Many thanks to Ted Claypoole for his leadership of the best committee in the Business Law Section! Of course, he isn't going away. In fact, he will help host our next Cyberspace Law Institute in his new home town of Atlanta, and he has volunteered to edit an exciting new book (see more below). We also owe much gratitude to Lois Mermelstein, who has edited our newsletter for the past several years, and congratulate her as the new chair of the BLS Technology Committee.

It was great to see many of you in Chicago for the Annual Meeting, where we sponsored six thought-provoking CLE programs. If you were not able to attend them, you can access the program materials here and the audio recordings. We also had a full slate of subcommittee/task force meetings with lively discussions that generated project ideas—a few of which have been submitted as CLE program proposals for the BLS Spring Meeting.

We are in the midst of planning for the 2018 Cyberspace Law Institute and Winter Working Meeting and welcome your proposals. A great way to convince your boss to send you to Atlanta in the middle of winter (January 26-27) is to explain that you must go because you have been selected as a CLE presenter or roundtable leader. The audience at the meeting is cyber lawyers, so propose a 30 to 45-minute talk that addresses something cutting edge. We love to hear about new technologies and speculative legal theories. Proposals are due by Friday, October 14.

The two books Cyberspace Law Committee published in August are selling well. You can purchase *Guide to Cybersecurity Due Diligence in M&A Transactions* and *Handbook on Global Social Media Law for Business Lawyers* through these links. We have three more books in the works. If you would like to contribute to a book on AI and machine learning, contact editor Ted Claypoole. To add your knowledge to a book about drafting and negotiating effective cloud computing agreements, please email editor Lisa Lifshitz. Our new book *Electronic Payment Systems: Law and Technology*, edited by Ed Morse, will be out soon.

And if you would like to contribute material to the Cyberspace Law newsletter, please reach out to Tom Kierner, the committee’s new Communications Director.

These are just a few ways to share your expertise and leadership not only with cyberspace lawyers but others who rely on the Cyberspace Law Committee’s in-person programs, publications, checklists, webinars, and more. See some of our projects in the works below. And reach out to Vice-Chair Cheryl Burtzel, Program Chair Ed Morse, or me with your ideas. We look forward to hearing from you—and to seeing you in Atlanta!

Cheryl Dancey Balough
Chair, Cyberspace Law Committee

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From the Electronic Payments and Financial Services Subcommittee

*Co-chairs Sarah Jane Hughes and Steve Middlebrook*
The Electronic Payments and Financial Services Subcommittee had a successful meeting in Chicago. We were happy to see several new faces join us. The committee discussed a number of recent legal developments. A recent Nebraska Supreme Court ethics opinion regarding when and how lawyers may accept payment of fees in Bitcoin generated a lot of response. The opinion, which allows payment of fees in virtual currency, was viewed favorably, but some of the restrictions place on attorneys, like the requirement to immediately convert bitcoin received into dollars, drew some criticism. Several people expressed interest in working on a project to look at the ethical issues raised when attorneys accept bitcoin or hold virtual currency in escrow for clients. Cyberspace members interested in the subcommittee's work should contact Sarah Jane Hughes (sjhughes@indiana.edu) or Steve Middlebrook (smiddlebrook@wcsr.com).

From the Enterprise Technology Subcommittee

Co-Chairs Candace Jones and Isvara Wilson

We would like to take this opportunity to thank Cheryl Burtzel (aka Austin Cheryl) for her leadership co-chairing the Enterprise Technology Subcommittee during the past two years. Cheryl contributed tremendously to the substance of the Subcommittee's work and to providing a platform for that work through Committee and Section programming.

In Chicago last month, the Subcommittee contributed its meeting slot to one such program. Bill Denny organized "Vendor Risk: The Weakest Link in Your Cybersecurity Strategy." The well-received program featured Subcommittee members Paige Boshell and Isvara Wilson, along with speakers Tracey Hawkins and Michael Richmond. The dialogue among the panel illustrated effectively the push and pull between vendors and purchasers on information security matters. If you were not able to attend, check out the audio recording and program materials on the Section website.

In future posts, we will update the Committee about new Subcommittee projects.

From the Robotics and Artificial Intelligence Subcommittee

Co-chairs Lisa Lifshitz and Richard C. Balough

The new Robotics and Artificial Intelligence Subcommittee's purpose is to explore issues relating to robotics and artificial intelligence that have an impact on business clients. We are currently working with Ted Claypoole to identify chapter authors for a new book on the Law of AI and Smart Machines. We also welcome ideas for additional presentations, webinars, and publications. If you would like to participate in the committee or any of its activities, please contact either of the co-chairs, Lisa R. Lifshitz (lifshitz@torkinmanes.com) or Richard C. Balough (rbalough@balough.com).

Uniform Regulation of Virtual Currency Update

Sarah Jane Hughes has been appointed reporter for the Uniform Law Commission's Act Adopting UCC Article 8 Protections for Users of Virtual Currency Custody Services (name subject to change), a companion act to the Uniform Regulation of Virtual Currency Business Act that the Uniform Law Commission approved in July 2017. The ULC will hold a meeting of the Drafting Committee for the new act in the early part of 2018 and is expected to consider approval at its July 2018 Annual Meeting.

The Uniform Law Commission's new Uniform Regulation of Virtual-Currency Businesses Act has been released to the public. Many thanks to CLC members who served as Observers and to Steve Middlebrook who served as the ABA Advisor for the project and Richard Field who served as the American Law Institute's Advisor.
SEC Takes First Enforcement Action Against Initial Coin Offerings

Steve Middlebrook, Womble Carlyle (smiddlebrook@wcsr.com)

On September 29th, the SEC took its first enforcement action related to an Initial Coin Offering ("ICO"), filing suit against RECoin. ICOs involve the sale of tokens to raise funds to support the development of a new product or service. The tokens are redeemable in the future for the product or service that is developed. Frequently, however, it is difficult to tell actually what you are getting when you buy a token. In addition, they are often advertised primarily as investment vehicles, sometimes with unrealistic profit projections. ICOs have become a popular method to raise capital, generating over a billion dollars so far in 2017.

RECoin claimed to be selling a token backed by real estate investments and it also offered a token which was supposedly backed by diamonds. The SEC alleges that RECoin's tokens are unregistered securities sold in violation of federal law and that the operation as a whole was basically a sham in that the company didn't actually hold any real estate or diamonds.

Lawyers monitoring the ICO world have been expecting an enforcement action to come based on guidance the SEC issued in July related to the DAO. The DAO was a Decentralized Autonomous Organization running on the Ethereum network that sold tokens to investors and then allowed those investors to vote on which projects the DAO fund. Unfortunately, the DAO got hacked and one third of the funding it raised was stolen. Tables were turned, however when the good guys hacked the hackers and recovered the stolen funds at which point the DAO was liquidated. While it took no enforcement action against the DAO, the SEC concluded that its tokens were a security under the 1946 Supreme Court decision in Howey. Such tokens need to be registered with the SEC and to comply with its regulations. Under Howey, a contract is a security if it involves:

1. An investment of money
2. In a common enterprise
3. With an expectation of profits
4. Derived from the efforts of others

In the SEC's view, the DAO and RECoin both met the Howey test and were securities which need to be registered and comply with SEC regulations. It appears that a number of recent ICOs also met the Howey test and so no one should be surprised to see additional SEC enforcement actions in this area.

Suggested reading on ICOs:
- SEC Press Release on RECoin
- SEC Complaint against RECoin
- SEC Report on the DAO

Committee Winter Meeting in Atlanta

Plans are underway for our Committee's 2018 winter meeting, to be held at the Georgia Tech Global Learning Center in Atlanta on January 26-27, 2018. And be sure to join us a little early - for what promises to be a lovely welcome reception on January 25, hosted by our colleague Ted Claypoole and his firm Womble Carlyle.
We plan to follow a similar format for the upcoming Cyberspace Law Institute and WWM as has been utilized in recent years. That is, speakers will present 30 to 45-minute CLE programs on cutting-edge topics of special interest to cyberspace lawyers. There also will be time set aside for our subcommittees to meet and to work on committee projects. Finally, we have heard your input asking us to bring back the Roundtables portion of the conference, so we plan to add some roundtable time as well.

While we have received a few proposals already, please remember to submit your proposals for:

1. topics for a CLE presentation you would like to make at the January meeting or
2. a roundtable discussion topic you would like to lead.

Proposals for the 2018 Cyberspace Law Institute and Winter Working Meeting are due no later than October 14, 2017.

We look forward to seeing you in Atlanta! Registration will open by early November.