

2023 STETSON LAW REVIEW SYMPOSIUM: Elon Musk and the Law

MARCH 24TH 8:30AM-4:30PM



Stetson University College of Law Gulfport, Florida



Stetson Law Review

2023 Stetson Law Review Symposium Virtual Attendance Schedule

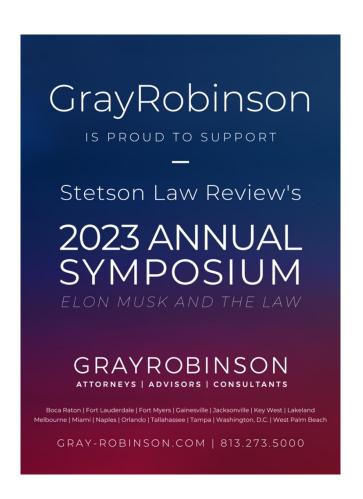
9:00am – 9:15am	Opening Remarks
9:15am – 10:15am	Panel 1: The Untouchable Elon Musk
10:15am – 10:25am	10-Minute Break
10:25am – 11:25am	Panel 2: Taming Elon Musk
11:25am – 11:35am	10-Minute Break
11:35am – 12:30pm	Keynote Address
12:30pm – 2:00pm	Lunch Break
2:00pm – 3:00pm	Panel 3: Representing Elon Musk
3:00pm – 3:10 pm	10-Minute Break
3:10pm – 4:10 pm	Panel 4: Twitter Trouble
4:10pm – 4:30pm	Closing Remarks

Meet Our Keynote Speaker

Justice John D. Couriel Florida Supreme Court



John D. Couriel is the 90th Justice of the Florida Supreme Court. Justice Couriel was born in Miami, Florida in 1978. He received his A.B. *magna cum laude* from Harvard College in 2000 and his J.D. from Harvard Law School in 2003. He clerked for the Honorable John D. Bates of the United States District Court for the District of Columbia before joining Davis Polk & Wardwell in New York. His practice there included securities offerings, mergers and acquisitions, bankruptcy matters, and investigations. In 2009, he became an Assistant United States Attorney for the Southern District of Florida. He prosecuted hundreds of federal offenses, including international money laundering, public integrity, healthcare fraud, and human trafficking crimes. In 2013, he joined Kobre & Kim LLP, where he specialized in cross-border disputes and investigations relating to financial products and services, asset recovery, and government enforcement defense, with an emphasis on clients in Latin America. Justice Couriel was appointed to the Florida Supreme Court by Governor Ron DeSantis on June 1, 2020.



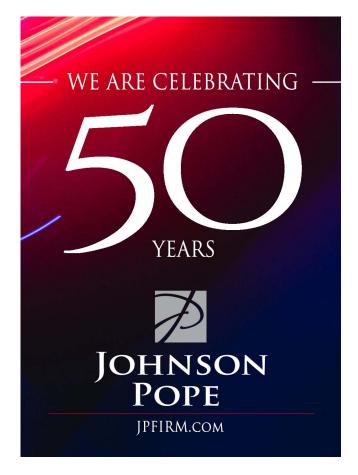
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Meet Our Panelists

Panel 1: The Untouchable Elon Musk



Dean Matthew Lyon

Vice President and Dean, Duncan School of Law

Safeguarding Shareholders When the Superstar CEO Becomes a Liability

Dean Lyon will explore the fiduciary duties of directors and the role of regulators in checking high-profile entrepreneurs when they potentially become more damaging than beneficial to the corporation. Beginning with an overview of a board's role in overseeing its CEO, specific points to be covered include the shareholder litigation over Elon Musk's compensation as Tesla CEO, his "funding secured" tweets about Tesla going private, and the impact of his Twitter purchase on Tesla. The presentation then will turn to whether regulators and the courts are a

sufficient backstop to protect shareholders when boards fail to act. The effectiveness of these external checks is debatable given Mr. Musk's idiosyncratic and anti-authoritarian nature, which has led him to challenge and even subvert orders by regulators and courts in the past. The presentation will also consider other "celebrity CEOs," including Elizabeth Holmes (Theranos), Travis Kalanick (Uber), Sam Bankman-Fried (FTX), and John Schnattner (Papa John's).

About Dean Lyon:

Matthew Lyon became the Vice President and Dean of LMU Law in July 2020. Prior to that, Lyon served as the Associate Dean for Academic Affairs at LMU Law for five years where he oversaw LMU Law's program of legal education and coordinated its successful efforts to obtain full approval from the American Bar Association.

From 2008 to 2011, Lyon served as the Senior Judicial Clerk to Justice Gary R. Wade of the Tennessee Supreme Court. He later served for one year as Chief of Staff to Chief Justice Wade. Prior to working for Justice Wade, Lyon was an associate at Sidley Austin LLP in Chicago. His practice focused on securities litigation, mergers and acquisitions litigation, and energy regulatory work. He has represented corporations and their officers and directors in federal securities fraud class actions, SEC investigations, and directors' and officers' liability claims. He also counseled Illinois' largest electric utility regarding a variety of regulatory and legislative matters. In addition, he was involved in the firm's pro bono efforts, representing a death row prisoner in Alabama in his post-conviction proceedings.

Prior to law school, Lyon worked as a Social Science Analyst in the Office of the Assistant Secretary for Planning and Evaluation at the U.S. Department of Health and Human Services in Washington, D.C. In that role, he helped develop a research agenda to evaluate the effects of the 1996 welfare reform law and worked with states and private research organizations to conduct and analyze that research. He was a participant in the prestigious Presidential Management Intern (PMI) program, during which time he worked for the Senate Health, Education, Labor and Pensions (HELP) Committee.

Lyon's research has been focused on business law and civil litigation, particularly variations among the states and between the state and federal systems in those areas. He studies how state courts and legislatures use their rules of civil procedure and/or substantive laws governing corporations to achieve their explicit or implicit policy goals. He also believes strongly in writing and presenting on issues of interest to local and state bar.

Professor Kenya Smith

Associate Professor of Law, Southern University Law Center

Pardon My Stat(e)us: Exploring Applicability of the Gubernatorial Pardon Power to Corporations

Elon Musk's purchase of Twitter has caused a great deal of rethinking how the First Amendment applies to this still relatively new aspect of the American town square. This represents another extension of corporate conversations beyond perceived traditional American business issues (i.e., taxation and other regulatory issues) to encompassing how larger constitutionally protected principals are perceived, protected, and processed. Musk's Twitter related actions could be seen as a precursor to his pursuit of elective office, following the likes of Mayor Michael Bloomberg and President Donald Trump. His seemingly nontraditional perspective on the political exercise, taken together with many of the issues emanating from the Trump presidency, can cause one to wonder how Elon Musk might, as a state chief executive, respond to legal trouble encountered by one of his companies.



About Professor Smith:

Professor Kenya Smith is an Associate Law Professor at the Southern University Law Center who teaches a robust package of business law courses, including Business Associations, Commercial Law, Federal Income Tax, Contracts, and Obligations. His scholarly interests include formation and taxation of business associations, constitutional law, and legislation. He is enthusiastic about education and scholarship and loves to share that enthusiasm with his students.

Professor Smith is an alumnus of Southern University at New Orleans where he received his B.A. (cum laude) in Political Science. He earned his J.D. from the University of Wisconsin Law School and began his legal career with Adams and Reese LLP as a member of the firm's transactions and corporate advisory services team. He next served in various senior executive positions in the New Orleans city government, including Executive Counsel to the Mayor, Deputy Mayor for Intergovernmental Relations and Deputy Mayor for Community Development. He later worked closely with the BP Gulf Coast Recovery Leadership team in the wake of the MC-252 incident.

Professor Smith is a member of the Wisconsin and Louisiana State Bar Associations and has served as a leader and volunteer in several local and national nonprofit organizations.

Panel 2: Taming Elon Musk



Professor David Rosenfeld

Associate Professor of Law, Northern Illinois University College of Law

Elon Musk and the Virtues of Restraint

Professor Rosenfeld will outline some of the issues encountered in the SEC enforcement process when a securities law violator is so intimately tied to the success of their company that sanctions might undermine rather than enhance the goal of investor protection. The SEC has become a "fining" agency, routinely imposing large civil penalties as part of the resolution of almost all major enforcement action. Such penalties are ultimately borne by innocent shareholders. He concludes that the enforcement process should more closely align with the underlying mission of the agency, which might lead to a different approach.

About Professor Rosenfeld:

David Rosenfeld joined the NIU Law faculty in 2015. He teaches courses in securities regulation, business law, and contracts.

Before joining the NIU Law faculty, Professor Rosenfeld worked for many years at the U.S. Securities and Exchange Commission (SEC). As co-head of Enforcement for the SEC's New York office, Professor Rosenfeld supervised teams of attorneys in investigating and prosecuting violations of the federal securities laws, including cases of insider trading and accounting fraud. Prior to working at the SEC, Professor Rosenfeld was in private practice at Davis Polk & Wardwell in New York. Professor Rosenfeld also taught at the University of Virginia and served as a law clerk to the Honorable A. Raymond Randolph of the United States Court of Appeals for the District of Columbia Circuit. At the SEC, Professor Rosenfeld led numerous prominent investigations, including the Galleon insider trading cases and the New York Stock Exchange Specialist cases.

Professor Rosenfeld graduated from Harvard Law School, where he was an editor of the *Harvard Law Review*, and received a Ph.D. in Political Theory from Columbia University.

Professor Angela Aneiros

Visiting Assistant Professor, Gonzaga University School of Law

D&O Insurance's Role in Corporate Fiduciaries' Duties: An Elon Story of Eradication

Co-Authored with Professor Karen Woody, Associate Professor of Law, Washington and Lee University School of Law

In April 2020, Elon Musk canceled the directors and officers (D&O) insurance of his directors at Tesla and offered to insure the board members personally—an exceedingly rare, though not unprecedented move. However, it underscored the notion of the "captured" board at Tesla and raised additional criticisms about the effectiveness and independence of Tesla's board. Personally insuring board members seems like a very "Elon" move, but it could have broader implications beyond Elon, especially among other unicorn companies in high-risk industries, where D&O insurance is essential. This discussion explores the implications of personally insuring board members, the effects on the D&O industry, and the liability exposure to directors and officers.



About Professor Aneiros:

Angela Aneiros is a Visiting Assistant Professor at Gonzaga University School of Law. Prior to joining Gonzaga Law, she was a Lecturer of Business Law & Ethics at Indiana University's Kelley School of Business. Professor Aneiros earned her J.D. from IU Maurer School of Law and her B.A. in Business Administrations-Prelaw from Michigan

State

University.

Drawing on more than a decade-long experience as a practitioner and as a scholar of business law and ethics, Professor Aneiros' research focuses on the intersection of law and corporate governance. In particular, how recent social unrest and social movements influence diversity, equity, inclusions, and justice in corporations. This includes both how social movements impact corporate America and corporate law and how stakeholders influence corporate behavior through legal avenues.

Prior to transitioning to academia, Professor Aneiros spent over a decade as a trial attorney in Illinois and Indiana. She spent six years in private practice representing individuals, businesses, and government entities in federal, district, and state courts. She also served as a supervising attorney at IU Student Legal Services, a clinical program for IU Maurer School of Law students, representing and advising IUB students.

Panel 3: Representing Elon Musk

Professor Joan MacLeod Heminway

Rick Rose Distinguished Professor of Law, University of Tennessee College of Law

Representing Elon Musk

Utilizing the lens of Elon Musk's legal troubles and the Model Rules of Professional Conduct, Professor Heminway will address professional obligations and the broader ethical and legal concerns associated with representing neurodivergent clients. Neurodiversity certainly intensifies the complexity of the lawyer-client relationship, as well as the relationships lawyers and clients have with others, including government regulators, the judiciary, and transactional counterparties or advocacy opponents. Although it is unclear how much of Musk's legally questionable conduct relates in any way (if at all) to his autism spectrum disorder diagnosis, that diagnosis is bound to impact the behavior and methods of lawyers representing him and the business firms for which he acts as an agent.



About Professor Heminway:

Professor Heminway brought nearly 15 years of corporate practice experience to the University of Tennessee College of Law when she joined the faculty in 2000. She practiced transactional business law (working in the areas of public offerings, private placements, mergers, acquisitions, dispositions, and restructurings) in the Boston office of Skadden, Arps, Slate, Meagher & Flom LLP from 1985 through 2000. She has served as an expert witness and consultant on business entity and finance and federal and state securities law matters and is a frequent academic and continuing legal education presenter on business law issues. Professor Heminway also has represented pro bono clients on political asylum applications, landlord/tenant appeals, social security/disability cases, and not-for-profit incorporations and related business law issues.

In her research and writing, Professor Heminway focuses most closely on disclosure regulation and policy under federal securities (including insider trading) law and state entity (especially corporate) law. Some of her work explores these topics in the context of sex or gender difference. She is best known for her recent work involving crowdfunding and, before that, for a series of articles relating to the insider trading and criminal securities fraud actions brought against Martha Stewart in connection with her December 2001 sale of ImClone Systems, Inc. common stock. Other areas of interest manifested in her work include institutional reform at the U.S. Securities and Exchange Commission, teaching business law, and business finance and governance planning and drafting. She has coauthored a series of annotated merger and acquisition agreements and related ancillary documents for Transactions: The Tennessee Journal of Business Law. Her work has been published in a wide variety of general and specialty journals. She also has authored numerous academic and trade book chapters and co-authored two business law teaching texts: Business Enterprises: Legal Structures, Governance, and Policy (Carolina Academic Press, 4th ed. 2020) and Martha Stewart's Legal Troubles (Carolina Academic Press 2006).



Professor Nicole Iannarone

Assistant Professor of Law, Drexel University Thomas R. Kline School of Law

Teaching Through Twitter's Takeover: Elon Musk, Business Law, and Professional Responsibility

Elon Musk as a potential client presents multiple points to enrich our pedagogy with an example familiar to the vast majority of students. Professor Iannarone focuses on utilizing current events to engage students more deeply in both corporate law and professional responsibility matters, including vetting information on the internet, why lawyers and professors tweet or engage online, the Model Rules of Professional Conduct, and professional identity formation.

About Professor Iannarone:

Professor Nicole Iannarone teaches courses including Business Organizations, Civil Procedure, Complex Litigation, Business Arbitration, and Professional Responsibility. Her scholarship focuses on consumer disputes with professional services providers, exploring the intersection between professional regulation, dispute resolution systems, transparency, and technology. She examines average consumers' experiences in dispute resolution to identify barriers they face in entrenched mandatory arbitration forums and recommends interventions to increase consumers' access to justice.

Professor Iannarone's scholarship has appeared in or is forthcoming in the Washington Law Review, Cardozo Law Review, Stetson Law Review, Tennessee Journal of Business Law, Chicago Kent Law Review, and the University of Toledo Law Review. She frequently is asked to share her expertise with regulatory and policy making bodies and has been invited to testify before the U.S. Securities & Exchange Commission and International Association of Securities Commissioners (IOSCO) on issues relating to consumer investor protection.

Before entering academia, Professor Iannarone was an equity partner and deputy general counsel in a litigation boutique firm where she represented plaintiffs and defendants in litigation at all levels of state and federal trial and appellate courts. Beginning with her time in law practice and throughout her academic career, Professor Iannarone has been heavily involved in service to the practicing bar, including by serving as President of the Atlanta Bar Association, President of the Atlanta Council of Younger Lawyers, Chair of the State Bar of Georgia's Professionalism Committee, Chair of the Atlanta Bar Association Reputation and Public Trust Committee, and liaison to the Georgia Chief Justice's Commission on Professionalism. She is also a former chair of the AALS Section on Employee Benefits and Executive Compensation and a fellow of the American Bar Foundation. Professor Iannarone received her J.D. from Yale Law School, where she served on the Yale Journal on Regulation, and graduated summa cum laude and with high honors in liberal studies from Brenau Women's College.

Panel 4: Twitter Trouble

Professor Carla Reyes

Assistant Professor of Law, SMU Dedman School of Law

Uncovering Elon Musk's Data Empire

Co-Authored with Professor Carliss Chatman, Associate Professor of Law, Washington and Lee University School of Law

This discussion will uncover the role that the market for data likely played in Musk's unusual plan to purchase Twitter given the rest of his corporate empire, and the potential implications for antitrust and securities law.



About Professor Reyes:

Carla L. Reyes is an Assistant Professor of Law at SMU Dedman School of Law. An outstanding teacher and distinguished scholar, Professor Reyes is a nationally recognized leader on issues raised by the intersection of business law and technology. Professor Reyes was appointed the Chair of the Texas Work Group on Blockchain Matters in September 2021. The work group is charged with considering policy priorities related to blockchain technology in Texas. Professor Reyes was also named an American Bar Foundation Fellow in June 2021 and named one of the Women of Legal Tech 2020, an honor bestowed by the American Bar Association Legal Technology Resource Center. Professor Reyes currently serves as the Research Director for the Uniform Law Commission's Technology Committee, an Associate Research Director of the Permanent Editorial Board of the Uniform Commercial Code, an Expert Member of the UNIDROIT Work Group on Private Law and Digital Assets, and an Expert Member of the UNIDROIT Work Group on Best Practices for Effective Enforcement. Professor Reyes also contributed to the Uniform Law Commission and American Law Institute 2022 Amendments to the Uniform Commercial Code. Prior to joining SMU Dedman School of Law, Professor Reyes served Michigan State University College of Law as an Assistant Professor of Law and Director of the Center for Law, Technology & Innovation, and taught Business Enterprises, Technology Transactions, Artificial Intelligence & the Law, and Blockchain Law & Policy. Prior to teaching law, Professor Reyes practiced law as an associate in the Blockchain Technology and Digital Currency industry group at Perkins Coie LLP.



Professor Tomer Stein

Bruce R. Jacob Visiting Assistant Professor of Law, Stetson University College of Law

MAE: Materiality, Adversity, and Elon

Elon Musk's acquisition of Twitter, Inc. has brought an important contractual provision into the limelight: the material adverse effect provision, or MAE. The MAE provision, when triggered, allows acquirers to walk away from an acquisition they have otherwise committed to. MAE litigation thus centers on arguments regarding whether the triggering events have been met. Drawing on lessons from the Elon Musk Twitter acquisition, Professor Stein will present and provide evidence for his novel theory of contractual provisions: MAE clauses are best understood as mezzanine provisions that balance the costs and benefits of contractual rules and contractual standards.

About Professor Stein:

Professor Tomer Stein focuses his teaching and scholarship on Business Associations (in particular, Corporate Law & Governance), Contracts, and Mergers & Acquisitions. His publications include forthcoming articles in the Arizona State Law Journal, Hastings Law Journal, and the Buffalo Law Review.

Professor Stein previously practiced corporate law at the New York office of a large international law firm and as a legal consultant to the capital markets arm of a multinational broker-dealer. His practice focused on capital markets, acquisition finance, and corporate governance matters. Professor Stein's experience includes advising corporate, private equity, and banking clients on a broad range of public and private domestic and cross-border financing transactions, including initial public offerings, high-yield and investment grade debt offerings, follow-on and secondary equity offerings, liability management transactions, and committed financings.

Professor Stein earned his J.D. from The University of Texas School of Law, his B.A. (majoring in Philosophy) from the University of Wisconsin-Madison, and has previously served as a foreign law clerk to Justice Isaac Amit of the Supreme Court of Israel.

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STETSON LAW REVIEW



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The *Stetson Law Review* will publish two Symposium Issues during the 2023–24 Academic Year consisting of Articles from our Symposium participants. For more information, and to subscribe to our print issues, please contact lreview@law.stetson.edu.

Thank you for attending today's program.



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