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## BUSINESS FACULTY NOTES

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**Professor Iris J. Goodwin's** article, "Why Civil Law Countries Might Forego the Individual Trustee: Provocative Insights from the New-to-the-Fold," will appear in *The Worlds of the Trust*, a volume to be published by Cambridge University Press in spring 2012. This paper was selected in a competitive review for presentation at a conference—The Worlds of the Trust/La fiducie dans tous ses États—held on September 24, 2010, at the Quebec Research Centre of Private and Comparative Law, McGill University. Professor Goodwin additionally authored an entry in *Blackwell's Encyclopedia of Political Thought* on the "Investiture Contest." This encyclopedia will be published in hard copy and online. Professor Goodwin was also a visiting scholar at St. John's School of Law on October 4, 2010, and at Villanova Law School on October 28, 2011, and in each instance spoke on a topic related to this article.

Professor Goodwin is also a member of the Organizing Committee for the "Symposium on Animals, Ethics, and Law," at which she will be a panelist. The symposium is scheduled for March 1-3, 2012, and is co-sponsored by the Howard H. Baker Jr. Center for Public Policy, along with the University of Tennessee's College of Arts and Sciences, College of Law, and College of Veterinary Medicine.



**Professor Joan M. Heminway** became President of the Southeastern Association of Law Schools (SEALS) this past summer, where she spoke at the organization's annual meeting on a panel entitled "Current Issues in Corporate Finance Law" and participated in a discussion group entitled "Corporate Law," which examined the enactment and implementation of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Professor Heminway will also serve on the SEALS program formatting committee and act as a mentor for junior faculty members at other schools. Professor Heminway's new duties with SEALS followed her one-year term as President of The University of Tennessee-Knoxville Faculty Senate. The theme for her Senate term was "Focus on

Faculty" and celebrated the teaching and outreach efforts of The University of Tennessee's Knoxville and Tullahoma-based faculty.

Professor Heminway's book chapter, entitled "Disparate Notions of Fairness: Comparative Insider Trading Regulation in an Evolving Global Landscape," was recently published by Westview Press in *International Law: Contemporary Issues and Future Developments*. Professor Heminway's article, "Sustaining Reform Efforts at the SEC: A Progress Report," appeared in the April 2011 issue of the "Banking & Financial Services Policy Report," a peer-edited journal published by Aspen Publishers. In addition, Professor Heminway presented her paper, "Proceed at Your Peril: Crowdfunding and the Securities Act of 1933," at the Law and Society Association's annual meeting and the Canadian Law and Economics Association's conference. The paper, coauthored with recent University of Tennessee College of Law Alumnus Ryan Hoffman, analyzes legal issues relating to a novel, internet-based venture finance model. Professor Heminway also participated in a panel discussion at the Hamline University School of Law's October symposium on "Reforming the Secondary Mortgage Market," at which she contributed a paper, entitled "The SEC's New Line-Item Disclosure Rules for Asset-Backed Securities: MOTS or TMI?"

Professor Heminway additionally gave a talk at the recent 2011 Applied Legal Storytelling Conference entitled "The Truth is Not Always Stranger (and May Be More Useful): Current Events Storytelling in Summative and Formative Law Student Assessment," which focused on engaging law students in constructing legally relevant stories in assignments and examinations. Additionally, Professor Heminway participated in a roundtable on teaching corporate finance at "The Conglomerate," a weblog focusing on business law issues. She served as a guest blogger for "The Conglomerate," providing her analysis of the Dodd-Frank Wall Street Reform and Consumer Protection Act and institutional reform at the Securities and Exchange Commission.



**Professor Amy Hess** recently participated as a commentator at a symposium, “The Uniform Probate Code: Remaking of American Probate Law,” at the University of Michigan Law School. At the symposium, which was sponsored by the ACTEC Foundation, Professor Hess commented on Professor John H. Martin’s paper on informal estate settlement and Professor Louise Lark Hill’s paper on the use of exculpatory clauses. Professor Hess was selected to comment because of a paper she is currently writing, tentatively called “The Myth of Uniformity,” which explores the reasons why state legislatures

make changes to uniform laws in trusts and estates before enacting them. Professor Hess is also working on the second edition of her book, *An Introduction to Trusts and Estates*, scheduled for publication in early 2013, and continues to publish annual updates to the multi-volume treatise, BOGERT & HESS, THE LAW OF TRUSTS AND TRUSTEES.

Professor Hess is the ABA Advisor to a Committee of the Uniform Laws Commission (“NCCUSL”) that is charged with drafting a uniform powers of appointment act and was recently appointed a Books & Media Editor of the ABA Real Property, Trusts & Estates Section. During the spring semester, Professor Hess will teach a course on Estate Planning in the University of Alabama’s distance LL.M. in Taxation program, which she has done for the last two years.



**Professor Becky Jacobs’s** article, “Volunteers: The Power of Community Mediation,” was recently published in the *Nevada Law Journal* as part of a symposium on “Conflict Resolution and the Economic Crisis.” Two other pieces by Professor Jacobs also have recently been published: “Unbound by Theory and Naming: Survival Feminism and the Women of the South African Victoria Mxenge Housing and Development Association,” 26 BERK. J. GENDER L. & JUSTICE 19 (2011), and “The Girl From Ipanema at Risk: Women’s Health and the Physical Environment,” a group publication in the

Brazilian journal, *Diversitatis* (Núcleo de Inclusão Social). In the Spring, Professor Jacobs organized the Regional ABA Representation in Mediation Competition,

which was held at the University of Tennessee. In conjunction with the competition, she organized and moderated a CLE/CME panel discussion entitled “Master Mediators – Lessons from the Trenches.”

Additionally, Professor Jacobs participated as an instructor in the South Africa Black Lawyers Association Commercial Law Education Project and traveled to Johannesburg in August to work with a group of practicing South African lawyers to develop their advanced transactional practice skills. While in South Africa, Professor Jacobs met with members of the legal writing faculty at the University of Pretoria to discuss ways to improve legal writing in large student courses and possible collaborative projects between the University of Tennessee and the University of Pretoria.

Closer to home, Professor Jacobs serves as an organizer for the new Interdisciplinary Discussion Forum for Energy and the Environment on the University of Tennessee campus. The forum, which is jointly sponsored by the University of Tennessee’s College of Agricultural Sciences and Natural Resources, College of Arts and Sciences, College of Business, and College of Law, is designed to bring together faculty and students to engage in interdisciplinary debate and discussion on current topics in environmental and energy science and policy. Professor Jacobs also is on the Watershed Minor Executive Committee as part of a campus-wide effort to create an undergraduate and graduate Minor for Watershed studies.



**Professor George Kuney** has been invited to publish a current work-in-progress on the recent U.S. Supreme Court case of *Stern v. Marshall* in the 2011 edition of *Norton Annual Survey of Bankruptcy Law*. Professor Kuney’s article details the dramatic restriction on bankruptcy court jurisdiction imposed by that decision and its ramifications, including an increase in the workload of already overloaded district court judges, the constitutionality of the federal magistrate program, and the potential for narrower interpretations of the bankruptcy court’s “all writs” powers in the future, a subject of another

work in progress to be completed this spring. He will speak on these issues as part of the 24<sup>th</sup> Annual Norton Bankruptcy Litigation Institute program in Las Vegas in March 2012.

Additionally, the *California Business Law Reporter* recently published Professor Kuney's article, "Implied-in-Fact Contracts and Idea Submission in California," 33 CAL. BUS. L. RPTR. 4 (July 2011). The article addresses, among other things, the effect of the 9th Circuit's *Montz v. Pilgrim Films and Television* decision, which found that the Copyright Act does not preempt a plaintiff's state law "Desny" claim of implied in fact contract for idea submissions in the entertainment industry. The defendants in *Montz* have filed a petition for certiorari, pointing out that the United States District Court for the Southern District of New York has recently reached the opposite conclusion.

Additionally, Professor Kuney published the third edition of his books, *The Elements of Contract Drafting* and *Contracts: Transactions and Litigation*. The new edition of *Elements*, the text for the College of Law's Contract Drafting classes, features an expanded and revised discussion of representations and warranties, events of default, and remedies based upon his work over the last few years. The new edition of *Contracts* incorporates three additional chapters on UCC Article 2 matters, reflecting the migration of this material from the University of Tennessee College of Law's Commercial Law course to its 1L Contracts course.



**Professor Michelle Kwon's** article, "Scratching Our Heads Over *Cooper v. Commissioner*," was recently published by Tax Analysts, the country's leading publisher dedicated to informing public policy, government, academic, and private practice tax experts. The article explains why the tax court should have denied jurisdiction in a recent tax whistleblower case and explores the implications of the court's decision and some of the questions that still remain.

Professor Kwon joined the University of Tennessee College of Law faculty in 2011 after three years at the Texas Tech University School of Law, where she taught corporate tax, partnership tax, state and local tax, accounting for lawyers, and transactional practice. Before entering academia, she was a partner in the Dallas office of Thompson & Knight LLP, where she concentrated her practice in corporate tax. She was also a senior attorney in the IRS's Office of Chief Counsel for two years, where she represented the IRS in the U.S. Tax Court with specific emphasis on cases involving foreign currency option tax shelters and cases involving individuals and small businesses. During the 2011-2012

academic year, Professor Kwon will teach the following courses: Contracts I, Income Taxation of Business Organizations, and Tax Practice and Procedure.

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**Professor Don Leatherman's** article, entitled "Section 1.1502-13(c)(6)(ii)(C): Limiting Gain Duplication on Member Stock," was selected for publication in "Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings 2011" (Practicing Law Institute 2011). Professor Leatherman is also publishing a book chapter, entitled "A Survey of the Federal Income Tax Consequences of DaimlerChrysler Combination," as part of a book about the DaimlerChrysler combination written primarily by members of the University

of Tennessee College of Law faculty.

At a meeting of the tax section of the American Bar Association, Professor Leatherman moderated and spoke on a panel entitled "A Survey of § 351" and spoke on a panel entitled "Sections 351(e) and 368(a)(2)(F)." Professor Leatherman also spoke during an ABA teleconference on "Consolidated Tax Return Basics" and moderated a panel at a tax section meeting on whether and to what extent the separate return limitation rules should be modified. Professor Leatherman additionally led an 8-hour continuing legal education program on S-corporation taxation for the accounting firm Dixon Hughes Goodman LLP, and, at the University of Tennessee College of Law, he debated a proponent of the FairTax in a program presented by the Federalist Society. Finally, Professor Leatherman participated in a panel for the Practicing Law Institute, reviewing current developments for consolidated groups at its mergers and acquisitions seminar in Los Angeles.



**Professor Robert M. Lloyd** recently retired from his full-time position at the College of Law following the spring 2011 semester. He intends to continue teaching a reduced number of classes in the spring as an Emeritus Professor of Law. Professor Lloyd came to the University of Tennessee in 1983 after a career in commercial law with the Los Angeles firm of Sheppard, Mullin, Richter & Hampton LLP. Professor Lloyd was instrumental in developing the College of Law's concentration in business transactions and served as the first director of the college's Center for Entrepreneurial Law. Since joining the University of Tennessee College of Law faculty, he has twice been honored with the Student Bar Association's Outstanding Teaching Award and also the Harold C. Warner Outstanding Teacher Award. In 1996, he received the UTK National Alumni Outstanding Teacher Award.

Professor Lloyd is an invaluable asset to the law school community and will be greatly missed by faculty and students alike. The *Transactions* staff would like to thank Professor Lloyd for his countless contributions to the law school and his genuine dedication to all of his many students. We wish him the very best in his retirement.



**Professor Alex Long's** latest article, "Employment Retaliation and the Accident of Text," will be published in volume 90 of the *Oregon Law Review*, and his article, "Professionalism and Matthew Shardlake," was recently selected for publication by the *UCLA Law Review Discourse*, the online version of the *UCLA Law Review*. Professor Long's article, "Lawyers Intentionally Inflicting Emotional Distress" will be published in volume 42 of the *Seton Hall Law Review*. In addition, Long was recently interviewed by the *Knoxville News Sentinel* for a reporter's blog about the Southeastern Conference. The interview addressed threats by Baylor University to sue the SEC for tortious interference, based on the SEC's recent invitation to Texas A&M to join the conference. Robert Siegel also interviewed Professor Long on NPR's "All Things Considered" in connection with Long's study of judicial citations to lyrics of popular

songs. The article that he wrote as part of the “Dylan and the Law” conference at Fordham University Law School will be published in an upcoming issue of the *Fordham Urban Law Journal*.

Additionally, Professor Long attended the 37th annual American Bar Association National Conference on Professional Responsibility, which was held in Memphis. The conference brought together leading experts, scholars, and practitioners in the field of attorney professional conduct, and included sessions on current issues in attorney discipline, malpractice, and proposed revisions to professional conduct rules. Professor Long also represented the University of Tennessee College of Law at this past summer’s annual meeting of the Southeastern Association of Law Schools (SEALS), where he spoke on a panel addressing “The Lawyer-Judge Bias.”



*Lawyer* (Thomson West 2010).

**Professor Carl Pierce**, the W. Allen Separk Distinguished Professor of Law, continues to serve as Executive Director of the Howard H. Baker Jr. Center for Public Policy, a nonpartisan institute devoted to education and scholarship concerning public policy and civic engagement. Professor Pierce has been teaching at the College of Law since 1972, and served as Director of the Clayton Center for Entrepreneurial Law from 1997 to 2000. Professor Pierce, along with co-authors Professor Judy Cornett and Professor Alex Long, published the book, *Professional Responsibility in the Life of the*



**Professor Thomas E. Plank**, the Joel A. Katz Distinguished Professor of Law, was recently selected as “Quest Scholar of the Week,” an award given by the UTK Office of Research to recognize the recent important research, scholarship, and creative accomplishment of faculty members. His article, “Why Bankruptcy Judges Need Not and Should Not Be Article III Judges,” was cited by Justice Antonin Scalia in his concurring opinion in *Stern v. Marshall*. That article originally appeared in the *American Bankruptcy Law Journal* in 1998. Professor Plank’s article, “Crisis in the Mortgage Finance

Market: The Nature of the Mortgage Loan and Regulatory Reform,” 12 TENN. J. BUS. L. 135 (2011), was published as part of A Multidisciplinary Event: The Clayton Center for Entrepreneurial Law Behavior and Business Law Conference. Additionally, Professor Plank represented the University of Tennessee College of Law at this summer's annual meeting of the Southeastern Association of Law Schools (SEALS), where he moderated the “New Scholars Workshop.”

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**Professor Gary Pulsinelli** recently presented a UT Science Forum to the university community on the topic, “Muggles vs. Goblins: Who Should Own Creative Property?” Professor Pulsinelli was also honored by the College of Law’s Moot Court Board at the group’s annual banquet, where he received the Forrest Lacey Award. In addition, Professor Pulsinelli serves on the technology committee for the Southeastern Association of Law Schools (SEALS).



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**Professor Paula Schaefer** presented a continuing legal education program, "Confidentiality Ethics," to the Tennessee Attorney General's Office in Nashville. Professor Schaefer also gave a presentation, "Attorney Ethics: Hot Topics and Updates 2011," at the 40th Annual Solid/Hazardous Waste Conference and Exhibition in Gatlinburg, a program sponsored by the Tennessee Department of Environment and Conservation. In addition, Professor Schaefer attended the 37th annual American Bar Association National Conference on Professional Responsibility, which was held in Memphis. The conference brought together leading experts, scholars, and practitioners in the field of attorney professional conduct, and included sessions on current issues in attorney discipline, malpractice, and proposed revisions to professional conduct rules. Professor Schaefer also represented the University of Tennessee at this past summer’s annual meeting of the Southeastern Association of Law Schools (SEALS), where she spoke on a panel addressing “Junior Faculty Challenges.”

Additionally, Professor Schaefer has been invited to speak at the annual meeting of the Association of American Law Schools, at its “Workshop on the Changes in Law Practice: Implications for Legal Education.” The session is entitled “Technological Innovation in Practice & Education,” and presenters will explore the impact of technology on practice and how the academy can address this issue in teaching and scholarship. Specifically, Professor Schaefer will discuss her E-Discovery class and her forthcoming article in the *Nevada Law Journal* concerning E-Discovery pedagogy.



**Associate Dean Gregory M. Stein** spoke at Georgetown University Law Center in November 2011 as part of the Georgetown Environmental Law and Policy Institute’s Annual Conference on regulatory takings law. His talk was entitled “*Penn Central* Issues: *Palazzolo* and Reasonable Investment-Backed Expectations,” and his paper and others from the conference will be published in the *Vermont Law Review* in the spring of 2012. Dean Stein also spoke at the University of Florida College of Law in October 2011 on the subject, “*Palazzolo* Ten Years Later.” His book, *Modern Chinese Real Estate Law: Property Development in an Evolving Legal System*, will be published in 2012 by Ashgate Publishing. Additionally, Dean Stein represented the University of Tennessee at this past summer’s annual meeting of the Southeastern Association of Law Schools (SEALS), where he spoke on a panel entitled “Expanding the First-Year Curriculum: Choices in the First Year” and participated in a discussion group on “Property and the New Federalism.”



**Professor Maurice Stucke**’s latest article, “Crony Capitalism and Antitrust,” has been accepted for publication in the *CPI Antitrust Chronicle*. His article, “Reconsidering Antitrust’s Goals,” was selected for publication by the *Boston College Law Review* and is scheduled for publication during the spring of 2012. His article about the AT&T/T-Mobile transaction, which he co-authored with attorney Allen P. Grunes, will be published by the *Federal Communications Law Journal*. Stucke and Grunes were recently interviewed on Lawyer2Lawyer, a legal affairs podcast, to discuss the antitrust lawsuit brought by

the U.S. Department of Justice to block the proposed merger. Professor Stucke was quoted at CNN-Money.com on the U.S. Department of Justice's challenge to this proposed merger, and was also quoted in an article on the Law360 website about the separate antitrust lawsuit brought by Sprint to challenge the merger. In addition, a chapter by Professor Stucke, entitled "Are People Self-Interested? The Implications of Behavioral Economics on Competition Policy," was published in the book, *More Common Ground for International Competition Law* (Josef Drexel et al., eds. 2011). His chapter, "Am I a Price-Fixer? A Behavioral Economics Analysis of Cartels" was published in the book, *Criminalising Cartels: A Critical Interdisciplinary Study of an International Regulatory Movement* (Caron Beaton-Wells & Ariel Ezrachi eds., 2011).

Professor Stucke was invited to participate in an American Antitrust Institute antitrust training program for judges, antitrust officials, and lawyers in the U.S. and in developing countries last May. Over the summer he also spoke at the Southeastern Association of Law Schools' 2011 Annual Conference on the "Workshop On Business Law: Dodd-Frank One Year Later," and presented a paper on behavioral economics and dynamic competition at Israel's Haifa University.

Additionally, Professor Stucke has been invited to present a paper at the annual meeting of the Association of American Law Schools. Professor Stucke and his co-panelists will discuss the influence of behavioral economics on antitrust law and policy, and the papers from the program will be published in the *Journal of Law, Economics and Policy*. Professor Stucke has been invited to speak at the annual conference of the Swedish Competition Authority in Stockholm, on the topic of behavioral economics and consumer protection. Following that talk, he will give a presentation to the Swedish Competition and Market Law Association on the topic, "Current Trends in U.S. Antitrust Practice and Policy."



**Professor Kris Anne Tobin** recently published an online book review of *Legal Research Illustrated* (9th edition), by Steven M. Barkan, Roy M. Mersky, and Donald J. Dunn. The book review was published by the Research Instruction and Patron Services section of the American Association of Law Libraries. Professor Tobin joined the Law Library faculty in 2010 after serving as a reference librarian at Roane State Community College for three years. In addition to providing reference services and teaching information literacy skills, Professor Tobin was responsible for the Edgar R. & Kay Bowers Law Library and three off-site law collections for the ABA-approved paralegal studies program at Roane State. Prior to Professor Tobin's work as a reference librarian, she practiced law for ten years, specializing in the areas of taxation, business law, estate planning, and probate. Professor Tobin holds an LL.M. in Taxation from William Mitchell College of Law, and her research interests include comparative tax law, educational learning theories, and legal research pedagogy.

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