

TRANSACTIONS

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BUSINESS FACULTY NOTES



Professor Teri Baxter is in her third year as member of the University of Tennessee College of Law faculty after eleven years at the Saint Louis University School of Law. Her academic focus at the College of Law includes secured transactions, torts, family and privacy law, and constitutional law.

In her first year at the College of Law, Professor Baxter was awarded the 2013 W. Allen Separk Faculty Scholarship Award for her article “Tort Liability for Parents Who Choose Not to Vaccinate Their Children and Whose Unvaccinated Children Infect Others,” which was published in the *University of Cincinnati Law Review* in 2014. Her next article, “Respecting Parents’ Fundamental Rights in the Adoption Process: Parents Choosing Parents for their Children,” was published in the Summer 2015 issue of the *Rutgers Law Review*. She is currently working on an article examining the proper role of states in regulating marriage. This article was featured on University of Pennsylvania’s Law School’s RegBlog, Week in Review. Professor Baxter was also featured as part of a HuffPost Live panel discussing the October 2015 Supreme Court Term.



Visiting Professor Kevin Conboy practiced business law in Atlanta, Georgia for more than twenty-five years, first with Powell, Goldstein, Frazer & Murphy (now Bryan Cave), and then moving to global firm Paul Hastings LLP. His practice focused on commercial lending and other debt finance transactions, structuring and documenting secured and unsecured loan transactions. Most of his practice involved representation of the agent bank in complex senior debt transactions, but he also represented borrower clients. His transactions frequently included cross-border features, first and

second lien financings, unusual collateral classes, and complex intercreditor issues. His industry focus was the communications and telecommunications industry, closing many deals in cable television, radio and broadcast television, cellular telephony, internet service providers, publishing, wireless, billboard, tower and other such businesses.

Professor Conboy served for two years as deputy headmaster and teacher at a secondary school in rural Kenya, East Africa. He also taught as an adjunct faculty member at both the University of Georgia and Emory University Law Schools, and taught for a year as an Associate Professor at Atlanta’s John Marshall Law School, before coming to Knoxville to serve on the faculty of The University of

Tennessee College of Law. He is currently teaching Mergers and Acquisitions/Deal Skills and Commercial Lending, and he will be teaching International Business Transactions and a Seminar on Marketing and Sales for lawyers in private practice. The 2015-2016 school year is his second year as a Visiting Professor.

Professor Conboy has published six law review articles (and written much more for popular publications), including “Tips for the Practitioner Seeking to Return to the Academy,” 14 *Tenn. J. Bus. L.* 147 (Spring 2013) and “Diagramming Transactions: Some Modest Proposals and a Few Suggested Rules,” 10 *Tenn. J. Bus. L.* 91 (Fall 2014).



Professor Iris J. Goodwin in January completed a one-year term as Program Chair of the Trusts and Estates Section of the Association of American Law Schools. For the association’s annual meeting in January, she developed a program entitled “Legal Reform and Grantors’ Jurisdictional Choices: The Implications of Freedom.” Professor Goodwin moderated the panel, which included Professors Anne-Marie Rhodes of Loyola University (Chicago), Stewart Sterk of Cardozo Law School, and Jeff Schoenblum of Vanderbilt Law School, along with practitioners Don Kozusko of Kozusko Harris Duncan and Susan Bart of Sidley & Austin. The program was ground-breaking in two ways. First, the panel consisted of both academics and practitioners. Second, the program presented – choice of law considerations in estate planning – is something that practitioners recognize as an essential element in their stock in trade but that academics rarely consider in depth. In January she ascended to the role of Section Chair. Her paper “Access to Justice—What to Do About the Law of Wills” will be submitted for publication in February 2016. Finally, she is working with West Academic Publishers to assemble an editorial board and otherwise develop a 25th edition of the iconic casebook, originally edited by Campfield, Turnier & Dickenson, *TAXATION OF ESTATES, GIFTS & TRUSTS*.



Professor Joan M. Heminway teaches a range of business law courses, including Business Associations, Corporate Finance, Mergers & Acquisitions, and Securities Regulation. She also serves as a co-editor of the *Business Law Prof Blog*, is a member of the Executive Council of the Business Law Section of the Tennessee Bar Association, and teaches in The University of Tennessee’s Professional MBA program.

She has been a front-runner in the legal field on the topic of crowdfunding. Her most recent published article in this

emergent area of legal research and scholarship, “Crowdfunding and the Public/Private Divide in U.S. Securities Regulation,” 83 U. CIN. L. REV. 477 (2014) (symposium issue), is being reprinted in a forthcoming issue of the *Texas Journal of Business Law*. In addition, she has been a featured speaker on crowdfunding at several legal conferences and continuing educational seminars, such as: “Crowdfunding: The Basics and Beyond” (Clayton Center for Entrepreneurial Law, September 2015); “Crowdfunding: The New Thing in Financing Development” (American Bar Association Professors’ Corner, continuing legal education program, August 2015); and “Curation and crowdfunding: Creating a sustainable investment market for the masses” (The University of Tennessee College of Law, faculty forum, June 2015; National Business Law Scholars Conference, June 2015).

Professor Heminway also continues to publish and present on other areas of business law doctrine and teaching. Her most recent publications include a book chapter entitled “Fundamental Changes in the LLC: A Study in Path-Divergence and Convergence,” in RESEARCH HANDBOOK ON PARTNERSHIPS, LLCs AND ALTERNATIVE FORMS OF BUSINESS ORGANIZATIONS (Robert W. Hillman & Mark J. Loewenstein, eds., 2015), and a law review article, “Teaching Business Associations with Group Oral Midterms: Benefits and Drawbacks,” 59 ST. LOUIS U. L.J. 863 (2015). She has spoken at several recent conferences and forums, most recently: “Hot Topics in Business Law: Tennessee’s New For-Profit Benefit Corporation Act” (a Tennessee Bar Association continuing legal education program in December 2015); “The Legal Death of a LLC: A Nationwide Hodgepodge of Rules and Practices” and “What Is An Operating Agreement and Why Do We Care?” (American Bar Association programs featured at the LLC Institute in November 2015); “The Role of Business Counsel as Compliance Gatekeepers: Law and Lawyering as Blunt Instruments in Getting Firms and their Principals to ‘Do the Right Thing’” (at the Wayne Law Review symposium, “Corporate Counsel as Gatekeepers,” October 2015); “The Ties That Bind: LLC Operating Agreements as Binding Commitments” (as part of a scholarship panel at the Law and Society Association annual conference in May 2015); and “Deal Structure – Point and Counter-Point” (a Tennessee Bar Association continuing legal education program in May 2015).



Professor Amy Morris Hess spoke in May 2015 at a continuing legal education program in Nashville presented by the Tennessee Bar Association. The half-day program was entitled “Unleashed: Hot Topics in Animal Law.” Professor Hess discussed estate planning for pet owners. In June, Professor Hess was back in Nashville to moderate a half-day CLE program for the TBA entitled “Doing Business Online: Advising the Online Business Owner - Digital Life Before and After

Death.” Hess is a member of the TBA CLE Committee.

In August, Professor Hess moderated a showcase program called “Same-Sex Marriage on the Cusp: Remaining Issues and a Look into the Future” at the American Bar Association’s Annual Meeting in Chicago. Showcase programs are selected competitively and emphasize cutting-edge issues that will appeal to a broad range of meeting attendees. A shortened and updated version of this program was presented at the joint fall meeting of the ABA Sections of Real Property, Trust & Estate Law and Taxation in September in Chicago.

Also at the joint meeting, Professor Hess organized, spoke, and moderated a presentation entitled “Elimination of Bias in the Profession: The Influence of Cultural Differences in Estate, Tax, and Employment Benefit Planning.” Hess is Co-Chair of the RPTE Section’s Committee on Diversity. The 2015 supplements to Hess’s multi-volume treatise, Bogert & Hess, *THE LAW OF TRUSTS & TRUSTEES* were published in October.



Professor Becky Jacobs most recently served as the moderator for both “ADR in Faculty Governance and Change: What Works – If Anything – and What Doesn’t?” at the 2015 Annual Meeting of the Southeast Association of Law Schools, as well as a panel on “Structural Inequality: Food, Dignity, and Culture” at the ClassCrits VII Conference - Emerging Coalitions: Challenging the Structures of Inequality (October 2015). She also participated on panels at several other conferences, included the 2015 AALS Clinical Conference and the 40th International Association for Housing Science World Congress on Housing. Professor Jacobs will give a presentation at the annual meeting of

the Association of American Law Schools to be held in January in New York.

In addition to her work in alternative dispute resolution, Professor Jacobs is the supervising professor for the University of Tennessee’s Mediation Clinic in addition to teaching Alternative Dispute Resolution and an Environmental Practicum at the University of Tennessee. Her article, “Cultivating Purposeful Curiosity in a Clinical Setting: Extrapolating From Case to Social Justice in the Community,” is in print in volume 21 of the *Clinical Law Review*. Her article, “A Perplexing Paradox: ‘De-Statification’ of ‘Investor-State’ Dispute Settlement?” will soon appear in volume 30 of the *Emory International Law Review*.



Professor Brian Krumm participated in a panel at the annual meeting of the Association of American Law Schools in January 2015. The panel, entitled “Integrating Clinical Pedagogy Across the Curriculum: Making It Work,” was presented by the Section on Clinical Legal Education. The panel explored innovative models for how clinical pedagogy can enhance learning across the curriculum in all three years of law school. Professor Krumm also recently presented at the 14th Annual Transactional Clinical Conference, which took place in April in Kansas City, MO. Professor Krumm, along with Professor Jiang Dong of Renmin University Law School (Beijing, China), will give a presentation at the Association of American Law Schools’ Clinical Legal Education Conference, to be held in May in Rancho Mirage, CA. They will speak about the business transactions course they jointly taught, in which students from the two law schools negotiated with each other via teleconference.

Professor Krumm’s portion of an edited conference panel transcript, “Teaching Transactional Skills Using Real Clients From Clinic to Classroom,” was included in a recent issue of *Transactions: The Tennessee Journal of Business Law*. Additionally, his article, “Registering Trade and Service Marks in Tennessee: A Brief How-To Guide,” appears in this issue of *Transactions*.

Professor Krumm has been named to the Anderson Center for Entrepreneurship and Innovation Research Council, Haslam College of Business. Professor Krumm’s article “University Technology Transfer - Profit Centers or Black Holes: Moving Toward a More Productive University Innovation Ecosystem Policy,” will be published in the *Northwestern Journal of Technology and Intellectual Property* in December.



Professor George Kuney’s most recent book, **BANKRUPTCY IN PRACTICE** 5th Edition, co-authored with Arnold & Porter’s Michael Bernstein, was published in November. The book, which has been called the best deskbook on bankruptcy practice, covers chapter 7 and 11 practice nationwide. It joins Kuney’s treatise and casebook, **BUSINESS REORGANIZATIONS**, co-authored with Brooklyn Law School’s Michael Gerber as the core of the readings for Kuney’s springtime seminar **Workouts & Reorganizations**, in which students produce detailed research papers tracking various chapter 11 cases around the country and which have now been downloaded over

8,400 times in the past year. His most recent article, ‘All Writs’ in Bankruptcy and District Courts: A Story of Differing Scope,” was published in the spring issue of The University of Texas School of Law journal, *The Review of Litigation*. The article compares and contrasts the differences in the use of the “all writs” authority granted to federal district courts and federal bankruptcy courts by their respective enabling statutes. Historically, federal district courts seem reluctant to invoke the authority granted by the “all writs” doctrine except under certain limited circumstances. On the contrary, bankruptcy courts seem much more willing to invoke the bankruptcy equivalent of the “all writs” doctrine in a variety of circumstances. CEB of California is publishing the 2015-updated edition of Professor Kuney’s single volume treatise, *California Law of Contracts*, co-authored with his wife, Adjunct Professor Donna Looper.



Professor Michelle Kwon’s presented “Easing Regulatory Bottlenecks” at the University of Washington School of Law tax symposium in October. This research considers the possibility of leveraging the intellectual capital of tax practitioners and academics to develop tax regulations. Tax regulations are crucial to both the government’s enforcement efforts as well as taxpayers’ efforts to adequately plan and to comply with the tax law. Unlike many other areas of law, taxpayers typically want more tax guidance, not less. But the demand for regulatory guidance exceeds their supply.

Professor Kwon participated in a panel presentation at the ABA Joint Tax Section and Real Property, Trust and Estate Law meeting in September. The panel focused on how cultural differences can affect estate planning decisions.

Professor Kwon has been working with Professor Leandra Lederman from Indiana University Maurer School of Law to finalize the third edition of *Understanding Corporate Taxation*, a student treatise that is part of the LexisNexis *Understanding* series.

In addition to her scholarly endeavors, since August, Professor Kwon has been a member of the Appointments Committee, which coordinates faculty hiring for the law school. Additionally, she began serving as a faculty advisor for the Christian Legal Society, along with Professor Brad Areheart.



Professor Don Leatherman recently participated in a panel at the American Bar Association (“ABA”) May meeting entitled “Current Developments for Consolidated Groups.” At that ABA May meeting, Professor Leatherman also moderated and participated in a panel at entitled “Hot Topics in COD Income.” Earlier in the year, Professor Leatherman participated in a panel at the ABA January meeting entitled “The Doctor is In.”

Professor Leatherman’s published “An Analysis of the Section 336(e) Regulations in Tax Strategies for Corporate Acquisitions, Dispositions, Spin-Offs, Joint Ventures, Financings, Reorganizations and Restructurings” earlier this year. The Winter edition of the Tax Lawyer will also contain ABA comments on the section 336(e) regulations, comments for which Professor Leatherman was a principal author.

This December, Professor Leatherman will speak at the Practising Law Institute's Los Angeles meeting on Mergers, Acquisitions, and Joint Ventures on current developments for consolidated groups.



Associate Dean Alex Long recently published this summer the second edition of PROFESSIONAL RESPONSIBILITY IN THE LIFE OF A LAWYER (2nd ed. West) with co-authors and professors Judy Cornett and Paula Schaefer. Dean Long teaches in the areas of Professional Responsibility, Torts, Employment Law, and Disability Law at the University of Tennessee College of Law.



Professor Thomas Plank recorded a podcast for the Federalist Society website in June discussing the United States Supreme Court case, *Wellness International Network, Limited v. Sharif*, which held that the parties to a proceeding in a bankruptcy court, which is not an Article III court exercising the judicial power of the United States because the judges are not appointed by the President for life but are instead appointed by the judges of the courts of appeal for the relevant appellate circuit for 14 year terms, could nevertheless consent to the adjudication of an issue that otherwise would need to be adjudicated by a federal district

court. Justice Thomas dissented on the grounds that consent to such non-Article III adjudication was not allowable under the Constitution and that the Court should have addressed whether certain assets should be included in the debtor's bankruptcy estate could, Constitutionally, be adjudicated by the bankruptcy court, citing Plank's law review article, "Why Bankruptcy Judges Need Not and Should Not Be Article III Judges," 72 AM. BANKR. L.J. 567-639 (1998) described the historical basis—the practice under the English Bankrupt Acts and Insolvency Acts before the adoption of the U. S Constitution—for allowing such adjudication by non-Article III judges.

On October 1 Professor Plank participated in the first drafting session of the advisors and consultants for the Restatement (Fourth) of Property of the American Law Institute. The reporters drafting the Restatement proposed a broad coverage of the topic, including contract rights and security interests as property. Although some suggested that the Restatement should focus on real estate, Professor Plank argued for the broad coverage, including contract rights and security interests, and most attendees agreed.

In November, Professor Plank participated in a Colloquium sponsored by the Federalist Society on the "Theory of the Firm". The Colloquium consisted of a series of informal, moderated discussions of a small number of invitees examined the ongoing debate regarding the nature and proper purpose of the corporation.



Professor Gary Pulsinelli continues to serve on the Website, Technology, and Communications Committee of the Southeastern Association of Law Schools for the 2015-16 academic year. Professor Pulsinelli teaches in the areas of Property and Intellectual Property. His background includes biotechnology patent prosecution and related legal research.



Professor Paula Schaefer's article, "A Primer on Professionalism for Doctrinal Professors," which appeared in the *Tennessee Law Review* in 2014, was noted on the Legal Skills Prof Blog. A related chapter by Schaefer will appear in the book, BUILDING ON BEST PRACTICES: TRANSFORMING LEGAL EDUCATION IN A CHANGING WORLD, to be published later this year by Lexis. Additionally, Professor Schaefer spoke at the 2015 Igniting Law Teaching Conference, on the subject, "Tips for Finding the Attorney Professionalism Lessons Hiding

in Plain Sight in Every Casebook,” at American University, Washington College of Law in Washington, DC. She teaches Legal Profession, Civil Procedure, E-Discovery, and Business Associations and was a co-author of *PROFESSIONAL RESPONSIBILITY IN THE LIFE OF A LAWYER* (West Academic, 2015).



Associate Dean Greg Stein's article, “Chinese Real Estate Law and the Law and Development Theory: A Comparison of Law and Practice,” has been accepted for publication in the *Florida State Journal of Transnational Law and Policy*. The article will appear in spring of 2016. His recent book, *MODERN CHINESE REAL ESTATE LAW: PROPERTY DEVELOPMENT IN AN EVOLVING LEGAL SYSTEM*, received a favorable review in the *Law and Politics Book Review*. In addition, Stein has been invited to serve as one of the inaugural editors of Jotwell–Property. Jotwell, the *Journal of Things We Like (Lots)*, is the place where legal academics identify, celebrate, and discuss the best new legal scholarship by others in short 500-1000 word articles. Stein will write regular articles for the Journal.

Dean Stein participated on a panel at the Annual Meeting of the Association for Law, Property, and Society (ALPS). His presentation, “Harmonizing Chinese Real Estate Law with the Theory of Law and Development,” was part of a panel on the Chinese Real Estate Market. The ALPS Conference was hosted by the University of Georgia School of Law in Athens, GA. Stein was interviewed on the subject, “China Goes Boom, but it’s Raining Money,” for the radio show *Your Weekly Constitutional*. The show, hosted by Professor Stewart Harris, is produced at WETS-FM, the NPR affiliate in Johnson City, Tennessee, and syndicated nationally. Stein also gave a Pre-Football Continuing Legal Education presentation on September 12, on “Government Conditions on Real Property Development: When Are They Constitutional and When Are They a Taking?”

Stein participated in the Fall Meeting of the American College of Real Estate Lawyers (ACREL) in two different capacities, serving as a Member-Elect of the Board of Governors and Co-Chairing the Meeting of the Law Professors’ Committee. Stein previously served on the ACREL Board from 2011 through 2013. The meeting took place in October 2015 in Baltimore.

Stein has also been invited to serve as a peer reviewer for *Frontiers of Law in China*, a law journal published in English by Renmin University School of Law in Beijing, China.



Professor Maurice Stucke was in the Spring 2015 semester an Academic Visitor at Oxford University's Institute of European and Comparative Law, a Fellow at Oxford's Centre for Competition Law and Policy, and a Senior Associateship at Pembroke College. While at Oxford with his family, Professor Stucke undertook several research projects. First, he examined, with Ariel Ezrachi, the relationship between competition and quality in two-sided markets. That led to their article, "When Competition Fails to Optimise Quality: A Look at Search Engines," *Yale Journal Of Law & Technology* (forthcoming

2015), available at <http://ssrn.com/abstract=2598128>

Second, Professor Stucke examined the implications of a data-driven economy on privacy, consumer protection and competition law. That led to two books: *BIG DATA AND COMPETITION POLICY* (Oxford University Press, forthcoming 2016) (with Allen P. Grunes) and *THE END OF COMPETITION AS WE KNOW IT: THE RISE OF PRICE ALGORITHMS, MACHINE LEARNING AND ARTIFICIAL INTELLIGENCE* (Harvard University Press, forthcoming 2016) (with Ariel Ezrachi). Finally, he is developing ways that companies can promote an ethical organizational culture to deter wrongdoing.

Professor Stucke co-authored two articles with Allen Grunes on the implications of Big Data on competition policy: "No Mistake About It: The Important Role of Antitrust in the Era of Big Data," which appeared in *The Antitrust Source* and "Debunking the Myths over Big Data and Antitrust," which appeared in *CPI Antitrust Chronicle*. Professor Stucke also coauthored with Allen Grunes an op-ed piece entitled, "Dancing Around Data." The article, which appears in *The Hill*, argues that privacy concerns should be given greater consideration in the evaluation of corporate mergers. His article, "In Search of Effective Ethics and Compliance Programs," was published in the *Journal of Corporation Law*, a publication of the University of Iowa College of Law, and his article, "How Competition Agencies Can Use Behavioral Economics," was published in *The Antitrust Bulletin*.

Professor Stucke recently authored a chapter "Leniency, Whistleblowing and the Individual: Should We Create Another Race to the Competition Agency?," in *ANTI-CARTEL ENFORCEMENT IN A CONTEMPORARY AGE: THE LENIENCY RELIGION* (Caron Beaton-Wells ed., Hart Publishing 2015).

Finally, he presented the above research at University of Oxford's The Antitrust Enforcement Symposium; before the U.S. Federal Trade Commission's workshop, The "Sharing" Economy: Issues Facing Platforms, Participants, and Regulators; at Oxford's Round Table Discussion on Information Exchange and Market Transparency; at the American Bar Association Section of Antitrust Law's 63rd Spring Meeting; in Madrid at the law firm Uría Menéndez's Mesa Redonda: Privacidad y Competencia en la Era del Big Data, at Bar Ilan University's

conference, Fairness in Antitrust; and Concurrences Journal's and Cadwalader, Wickersham & Taft's forum in Brussels, Antitrust, Privacy & Big Data.



Professor Kris Anne Tobin, along with Brad Morgan, associate director of the Institute for Professional Leadership, presented at the annual conference of the Institute for Law Teaching and Learning. The title of their presentation was “Combining Legal Research Pedagogy, Pro Bono and Experiential Learning in the First Year Curriculum at the University of Tennessee College of Law.” Professor Tobin continues to serve on the Executive Committee for the AALS Section on Admiralty and Maritime Law.



Professor Paulette J. Williams teaches the Nonprofits Clinic, the Nonprofits Seminar, and the Business Clinic. During the Fall 2015 semester she attended the Engagement Scholarship Consortium at Penn State University, and she presented on the final plenary panel at the Southern Clinical Conference at the University of Memphis Cecil C. Humphreys School of Law. Professor Williams recently served as a member of the ABA-AALS site visit team for the University of Massachusetts School of Law at Dartmouth.