewed in Law and Liberty, Jotwell, and Publisher's Weekly.

- BENJAMIN H. BARTON, FIXING LAW SCHOOLS: FROM COLLAPSE TO THE TRUMP BUMP AND BEYOND (NYU Press 2019). Excerpted in *The Chronicle of Higher Education*, https://www.chronicle.com/interactives/20200103-LawSchoolCrash and reviewed in Michael Conklin, No Quick Fix: An Analysis of the Challenges Law Schools Face, 27 J.L. BUS. & ETHICS 65 (2021).

- BENJAMIN H. BARTON & STEPHANOS BIBAS, REBOOTING JUSTICE (Encounter Press 2017). Reviewed in the New York Times, https://www.nytimes.com/2017/07/31/business/dealbook/in-rebooting-justice-a-call-to-help-the-lawyerless-in-court.html, and the Wall Street Journal, https://www.wsj.com/articles/the-excess-of-lawyers-is-a-burden-on-society-1506883536, and featured in USA Today, https://www.usatoday.com/story/opinion/2017/08/07/legal-automation-spells-relief-lower-income-americans-hard-times-lawyers/543542001/.

- BENJAMIN H. BARTON, GLASS HALF FULL: THE DECLINE AND REBIRTH OF THE LEGAL PROFESSION (Oxford University Press 2015). As featured in the USA Today, http://www.usatoday.com/story/opinion/2015/06/29/law-school-decline-industry-transformation-column/29456369/, The Journal of Things We Like (Lots), http://legalpro.jotwell.com/is-the-crisis-in-the-profession-good-for-consumers/, and Bloomberg View, http://www.bloomberg.com/view/articles/2015-08-21/a-big-law-revolution-not-likely.

- BENJAMIN H. BARTON, THE LAWYER-JUDGE BIAS IN THE AMERICAN LEGAL SYSTEM (Cambridge University Press Paperback 2013, Hardcover 2011). As featured in the Washington Examiner, http://washingtonexaminer.com/opinion/columnists/2011/02/sunday-reflection-does-america-have-lawyer-problem-or-law-problem, and the Sydney Morning Herald, http://www.smh.com.au/opinion/politics/tobacco-cases-reignite-debate-over-the-complex-legal-system-and-bias-20110210-1aojh.html, and truth on the market, http://truthonthemarket.com/2011/02/21/a-nation-of-lawyers-and-judges/).

Book Chapters

- Benjamin H. Barton, *Regulation, Culture, Markets, and the Future of American Legal Tech, in* LEGAL TECH AND THE FUTURE OF CIVIL JUSTICE (David Freeman Engstrom, ed., Cambridge University Press, 2023).

- Benjamin H. Barton, *Hamilton, Burr, and Defamation, in* HAMILTON AND THE LAW (Lisa Tucker, ed., Cornell University Press 2020) (the book is reviewed here: https://www.washingtonpost.com/outlook/exploring-the-legal-world-of-hamilton--and-hamilton/2020/11/12/97a62754-d00c-11ea-8d32-1ebf4e9d8e0d_story.html).

- Benjamin H. Barton & Deborah Rhode, *Legal Services Regulation in the United States: A Tale of Two Models, in* INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES (Andy Boon, ed., Hart Publishing 2017).

- Benjamin H. Barton, *Technology Can Solve Much of America's Access to Justice Problem, If We Let It, in* BEYOND ELITE LAW: ACCESS TO CIVIL JUSTICE IN AMERICA (Samuel Estreicher and Joy Radice, eds., Cambridge University Press 2016).

- Benjamin H. Barton, *What Law School Clinics and Universities Can Teach Each Other About the Pursuit of Social Justice, in* SOCIAL JUSTICE AND THE UNIVERSITY (Jon Shefner, Harry Dahms, Robert E. Jones, and Asafa Jalata, eds., Palgrave 2014).

- Benjamin H. Barton, *The Lawyer-Judge Hypothesis, in* THE PURSUIT OF JUSTICE: LAW AND ECONOMICS OF LEGAL SYSTEMS (Edward J. Lopez, ed., Palgrave 2010).

- Benjamin H. Barton, *Harry Potter and the Half-Crazed Bureaucracy*, in SOCIAL ISSUES IN LITERATURE: POLITICAL ISSUES IN J.K. ROWLING'S HARRY POTTER SERIES (Dedria Bryfonski, ed., Gale Publishers 2009). Also Reprinted in HARRY POTTER AND THE LAW (Jeffrey E. Thomas, ed., Carolina Academic Press 2010) and translated into Turkish in 2023.

Articles

- Benjamin H. Barton, *The Case for and Against ABA Regulation of Non-JD Law School Programs*, 85 PITT. L. REV. __ (forthcoming 2024).

- Benjamin H. Barton, *The Law Fox Manifesto*, 112 KY. L.J. __ (forthcoming 2024).

- Benjamin H. Barton, *Why Are These Justices Using the Shadow Docket More Than Past Justices?*, 22 NEVADA L. REV. __ (forthcoming 2023) (symposium).

- Benjamin H. Barton, *Deborah Rhode In Memoriam: Three Stories and Ten Life Lessons*, 91 FORDHAM L. REV. 1139-60 (2023) (Rhode symposium).

- Fernanda Antunes Marques Junqueira, Flávio da Costa Higa & Benjamin H. Barton, *Comparative Rights to Counsel and Access to Justice: The American and Brazilian Approaches and Realities*, 10 PENN ST. J.L. & INT'L AFF. 108-44 (2023).

- Benjamin H. Barton, *Trump, Lawyer Regulation, and the Institutional Double Bind*, 69 WASH. U. J. L & POL. 1-16 (2022) (lead article in symposium).

- Benjamin H. Barton, *Two Different Decisions, Two Different Courts: Compare Samuel Alito's Would-Be Majority Decision to Earl Warren's in Brown v. Board,* NY DAILY NEWS, May 5, 2022 at https://www.nydailynews.com/opinion/ny-oped-tale-of-two-decisions-20220505-r5riijxombccjbw6txf5fk4vl4-story.html.

- Benjamin H. Barton, *The Supreme Court Needs Diversity in More Ways Than One*, WALL ST. J., January 30, 2022, at https://www.wsj.com/articles/the-supreme-court-

needs-diversity-in-more-ways-than-one-ketanji-brown-jackson-judge-ivy-league-biden-appointee-appointment-11643566752?mod=trending_now_opn_3.

- Benjamin H. Barton, *The Law School Crash*, THE CHRONICLE OF HIGHER ED., January 3, 2020, *available at*, https://www.chronicle.com/interactives/20200103-LawSchoolCrash.

- Benjamin H. Barton, *American (Dis)Trust of the Judiciary*, IAALS SYMPOSIUM: ARE WE AT A BOILING POINT (2019), *available at* https://iaals.du.edu/sites/default/files/documents/publications/barton_american_distrust_of_the_judiciary.pdf.

- Benjamin H. Barton & Deborah Rhode, *Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*, 70 HASTINGS L.J. 955-88 (2019) (Geoffrey Hazard Symposium).

- Benjamin H. Barton, *Rebooting Justice: ODR Is Disrupting the Judicial System*, 44 LAW PRACTICE 32-37 (2018).

- Benjamin H. Barton & Deborah Rhode, *Rethinking Self-Regulation: Antitrust Perspectives on Bar Governance Activity*, 20 CHAPMAN L. REV. 267 (2017) (symposium).

- Benjamin H. Barton & Stephanos Bibas, *Simplify the Law*, NAT'L REV., August 4, 2017, https://www.nationalreview.com/magazine/2017-08-13-2050/law-order-courts-simplify.

- Benjamin H. Barton, *A Comparison Between the American Markets for Medical and Legal Services*, 66 HASTINGS L.J. 1331-66 (2016) (symposium).

- Benjamin H. Barton, *Some Early Thoughts on Liability Standards for Online Providers of Legal Services*, 43 HOFSTRA L. REV. 101-25 (2016) (symposium).

- Benjamin H. Barton, *Four Big Picture Trends to Watch in a Roiling Market*, 42 LAW PRACTICE 32-41 (2016).

- Benjamin H. Barton, *Book Review - Middle Income Access to Justice* (Michael Trebilcock, Anthony Duggan, & Lorne Sossin, eds., 2012), 73 Toronto L. Rev. 434-44 (2015).

- Benjamin H. Barton, *The Lawyer's Monopoly - What Goes and What Stays*, 83 FORDHAM L. REV. 3067-90 (2014).

- Benjamin H. Barton, *A Glass Half Full Look at the Changes in the American Legal Market*, 38 INTERNATIONAL JOURNAL OF LAW AND ECONOMICS 29-42 (2014), available at http://www.sciencedirect.com/science/article/pii/S0144818813000446.

- Benjamin H. Barton & Emily Moran, *Measuring Diversity on the Supreme Court with Biodiversity Statistics*, 10 J. EMPIRICAL L. STUD. 1-34 (2013). Peer-reviewed journal hosted by Cornell Law School.

- Benjamin H. Barton, *An Empirical Study of Supreme Court Justice Pre-Appointment Experience*, 64 FLA. L. REV. 1137-1187 (2012). As featured in the Washington Post (http://www.washingtonpost.com/politics/how-is-the-roberts-court-unusual-a-law-professor-counts-the-ways/2012/03/02/gIQAk1nKrR_story.html and http://www.washingtonpost.com/politics/supreme-court-justices-fewer-years-in-private-practice-than-any-previous-court/2012/03/04/gIQAXJKQrR_graphic.html), the New York Times (http://www.nytimes.com/2012/04/03/us/sidebar-justices-cerebral-combativeness-on-display-in-health-law-hearings.html) and the Wall Street Journal (http://blogs.wsj.com/law/2012/03/01/the-roberts-court-is-wonkier-worse/).

- Benjamin H. Barton & Stephanos Bibas, *Triaging Appointed-Counsel Funding and* Pro Se *Access to Justice*, 160 U. PENN. L. REV. 967-94 (2012).

- Benjamin H. Barton, *Economists on Deregulation of the American Legal Profession: Praise and Critique*, 2012 MICH. ST. L. REV. 493-511 (2012) (symposium).

- Benjamin H. Barton, *An Article I Theory of the Inherent Powers of the Federal Courts*, 61 CATH. U. L. REV. 1-61 (2011).

- Benjamin H. Barton, *Harry Potter Och Den Farliga Staten*, NEO, Aug. 2011, at 65 (essay on Harry Potter and Libertarianism translated into Swedish for Swedish academic publication).

- Benjamin H. Barton, *Against Civil* Gideon *(and for* Pro Se *Court Reform)*, 62 FLA. L. REV. 1227-1274 (2010). As featured in the ABA Journal (http://www.abajournal.com/magazine/article/a_sour_note_from_gideons_trumpet/).

- Benjamin H. Barton, *Saving Law Reviews From Political Scientists: A Defense of Lawyers, Law Professors, and Law Reviews*, 45 GONZ. L. REV. 189-207 (2009) (Reviewing Robert J. Spitzer, *Saving the Constitution from Lawyers* (2008)).

- Benjamin H. Barton, *Is There a Correlation Between Law Professor Publication Counts, Law Review Citation Counts, and Teaching Evaluations? An Empirical Study*, 5 J. EMPIRICAL L. STUD. 619-44 (2008). Peer-reviewed journal hosted by Cornell Law School.

- Benjamin H. Barton, *A Tale of Two Case Methods*, 75 TENN. L. REV. 233-50 (2008). As featured in the Wall Street Journal (http://blogs.wsj.com/law/2007/10/30/should-law-schools-adopt-the-b-school-case-method/).

- Benjamin H. Barton, *Do Judges Systematically Favor the Interests of the Legal Profession?*, 59 ALA. L. REV. 1-55 (2007). As featured in the New York Times (http://select.nytimes.com/2007/08/27/us/27bar.html) and the Wall Street Journal Law Blog (http://blogs.wsj.com/law/2007/06/19/do-judges-favor-the-interests-of-the-legal-profession/).

- Benjamin H. Barton, *Tort Reform, Innovation, and Playground Design*, 57 FLA. L. REV. 265-304 (2006).

- Benjamin H. Barton, *Harry Potter and the Half-Crazed Bureaucracy*, 104 MICH. L. REV. 1523-38 (2006). (Reviewing J.K. Rowling, *Harry Potter and the Half-Blood Prince* (2005)). As featured in the 2007 Time Magazine Person of the Year Issue (http://www.time.com/time/specials/2007/personoftheyear/article/0,28804,1690753_1695388_1695436,00.html).

- Benjamin H. Barton, Joel Fishman, Daniel Austin Green, Timothy S. Hall, Andrew P. Morriss, Aaron Schwabach, James C. Smith, Jeffrey E. Thomas, Danaya Wright, *Harry Potter and the Law,* 12 TEX. WESLEYAN L. REV. 427-84 (2005).

- Benjamin H. Barton, *The ABA, the Rules, and Professionalism: The Mechanics of Self-Defeat and a Call for a Return to the Ethical, Moral, and Practical Approach of the Canons*, 83 N.C. L. REV. 411-80 (2005).

- Benjamin H. Barton, *The Emperor of Ocean Park: The Quintessence of Legal Academia*, 92 CALIF. L. REV. 585-608 (2004). (Reviewing Stephen L. Carter, *The Emperor of Ocean Park* (2002)).

- Benjamin H. Barton, *An Institutional Analysis of Lawyer Regulation – Who Should Control Lawyer Regulation, Courts, Legislatures, or the Market?*, 37 GA. L. REV. 1167-1250 (2003).

- Benjamin H. Barton, *Why Do We Regulate Lawyers? An Economic Analysis of the Justifications for Entry and Conduct Regulation*, 33 ARIZ. ST. L. J. 429-90 (2001).

- Benjamin H. Barton, Note, *Religion-Based Peremptory Challenges After* Batson v. Kentucky *and* J.E.B. v. Alabama: *An Equal Protection and First Amendment Analysis*, 94 MICH. L. REV. 191-216 (1995).

- Benjamin H. Barton, Book Notice, 94 MICH. L. REV. 1993-2008 (reviewing THE NATIONAL RESEARCH COUNCIL, MEASURING POVERTY: A NEW APPROACH (1995)).

AWARDS

- Selected as a Fellow of the American Bar Foundation 2022-present.

- Fulbright Scholar 2014-15. Fulbright Peer Reviewer 2017-20; 2023-24.

- 2010 LSAC Philip D. Shelton Award for outstanding research in legal education for article *Is There a Correlation Between Law Professor Publication Counts, Law Review Citation Counts, and Teaching Evaluations? An Empirical Study*.
- 2020 Separk Award for Faculty Scholarship.
- 2018 and 2010 Carden Award for Outstanding Achievement in Scholarship.
- 2016, 2011, and 2003 Marilyn V. Yarbrough Faculty Award for Writing Excellence.
- 2013 Harold C. Warner Outstanding Teacher Award.
- UT Pro Bono Outstanding Faculty Contribution Award, 2013, 2003, and 2001.
- 2018-22 Attorney For Justice, TN Access to Justice Commission.
- Knoxville's "40 under 40" for young professionals making a difference, 2009.

SELECTED ACADEMIC PRESENTATIONS

- "Critiquing Supreme Court Shortlists and the Credentials of Those Selected," SEALS Conference, July, 2023.
- "Comparative Access to Justice Issues: The U.S. and Brazil," Conference of the 8th Circuit Labor Court Judges, Proto Velho, Rodonia, Brazil, May, 2023.
- "The Case for and Against ABA Regulation of non-JD Law School Programs," Pitt Law Review Symposium, April, 2023.
- "In Memorium of Deborah Rhode," invited memorial symposium at Fordham Law School, October 2022.
- "The Credentialed Court," Fulbright Conference, Washington, D.C., October 2022.
- "Dismantle the Legal Hierarchy" and "Legal Ethics Fulbright Awards," International Legal Ethics Conference, UCLA Law School, August 2022.
- "The Credentialed Court," Houston Real Estate Lawyers Conference, February 2022.
- "The Impact & Legacy of Deborah Rhode," Plenary Session, AALS 2022.
- "Rebooting Justice," Keynote Speaker, 14th Annual Brazilian Labor Court Conference, November 2021.

- "Deborah Rhode's Legal Ethics as Moral and Political Obligation," Stanford Law School, October 2021.
- "Rebooting Justice," Keynote Speaker, Arkansas Supreme Court Conference, Little Rock, AR, July 2021.
- "Design Sprint for the Stanford Center on the Legal Profession," Stanford Law School, June 2021.
- "The Credentialed Court," North Knoxville Rotary Club, Knoxville, TN, June 2021.
- "Commentator on Ann Southworth's book draft *$peech: The Litigation Campaign to Unleash Money in American Politics*," UC Irvine Law School, May 2021.
- "National Academy of Science Session on Ethical Computing in Civil Justice," National Academy of Sciences, May 2021.
- "The Pioneering Work of Prof. Deborah Rhode, The Future of Regulation of the Legal Profession, and Its Impact on Legal Innovation," 9th Annual Stanford Codex Conference, April 2021.
- "The Life and Legacy of Deborah Rhode," LSA Conference, 2021.
- "The Latest in ODR," ABA 2021 Techshow.
- "Regulation, Culture, Markets, and the Future of American Legal Tech," Opening Speaker, Stanford Legal Tech and the Future of Civil Justice, February 2021.
- "The Future of Law," University of Miami School of Law, February 2021.
- Opening Speaker for the Stanford Law School conference, "Law School Regulation: Defining the Future," October 2020, discussing Fixing Law Schools: From Collapse to the Trump Bump and Beyond.
- "The Cost of Legal Education," Georgetown Law School, October 2020, discussing Fixing Law Schools.
- Rebooting Justice 2018-20 book tour: Keynote speaker at the Tennessee Bar Association annual conference, the eCourts Conference, the Minnesota, Michigan, and Georgia Judicial Conferences, and cle presentations for corporate counsel hosted by Butler Snow and Wyatt law firms in Nashville and Louisville.
- "Diversity of Supreme Court Justice Backgrounds," **U.C. Irvine School of Law**, June 2019.
- "Rebooting Justice Book Celebration," **Penn Law School**, April 2018.

- "Comparative Study of Judges and Trial Publicity," **The International Legal Ethics Conference**, Fordham Law School, December 2017.

- "ODR," **Knoxville Bar Association,** September 2017.

- "The Medical and Legal Ramifications of Legalized Marijuana," **Tennessee Convention of Social Workers**, Knoxville, TN, September 2017.

- "Rule 1.1 and New Law Tech," **Knoxville Bar Association,** September 2017.

- "The Life and Times of Ramsey Clark," **SEALS Conference**, Boca Raton, FL, August 2017.

- "Why Haven't More Law Schools Closed?," **UCLA Law School**, July 2017.

- "The Fair Administration of Justice," **LSA Conference**, Mexico City, MX, June 2017.

- "Consumer Law and Technology," **Tennessee Bar Association**, Nashville, TN, April 2017.

- Plenary Speaker, "Status Report on American Law Schools," **NALP Conference**, New York, NY, January 2017.

- Visiting Scholar, **Stanford Law School**, Palo Alto, CA, January 2017. Three presentations over the course of a week: 1) Presented my book Glass Half Full to Chief Legal Officers, law firm partners, and legal tech CEOs. 2) Presented a draft of my forthcoming book "Diversity on the Court: Supreme Court Justice Backgrounds and Why They Matter." 3) Presented on the future of technology and the practice of law to Stanford students.

- "ODR And the Future of Law Practice," **Knoxville Inns of Court** and **Tennessee Bar Association**, Knoxville and Nashville, November and December 2016.

- Organizer and Panelist, "The Future of Legal Ethics Scholarship," **SEALS Conference,** Amelia Island, FL, August 2016.

- "Rebooting Justice," **International Legal Ethics Conference, Fordham Law School**, New York, NY, July 2016.

- "Technology and Access to Justice, **Law School Access to Justice Conference, NYU Law School**, New York, NY, May 2016.

- "Beyond Elite Law: The Role for Solo Practitioners and Small Firms," **NYU Law School**, New York, NY, April 2016.

- "Glass Half Full," **KBA Law Practice Today EXPO**, Knoxville, TN, April 2016.
- "AALS President's Program," Plenary Speaker, **AALS 2016**, New York, NY, January 2016.
- "Plenary Session 1: Managing the Right-Sized Law School," **AALS Dean's Conference**, New York, NY, January 2016.
- "A Comparison Between the American Markets for Medical and Legal Services," **NYU Clinical Law Review Conference, Hastings Law Journal Symposium**, Fall 2015.
- "Glass Half Full – Reactions and Reviews," **Southeastern Association of Law Schools (SEALS) Annual Meeting**, FL, July 2015.
- "Legal Technology in America," "The Changes in the American Market for Legal Services," and "American Trial Practice," The University of Ljubljana, **Slovenia**, 2014-15.
- "Comparative Law: EU, Slovenia, and America," AmCham Slovenia, **Ljubljana**, October 2014.
- "The Effect of Technology on the Regulation of Lawyers in the United States" and "A Roundtable Discussion on the Lawyers' Monopoly and Client/Consumer Protection," International Legal Ethics Conference, **City University London**, London, U.K., July 2014.
- "Against Civil Gideon," Until Civil Gideon Conference, **Fordham Law School**, New York, NY, November 2013.
- "The Lawyers' Monopoly: What Goes, What Stays," **Fordham Legal Ethics Conference**, New York, NY, October 2013.
- "Reversal of Fortune," Unlocking the Law: Building on the Work of Professor Larry E. Ribstein, **George Mason Law and Economics Center**, Arlington, VA, September 2013.
- "Collegiality And Service: Balance," **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Palm Beach, FL, July 2013.
- "Glass Half Full and Clinical Legal Education," **AALS Workshop on Clinical Legal Education**, Los Angeles, CA, April 2013.
- "Whither American Law Schools," **New York Law School**, New York, NY, February 2013.

- "Whither American Lawyers," **The University of Florida College of Law**, Gainesville, FL, January 2013.

- "Glass Half Full," Unlocking the Law: Building on the Work of Professor Larry E. Ribstein, **George Mason Law and Economics Center**, Arlington, VA, November 2012.

- "Torts on the Playground," **Yale Law School Guest Lecture**, Yale Law School, New Haven, CT, September 2012.

- "A Glass Half Full Look at the Changes in the American Legal Market," Unlocking the Law Roundtable, **George Mason Law and Economics Center**, Arlington, VA, September 2012.

- "Whither Skills Training, Clinic and Scholarship in Tight Budget Times?," **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Amelia Island, FL, July 2012.

- "The Lawyer-Judge Bias: Round Table," **The International Legal Ethics Conference**, Banff, Alberta, July 2012.

- "Scholarship for Social Change," **AALS Workshop on Clinical Legal Education**, Los Angeles, CA, May 2012.

- "Where are the Lawyers? An Investigation of Access to Justice for Children with No Counsel," **The A.B.A. Section on Litigation Annual Conference**, Washington, DC, April 2012.

- "Exploring the Role of Clinical Scholarship in Advancing Social Justice," **The Southern Clinical Conference**, Knoxville, TN, March 2012.

- "Criminal Procedure and the Lawyer-Judge Bias," **The University of Maryland Faculty Colloquium Series**, Baltimore, MD, November 2011.

- "The Lawyer-Judge Bias in Regulation of the Legal Profession," **Lawyers as Conservators**, Michigan State University College of Law, East Lansing, MI, September 2011.

- "The Lawyer-Judge Bias," **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Hilton Head, SC, July 2011.

- "Law Schools and Social Justice Work," **Social Justice and the University,** Howard H. Baker Jr. Center for Public Policy, University of Tennessee, Knoxville, April 2011.

- "Developing the Next Generation of Lawyers: What Law Schools Are Doing to Develop Practice-Ready Graduates," Invited Plenary Panelist, **Professional Development Institute**, Washington, DC, December 2010.

- "Clinical Theory, Jurisprudence, and the Law in Action," **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Palm Beach, FL, July 2010.

- "An Empirical Study of Scholarly Productivity and Teaching Effectiveness in American Law Schools," Invited Presenter and Award Recipient, **LSAC Annual Conference**, Fort Lauderdale, FL, June 2010.

- "The Feedback Circle in Clinical Programs," Presenter and Legal Education Commenter, **The Southern California Innovation Project, "Making Better Lawyers" Conference**, The Center for Advanced Study in the Behavioral Sciences, Stanford University, May 2010.

- "Against Civil *Gideon* (And for Pro Se Court Reform)," Presenter, **AALS Workshop on Clinical Legal Education**, Baltimore, MD, May 2010.

- "Southeastern Clinician's Regional Workshop" and "Workshop on Empirical Law - Basic Statistics Tutorial for Law Professors," Organizer for and presenter on two all day series of panels, **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Palm Beach, FL, July 2009.

- "Taking it to Scale: Best Practices and Beyond in The 21st Century," Presenter, **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Palm Beach, FL, July 2009.

- "Affinity Group for Clinicians Interested in Scholarship," Group Leader and Discussant, **AALS Workshop on Clinical Legal Education**, Cleveland, OH, May 2009.

- "Access to Justice," Presenter, **Access to Justice Committee, Tennessee Supreme Court,** Knoxville, TN, February 2009.

- "Leading Legal Innovation," Presenter and Small Group Discussion Leader, **Southern California Innovation Project Conference**, University of Southern California, December 2008.

- "The Case for the Business School Case Method," Presenter, **The Future of Legal Education Conference**, The University of Washington Law School, Seattle, September 2008.

- "Promoting Faculty Scholarship: What Kind Of Scholarship Should Be Promoted?" Presenter, **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Palm Beach, FL, July 2008.

- "A Tale of Two Case Methods," Presenter, **The Legal Clinic 60th Anniversary Conference**, The University of Tennessee College of Law, September 2007.

- "The 'Ins' and 'Outs' of Empirical Research," Moderator and Presenter, **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Amelia Island, FL, July 2007.

- "Do Judges Systematically Favor the Interests of the Legal Profession?," Presenter, **AALS Workshop on Clinical Legal Education**, New Orleans, LA, May 2007.

- "An Empirical Study of Scholarly Productivity and Teaching Effectiveness in American Law Schools," Invited Presenter, **The Inaugural Conference on Empirical Legal Studies**, The University of Texas Law School, October 2006.

- "Empirical Research Projects," Moderator and Presenter, **Southeastern Association of Law Schools (SEALS) Annual Meeting**, Palm Beach, FL, July 2006.

- "Is There a Correlation Between Scholarly Productivity and Teaching Effectiveness in American Law Schools – An Empirical Study," Villanova School of Law, April 2006 and Cumberland School of Law, March 2006.

- "What do the *Harry Potter* Novels Teach Us About the Structure and Value of Government, Bureaucracy, and Law and its Legitimacy and Enforcement?," Presenter, **The Power of Stories: Intersections of Law, Culture, & Literature**, Gloucester, England, July 2005.

- "Tort Reform, Products Liability and Playground Design," Faculty Presenter, the University of Tennessee College of Law, June 2005.

- "Roundtable – Multiple Teaching Methodologies in Clinical and Non-Clinical Courses," Presenter, **Law and Society Association Annual Meeting**, Las Vegas, NV, June 2005.

- "Tort Reform, Products Liability, Innovation, the 'Y2K Effect,' and Playground Design," Presenter, **AALS Workshop on Clinical Legal Education**, Chicago, IL, May 2005.

- "Workshop for the Future: Ethics, Professionalism, Reform," Panelist, **AALS Workshop on Clinical Education**, San Diego 2004.

- "A Multi-Disciplinary Approach to the Problems of Legal Ethics: Lawyer Self-Regulation, *Hamartia*, and the Tragic Impulse for Self-Destruction," Presenter, **Southeastern Association of Law Schools (SEALS) Annual Meeting**, 2003.

- "The Challenges of Working with Social Workers and Other Professionals in the Clinic," Panelist, **AALS Workshop on Clinical Legal Education**, Vancouver, Can., 2003.

- "What I Learned from the MPRE: A Critique of Multiple Choice Ethics," Presenter, **AALS Workshop on Clinical Legal Education**, Vancouver, Can., 2003.

- "An Institutional Analysis of Lawyer Regulation," Faculty Presenter at Michigan Law School, Michigan State University College of Law, John Marshall Law School, the University of Tennessee College of Law, and Arizona State University College of Law, 2000-2001.

- "Why Do We Regulate Lawyers?" Faculty Presenter, Arizona State University College of Law, 2000.

SELECTED BRIEFS

- National Institute of Family and Life Advocates v. Becerra, U.S. Supreme Court No. 16-1140, Brief of Legal Ethicists as *Amici Curiae* in Support of Respondents.

- Turner v. Rogers, U.S. Supreme Court No. 10-10, Amicus Brief for Law Professors in Support of Respondents.

- Sahyers v. Prugh, Holiday & Karatinos, U.S. Supreme Court No. 10-92, Petition for Writ of Certiorari and Reply Brief.

- Ross v. Broadway Towers, Inc., U.S. Supreme Court No. 07-417, Amicus Brief of the Housing Law Clinic Consortium in Support of Petitioners.

SERVICE

- UT College of Law Homeless Assistance Project, **Faculty Supervisor/Volunteer Attorney**, 2001-present.

- UT College of Law Virtual Legal Aid Clinic, **Faculty Founder, Faculty Advisor, Volunteer Attorney**, 2017-present.

- Secretary of the University of Tennessee Chapter of the Order of the Coif, 2006-present.

- Southeastern Association of Law Schools, **Deputy Executive Director**, 2017-18. **Co-Chair of the Mentor Committee**, 2006-2017.

- AALS Section on Empirical Study of Legal Education and the Legal Profession, **Member Executive Committee**, 2021-22.

- Faculty Representative, **Big Orange Family Campaign**, 2012-2021. Coordinated annual internal fund-raising drive. Coerced 100% faculty participation most years.

- LAW SCHOOL COMMITTEE SERVICE: Appointments Committee, 2023-24; MLS Committee, 2020-23; Artwork Taskforce, 2022-23; Dean Search Committee, 2021-22; Governance Committee, 2011-14 and 2020-21; Law School Strategic Planning Committee, 2008-11 and 2020-21; Admissions Committee, 2010-20 (Chair 2016-20); Promotion of Brad Areheart (2019-20); Promotion Committee of Wendy Bach (2018-19); Tenure Committee of Joy Radice (Chair) 2017-18; Pro Bono Committee (Chair), 2015-16; Tenure Committee of Bradley Areheart (Chair), 2015-16; Tenure Committee of Wendy Bach (Chair), 2013-14; Faculty Engagement Committee, 2012-13; Promotion Committee of Alex Long, 2011-12; Tenure Committee of Robert Blitt (Chair), 2010-11; Appointments Committee, 2009-10; Communications Director Search Committee, 2009-10; Web Task Force, 2007-10; Advocacy Center Director Search Committee, 2007-08; Dean Search Committee, 2007-08; Faculty Development Committee, 2006-07; Clinic Director Search Committee, 2006-07; Dean Search Committee, 2005-2006; Geier Task Force, 2005-06; Appointments Committee, 2004-2005; Yarbrough Award Selection Committee, 2004-2006; Advocacy Center Director Search Committee, 2003-2004; Advocacy Concentration Committee, 2002-2003; TAPIL Fellowship Selection Committee, 2001-2002; Law School Committee on the Community, 2001-2002.

- UNIVERSITY OF TENNESSEE COMMITTEE SERVICE – Academic Outreach and Engagement Council, 2009-10; Engaged Scholarship/Service Learning Committee, 2009-11.

- Member, Board of Editors, The Clinical Law Review, 2007-14.

- Tennessee Law Review, **Faculty Advisor**, 2004-07.

- UT College of Law LAMBDA, **Faculty Advisor**, 2002-07.

PRO BONO AND PUBLIC INTEREST WORK

- **Volunteer Attorney**, 2001-present. Personally handle multiple clinic and homeless project cases that were too complicated for student attorneys.

- The Bijou Theater, **Board Member**, 2009-13.

- Tennessee Justice Center, **Board Member**, 2001-07.

- Habitat for Humanity International, Guatemala and Bolivia. **Volunteer.** Summer 1996 and 1997.

EDUCATION

University of Michigan Law School - J.D. *Magna Cum Laude* 1996. 3.92 GPA.

- Jason L. Honigman Award for the senior Law Review Editor who displayed the most dedication to the Review.
- Member Order of the Coif.
- Book Awards for Highest Grade: Contracts I, Contracts II, Labor Law, First Amendment, Legal Process.
- Executive Note Editor, Michigan Law Review.

Haverford College – B.A. 1991 with Honors in Religious Studies.

- Awarded Best Religion Thesis for a study of Soren Kierkegaard's *Fear and Trembling*.
- William J. Docherty Award for excellence and sportsmanship in intramural basketball.
- Lead guitarist in band Sea of Fuzz. 1987-91.
- Wing Forward, Haverford College Rugby Club. 1987-90.

PRIOR EMPLOYMENT

Morgan, Lewis & Bockius, Princeton, NJ.
Associate. 1997-99.

- Litigation associate in five-lawyer New Jersey branch office of an international law firm. Served as first or second chair in three jury trials. Appeared and argued in both State and Federal Court on behalf of clients. Drafted numerous legal pleadings, including multiple appellate and New Jersey Supreme Court briefs.

Judge Diana Gribbon Motz, U.S 4th Circuit Court of Appeals, Baltimore, MD.
Law Clerk. 1996-97.

Shea & Gardner, Washington, DC, U.S. Department of Justice, Antitrust Division, Washington, DC, Sullivan & Cromwell, New York, NY, Arent, Fox, Kintner, Plotkin & Kahn, Washington, DC. **Summer Associate.** Summers 1994-96.

Marin Fair Housing Program, San Rafael, CA.
Assistant to the Director. 1992-93.

Hughes, Hubbard & Reed, New York, NY.
Paralegal. 1991-92.

ADMISSIONS AND MEMBERSHIPS

- Bar of the State of Tennessee, admitted to practice in 2003.
- Bar of the State of Maryland, admitted to Practice in 1998, inactive status 2005.
- Bar of the State of New Jersey, admitted to practice 1997, inactive status 2000.
- Inns of Court, East Tennessee Chapter, joined 2008.
- Clinical Legal Education Association, joined 1999.
- Law and Society Association, joined 2004.
- Order of the Coif, University of Michigan Chapter, joined 1996.