# Table of Contents

North Carolina Banking Institute

Follow this and additional works at: [http://scholarship.law.unc.edu/ncbi](http://scholarship.law.unc.edu/ncbi)

---

**Recommended Citation**

Available at: [http://scholarship.law.unc.edu/ncbi/vol18/iss1/1](http://scholarship.law.unc.edu/ncbi/vol18/iss1/1)
North Carolina Banking Institute

Volume 18  November 2013

Contents

Transcripts

Keynote Address: The Continuing Problem of "Too Big To Fail"...............Simon Johnson 1

Explaining and Curbing Capture........RACHEL E. BARKOW 17

Financial Innovation and Flexible Regulation: Destabilizing the Regulatory State............Cristie Ford 27

Regulatory Capture: Why it Occurs, How to Minimize It........................Gerard Caprio 39

A Debate Framed by Fallacies........Robert Jenkins 51


The SEC Can No Longer Regulate From Behind.....................Judge Stanley Sporkin 65

Financial Regulation Reform: Politics, Implementation, and Alternatives....................Anat Admati 71

Political Accountability, Campaign Finance, and Regulatory Reform.....Michael Waldman 83

Götterdämmerung........................Lawrence G. Baxter 91

Headwinds Confronting the SEC..............James D. Cox 105
The Right Way to Regulate
From Behind.......................... Frank Partnoy 113

ARTICLES

Designing Countercyclical Capital
Buffers.................................... Brett H. McDonnell 123

Organizational Diversity and Regulatory
Strategy in Financial Markets:
Possibilities for Upgrading
and Reform............................. Marc Schneiberg 141

Financialization:
Causes, Inequality Consequences,
and Policy Implications............. Donald Tomaskovic-Devey
Ken-Hou Lin 167

Keeping Tabs on Financial Innovation:
Product Identifiers in Consumer
Financial Regulation..................... Daniel Carpenter
Patricia A. McCoy 195

Regulatory Reform in the U.K........ Michael W. Taylor 227

Corporate Law Constraints on
Political Spending....................... James Kwak 251
BOARD OF ADVISORS

B.T. ATKINSON
Bryan Cave LLP
Charlotte, North Carolina

NATHAN BATTS
North Carolina Bankers Association
Raleigh, North Carolina

DAVID LINE BATTY
Winston & Strawn LLP
Charlotte, North Carolina

RUFUS F. BEATY
TD Bank, N.A.
Greenville, South Carolina

JOHN CHARLES BOGER
UNC School of Law
Chapel Hill, North Carolina

LISSA L. BROOME
UNC School of Law
Chapel Hill, North Carolina

JAMES R. BRYANT, III
Kingstree Group
Charlotte, North Carolina

R. LEE BURROWS JR.
Bank Street Partners
Atlanta, Georgia

MICHAEL D. CALHOUN
Center for Responsible Lending
Durham, North Carolina

SCOTT A. CAMMARN
Cadwalader, Wickersham & Taft LLP
Charlotte, North Carolina

ALFRED P. CARLTON, JR.
Allen, Pinnix & Nichols PA
Charlotte, North Carolina

JAMES P. CARROLL
Cadwalader, Wickersham & Taft LLP
Charlotte, North Carolina

SCOTT M.A. CLARK
Sandler O’Neil + Partners, LP
New York, New York

H. RODGIN COHEN
Sullivan & Cromwell
New York, New York

V. GERARD COMIZIO
Paul, Hastings, Janofsky & Walker LLP
Washington, D.C.

SARAH A. CORE
North Carolina Banking Institute
Chapel Hill, North Carolina

ALEXANDER C. COVINGTON
McGuireWoods LLP
Charlotte, North Carolina

MARION A. COWELL
Kilpatrick Townsend & Stockton LLP
Charlotte, North Carolina

BETH S. DESIMONE
FNB United Corp.
Asheboro, North Carolina

PAUL S. DONOHUE
Alston & Bird LLP
Charlotte, North Carolina

A. PATRICK DOYLE
Arnold & Porter
Washington, D.C.

STEVEN S. DUNLEVIE
Womble Carlyle Sandridge & Rice LLP
Atlanta, Georgia

KIERAN J. FALLON
PNC Financial Services Group, Inc.
Washington, D.C.

GARY W. FARRIS
Burr & Forman LLP
Atlanta, Georgia
ADAM FEIBelman  
Tulane University Law School  
New Orleans, Louisiana

RAYMOND D. FORTIN  
SunTrust Banks, Inc.  
Atlanta, Georgia

PAOLO FULGHERI  
Kenan-Flagler Business School  
Chapel Hill, North Carolina

ANTHONY GAETA, JR.  
Wyrick Robbins Yates & Ponton LLP  
Raleigh, North Carolina

LEONARD H. GILBERT  
Holland & Knight, LLP  
Tampa, Florida

RICHARD L. GRAY  
United Guaranty Corporation  
Greensboro, North Carolina

BARRY HARRIS  
First-Citizens Bank & Trust Co.  
Raleigh, North Carolina

THOMAS L. HAZEN  
UNC School of Law  
Chapel Hill, North Carolina

J. RICHARD HAZLETT  
Moore & Van Allen, PLLC  
Charlotte, North Carolina

JAMES T. HEDRICK, JR.  
McGuireWoods LLP  
Charlotte, North Carolina

FRANK A. HIRSCH, JR.  
Alston & Bird LLP  
Raleigh, North Carolina

CAROL A. HITSHELBERGER  
Mayer Brown LLP  
Charlotte, North Carolina

A. LEE HOGEWOOD III  
K&L Gates LLP  
Raleigh, North Carolina

JEWEL D. HOOVER  
Hoover and Associates, LLC  
Charlotte, North Carolina

CHARLES M. HORN  
Morrison & Foerster LLP  
Washington, D.C.

PHILLIP D. HUBER, CFA  
The Hutchison Company  
Durham, North Carolina

GERALD P. HURST  
RBC Bank (Georgia), N.A.  
Raleigh, North Carolina

JOHN L. JERNIGAN  
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP  
Raleigh, North Carolina

ROBERT J. JOHNSON, JR.  
BB&T Corporation  
Winston-Salem, North Carolina

KENNETH C. JOHNSTON  
Kane Russell Coleman & Logan PC  
Dallas, Texas

MARK C. KANALY  
Alston & Bird, LLP  
Atlanta, Georgia

EUGENE M. KATZ  
Wells Fargo & Company  
Charlotte, North Carolina

SATISH M. KINI  
Debevoise & Plimpton LLP  
Washington, D.C.

DONALD C. LAMPE  
Dykema Gossett PLLC  
Charlotte, North Carolina
WILLIAM R. LATHAN, JR.
Ward and Smith, PA
New Bern, North Carolina

PAUL S. PILECKI
Kilpatrick Townsend & Stockton LLP
Washington, D.C.

RENE J. LEBLANC-ALLMAN
Winston & Strawn LLP
Charlotte, North Carolina

STEPHEN D. POE
Bell, Davis & Pitt, PA
Winston-Salem, North Carolina

CHRISTOPHER E. LEON
Womble Carlyle Sandridge & Rice, PLLC
Winston-Salem, North Carolina

FRANCIS C. PRAY, JR.
Nelson Mullins Riley & Scarborough, LLP
Charlotte, North Carolina

MEGHAN MCCULLE LUBERAS
King & Spalding
Charlotte, North Carolina

HENRY H. RALSTON
Robinson, Bradshaw & Hinson, PA
Charlotte, North Carolina

JACOB A. LUTZ, III
Troutman Sanders LLP
Richmond, Virginia

RONALD D. RAXTER
Williams Mullen
Raleigh, North Carolina

JERRY W. MARKHAM
Florida International University
College of Law
Miami, Florida

C. COWDEN W. RAYBURN
North Carolina Banking Institute
Chapel Hill, North Carolina

MICHAEL NEDZBALA
Hunton & Williams LLP
Charlotte, North Carolina

PATRICIA A. ROBINSON
Wachtell Lipton
New York, New York

EDWARD P. O'KEEFE
Bank of America
Charlotte, North Carolina

ALBERT M. SALEM, JR.
First Commercial Bank of Tampa
Tampa, Florida

MARY PATRICIA D. OLIVER
Vorys, Sater, Seymour and Pease LLP
Cleveland, Ohio

PAUL SALTZMAN
The Clearing House
New York, New York

SAULE OMAROVA
UNC School of Law
Chapel Hill, North Carolina

MARGOT F. SAUNDERS
National Consumer Law Center
Washington, D.C.

REGINALD T. O'SHIELDS
Federal Home Loan Bank of Atlanta
Atlanta, Georgia

ROBERT A. SINGER
Brooks, Pierce, McLendon, Humphrey, & Leonard LLP
Greensboro, North Carolina

THERES S. PAUL
Fifth Third Bank Bancorp
Cincinnati, Ohio

JOSEPH A. SMITH, JR.
Poyner Spruill LLP
Raleigh, North Carolina
KAROL K. SPARKS  
*Barack Ferrazzano Kirschbaum & Nagelburg LLP*  
Chicago, Illinois

WILLIAM J. WAGNER  
*Raymond James & Associates*  
Raleigh, North Carolina

RALPH N. STRAYHORN  
*Cape Point Advisory Partners, LLC*  
Charlotte, North Carolina

PAUL S. WARE  
*Bradley Arant Boult Cummings LLP*  
Birmingham, Alabama

JAMES M. STROTHER  
*Wells Fargo & Company*  
San Francisco, California

MICHAEL D. WATERS  
*Jones Walker LLP*  
Birmingham, Alabama

MARGARET E. TAHYAR  
*Davis Polk & Wardwell LLP*  
New York, New York

K. ELIZABETH WHITEHEAD  
*American Savings Bank*  
Honolulu, Hawaii

DANIEL K. TRACEY  
*North Carolina Banking Institute*  
Chapel Hill, North Carolina

AMY P. WILLIAMS  
*K&L Gates LLP*  
Charlotte, North Carolina

THOMAS P. VARTANIAN  
*Dechert, LLP*  
Washington, D.C.

W. SAMUEL WOODARD  
*Parker Poe Adams & Bernstein LLP*  
Charlotte, North Carolina

**EMERITUS MEMBERS**

J. THOMAS DUNN  
*Retired, Moore & Van Allen, PLLC*  
Charlotte, North Carolina

PAUL J. POLKING  
*Retired, Bank of America*  
Charlotte, North Carolina

JERONE C. HERRING  
*Retired, BB&T Corporation*  
Montreat, North Carolina

PAUL J. REYNOLDS  
*Retired, Fifth Third Bank Bancorp*  
Cincinnati, Ohio

K. ELIZABETH WHITEHEAD  
*American Savings Bank*  
Honolulu, Hawaii

PAUL H. STOCK  
*Retired, North Carolina Bankers Association*  
Raleigh, North Carolina
SPONSORS

Alston & Bird LLP
Bank of America Corporation
BB&T Corporation
Bradley Arant Boult Cummings, LLP
Brooks, Pierce, McLendon, Humphrey & Leonard, LLP
Bryan Cave LLP
Cadwalader, Wickersham & Taft LLP
The Clearing House
Davis Polk & Wardwell LLP
Dykema Gossett PLLC
FHLBank Atlanta
Fifth Third Bancorp
First Citizens Bank & Trust Company
Hunton & Williams LLP
The Hutchison Company
Jones Walker LLP
Kane Russell Coleman & Logan PC
Kilpatrick Townsend & Stockton LLP
Mayer Brown LLP
McGuireWoods LLP
Moore & Van Allen, PLLC
Morrison & Foerster LLP
Nelson Mullins Riley & Scarborough LLP
Paul Hastings LLP
Poyner Spruill LLP
Raymond James & Associates
Robinson, Bradshaw & Hinson, PA
Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP
Troutman Sanders LLP
Vorys, Sater, Seymore and Pease, LLP
Ward and Smith, PA
Wells Fargo & Company
Williams Mullen
Winston & Strawn LLP
Womble Carlyle Sandridge & Rice, LLP
Wyrick Robbins Yates & Ponton LLP
The University of North Carolina
School of Law

Administration

THOMAS W. ROSS, B.S., J.D., President of the University of North Carolina
CAROL L. FOLT, B.S., M.A., Ph.D., Chancellor of the University of North Carolina
JOHN CHARLES BOGER, A.B., M.Div., J.D., Dean and Wade Edwards Distinguished Professor of Law
JEFFREY MICHAEL HIRSCH, B.A., M.P.P., J.D., Associate dean for Academic Affairs and Associate Professor of Law
KARL H. MYERS II, B.A., M.A., J.D., Associate Dean for Student Affairs and Professor of Law
JOAN H. KRAUSE, B.A., J.D., Associate Dean for Faculty Development and Don K. Moore Distinguished Professor of Law; Professor, Social Medicine, School of Medicine; Adjunct Professor of Health Policy and Management, School of Public Health
CRAIG T. SMITH, B.A., J.D., LL.M., Assistant Dean for Legal Writing and Academic Success and Clinical Professor of Law

Faculty

DAVID S. ARDIA, B.S., M.S., J.D., LL.M., Assistant Professor of Law and Co-Director of the Center for Media Law and Policy
TAMAR R. BIRCKHEAD, B.A., J.D., Assistant Professor of Law
KIMBERLY C. BISHOP, B.A., J.D., Clinical Assistant Professor of Law
JOHN CHARLES BOGER, A.B., M.Div., J.D., Dean and Wade Edwards Distinguished Professor of Law
LISSA LAMKIN BROOME, B.S., J.D., Wells Fargo Professor of Banking Law and Director of the Center for Banking and Finance
ALFRED L. BROPHY, A.B., A.M., J.D., Ph.D., Judge John J. Parker Distinguished Professor of Law
CAROLINE NICHOLSON BROWN, B.A., M.A., J.D., Professor of Law
PATRICIA L. BRYAN, B.A., J.D., LL.M., Martha Brandis Professor of Law
BERNARD A. BURK, B.A., J.D., Assistant Professor of Law
LAURA COLLINS BRITTON, B.A., J.D., Clinical Assistant Professor of Law
ALEXA Z. CHEW, A.B., J.D., Clinical Assistant Professor of Law
ANDREW CHIN, B.S., Ph.D., Associate Professor of Law
JOHN MARTIN CONLEY, B.A., J.D., Ph.D., William Rand Kenan, Jr. Professor of Law
MICHAEL L. CORRADO, B.A., B.S., A.M., Ph.D., J.D., Arch T. Allen Distinguished Professor of Law
JOHN F. COYLE, B.A., M.P.H., J.D., Assistant Professor of Law
KAREEM U. CRAYTON, A.B., B.P.H., J.D., Associate Professor of Law
CHARLES EDWARD DAVE, B.A., J.D., Henry Brands Professor of Law and Deputy Director of the Center for Civil Rights
MAXINE N. EICHNER, B.A., J.D., M.A., Ph.D., Reef C. Ivey II Professor of Law
LEWIS MOORE EVERTT, B.A., M.A., J.D., Clinical Assistant Professor of Law
BARBARA A. FEDDERS, B.A., J.D., Clinical Assistant Professor of Law
VICTOR B. FLATT, B.A., J.D., Thomas F. and Elizabeth Taft Distinguished Professor in Environmental Law and Director of the Center for Law, Environment, Adaptation and Resources (CLEAR)
TIMOTHY J. GALLINA, B.A., M.S., J.D., Clinical Assistant Professor of Law and Reference/Emerging Technologies Librarian
DEBORAH R. GERHARDT, A.B., J.D., Assistant Professor of Law
MICHAEL J. GERHARDT, B.A., M.S., J.D., Samuel Ashe Distinguished Professor in Constitutional Law and Director of the Center for Law and Government
S. ELIZABETH GHISON, B.A., J.D., Burton Craige Professor of Law
AARON R. HARMON, B.A., M.A., J.D., Clinical Assistant Professor of Law
THOMAS LEE HAZEN, B.A., J.D., Cary C. Boshamer Distinguished Professor of Law
JEFFREY MICHAEL HIRSCH, B.A., M.P.P., J.D., Professor of Law
AMANDA S. HITCHCOCK, B.A., J.D., Clinical Assistant Professor of Law
DONALD THOMAS HORNSTEIN, B.A., J.D., Aubrey L. Brooks Professor of Law
MELISSA B. JACOBY, B.A., J.D., Graham Kenan Professor of Law
THOMAS A. KELLEY, III, A.B., J.D., Professor of Law and Director of Clinical Programs
JOSEPH E. KENNEDY, B.A., J.D., Professor of Law
CATHERINE Y. KIM, B.A., J.D., Assistant Professor of Law
JULIE L. KIMBROUGH, B.A., M.L.S., Clinical Assistant Professor of Law and Assistant Director for Collection Services
P. ANNE KLIEFELT, B.A., M.L.S., J.D., Associate Professor of Law and Director of Law Library
Adjunct Faculty

Michael A. Abel, A.B., J.D., Adjunct Professor of Law
Michael W. Ballance, B.A., J.D., Adjunct Professor of Law
Charles L. Becton, B.A., J.D., LL.M., Adjunct Professor of Law
Elizabeth B. Braswell, B.A., J.D., Adjunct Professor of Law
Jonathan E. Broun, B.A., J.D., Adjunct Professor of Law
Mary Beth Chopas, B.A., J.D., Adjunct Professor of Law
Joanna Carey Cleveland, B.A., J.D., LL.M., Adjunct Professor of Law
Felice M. Corpening, B.A., J.D., Adjunct Professor of Law
Karen P. Davidson, B.A., M.A., J.D., Adjunct Professor of Law
Kearns Davis, B.A., M.A., J.D., Adjunct Professor of Law
Mark E. Dorosin, B.A., M.A., J.D., Adjunct Professor of Law
James C. Drennan, B.A., J.D., Adjunct Professor of Law
James C. Fuller, B.A., J.D., Adjunct Professor of Law
Tristan Fuierer, B.A., J.D., Adjunct Professor of Law
Anthony Gaeta, Jr., B.A., J.D., Adjunct Professor of Law
David Lombard Harrison, B.A., J.D., Adjunct Professor of Law
Robert Harper Heckman, B.A., J.D., Adjunct Professor of Law
Norma R. Houston, B.S., J.D., Adjunct Professor of Law
MALCOLM R. HUNTER, JR., A.B., J.D., Adjunct Professor of Law
SAMUEL S. JACKSON, A.B., J.D., Adjunct Professor of Law
ROBERT O. JENKINS, B.A., M.P.A., J.D., Adjunct Professor of Law
SALLY C. JOHNSTON, B.S., M.D., Adjunct Assistant Professor of Law
VALERIE A. JOHNSON, B.A., J.D., Adjunct Professor of Law
THE HONORABLE ABRAHAM JONES, B.A., J.D., Adjunct Professor of Law
MICHAEL G. KADENS, A.B., J.D., Adjunct Professor of Law
MICHAEL KLINKOSUM, A.B., J.D., Adjunct Professor of Law
ROBERTO. JENKINS, B.A., M.P.A., J.D., Adjunct Professor of Law
SALLY C. JOHNSON, B.S., M.D., Adjunct Assistant Professor of Law
VALERIE A. JOHNSON, B.A., J.D., Adjunct Professor of Law
THE HONORABLE ABRAHAM JONES, B.A., J.D., Adjunct Professor of Law
MICHAEL KADENS, A.B., J.D., Adjunct Professor of Law
RINA LYUBKIN, A.B., J.D., Adjunct Professor of Law
JOHN LOFTIN, A.B., J.D., Adjunct Professor of Law
SAMUEL S. JACKSON, A.B., J.D., Adjunct Professor of Law
THE HONORABLE J. MATTHEW MARTIN, A.B., J.D., Adjunct Professor of Law
THE HONORABLE MARK D. MARTIN, B.S., B.A., J.D., Adjunct Professor of Law
WILLIAM S. MILLS, A.B., J.D., Adjunct Professor of Law
CHRISTINE C. MUMMA, B.S., J.D., Adjunct Professor of Law
BENTLEY OLIVE, A.B., J.D., Adjunct Professor of Law
SAMUEL T. OLIVER JR., B.A., J.D., Adjunct Professor of Law
THE HONORABLE ROBERT F. ORR, A.B., J.D., Adjunct Professor of Law
BARBARA J. O'NEAL, A.B., J.D., Adjunct Professor of Law
JAMES D. PHILLIPS, A.B., J.D., Adjunct Professor of Law
FU QIANG, A.B., J.D., Adjunct Professor of Law
LISA C. SCHIAVINATO, B.A., J.D., Adjunct Professor of Law
SCOTT L. SILLMAN, A.B., J.D., Adjunct Professor of Law
ELLIOT M. SILVERSTEIN, B.A., J.D., Adjunct Professor of Law
ELIZABETH G. SIMPSON, B.A., J.D., Adjunct Professor of Law
THOMAS M. STERN, B.A., J.D., Adjunct Professor of Law
LINDSEY WHEELER SPAIN, B.A., J.D., Adjunct Professor of Law
HAOCHEN SUN, B.A., J.D., Adjunct Professor of Law
KATHERINE TOPULOS, B.A., M.A., J.D., Adjunct Professor of Law
DOBI WIGGEN, B.A., J.D., Adjunct Professor of Law
MELVIN F. WRIGHT, Jr., B.A., J.D., Adjunct Professor of Law
PO JEN YAP, B.A., J.D., Adjunct Professor of Law

Faculty Emeriti

WILLIAM BRANTLEY AYCOCK, B.A., A.M., J.D., LL.D., Kenan Professor of Law Emeritus
KENNETH S. BROWN, B.S., J.D., Henry Brandis Professor of Law Emeritus
LAURA N. GASAWAY, B.A., M.L.S., J.D., Paul B. Eaton Distinguished Professor of Law
PAUL HARDIN, B.A., J.D., Professor of Law Emeritus
PAUL G. HASKELL, A.B., J.D., LL.B., William Rand Kenan, Jr. Professor of Law Emeritus
JOSEPH JOHN KALO, B.A., J.D., Graham Kenan Professor of Law Emeritus
RONALD CHARLES LINK, A.B., M.A., J.D., Dan K. Moore Distinguished Professor of Law Emeritus
ARNOLD H. LOEWY, B.S., J.D., LL.M., Graham Kenan Professor of Law Emeritus
RUTH ANN MCKINLEY, B.A., M.Ed., J.D., Clinical Professor of Law Emeritus
RICHARD A. ROSEN, B.A., J.D., Professor of Law Emeritus