To Teach is to Learn Twice: Fostering Excellence in Transactional Law and Skills Education

Sixth Biennial Conference on the Teaching of Transactional Law and Skills
Emory University School of Law; June 1-2, 2018

Opening Remarks
Sub Payne

Redlining is a Skill
Stacey Bowers

Using Transactional Exercises for First-year Learning Assessment
Carol Goforth & Will Foster

The Creative Aspect of Transactional Lawyering: Structuring the Transaction and Drafting the Agreement to Resolve a Legal Issue
John F. Hilson & Stephen Sepinuck

Client Communication: Drafting a Client Issues Memo
Larry Platt

Mergers & Acquisitions with Props & Pantomime
William Birdthistle

The Value of Document “Treasure Hunts” in Teaching Transactional Law and Skills
Joan MacLeod Heminway

Teaching Contract Law, Terms, and Practice Skills Through Problems
Nadelle Grossman

Adding Risk Assessment and Negotiation to a Drafting Course
Richard K. Neumann Jr.

Teaching Law Practice Management in a Transactional Clinic Using Student-Led Projects
Christopher D. Heard

Does Trump Have the Best Words? Using the David Dennison/Peggy Peterson Confidentiality Agreement to Teach the Realities of Contract Drafting in Practice
Elizabeth August & Sue Payne

Teaching the Basics of Contract Drafting, Corporate Governance & Transactional Law in One Sentence
Neil J. Wertelib

Where Do We Go From Here?
Joan MacLeod Heminway, Howard Katz & George Kuney

Teaching Communication Skills in Transactional Simulations
Eric J. Gouvin, Katherine M. Koops, James E. Molterino, Carol E. Morgan & Carol D. Newman

What Can Students Teach Other?
Stacey Bowers, Brain Krumm & Willow Tracy

(Continued on Next Page)

The Clayton Center for Entrepreneurial Law

The University of Tennessee
Knoxville
College of Law
HAPPILY EVER AFTER: FOSTERING THE ROLE OF THE TRANSACTIONAL LAWYER AS STORYTELLER
Susan M. Chesler & Karen Sneddon

IMPLEMENTATION NEGOTIATION: A TRANSACTIONAL SKILL THAT BUILDS ON AND TRANSFORMS CLASSIC NEGOTIATION THEORY
Tina L. Stark

FROM THE COURTROOM TO THE CLASSROOM: HOW A LITIGATOR BECAME A TRANSACTIONAL DRAFTING PROFESSOR
Amy Bauer

TEACHING CONTRACT DRAFTING BY “FLIPPING THE CLASSROOM,” USING FAMILIAR LAW SCHOOL TECHNIQUES
D.C. Toedt III

IS A TRANSACTIONAL CLINIC THE ANSWER TO TRAINING TRANSACTIONAL ATTORNEYS
Tyra Blew, Carmen Huertas-Noble & Melissa Risser

STUDENTS IN A MENU OF LAW DEGREES PROVIDE CONTEXT FOR UNDERSTANDING AND LEARNING THE TRANSACTIONAL ATTORNEY’S ROLE
Celeste M. Hammond

CONTEXT INTEGRATION AND THE “BIG THREE” QUESTIONS
Andrew Kaufman

CONTEXT MATTERS WHEN MOVING A SKILLS WORKSHOP FROM THE CLASSROOM TO ONLINE
Virginia M. Harding

WHAT ARE SOME DIFFERENT APPROACHES TO TEACHING TRANSACTIONAL LAWYERING SKILLS? BUILDING BUSINESS AND FINANCIAL LITERACY IN LAW STUDENTS
Mary Ann Robinson

HOW TO DESIGN AND CONDUCT NEGOTIATION SIMULATIONS IN CONTRACT DRAFTING COURSES
Naveen Thomas

TRANSACTIONAL RISK AND CONTRACTUAL RISK ACCOMMODATION IN CONTRACT DRAFTING: MORE THAN AN INDEMNITY PARAGRAPH
Harold Weston

TRANSACTIONAL SKILLS EDUCATION: MANDATED BY THE ABA STANDARDS
Tina L. Stark
EDITORIAL BOARD

WILLIAM BEASLEY
Editor-in-Chief

DEREK TERRY
Managing Editor

SAMUEL HENNINGER
Executive Editor

JOHN ADJENT
Executive Editor

BRENNAN M. FOY
Publications Editor

ADELINA S. KEENAN
Symposium Editor

KENDRIA LEWIS
Senior Commentary Editor

SARAH E. GUTHRIE
Acquisitions Editor

JOSEPH GONZALEZ
Research Editor

GRANT WILLIAMSON
Acquisitions Editor

CAMPBELL COX
Research Editor

KELEY JONES
Research Editor

BRIANNE ZIMMERMAN
Research Editor

JACOB FARMER
Research Editor

LAUREN HUGHES
Research Editor

BRADFORD J. MONROSE
Research Editor

DANIEL CHOE
Marketing and Solicitations Editor

KENNEDY KELLY
Marketing and Solicitations Editor

STAFF

DIXON BABB
Wade Blair
Monique Brown
Duncan Bryant
Taylor Bullard
Colleen Conboy
Mariel Cooper
Andrew Cox
Savannah Darnall

JORDAN FERRELL
M. Tanner Hamilton
Andrew Harrison
Mary Beth Hendershot
Drew Hove
Madeleine Leonard
Addie Martin
Zac Mason

D. TYLER MUNGER
Sallie Papajohn
Clint Pitts
Phil Redd
Kaitlyn Sell
Alice Rose Sherman
Nicole Williams
Matthew Womack
Bei Yang

FACULTY ADVISOR

GEORGE W. KUNEY
LINDSAY YOUNG DISTINGUISHED PROFESSOR OF LAW
DIRECTOR, THE CLAYTON CENTER FOR ENTREPRENEURIAL LAW
ISSN 4486-1457. Transactions: The Tennessee Journal of Business Law is published semi-annually and edited by students of the University of Tennessee College of Law. The publisher is The Tennessee Journal of Business Law, Inc., c/o The Clayton Center for Entrepreneurial Law, 1505 W. Cumberland Ave., Knoxville, Tennessee 37996-1810. All claims of non-receipt of an issue should be made within six months of the date of publication if claimant wishes to avoid paying for the missing issue. To order back issues, contact William S. Hein & Co., Inc. at 2350 North Forest Road, Getzville, New York 14068, or call toll free at (800) 828-7571. POSTMASTER: Send address changes to: Transactions: The Tennessee Journal of Business Law, c/o The Clayton Center for Entrepreneurial Law, 1505 W. Cumberland Ave., Knoxville, Tennessee 37996-1810. The journal is available free online and print editions may be ordered at http://trace.tennessee.edu/transactions.

The preferred Bluebook abbreviation for the journal title is TENN. J. BUS. L.
THE UNIVERSITY OF TENNESSEE

COLLEGE OF LAW

UNIVERSITY ADMINISTRATION

JOSEPH DIPETRO, B.S., D.V.M., M.S. .................................................. President
WAYNE T. DAVIS, A.B., M.S., Ph.D. .................................................. Chancellor

COLLEGE OF LAW ADMINISTRATION

MELANIE D. WILSON, B.A., J.D. .................................................. Dean and Lindsay Young Distinguished Professor of Law
ALEX B. LONG, B.A., J.D. .............................................................. Associate Dean for Academic Affairs and Doug Blaze Distinguished Professor of Law
TERI D. BAXTER, B.A., J.D. .................................................. Associate Dean for Faculty Development and Professor of Law
SCOTT CHILDS, B.S., J.D., M.L.S. .................................................. Associate Dean for Library and Technology Services and Professor of Law
KATRICE J. MORGAN, B.A., J.D. .................................................. Assistant Dean for Student Affairs and Director of Diversity and Inclusion
E. JOY RADICE, A.B., J.D. ............................................................. Director of Clinical Programs and Associate Professor of Law
PENNY J. WHITE, B.S., J.D., J.L.M. .................................................. Director of the Center for Advocacy and Dispute Resolution and Elvin E. Overton Distinguished Professor of Law

GEORGE W. KUNEY, B.A., J.D., M.B.A. ........................................ Director of the Clayton Center for Entrepreneurial Law and Lindsay Young Distinguished Professor of Law and Director of the LLM in United States Business Law

MICHELLE T. COSBY, B.A., M.L.S., J.D. ........................................ Associate Dean of the Law Library and Associate Professor
STEPHEN J. EVANS, B.S., M.A. .................................................. Senior Director of Development
TERESA L. PETERSON, B.S. .......................................................... Assistant Dean for Finance, Administration, and Operations
MARY ANN JAMES ................................................................. Human Resources and Administration Manager

COLLEGE OF LAW FACULTY

Dwight L. Aarons, B.A., J.D., Associate Professor of Law
Eric F. Amarante, B.A., J.D., Assistant Professor of Law
Brad Areheart, B.A., J.D., Associate Professor of Law
Wendy A. Bach, B.A., M.A., J.D., Associate Professor of Law
Benjamin H. Barton, B.A., J.D., Helen & Charles Lacke Distinguished Professor of Law
Doug Blaze, Art Stolnitz & Elvin E. Overton Distinguished Professor of Law and Director of the Institute For Professional Leadership
Robert C. Blitt, B.A., M.A., J.D., L.L.M., Professor of Law
Zack Buck, Assistant Professor of Law and Wilkinson Junior Research Professor
Carol M. Collins, B.A., M.S., Head of Technical Services and Associate Professor
Judy M. Cornett, B.A., J.D., M.A., Ph.D., College of Law Distinguished Professor of Law
Eliza Fink, Assistant Professor and Digital Resources & Services Librarian
Iris J. Goodwin, A.B., Ph.D., J.D., Associate Professor of Law
Joan Macleod Heminway, A.B., J.D., Rick Row Distinguished Professor of Law
Michael J. Higdon, B.A., M.A., J.D., Associate Professor of Law and Director of Legal Writing
Becky L. Jacobs, B.S., J.D., Waller Lansden Distinguished Professor of Law
Lucy Jewel, B.A., J.D., Professor of Law
Brian Krumm, B.A., M.P.A., J.D., Associate Professor of Law
Michelle Kwon, B.B.A., J.D., Associate Professor of Law
Don A. Leatherman, B.A., J.D., J.L.M., W. Allen Separk Distinguished Professor of Law
Sibyl Marshall, B.A., J.D., M.L.S., Head of Public Services, Joel A. Katz Law Library and Associate Professor
Thomas E. Plank, A.B., J.D., Joel A. Katz Distinguished Professor of Law
Nathan A. Preuss, B.A., J.D., M.L.S., Reference & Student Services Librarian and Assistant Professor
Gary Puliselli, A.B., Ph.D., J.D., Associate Professor of Law
Glenn H. Reynolds, B.A., J.D., Beauchamp Brogan Distinguished Professor of Law
Dean Hill Rivkin, A.B., J.D., Wilder Gregg Distinguished Professor of Law
Briana L. Rosenbaum, B.S., J.D., Professor of Law
Paula Schaefer, B.A., J.D., Associate Professor of Law
Gregory M. Stein, A.B., J.D., Woolf, McClane, Bright, Allen & Carpenter Distinguished Professor of Law
Maurice E. Stucke, A.B., J.D., Professor of Law
Valorie Vojdik, B.S., J.D., Waller Lansden Distinguished Professor of Law
David Woltitz, B.A., J.D., Associate Professor of Law
Jingwei Zhang, B.S., J.D., Reference & Instructional Services Librarian and Assistant Professor
RETIRED FACULTY

GARY L. ANDERSON, S.B., J.D., I.L.M.,
Associate Professor of Law
FRANCES LEE ANSLEY, B.A., J.D., I.L.M.,
College of Law Distinguished Professor of Law
WILLIAM J. BEINTEMA, B.B.A., J.D., M.S.L.S.,
Director of the Law Library and Associate Professor
JERRY P. BLACK, JR., B.A., J.D.,
Associate Professor of Law
NEIL P. COHEN, B.A., J.D., I.L.M.,
UTK Distinguished Service Professor of Law and W.P. Toms Professor of Law
JOSEPH G. COOK, A.B., J.D., I.L.M.,
Williford Cragg Distinguished Professor of Law
THOMAS Y. DAVIES, B.A., M.A., J.D., Ph.D.,
Elvin E. Overton Distinguished Professor of Law
GRAYFRED B. GRAY, B.A., J.D.,
Associate Professor of Law
PATRICK HARDIN, B.A., J.D.,
W. Allen Separk Distinguished Professor of Law
AMY MORRIS HESS, B.A., J.D.,
UTK Distinguished Service Professor and Waller Lansden Dortch & Davis and Williford Cragg Distinguished Professor of Law
JOSEPH H. KING, JR., B.A., J.D.,
Walter W. Bussart and UTK Distinguished Professor of Law
ROBERT M. LLOYD, B.S.E., J.D.,
Lindsay Young Distinguished Professor of Law
D. CHERYN PICQUET, B.A., M.S.L.S.,
Professor
CARL A PIERCE, B.A., J.D.,
W. Allen Separk Distinguished Professor of Law
OTIS H. STEPHENS, A.B., M.A., Ph.D., J.D.,
Alumni Distinguished Service Professor of Political Science
JOHN L. SOBIESKI, JR., B.S., J.D.,
Lindsay Young Distinguished Professor of Law
KRIS ANNE TOBIN, B.S., J.D., I.L.M., M.L.I.S.
Assistant Professor and Reference & Faculty Services Librarian
PAULETTE J. WILLIAMS, B.A., J.D.,
Associate Professor of Law
RICHARD S. WIRTZ, B.A., M.P.A., J.D.,
Elvin E. Overton Distinguished Professor of Law
ARTICLES

OPENING REMARKS

Sue Payne 191

REDLINING IS A SKILL

Stacey Bowers 197

USING TRANSACTIONAL EXERCISES FOR FIRST-YEAR LEARNING ASSESSMENT

Carol Goforth & Will Foster 215

THE CREATIVE ASPECT OF TRANSACTIONAL LAWYERING: STRUCTURING THE TRANSACTION AND DRAFTING THE AGREEMENT TO RESOLVE A LEGAL ISSUE

John F. Hilson & Stephen Sepinuck 241

CLIENT COMMUNICATION: DRAFTING A CLIENT ISSUES MEMO

Larry Platt 261

MERGERS & ACQUISITIONS WITH PROPS & PANTOMIME

William Birdthistle 277

THE VALUE OF DOCUMENT “TREASURE HUNTS” IN TEACHING TRANSACTIONAL LAW AND SKILLS

Joan MacLeod Heminway 301

TEACHING CONTRACT LAW, TERMS, AND PRACTICE SKILLS THROUGH PROBLEMS

Nadelle Grossman 323

ADDING RISK ASSESSMENT AND NEGOTIATION TO A DRAFTING COURSE

Richard K. Neumann Jr. 337

TEACHING LAW PRACTICE MANAGEMENT IN A TRANSACTIONAL CLINIC USING STUDENT-LED PROJECTS

Christopher D. Heard 369

DOES TRUMP HAVE THE BEST WORDS? USING THE DAVID DENNISON/PEGGY PETERSON CONFIDENTIALITY AGREEMENT TO TEACH THE REALITIES OF CONTRACT DRAFTING IN PRACTICE

Elizabeth August & Sue Payne 379

TEACH THE BASICS OF CONTRACT DRAFTING, CORPORATE GOVERNANCE & TRANSACTIONAL LAW IN ONE SENTENCE

Neil J. Wertleib 387

WHERE DO WE GO FROM HERE?

Joan MacLeod Heminway, Howard Katz & George Kuney 403
TEACHING COMMUNICATION SKILLS IN TRANSACTIONAL SIMULATIONS

Eric J. Gouvin, Katherine M. Koops, James E. Moliterno, Carol E. Morgan & Carol D. Newman 429

WHAT CAN STUDENTS TEACH EACH OTHER?

Stacey Bowers, Brian Krumm & Willow Tracy 459

HAPPILY EVER AFTER: FOSTERING THE ROLE OF THE TRANSACTIONAL LAWYER AS STORYTELLER

Susan M. Chesler & Karen J. Sneddon 491

IMPLEMENTATION NEGOTIATION: A TRANSACTIONAL SKILL THAT BUILDS ON AND TRANSFORMS CLASSIC NEGOTIATION THEORY

Tina L. Stark 513

FROM THE COURTROOM TO THE CLASSROOM: HOW A LITIGATOR BECAME A TRANSACTIONAL DRAFTING PROFESSOR

Amy Bauer 559

TEACHING CONTRACT DRAFTING BY “FLIPPING THE CLASSROOM,” USING FAMILIAR LAW SCHOOL TECHNIQUES

D.C. Toedt III 571

IS A TRANSACTIONAL CLINIC THE ANSWER TO TRAINING TRANSACTIONAL ATTORNEYS?

Tyra Blew, Carmen Huertas-Noble & Melissa Risser 583

CONTEXT INTEGRATION AND THE “BIG THREE” QUESTIONS

Andrew Kaufman 611

STUDENTS IN A MENU OF LAW DEGREES PROVIDE CONTEXT FOR UNDERSTANDING AND LEARNING THE TRANSACTIONAL ATTORNEY’S ROLE

Celeste M. Hammond 627

CONTEXT MATTERS WHEN MOVING A SKILLS WORKSHOP FROM THE CLASSROOM TO ONLINE

Virginia M. Harding 637

WHAT ARE SOME DIFFERENT APPROACHES TO TEACHING TRANSACTIONAL LAWYERING SKILLS? BUILDING BUSINESS AND FINANCIAL LITERACY IN LAW STUDENTS

Mary Ann Robinson 649

HOW TO DESIGN AND CONDUCT NEGOTIATION SIMULATIONS IN CONTRACT DRAFTING COURSES

Naveen Thomas 661

TRANSACTIONAL RISK AND CONTRACTUAL RISK ACCOMMODATION IN CONTRACT DRAFTING: MORE THAN AN INDEMNITY PARAGRAPH

Harold Weston 673

TRANSACTIONAL SKILLS EDUCATION: MANDATED BY THE ABA STANDARDS

Tina L. Stark 693
Professor Eric Franklin Amarante recently presented at the 2018 SALT Teaching Conference, held at State College, Pennsylvania in a panel entitled Breaking Down Walls: Harnessing the Collective Capacity of Clinics, Pro Bono, Alumni, and Our Rural Communities. Professor Amarante discussed the Community Economic Development Clinic’s work in representing rural entrepreneurs, as well as the University of Tennessee College of Law’s collective response to the U.S. Immigration and Customs Enforcement’s raid of a meat processing plant in Bean Station, Tennessee.

Additionally, the Immigration Prof Blog recently named Professor Amarante’s article, The Unsung Latino Entrepreneur of Appalachia, 120 W. VA. L. REV 773 (2018), as the Immigration Article of the Day for July 26, 2018.

Finally, Professor Amarante’s article The Perils of Philanthrocapitalism will appear in Volume 78 of the Maryland Law Review and his article Unregulated Charity will appear in a future volume of the University of Washington Law Review.

Professor Brad Areheart’s latest article, GINA, Big Data, and the Future of Employee Privacy, is forthcoming (2019) in the Yale Law Journal. He was awarded the second annual Michael J. Zimmer Memorial Award at the 12th annual Colloquium on Scholarship in Employment and Labor Law at Texas A&M University School of Law in the fall of 2017. Labor and employment law professors from across the country selected Professor Areheart for the award, which recognizes “a rising scholar who values workplace justice and community, and who has made significant contributions to the field of labor and employment law scholarship.”

Professor Areheart’s article The Symmetry Principle was published in Volume 58 of the Boston College Law Review. He also presented his paper, The Headwinds and Tailwinds of Workplace Equality, at the 12th Annual Colloquium on Scholarship in Employment and Labor Law, and at an AALS Works-in-Progress panel. Professor Areheart was also an invited speaker at the Feminist Judgments Rewritten Conference in which he provided commentary on the Young v. UPS decision. Finally, Professor

Professor Areheart continued to co-chair and coordinate the annual Prospective Law Teachers Workshop at the 2018 Southeastern Association of Law Schools Conference. He also organized, moderated, and spoke on a panel entitled “Navigating the Hiring Market.” In addition, Professor Areheart was a commentator on a paper about racial bias for the “New and Existing Voices in Labor and Employment Law.”

**Associate Dean Teri Baxter's** article, *Employer-Mandated Vaccination Policies: Different Employers, New Vaccines, and Hidden Risks*, was published in the Fall 2017 issue of the Utah Law Review. In September 2017, Professor Baxter participated in the “Teachers Law School,” a program co-sponsored by the Tennessee Chapter of the American Board of Trial Advocacy (ABOTA) Foundation and the Federal Bar Association. Tennessee middle and high school teachers traveled to United States District Courthouse in Chattanooga to learn about the federal court system and state and federal law from lawyers, professors, and federal district court judges. Professor Baxter spoke about State Rights v. Federal Rights.

In November 2017, Professor Baxter participated in the 8th Annual Constitutional Law Colloquium at Loyola University Chicago. The colloquium brought together senior and junior constitutional law scholars to discuss current projects, doctrinal developments in constitutional law, and future goals.

Additionally, Professor Baxter’s article *Child Marriage as Child Abuse and Constitutional Violation* will be published in Volume 19 of the Nevada Law Journal. Professor Baxter presented her article as part of a panel on Parental Rights at the 8th Annual Constitutional Law Colloquium and at the Saint Louis University School of Law as part of their Faculty Workshop Series. The article was also featured on the Family Law Prof Blog.

Most recently, in August 2018, Professor Baxter was the Organizer and Moderator for the Associate Deans for Research Discussion Group at the Southeastern Association of Law Schools (SEALS) Annual Meeting.

In May 2017, the Knoxville News-Sentinel published an Op-Ed by Professor Buck examining the American Health Care Act (AHCA), which had just passed the U.S. House of Representatives. In the article, titled *American Health Care Act will reduce number of citizens with insurance*, Professor Buck noted that the bill had “a radically different focus” than the Affordable Care Act. The AHCA sought “to limit health insurance costs for healthier, younger and more affluent Americans. . . . At the expense of cutting costs for healthier Americans,” he wrote, it limited “coverage for older, sicker and lower-income Americans.” Professor Buck warned that the changes would likely have a profoundly negative impact on Tennessee.

In July 2017, Professor Buck was interviewed and participated in “This Week in Health Law: Back to School Special,” hosted by Professors Nic Terry and Frank Pasquale. Professor Buck, along with fellow “TWIHL All-Stars” Erin Fuse Brown and Jessica Roberts, discussed topics including state laws, price and cost issues, development in employer-based insurance, Medicare’s new incentive-based payment system, a fraud and abuse case to watch, and genetic “property” statutes. In the same month, he was also a Panelist on a panel entitled, *Health Reform After the 2016 Presidential Election*, and a Discussant for the Discussion Group, *Recent Developments in Health Law and Public Health Ethics*.

In fall 2017, Professor Buck spoke to the Tennessee Bar Association Health Law Section on “The ABCs of Healthcare.” The program was “designed for new lawyers – offering an introduction to health law as a practice area and career.” He also spoke at The Next Steps in Health Reform 2017 Conference in Washington, D.C., where he presented “Medicaid Cost Concerns: Managed Care and Challenges at the State Level.” He also gave a lecture and led a discussion at the University of Tennessee Department of Public Health, on the “Basics of Public Health Law,” for doctoral public health students.

Early this year, Professor Zack Buck was the guest of *This Week in Health Law (TWIHL)* podcast episode. The conversation included some compelling “lightning” stories, including wellness plans, Maryland’s potential state mandate, the Health Affairs retirement of Tim Jost, and
Medicaid work requirements. According to TWIHL.com, Professor Buck “demonstrated his true mettle, answering questions about MACRA/MIPS, value bundle reimbursement models, and state law attempts to reel in drug costs.” Professor Buck was also part of a panel titled “The Opioid Epidemic: Regulation, Responsibility, and Remedies,” as part of the Tennessee Journal of Law and Policy Symposium “Healing Appalachia: The Role of Professionals in Solving the Opioid Crisis.” The Symposium was held at the University of Tennessee College of Law.

More recently, Professor Zack Buck presented his paper States of Emergency: Illegal Pharmaceutical Pricing, at the University of Kentucky College of Law as part of the Faculty Exchange Program. He also published Preaminent Work on Health Reform and Preemption, Review of Elizabeth Y. McCuskey, Agency Imprimatur & Health Reform Preemption, on Jotwell. Finally, Professor Buck’s invited symposium article, The Affordable Care Act and the Chronic Challenge of Cost Control, was recently published in Volume 11 of the University of St. Thomas Journal of Law and Public Policy.

**Professor Iris Goodwin** published Access to Justice: What to do about the Law Of Wills? in the Wisconsin Law Review in 2017. She is currently occupied with two research projects. The first has the working title, Dating in Tennessee, and examines the statutory attempt with respect to the the Tennessee Wills Act to provide limited relief from the heretofore rigorous requirements for due execution. Courtesy of the amended statute, wills can now be admitted to probate even where witnesses have failed to sign the instrument. As per the statute, however, relief is available for wills executed before July 1, 2016 only. Historically, in this area of the law, statutes that gain or lose effect on a certain date take as their point of reference the testator’s date of death. The article examines the myriad consequences, many unintended, resulting from the amended statute and the attempt to circumscribe its effect by reliance upon the date of execution.

She also has a second article in process, an ambitious piece with the working title, The Constitution of Civil Society. This article begins with the Trump Administration’s proposed repeal of the Johnson Amendment, a rule that prohibits public charities from engaging in political activities such as the endorsement of candidates for public office. The article recognizes the essential and indeed salubrious proto-political character of much
citizen activity in civil society and the importance of such activity in a democracy. The partisan is quite another matter. To preserve a healthy democracy, partisan activity is necessarily located and constrained, and the Johnson Amendment does heavy lifting to establish and secure this boundary.

Professor Joan M. Heminway has recently published two works in law journals. The most recent article, *Tipper/Tippee Insider Trading as Unlawful Deceptive Conduct: Insider Gifts of Material Nonpublic Information to Strangers*, was published in a symposium issue of the Washington University Journal of Law and Policy. The earlier piece is entitled *Let’s Not Give Up on Traditional For-Profit Corporations for Sustainable Social Enterprise*. It was published in a symposium issue of the UMKC Law Review.

Professor Heminway has given numerous academic presentations since the spring. Earlier this fall, she spoke on current federal business deregulatory initiatives at a symposium sponsored by the Mercer Law Review and on “Lawyering for Social Enterprise” at the second annual Business Law Prof Blog symposium hosted by Transactions: The Tennessee Journal of Business Law. In June, she presented her overall 2018 project on business deregulation at the National Business Law Scholars Conference and spoke on the promise that securities crowdfunding might hold in contributing to U.S. microfinance at the Law and Society Association annual meeting and conference. Earlier that month, she participated in two teaching forums at the Emory University School of Law’s Sixth Biennial Conference. She was part of a panel forwarding “An Agenda for Advocates of Transactional Skills Instruction” and also spoke on “The Value of Document ‘Treasure Hunts’ in Teaching Transactional Law and Skills.”

Professor Heminway served as the U.S. Reporter for an international and comparative law project on *The Legal Regulation of Crowdfunding*. In that capacity, she participated in The 20th Congress of the International Academy of Comparative Law in Fukuoka, Japan in July. Her report has been chosen for publication in a volume dedicated to the crowdfunding work of scholars from a variety of countries around the world.

At other academic events over the past six months, Professor Heminway has organized or coordinated additional academic programs involving
business law topics. This fall, she moderated three panels: one on “Women as Counsel and Gatekeepers” at George Washington Law Review’s Women and Corporate Governance symposium; one on “Reclaiming Corporations” at UT Law’s recent symposium on The Urgency of Poverty; and one on “The Coming Second Wave of Digital and other Electronic Signatures in Commerce” at a symposium on Law and Business Tech: Cybersecurity, Blockchain and Electronic Transactions co-sponsored by Transactions: The Tennessee Journal of Business Law. In addition, she moderated and participated in several business law discussion groups at the Southeastern Association of Law Schools annual conference over the summer.

Professor Heminway also was a frequent continuing legal education speaker in the spring. In May alone, she spoke on “Legal Issues in Social Entrepreneurship” at the Sixth Annual Midwest Symposium On Social Entrepreneurship hosted by the Ewing Marion Kauffman Foundation and the University of Missouri-Kansas City and on “Technology and YOU: What you need to know to stay ethical” as part of the Tennessee Bar Association’s 2018 Business Law Forum. The Tennessee Bar Association also invited Professor Heminway to speak at its annual forum for the Animal Law Section in May. Her topic at that event was “Pot-Bellied Pigs, Dyed Rabbits, and Other Such Stuff.”

Finally, the Southeastern Academy of Legal Studies in Business hosted Professor Heminway as the keynote speaker for its 64th annual conference in Chattanooga in October. The topic of her talk was “Valuing and Visioning Collaboration.” It focused on inspiring and increasing joint efforts between law faculty teaching and writing in business school settings and those doing the same work in law schools.

Professor Emerita Amy Morris Hess spoke on a panel at the Spring Symposia of the ABA’s Section of Real Property, Trust & Estate Law in Boston in May. The panel’s topic was “Drafting for the Twenty-First Century Family.” It was so well-received that the panelists have been invited to do an expanded version for a national webinar in February 2019. Professor Hess is completing a four-year term as Co-Chair of the Section’s Standing Committee on Diversity and Inclusion this year. Her 2018 annual supplements to the multi-volume treatise, Bogert & Hess, The Law of Trusts and Trustees were published in July.
Professor Becky Jacobs recently published *A Rot in Heaven: A Powerful Investigative Partnership, The Opioid Crisis, Pill Profits, and a Pulitzer Prize* in the Summer 2018 Special Edition of the Tennessee Journal of Law & Policy. Her paper *Sisters in Sustainability: Gender-Driven Agricultural Initiatives Promoting Socioeconomic, Environmental, and Cultural Sustainability*, was published in the official conference proceedings for the European Conference on Sustainability, Energy & the Environment. She very proudly co-authored this paper with her daughter, Chelsea, who is a graduate student at the UT Institute of Agriculture. Professor Jacobs also co-authored an article with College of Law graduate Brad Finney, on sustainable business entitled, *Defining Sustainable Business - Beyond Greenwashing*. It will be published in the Virginia Environmental law Journal’s Spring 2019 edition.

Professor Jacobs also attended and presented at several conferences. She moderated a dialogue with the keynote speakers at the College of Law’s symposium “Healing Appalachia: The Role of Professionals in Solving the Opioid Crisis” in the Spring of 2018. Professor Jacob also took part in the European Conference on Sustainability, Energy & the Environment in Brighton, England in July.

At the 2018 Southeastern Association of Law Schools Conference (SEALS) in August, she was a participant in the “Connecting to the Future: What’s in Store for Writing and Law” Discussion Group and moderated the “Perspectives on the Future of Gender Equality in the Legal Profession” panel. At the College of Law, the Professor participated in the second annual “Connecting the Threads” business law conference held in October 2018, at which she commented on Professor Marcia Weldon’s blockchain research.

Professor Jacobs remains an organizing member of the Baker Center Energy and Environment Forum at the University of Tennessee. The Forum is an opportunity for academics to share their research with a broad set of academics, researchers, and students from outside their own discipline who have a common interest in environmental- and energy-related issues. She was instrumental in bringing leading environmental law
schor Robin Kundis Craig to UT as part of the Forum in Spring 2018. Professor Craig has written important works on water and ocean and coastal issues.


Professor George W. Kuney’s article *Should the Trustee in Bankruptcy Succeed to the “Equal Guilt” of the Debtor? Putting the Burden of Imputation on Wrongdoing Third Parties for In Pari Delicto Purposes* was published as the lead article in the 2017 Norton Annual Survey of Bankruptcy Law. The article reviews the origins and development of the *in pari delicto* defense in bankruptcy and related fields of law, and urges the adoption of a federal rule of decision creating a rebuttable presumption against its application in cases brought by a bankruptcy trustee, especially in Ponzi scheme and similar contexts.

In early 2017, Professor Kuney was awarded the Chancellor’s Excellence in Graduate Mentoring and Advising Award at the University of Tennessee Chancellor’s Honors Banquet. The Office of the Chancellor and the Teaching Council of the Faculty Senate selected Professor Kuney for the award in recognition of his outstanding work in mentoring law students at the University of Tennessee College of Law.
Professor Kuney also provided commentary at an event sponsored by the University of Tennessee College of Law chapter of The Federalist Society featuring Karin Agness Lips. The program focused on how colleges and universities have failed students with respect to safe spaces, sexual assault, and student debt.

In fall 2017, Professor Kuney presented a training CLE regarding contract and transactional drafting for the Jones Day law firm and gave a talk on “Drafting Elegant Contracts” for the Texas Bar’s 27th Annual Entertainment Law Institute. He also produced and moderated a series of three webinars dealing with legal ethics topics including ethical issues involving technology and avoiding malpractice and disciplinary actions in association with Financial Poise and West/Thompson Reuters. The three-part series, Best Practices regarding Technology, Recent Cases and Decisions, and How to Avoid Malpractice and Disciplinary Actions, debuted at the close of the months of September, October, and November.

More recently, Professor Kuney gave a talk on “Bankruptcy Fundamentals” for the 2018 American Bar Association Construction Law Forum in New Orleans. The talk centered on key bankruptcy concepts in the context of construction, including issues that arise when construction project participants go bankrupt or a construction project becomes entangled in a bankruptcy proceeding.

He continues to update his single volume treatise titled California Law of Contracts (CEB) with his wife and co-author Donna C. Looper, who also teaches Legal Process I & II at the College of Law.

Professor Michelle Kwon’s article *Easing Regulatory Bottlenecks with Collaborative Rulemaking* was published in Volume 69 of the Administrative Law Review.

Professor Kwon also recently moderated a panel at the “Title IX: History, Legacy, and Controversy” conference at the University of Tennessee College of Law. The conference addressed issues regarding athletics and education, sexual harassment and assault on campus, racial inequality in schools and athletics, inclusion of LGBTQ students, pay equity and compensation, and media coverage of Title IX issues.
Professor Don Leatherman recently spoke at several different forums. In early 2017, he moderated and participated in a panel at the American Bar Association’s January meeting entitled “Consolidated Corporation Regulations: Validity Challenges and Interpretive Patterns.” In August 2017, Professor Leatherman moderated a panel at the 2017 Southeastern Association of Law Schools Conference on administrative tax issues as well as moderated and participated in a webinar for the ABA entitled “The Nuts and Bolts of the Consolidated Return Regulations.” In September 2017, Professor Leatherman moderated and participated in a panel at the ABA meeting entitled “Current Developments for Consolidated Groups.” Additionally, Professor Leatherman moderated and participated in a panel at the ABA September tax section meeting entitled “Current Developments for Consolidated Groups.” Late 2017, Professor Leatherman spoke at the Practising Law Institute's Los Angeles meeting on Mergers, Acquisitions, and Joint Ventures, discussing current developments for consolidated groups. Most recently, in August 2018, Professor Leatherman moderated a panel at SEALS on various tax issues. In October 2018, Professor Leatherman also moderated and participated in a panel at the ABA October tax section meeting entitled “Current Developments – Consolidated Aspects of the TJCA.”

Professor Leatherman’s article *The Treatment of Corporations and Partnerships under the TCJA* is published in this volume of Transactions: The Tennessee Journal of Business Law. Professor Leatherman is also finishing an article analyzing proposed regulations (Prop. Treas. Reg. section 1.1502-11(b)) relating to the circular basis rule. In addition, he plans to publish a textbook, with a teacher’s manual, and a student treatise, both with Howard Abrams as a co-author.
Dean Alex Long’s article *Retaliation Backlash* has been published in the Washington Law Review, 93 WASH. L. REV. 715 (2018). Dean Long’s article, “Abolishing the Suicide Rule” will be published in volume 113 of the Northwestern Law Review. He also participated in the Workshop on Labor and Employment Law, Discussion Group: “Trends and Developments in Anti-Retaliation Law” at the 2017 Southeastern Association of Law Schools Conference. He also has presented a CLE entitled “The Legal Ethics of Better Call Saul: Professional Responsibility According to Saul Goodman” for the Knoxville Bar Associations Barriesters and the National Nuclear Security Administration General Counsel’s annual Training Session at the Y-12 National Security Complex. Finally, Dean Long recently presented “Legal Ethics Issues Involving Technology and the Practice of Law” at the Law & Business Tech Conference here at the University of Tennessee College of Law this past September 2018.

Professor Thomas Plank published his article, *Security Interests in Deposit Accounts, Securities Accounts and Commodity Accounts: Correcting Article 9’s Confusion of Contract and Property*, 69 OKLA. L. REV. 337 (2017). This article analyzes a deficiency in the way Article 9 of the UCC, which governs security interests in 24 different categories of personal property, defines four of these categories—deposit accounts, securities accounts, commodity accounts, and commodity contracts—as contractual relationships instead of the rights of the applicable contracting party. These conceptually confused definitions have caused difficulties in interpreting and applying the related provisions of Article 9 as well as drafting errors in a few provisions of Article 9. This article analyzes how the relevant provisions of Article 9 need to be revised and, pending revision, interpreted, to fix the problems.

In September 2017, Professor Plank participated in a symposium titled “Business Law: Connecting the Threads” hosted by Transactions: The Tennessee Journal of Business Law at the University of Tennessee College of Law. He presented and then published a law review article, *Judicial

On Friday and Saturday, October 13-14, 2017, Professor Plank participated in a drafting session of the Drafting Committee of the Uniform Law Commission (ULC) on Revised Articles 1, 3, and 9 of the Uniform Commercial Code in Philadelphia, Pa., as a member of the American Law Institute (ALI) Consultative Group on this revision. The project has two purposes: (1) to comment on a proposed federal National Mortgage Note Repository Act being drafted by the Federal Reserve Bank of New York to establish a federal registration system for electronic promissory notes secured by single family mortgages; and (2) to draft revisions to Article 1, Article 3 (Negotiable Instruments) and Article 9 (Secured Transactions) of the UCC that would give these electronic promissory notes the same attributes and benefits currently provided for written negotiable promissory notes, which evidence more than $10 trillion of single family mortgage loans. At the drafting session, Professor Plank presented comments on the language of the draft revisions to the UCC. Additionally, he later reviewed and submitted comments on subsequent drafts to the drafting committee.

Professor Gary Pulsinelli presented his paper, Geographicide, at the 2017 Intellectual Property Scholar’s Conference, held at Cardozo School of Law. Additionally, a recent opinion issued by Judge John Tharpe, Jr. in the Northern District of Illinois cited Professor Pulsinelli’s article Happy Together? The Uneasy Coexistence of Federal and State Protection for Sound Recordings, 82 TENN. L. REV. 167, 200-204 (2014). Judge Tharpe identified Professor Pulsinelli as one of the scholars who has “noted the potentially devastating consequences of a regime in which national broadcasts generate liability in some states and not in others.”
Professor Paula Schaefer’s article *Attorneys, Document Discovery, and Discipline* has been published in volume 30 of the Georgetown Journal of Legal Ethics. In addition, her article *In Pari Delicto Deconstructed: Dismantling the Doctrine that Protects the Business Entity’s Lawyer from Malpractice Liability* has been published in volume 90 of the St. John’s Law Review.

In fall 2017, Professor Schaefer was an invited speaker at the Midwest Clinical Legal Education Conference in Lawrence, Kansas in October. She spoke in a plenary session titled “Building on Best Practices: Professional Identity, Role Assumption, and Other Professional Skills Across Learning Experiences.” The session highlighted material from the 2015 book *Building on Best Practice: Transforming Legal Education in a Changing World* and discussed new suggestions for integrating “public citizen lawyering” into the law school curriculum.

More recently, Professor Schaefer has presented at a number of legal conferences. In March, she and Judge Kelvin Jones co-presented a two-hour, interactive CLE program titled “Judicial Ethics Update” at the 2018 Tennessee Judicial Conference. She also participated in a meeting of the Consortium on Teaching E-Discovery at the Sixth Annual University of Florida Law E-Discovery Conference. This consortium consists of professors from eight U.S. law schools who are working together to develop a model curriculum for teaching e-discovery in law school. Finally, Professor Schaefer was invited to participate in the Akron Law Review’s Civil Discovery Symposium. She presented “Attorney Negligence and Negligent Spoliation” at the April 2018 symposium. Her article, *Attorney Negligence and Negligent Spoliation: The Need for New Tools to Prompt Attorney Competence in Preservation*, will be published in Volume 51 of the Akron Law Review.

Professor Stein’s article, *Chinese Real Estate Law and the Law and Development Theory: A Comparison of Law and Practice*, was reviewed favorably in the July 2017 issue of the journal Probate & Property. The review noted that the article “provides readers with an important understanding of the law and practice of real estate law in China.” Stein’s article originally appeared in the Florida State Journal of Transnational Law & Policy in 2016. In addition, Professor Stein’s recent article, *Reverse Exactions*, was reviewed favorably in Jotwell, by Professor Sarah Schindler. Jotwell reviews “the best works of recent scholarship” in various subject matter areas. Schindler concludes that “Professor Stein joins the ranks of other creative scholars such as Professors Chris Serkin and Tim Mullaney, who have suggested that we should not always be so defensive when it comes to takings law, and might instead find ways to use it to reach more progressive ends. Stein does that here.”

Professor Stein presented at the 2017 annual meeting of the Association for Law, Property, and Society (ALPS), held at the University of Michigan. His presentation, entitled “Reverse Exactions,” was part of a panel on “New Perspectives on Takings.” Panelists from the United States, England, and Israel offered different views on when governmental regulations require compensation to property owners. He presented “Will the Sharing Economy Increase Inequality?” at the 2018 ALPS meeting.
held at Maastricht University in the Netherlands and served as the moderator for another panel at that conference, on “Private and Compulsory Takings of Land: Singapore and International Perspectives.” Professor Stein also presented a webinar on “Development, Permitting, and Exactions” sponsored by the Legal Education Committee of the ABA’s Section of Real Property, Trust and Estate Law.

In addition, Professor Stein continues to serve as a member of the Board of Governors of the American College of Real Estate Lawyers, the only law professor on its 21-member Board. He participated in ACREL’s Annual Meeting and Board Meeting in October 2017 in Los Angeles and in March 2018 in Orlando. At the Orlando meeting, he gave a presentation to ACREL’s Land Use and Environmental Committee on “Recent Developments in Regulatory Takings Law.” In addition to serving on that committee, he also serves on ACREL’s Land Use and Environmental Committee, Law Professors’ Committee, Amicus Briefs Committee, Charitable Foundation Task Force, Innovation and Evolution Committee, and Homelessness Task Force, and as a Mentor for new Fellows.

a Concentration Problem in America?” and at the American Bar Association Section of Antitrust Law’s 65th Spring Meeting, on the panel “Competition and Consumer Law Issues with Customer Profiling.” In May 2017, he presented at the University of Oxford Centre for Competition Law and Policy’s conference titled “Online Markets and Offline Welfare Effects - The Internet. Competition, Society and Democracy.” In June 2017, Professor Stucke presented at a number of venues, including the 2nd Annual Berlin Center for Consumer Policies Conference titled “Regulatory Challenges in Digital Markets: Algorithms and Platform Competition;” the 22nd Annual EU Competition Law and Policy Workshop, “Disruptive Innovation and Implications for Competition Policy,” hosted by the European University Institute; the OECD Forum 2017; the “IT and Competition Law Workshop” hosted by the University of Edinburgh; the Scottish Competition Forum; and the 12th Annual ASCOLA Conference hosted by Stockholm University. Finally, in August 2017, Professor Stucke presented at the American Bar Association’s 2017 Annual Meeting, on the panel “Does Antitrust Law Need to Innovate to Stay Relevant in the 21st Century?”


Professor Stucke has also published a number of other works. Professor Stucke’s blog post with co-author Ariel Ezrachi titled Law Profs to Antitrust Enforcers: To Rein in Super-Platforms, Look Upstream was published by The Author’s Guild. Another blog post, Who Wouldn’t Want a Digital Butler? was published in the Berkeley Technology Law Journal. The AIA News published The Networks of Control by Professors Stucke and Ariel Ezrachi.
Finally, the Harvard Business Review published Professor Stucke and Professor Ariel Ezrachi’s article *The Rise, Fall, and Rebirth of the U.S. Antitrust Movement* in addition to Professor Stucke’s article *Here Are All the Reasons It’s a Bad Idea to Let a Few Tech Companies Monopolize Our Data*.

In addition, numerous recent articles quote Professor Stucke. They include the following: *Stucke: US should follow Europe’s lead on privacy*, published in the Global Competition Review online; *A Mark Zuckerberg Presidency Isn’t Ridiculous—It’s Terrifying*, published by The Nation; the newspaper article *John McLellan: How can we shape the future of digital news?* in The Scotsman; the Politico article *Margrethe Vestager’s growing American fan club*; and *Google’s Search Changes My Not Level Playing Field* on Wired.com. Further, two articles discussing the Department of Justice challenge to the AT&T-Time Warner merger likewise quote Professor Stucke—the NY Times article *With AT&T and Time Warner, Battle Lines Form for an Epic Antitrust Case* and the France 24 article *With AT&T case, US may chart new antitrust path*.

Lastly, Professor Stucke addressed a United Nations committee about antitrust regulation enforcement. In his presentation, Professor Stucke addressed the implications of a data-driven economy. At the heart of his concerns are companies like Facebook, Google, Apple, and Amazon – or data-opolies – as Stucke calls them, whose collection of data can pose a number of risks to individuals and the economy. Professor Stucke addressed the dangers of failing to enforce antitrust regulations against these data-opolies, noting that “[t]he potential harms from these data-opolies can affect not only our wallets, but also our privacy, autonomy, well-being, and democracy.” Stucke further stated: “Anti-trust enforcement is necessary, but not sufficient, to promote privacy competition. Competition officials have to coordinate with the privacy and consumer protection officials globally.”