

**COLLEEN E. MEDILL**  
**University of Nebraska College of Law**  
**1875 N. 42<sup>nd</sup> Street, P.O. Box 830902**  
**Lincoln, Nebraska 68583-0902**  
**cmedill2@unl.edu (preferred contact method)**

**EDUCATION**

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**UNIVERSITY OF KANSAS SCHOOL OF LAW, J.D. (1989)**

- Class Rank: 1st
- Order of the Coif
- Articles Editor, Kansas Law Review
- C.C. Stewart Award for Scholarship (awarded to the outstanding graduate by the faculty)
- Robert A. Schroeder Scholarship (three year full-tuition merit scholarship)

**UNIVERSITY OF ILLINOIS (FALL 1985)**

- Graduate student in Quantitative International Relations
- Recipient of a National Science Foundation Fellowship

**UNIVERSITY OF KANSAS, B.A. IN ECONOMICS AND POLITICAL SCIENCE (1985)**

- Graduated *With Highest Distinction* with Honors in Political Science
- Phi Beta Kappa
- Class of 1913 Award (awarded annually to two outstanding graduates of the College of Liberal Arts and Sciences)
- Hilltopper Award (awarded annually to seven graduating seniors in recognition of leadership and service to the University and the Lawrence, Kansas community)

**EXPERIENCE**

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**UNIVERSITY OF NEBRASKA COLLEGE OF LAW, LINCOLN, NEBRASKA** **2004 - present**

- Robert and Joanne Berkshire Family Professor of Law (2013-present)
- Director, College of Law Undergraduate Academic Programs (2019-present)
- Warren R. Wise Professor (2008-2012)
- Professor (2005-2008)
- Associate Professor (2004-2005)
- Courses: Employee Benefits Law, Property I and II, Real Estate Transactions, Wills & Trusts

**KOLEY JESSEN PC, LLO, OMAHA, NEBRASKA** **2014-2019**

- Of Counsel to the Labor and Employment Practice Group
- Practice focused primarily on tax, regulatory compliance, litigation, and corporate transaction issues concerning retirement and welfare benefit plans subject to ERISA and Chapter 400 of the Internal Revenue Code

**THE UNIVERSITY OF TENNESSEE COLLEGE OF LAW, KNOXVILLE, TENNESSEE 1997 - 2004**

- Professor (2003-2004)
- Associate Professor (1997-2002)
- Courses: Employee Benefits Law; Property; Gratuitous Transfers, Wealth Transfer Tax

**STINSON, LLP, KANSAS CITY, MISSOURI 1990 - 1997**

- Associate Attorney
- Practice focused primarily on tax, regulatory compliance, litigation, and corporate transaction issues concerning retirement and welfare benefit plans subject to ERISA and Chapter 400 of the Internal Revenue Code

**THE HONORABLE DEANELL REECE TACHA, UNITED STATES COURT OF APPEALS 1989 - 1990**

- Law Clerk

**AWARDS**

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- Professor of the Year Award (2021) (voted by the students)
- John H. Binning Award for Excellence (2020)
- Professor of the Year Award (2020)
- Selected for inclusion in *The Best Lawyers in America*<sup>™</sup> 2020 in the field of ERISA Litigation
- University of Nebraska Outstanding Teaching and Instructional Creativity Award (2018)
- University of Nebraska John E. Weaver Award for Teaching Excellence (2017)
- Bunger Memorial Award for Excellence (2016)
- Schmoker Faculty CLE Grant (2014-2015)
- Professor of the Year Award (2014)
- Robert and Joanne Berkshire Family Professor of Law (2012-present)
- Warren R. Wise Professor of Law (2008-2012)
- Hevelone Research Professor (2008-2009)
- Professor of the Year Award (2008)
- Distinguished Faculty Award, University of Nebraska College of Law Alumni Council (2007)
- Cline Williams Research Professor (2005-2006)
- One of ten finalists for The University of Tennessee National Alumni Association Outstanding Teacher Award (2002)
- Winner of the Labor and Social Welfare Policy Category for the 2002 Stanford/Yale Junior Faculty Scholarship Forum
- The University of Tennessee College of Law: Marilyn V. Yarbrough Faculty Award for Writing Excellence (2001)
- The University of Tennessee College of Law Harold C. Warner Outstanding Teacher Award (2000)
- The University of Tennessee College of Law W. Allen Separk Faculty Scholarship Award (2000)

**PROFESSIONAL MEMBERSHIPS AND ACTIVITIES**

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- Member of the Bars for Nebraska (since 2015-inactive), Kansas (since 1989-inactive), Missouri (since 1990-inactive), and Tennessee (since 1997-inactive)
- Big 10 Academic Leadership Program (2021-2022)
- University of Nebraska Faculty Leadership in Academia: From Inspiration to Reality (FLAIR) Program (2020)
- Graduate of the University of Nebraska Summer Institute for Online Teaching (2020)
- United States Dept. of Labor, Advisory Council on Welfare and Pension Benefit Plans, Appointed Member (2017-2019) (see below for description of activities)

- American College of Employee Benefits Counsel, Elected Fellow (since 2014)
- American Law Institute, Elected Member (since 2006)
- Association of American Law Schools, Section on Women in Legal Education
  - Executive Committee Member (2011)
  - Chair, Program Planning Committee for 2012 Annual Meeting (2011)
  - Chair, Mentoring Committee (2009-2011)
  - Member of the Subcommittee on Mid-Year Meeting Proposal (2009)
  - Webmistress for the Section's Mentoring Program database (2009-2013)
- Association of American Law Schools, Section on Property
  - Secretary (2011)
  - Executive Committee Member (2011)
- Association of American Law Schools, Section on Employee Benefits Law
  - Chair (2003-2004)
  - Executive Committee Member (2001-2003, 2009-present)
- American Bar Association, Member (since 1989)
  - Member of the Sections on Taxation, Labor and Employment Law, and Health Law
- Pension Rights Center, Washington, D.C., Conversation on Coverage Project, Member of Working Group III (2004-2007)
- Tobin Project, Cambridge, Massachusetts, Member of the Working Group on Retirement Security (2006-2008)
- Catholic Lawyers Guild of the Diocese of Lincoln, Member (since 2006)
  - Board of Directors (2013 - 2019)

## BOOKS AND BOOK CHAPTERS AUTHORED

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INTRODUCTION TO EMPLOYEE BENEFITS LAW: POLICY AND PRACTICE (West Academic Publishing 2004, 2007, 2010, 2014, 2018) (with accompanying Teacher's Manual and semi-annual Student Supplemental Materials reflecting changes in the law)

*This textbook has been adopted to teach employee benefits law at over 40 ABA-accredited law schools. Big Ten schools that have used the book to teach a course on employee benefits law are Illinois, Maryland, Michigan, Minnesota, Nebraska, Northwestern, Ohio State, Penn State, Rutgers, and Wisconsin. Other law schools that have used the book are Arizona State, Boston College, Boston University, Colorado, Creighton, Kansas, Maine, Marquette, Missouri, NYU (Graduate Tax Program), Oklahoma, Notre Dame, San Diego, St. Louis, Tennessee, Utah, Virginia, and Wake Forest.*

CONTEMPORARY PROPERTY (with Grant S. Nelson, Dale A Whitman, and Shelley Ross Saxer (West Academic Publishing 2013, 2019) (with accompanying Teacher's Manual)

ACING PROPERTY (West 2009, 2012, forthcoming 2022)

DEVELOPING PROFESSIONAL SKILLS: PROPERTY (West 2011) (with accompanying Teacher's Manual)

*This supplemental textbook, which pioneered a creative and innovative approach to the incorporation of professional legal skills training in a traditional doctrinal Property Law course, formed the model for West Academic Publishing's Developing Professional Skills series (see listing below).*

*Enron and the Pension System*, in ENRON: CORPORATE FIASCOS AND IMPLICATIONS (Foundation Press 2004)

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**SERIES EDITOR AND CONSULTANT, DEVELOPING PROFESSIONAL SKILLS BOOK SERIES**

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DEVELOPING PROFESSIONAL SKILLS: BUSINESS ASSOCIATIONS (2012)  
DEVELOPING PROFESSIONAL SKILLS: CIVIL PROCEDURE (2013)  
DEVELOPING PROFESSIONAL SKILLS: CONTRACTS (2013)  
DEVELOPING PROFESSIONS SKILLS: CONSTITUTIONAL LAW (2014)  
DEVELOPING PROFESSIONAL SKILLS: BANKRUPTCY (2016)  
DEVELOPING PROFESSIONS SKILLS: WORKPLACE LAW (2016)  
DEVELOPING PROFESSIONS SKILLS: ENVIRONMENTAL LAW (2016)  
DEVELOPING PROFESSIONAL SKILLS: SECURED TRANSACTIONS (2017)  
DEVELOPING PROFESSIONS SKILLS: CRIMINAL PROCEDURE (2017)  
DEVELOPING PROFESSIONS SKILLS: CRIMINAL LAW (2017)  
DEVELOPING PROFESSIONS SKILLS: PROFESSIONAL RESPONSIBILITY (2017)

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**CURRENT SCHOLARLY WORKS-IN-PROGRESS**

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*Solving the Problem of Uncashed Pension Checks*

This article is based on what I learned through my service on the Department of Labor's ERISA Advisory Council (see discussion below). According to the 2019 ERISA Advisory Council Report:

The testimony suggested that, in the year 2017, roughly 4.5% of all [pension plan] checks go uncashed. Roughly 5 million checks were issued from defined contribution plans, which would suggest that 225,000 checks may have gone uncashed in defined contribution plans alone. Based on the experience of Council members, and testimony and conversations with recordkeepers, the value of uncashed retirement plan checks likely exceeds \$100 million per year but could be considerably larger. This suggests that the total value of uncashed retirement plan checks could easily exceed \$500 million cumulatively.

These are 2017 estimates (the best available data). Given the large numbers of elderly deaths due to COVID-19, the dollars associated with uncashed pension checks today are likely to be much larger. Although the ERISA Advisory Council is prohibited from opining on the proper interpretation of the federal statutory provisions establishing fiduciary responsibilities for plan administrators, as a former Council member I am no longer bound by this requirement. I believe that using state-based unclaimed property funds to reunite retirees (or their devisees/intestate heirs) with uncashed pension checks is consistent with ERISA fiduciary responsibilities, and it is in fact the best option considering the available alternatives (which assume Congressional inaction). This article will explain why.

*Reconceptualizing ERISA Fiduciary Duties, Claims Processing, and the Settlor Function Doctrine: Insights from Witt v. United Behavioral Health*

In this plaintiffs' class action litigation, the federal district court certified three classes, which covered 67,000 denied claims for residential, outpatient, and intensive outpatient treatment for mental health and substance abuse disorders. On March 5, 2019, following a 10-day bench

trial, the district court entered judgment on liability for the plaintiffs with respect to both the ERISA fiduciary-breach and denial-of-benefits claims. The court found that the claims administrator, United Behavioral Health (UBH), used internal guidelines for the review of claims that were more restrictive than generally accepted standards of care for a host of reasons. On November 3, 2020, the district court issued a remedies order awarding the plaintiffs prospective declaratory and injunctive relief and requiring UBH to reprocess all of the 67,000 denied claims under a new standard that comported with the plan terms. The district court's claim reprocessing remedy has been stayed by the Ninth Circuit pending appeal.

Another part of the district court's order mandated ERISA fiduciary training for UBH senior management. I was contacted by legal counsel in the case to conduct this fiduciary training. Although I originally agreed to conduct the training, I (fortunately) never signed an engagement letter and later declined when it became evident that the parties were still fighting over the definition of an ERISA "fiduciary" and defense counsel simply could not (in my opinion) get its act together. I had better things to do with my summer. Currently, I am closely monitoring this case and intend to use it as a vehicle to write the definitive article on plan participant rights under the Mental Health Parity and Addiction Equity Act, ERISA fiduciary duties, plan claims processing, and the current misuse of the settlor function doctrine.

#### **ARTICLES PUBLISHED IN LAW REVIEWS**

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*ERISA Subrogation After Montanile*, 95 NEB. L. REV. 603 (2017) (selected by Tax Notes as one of the top three most thought-provoking articles on employee benefits law written in 2017).

*Regulating ERISA Fiduciary Outsourcing*, 102 IOWA L. REV. 505 (2017) (selected by Tax Notes as one of the top two most thought-provoking articles on employee benefits law written in 2017).

*Comparing ERISA and Fair Labor Standards Act Claims Under the Affordable Care Act*, 20 EMP. RTS & EMP. POL'Y J. 173 (2016).

*The Federal Common Law of Vicarious Fiduciary Liability Under ERISA*, 42 MICHIGAN JOURNAL OF LAW REFORM 1 (2011) (lead article) (selected by Tax Notes as one of the ten most thought-provoking articles on employee benefits law written in 2011).

*The Retirement Distribution Decision Ten Years Later: Results from an Empirical Study*, 16 ELDER L. J. 295-332 (2008).

*Transforming the Role of the Social Security Administration*, 92 CORNELL L. REV. 323 (2007) (invited submission for symposium issue).

*Resolving the Judicial Paradox of "Equitable" Remedies Under ERISA Section 503(a)(3)*, 39 J. MARSHAL L. REV. 827-967 (2006) (invited submission for symposium issue).

*Challenging the Four Truths of Personal Social Security Accounts: Evidence from the World of 401(k) Plans*, 81 NORTH CAROLINA LAW REVIEW 901-975 (2003) (lead article).

*Stock Market Volatility and 401(k) Plans*, 34 MICHIGAN JOURNAL OF LAW REFORM 469-545 (2001).

*Targeted Pension Reform*, 27 JOURNAL OF LEGISLATION 1-68 (2001) (lead article).

*The Individual Responsibility Model of Retirement Plans Today: Conforming ERISA Policy to Reality*, 49 EMORY LAW JOURNAL 1-86 (2000) (lead article).

*HIPAA And Its Related Legislation: A New Role For ERISA In The Regulation Of Private Health Care Plans?*, 65 TENNESSEE LAW REVIEW 485-510 (1998).

*The Law of Directed Trustees Under ERISA: A Proposed Blueprint for the Federal Courts*, 61 MISSOURI LAW REVIEW 825-876 (1996).

Comment, *Title VII and the Age Discrimination in Employment Act: Should Partners be Protected as Employees?*, 36 KANSAS LAW REVIEW 581-609 (1988).

## **OTHER LEGAL PUBLICATIONS**

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*How Do Conflicts of Interest Affect Benefit-Denial Claims Under ERISA?*, 2008 PREVIEW U.S. SUP. CT. CAS. 343-347 (previews *Metropolitan Life Insurance Co. v. Glenn*) (invited submission).

*How Readable Are Summary Plan Descriptions for Health Care Plans?*, Employee Benefit Research Institute, Notes (Oct. 2006) (with Wiener, Bornstein, and McGorty).

*Are Constructive Trusts or Equitable Liens Available As Equitable Remedies Under Section 502(a)(3) of ERISA?*, 2006 PREVIEW U.S. SUP. CT. CAS. 309 (previews *Sereboff v. Mid Atlantic Medical Services, Inc.*) (invited submission).

## **SELECTED PROFESSIONAL PRESENTATIONS**

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Invited Speaker, *DOL Enforcement Program for the Mental Health Parity and Addiction Equity Act*, Annual Meeting of the Nebraska State Bar Association, Oct. 2018, Omaha, Nebraska.

Invited Speaker, *Health Care Reform in 2018: What's Next?*, Nebraska Judicial Education Program, Feb. 2018, University of Nebraska College of Law.

Invited Speaker, *Association Health Plans*, Annual Meeting of the Association of American Law Schools, Jan. 2018, San Diego, California.

Invited Speaker, *Update: What's In and What's Out in Health Care Reform: What Every Attorney Should Know About Health Law*, Annual Meeting of the Nebraska State Bar Association, Oct. 2017, Omaha, Nebraska.

Invited Speaker, *Reinforcing Student Understanding of Substantive Property Law through Skills Exercises*, Jan. 2017, San Francisco, California (hosted by West Academic Publishing in conjunction with the Annual Meeting of American Law Schools).

Invited Speaker, *ERISA Subrogation After Montanile*, Annual Meeting of the Nebraska Association of Trial Attorneys (part of the Nebraska State Bar Association Annual Meeting), Oct. 2016, Papillion, Nebraska.

Invited Speaker, *Teaching Professional Skills in Doctrinal Courses: Managing Time/Substantive Coverage Constraints and Assessing Student Performance*, Experiential Innovation Summit: Incorporating Skills Throughout the Law School Curriculum, July 2017, St. Paul, Minnesota (hosted by West Academic Publishing).

Invited Presentation, *Integrating (and Assessing) Lawyering Skills in the 1L Curriculum* (with Professors Paula Schaefer and Alex Long), Institute for Law Teaching and Learning National Conference, June 2016, Topeka, Kansas.

Invited Speaker, *Hot Topics in ERISA Litigation*, Nebraska Defense Counsel Association Annual Meeting, June 2016, Lincoln, Nebraska

Invited Speaker, *ERISA Litigation in the Federal Courts*, Summer Education Program for Nebraska Federal Law Clerks, June 2016, Omaha, Nebraska.

Invited Speaker, *Emerging Employee Claims Under the Affordable Care Act*, Joint Program co-sponsored by the Section on Employee Benefits Law and Executive Compensation and the Section on Health Law, Association of American Law Schools Annual Meeting, January 2016, Washington, D.C.

Invited Participant, Workshop on the Economics of Public Pensions, George Mason University Law and Economics Center, Sept. 2015, Palo, Alto, California.

Invited Speaker, *Assessment of Skills Exercises: Tips and Techniques for Time and Classroom Management*, Annual Meeting of the Southeastern Association of American Law Schools, July 2015, Boca Raton, Florida.

Invited Speaker, *New Developments Under the Affordable Care Act*, University of Kansas School of Law New Developments in the Law CLE Program, May 2015.

Invited Speaker, *The Supreme Court and the Future of the Affordable Care Act*, CLE Programs at Omaha Bar Association, Madison County Bar Association, and the University of Kansas, April-May 2015.

Invited Speaker, *The Supreme Court and the Future of the Affordable Care Act*, Nebraska College of Law STIR Talk Series, March 2015.

Invited Speaker, *Implementing the Affordable Care Act: A Primer for the Non-Expert*, College of Law Mini CLE Program, Oct. 2014, North Platte and Kearney, Nebraska.

Invited Speaker, *Determining "Fair Market Value" in Real Estate Transactions and Condemnation Actions*, College of Law Table for Ten Series, Sept. 2014, Lincoln, Nebraska.

Invited Witness, *Testimony on Outsourcing of Fiduciary Responsibilities*, ERISA Advisory Council, United States Department of Labor, June 1014, Washington, D.C.

Invited Speaker and Panel Moderator, *Social Insurance Programs Under Attack*, Third Annual ERISA, Benefits and Social Insurance Conference, Marquette University Law School, March 2014, Milwaukee, Wisconsin.

Invited Speaker, *Public and Private Employee Benefits In Turmoil*, 2012 International Conference for Law and Society, June 2012, Honolulu, Hawaii.

Invited Program Moderator, *Tenth Annual Symposium on Employee Benefits Law*, Center for Tax Law and Employee Benefits, John Marshall Law School, April 2012, Chicago, Illinois.

Invited Speaker, *ERISA Litigation in the Federal Courts*, The William Matthew Byrne, Jr. Judicial Clerkship Institute, Pepperdine University School of Law, March 2012, Malibu, California (co-sponsored by the national Federal Judicial Center).

Invited Presenter, *The New Revocable Property*, Conference on Employee Benefits in an Era of Retrenchment, Washington University Law School, March 2012, St. Louis, Missouri.

Invited Speaker, *The Patient Protection and Affordable Care Act*, Health, Law and Ethics Society, March 2012, Lincoln, Nebraska.

Invited Program Moderator, *An Objective Discussion of Public Sector Pension Plans*, Joint Program co-sponsored by the Section on Employee Benefits Law and Executive Compensation and the Section on State and Local Government, Association of American Law Schools Annual Meeting, January 2012, Washington, D.C.

Speaker, *Integrated Skills Training for Law Students*, University of Nebraska Faculty Forum, August 2011, Lincoln, Nebraska.

Invited Speaker, *Teaching Skills and Professional Responsibility Concepts in Traditional Doctrinal Courses*, Innovation in Teaching Summit, August 2011, St. Paul, Minnesota (hosted by Thomson Reuters).

Speaker, *Thoughts on Effective Teaching and Efficient Class Preparation*, Faculty Brown Bag Luncheon Series on Professional Development, University of Nebraska College of Law, July 2011, Lincoln, Nebraska.

Invited Commentator, Association of American Law Schools, Workshop on Women Rethinking Equality, June 2011, Washington, D.C.

Invited Speaker, *ERISA Litigation in the Federal Courts*, The William Matthew Byrne, Jr. Judicial Clerkship Institute, Pepperdine University School of Law, March 2011, Malibu, California (co-sponsored by the national Federal Judicial Center).

Invited Speaker, *National Health Care Reform: A Post-Election Analysis*, American Constitution Society, November 2010, Lincoln, Nebraska.

Invited Speaker, *Employee Health Care Benefits and ERISA Preemption*, Association of American Law Schools, Workshop on Work Law, June 2009, Long Beach, California.

Panel Organizer and Speaker, *Merging the "Old" with the "New": Community-Based Collaborative Legal Research and Opportunities for Empirical Legal Studies*, Annual Meeting of the Southeastern Association of American Law Schools, July 2008, Palm Beach, Florida.

Invited Speaker, *Retiree Perceptions and Decision-Making Concerning Longevity, Inflation, and Investment Risk in the Early Years of the Post-Retirement Phase*, Ninth Annual Joint Conference of the Retirement Research Consortium, August 2007, Washington, D.C.

Invited Speaker, *Improving Retirement Savings Through Retirement Financial Education: A "Best Practices" Approach*, Annual Meeting of the National Tax Association, November 2006, Boston, Massachusetts.

Invited Speaker, *ERISA and the Future of Health Care Reform*, University of Missouri School of Law, Faculty Colloquium Series, October 2006, Columbia, Missouri.

Invited Speaker, *The Judicial Paradox of Equitable Relief Under ERISA*, Center for Tax Law and Employee Benefits, Fourth Annual Employee Benefits Symposium, John Marshall Law School, April 2006, Chicago, Illinois.

Invited Speaker, *Roundtable on Law Review Publishing*, Annual Meeting of the Southeastern Association of American Law Schools, July 2005, Hilton Head, South Carolina.

Program Chair, *Coverage of Reproductive Technologies Under Employer-Sponsored Health Care Plans*, Section on Employee Benefits Law, Association of American Law Schools Annual Meeting, January 2004, Atlanta, Georgia (program published by the EMPLOYEE RIGHTS AND EMPLOYMENT POLICY JOURNAL, vol. 8 (2004)).

Invited Speaker, *Company Stock In 401(k) Plans and the Old-Fashioned Duty of Prudence*, Panel on Employee Stock Ownership After Enron, Section of Employee Benefits Law, Association of American Law Schools Annual Meeting, January 2003, Washington, D.C. (program published by the EMPLOYEE RIGHTS AND EMPLOYMENT POLICY JOURNAL, vol. 7 (2003)).

Invited Speaker, Stanford/Yale Junior Faculty Forum, Yale Law School, June 2002, New Haven, Connecticut (presentation of scholarship work on proposed reform of the Social Security system).

Invited Speaker, *Privatizing Social Security: A Closer Look*, Kansas Insurance Institute, February 2002, Overland Park, Kansas.

Invited Speaker, *What 401(k) Plans Teach Us About Privatizing Social Security*, Kansas Governor's Conference on Aging, May 2001, Topeka, Kansas.

Invited Speaker, *The Budget Process, Pension Tax Policy Cycles, and Pension Reform*, Panel on Tax Law Policy, Annual Meeting of the Southeastern Association of American Law Schools, August 2000, Captiva Island, Florida.

Faculty Forum, *Saving Social Security Through Targeted Pension Reform*, University of Tennessee College of Law, June 2000.

Invited Speaker, *Preventive Medicine for Employee Benefit Plans*, Eighth Annual Tennessee Corporate Counsel Institute, May 2000, Memphis, Tennessee.

Student Forum, *What Should Be The Role Of Individual Responsibility For Retirement Income Security?*, University of Tennessee College of Law, February 1999.

Invited Speaker, *Employer Fiduciary Liability for Participant Retirement Savings Education and Investment Advice*, Sixth Annual Tennessee Corporate Counsel Institute, October 1998, Kingsport, Tennessee.

Invited Speaker, *Redesigning Federal Retirement Laws For An Age Of Individual Responsibility*, Young Scholars Workshop, Annual Meeting of the Southeastern Association of American Law Schools, July 1998, Marco Island, Florida.

Faculty Forum, *Participant Retirement Savings Education and Investment Advice Under ERISA*, University of Tennessee College of Law, July 1998.

Invited Speaker, Panel on Costs of Litigation and Access to the Federal Courts, Tenth Circuit Judicial Conference, July 1996, Aspen, Colorado.

**UNITED STATES DEPT. OF LABOR, ADVISORY COUNCIL ON WELFARE AND PENSION BENEFIT PLANS, APPOINTED MEMBER REPRESENTING THE GENERAL PUBLIC (2017-2019)**

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Note: Council Members research and write the reports produced by the Council without secretarial or research assistance. Members of the Council with a talent for research, analysis, and writing are rewarded with primary drafting responsibility under the principle of “no good deed goes unpunished.”

**2017 COUNCIL REPORTS:**

MANDATED DISCLOSURE FOR RETIREMENT PLANS - ENHANCING EFFECTIVENESS FOR PARTICIPANTS AND SPONSORS

REDUCING THE BURDEN AND INCREASING THE EFFECTIVENESS OF MANDATED DISCLOSURES WITH RESPECT TO EMPLOYMENT-BASED HEALTH BENEFIT PLANS IN THE PRIVATE SECTOR

These 2017 reports resulted in a new proposed regulation by the Department of Labor, *Default Electronic Disclosure by Employee Pension Benefit Plans under ERISA*, 84 Fed. Reg. 56894 (Oct. 10, 2019). The Department of Labor described the contributions of the 2017 Council to the promulgation of this new regulation as follows:

The ERISA Advisory Council (the Advisory Council) has repeatedly made recommendations to the Department concerning possible changes to the electronic delivery rules for ERISA disclosures. Most recently, in its November 2017 report, the Advisory Council recommended that to ease burdens on plans and improve understandability for participants, an ideal disclosure protocol would implement both paper and electronic delivery.<sup>43</sup> In making its recommendation, the Advisory Council cited to witness testimony that a majority of participants do not read paper documents sent to them, and participants who do read the documents find them difficult to understand, noting that “SPDs were becoming increasingly detailed and using legalistic language to mitigate the litigation risks.” The Council also noted that home internet and computer use for adults over age 50, individuals with less than \$25,000 in annual income, those without a college degree, and those living in rural areas is lower than for other demographic groups. The Council further recommended that a new disclosure called a

“Quick Reference Guide” could be distributed annually to participants that would provide answers to basic questions about the plan.

## **2018 COUNCIL REPORTS**

LIFETIME INCOME SOLUTIONS AS A QUALIFIED DEFAULT INVESTMENT ALTERNATIVE (QDIA)  
– FOCUS ON DECUMULATION AND ROLLOVERS

EVALUATING THE DEPARTMENT’S REGULATIONS AND GUIDANCE ON ERISA BONDING  
REQUIREMENTS AND EXPLORING REFORM CONSIDERATIONS

## **2019 COUNCIL REPORTS**

BEYOND PLAN AUDIT COMPLIANCE: IMPROVING THE FINANCIAL STATEMENT AUDIT  
PROCESS

VOLUNTARY TRANSFERS OF UNCASHED CHECKS FROM ERISA PLANS TO STATE  
UNCLAIMED PROPERTY PROGRAMS

Proposing a solution to the problem of uncashed pension checks was a fascinating intellectual challenge with enormous potential real-world impact. Using my background in both property law and ERISA, I was able to teach the rest of the Council how state unclaimed property systems work, the fiduciary responsibilities of the administrator of the system, and how these systems are potentially consistent with the ERISA fiduciary responsibilities of plan administrators to ensure participants receive their benefits while reasonably controlling the expenses of operating the plan. This Council Report has generated extensive media coverage in the employee benefits industry due to the significant amount of dollars involved.

As an interesting side note, I incorporated this material into my class coverage of “lost and found” property during the Fall 2019 semester. A single-parent student, whose mother had recently died, checked the Nebraska unclaimed property fund site and found \$30,000 that had been left unclaimed by her deceased mother. She told me later that having this extra \$15,000 in cash (she had to share the funds with her brother) gave her enormous peace of mind when the world went crazy in March of 2020. This is my best counter-anecdote when other faculty members complain that it is impossible to combine teaching, service, and scholarship. In my experience, being a “decathlete” pays dividends (literally).

## **RESEARCH GRANTS**

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Principal Investigator, *Retiree Perceptions and Decision-Making Concerning Longevity, Inflation, and Investment Risk in the Early Years of the Post-Retirement Phase*, funded by the Center for Retirement Research, Sandell Grant Program (2006-2007) (\$30,000).

Co-Principal Investigator, *An Empirical Analysis of Summary Plan Description Language* (with Richard Weiner and Brian Bornstein), funded by The Commonwealth Fund and the Employee Benefit Research Institute (2005-2006) (\$20,000).

## **EXPERT WITNESS TESTIMONY AND CONSULTING**

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Expert witness for the plaintiffs in the case of *BP Corporation North America Inc. Savings Plan Investment Oversight Committee v. Northern Trust Investments, N.A.*, Case No. 08CV6029 (filed N.D. Ill.2008).

Consultant for the defendant in the case of *Curtis v. Alcoa Inc.*, Case No. 3:06-CV-448-TJM (filed E.D. Tenn. 2008).

Expert witness for the plaintiffs in *In re Weirton Steel Corporation Retirement Plan* (administrative appeal before the Pension Benefit Guaranty Corporation, filed 2005).

Expert witness for the defendant in the case of *In re Electronic Data Systems Corp. Securities Litigation*, Case No. 6:03-MD-1515, Lead Case No. 6:03-CV-110 (filed E.D. Texas 2004).

## **UNIVERSITY OF NEBRASKA AND COLLEGE OF LAW COMMITTEES AND OTHER SERVICE**

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- 2021-2022**
- Director, College of Law Undergraduate Academic Programs (Nebraska Honors and College of Business)
  - Member, Executive Vice Chancellor's Peer Review of Teaching Task Force
  - Member, Faculty Appointment Committee
  - Member, College of Law Long Range Planning Committee
  - Nebraska Honors Program Faculty Fellow in Law
  - Member, Nebraska Honors Strategic Visioning Committee
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Solo and Small Firm Practice Concentration
  - Faculty Advisor, Program of Concentrated Study in Human Resources Law
  - Faculty Advisory, Program of Concentrated Study in Wealth Management Law
  - Faculty Advisor, Saint Thomas More Society
- 2020-2021**
- Director, College of Law Undergraduate Academic Programs (Nebraska Honors and College of Business) (successfully navigated the multiple levels of institutional and State of Nebraska requirements to obtain approval for a new Business and Law Major in the College of Business, with the four "core" courses taught by College of Law faculty)
  - Chair, President's Faculty Excellence Awards Committee (responsible for selecting recipients of the University of Nebraska Outstanding Teaching and Instructional Creativity Award)
  - Member, Executive Vice Chancellor's Peer Review of Teaching Task Force
  - Member, College of Law Long Range Planning Committee
  - Member, College of Law Strategic Planning Implementation Working Group
  - Nebraska Honors Program Faculty Fellow in Law
  - Member, Nebraska Honors Strategic Visioning Committee
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Solo and Small Firm Practice Concentration
  - Faculty Advisor, Program of Concentrated Study in Human Resources Law
  - Faculty Advisory, Program of Concentrated Study in Wealth Management Law
  - Faculty Advisor, Saint Thomas More Society
- 2019-2020**
- Director, College of Law Undergraduate Academic Programs (Nebraska Honors and College of Business) (charged with developing and implementing a strategy to turn the Business and Law Minor at the College of Business into a Major)

- Member, College of Law Long Range Planning Committee (Note: With the COVID-19 outbreak in March of 2020, this Committee became the COVID Strategic Planning Committee, which met every week over the Summer of 2020 to figure out how to operate the College of Law under the social distancing requirements established by the University of Nebraska Medical Center)
- Member, Dean's Ad Hoc Committee on Grading System for Spring 2020 Courses
- Member, President's Faculty Excellence Awards Committee (responsible for selecting up to two recipients of the University of Nebraska Outstanding Teaching and Instructional Creativity Award)
- Member, Executive Vice Chancellor's Peer Review of Teaching Task Force
- Member, College of Law Strategic Planning Implementation Working Group
- Member, College of Law Pro Bono Committee
- Member, College of Law Grade Appeal Committee (resolved three student appeals)
- Nebraska Honors Program Faculty Fellow in Law
- Member, Nebraska Honors Strategic Visioning Committee
- Faculty Advisor, Program of Concentrated Study in Real Estate Law
- Faculty Advisor, Solo and Small Firm Practice Concentration
- Faculty Advisor, Program of Concentrated Study in Human Resources Law
- Faculty Advisory, Program of Concentrated Study in Wealth Management Law
- Faculty Advisor, Saint Thomas More Society

- 2018-2019**
- Charged with overseeing the ongoing development of the new Business and Law Minor at the College of Business
  - Faculty Supervisor, Federal Judicial Externship Program
  - Member, College of Law Long Range Planning Committee
  - Member, College of Law Mission and Values Subcommittee for Strategic Planning
  - Member, Adjunct Faculty Teaching Review Committee
  - Nebraska Honors Program Faculty Fellow in Law
  - Member, Nebraska Honors Program Strategic Visioning Committee
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Solo and Small Firm Practice Concentration
  - Faculty Advisor, Program of Concentrated Study in Human Resources Law
  - Faculty Advisor, Saint Thomas More Society

- 2017-2018**
- Charged with creating a new Business and Law Minor at the College of Business
  - Member, Untenured Faculty Teaching Review Committee
  - Faculty Supervisor, Federal Judicial Externship Program
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Solo and Small Firm Practice Concentration
  - Faculty Advisor, Program of Concentrated Study in Human Resources Law
  - Faculty Advisor, Program of Concentrated Study in Wealth Management Law
  - Faculty Advisor, Saint Thomas More Society

- 2015-2017**
- Chair, Ad Hoc Committee on New ABA Standards 314 & 315 (successfully created and obtained faculty approval of institutional learning outcomes along with quantitative measures of progress/compliance in anticipation of a Spring 2017 ABA accreditation site review)
  - Member, Untenured Faculty Teaching Review Committee
  - Faculty Supervisor, Federal Judicial Externship Program
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Solo and Small Firm Practice Concentration
  - Faculty Advisor, Program of Concentrated Study in Human Resources Law

- Faculty Advisor, Program of Concentrated Study in Wealth Management Law
- Faculty Advisor, Saint Thomas More Society
- Faculty Advisor, Nebraska Real Estate Law Society

- 2012-2015**
- Chair, Curriculum Committee (successfully implemented new joint degree programs with the University of Nebraska-Omaha (J.D./M.A. Social Gerontology) and the University of Nebraska Medical Center (J.D./M.P.H), substantially expanded opportunities for law student externships by successfully obtaining faculty approval to change the requirements for academic credit for externships, created new Programs of Concentrated Study in Solo/Small Firm Practice and Intellectual Property Law, revised the Individualized Program of Concentrated Study policy to more easily allow students to design their own concentrated study programs by subject area(s) of interest, completed a comprehensive survey of the faculty on course teaching methods and the use of instructional technology, and successfully obtained faculty approval to revise the 1L curriculum to include a mandatory course in International Law after preparing and presenting to the faculty a comprehensive survey of other Big 10 law school curricula)
  - Member, Untenured Faculty Teaching Review Committee
  - Faculty Supervisor, Federal Judicial Externship Program
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Solo and Small Firm Practice Concentration
  - Faculty Advisor, Program of Concentrated Study in Human Resources Law
  - Faculty Advisor, Program of Concentrated Study in Wealth Management Law
  - Faculty Advisor, Saint Thomas More Society
  - Faculty Advisor, Nebraska Real Estate Law Society
- 2011-2012**
- Chair, Curriculum Committee (see list of accomplishments above)
  - Member, Faculty Appointments Committee
  - Member, Untenured Faculty Teaching Review Committee
  - Faculty Supervisor, Federal Judicial Externship Program
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Saint Thomas More Society
- 2010-2011**
- Member, Faculty Appointments Committee
  - Member, Curriculum Committee
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Saint Thomas More Society
- 2009-2010**
- Member, Dean Search Committee
  - Member, Faculty Appointments Committee
  - Member, Curriculum Committee
  - Member, Law Library Committee
  - Member, Untenured Faculty Teaching Review Committee
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Saint Thomas More Society
- 2008-2009**
- Member, Faculty Appointments Committee
  - Member, Untenured Faculty Teaching Review Committee
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Saint Thomas More Society
- 2007-2008**
- Member, Faculty Appointments Committee

- Member, Untenured Faculty Teaching Review Committee
- Judicial Clerkships Faculty Co-Advisor
- Faculty Advisor, Program of Concentrated Study in Real Estate Law
- Faculty Advisor, Saint Thomas More Society

- 2006-2007**
- Member, Curriculum Committee
  - Faculty Advisor, Program of Concentrated Study in Real Estate Law
  - Faculty Advisor, Saint Thomas More Society

- 2004-2006**
- Member, Lectureship Committee

**THE UNIVERSITY OF TENNESSEE COLLEGE OF LAW COMMITTEES AND OTHER SERVICE**

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- 2002-2003**
- Faculty Judicial Clerkship Advisor
  - Faculty Advisor, UT Pro Bono Health Care Access Project
  - Member, Readmissions Committee
  - Member, Outstanding Teacher Award Selection Committee
  - Member, Separk Faculty Scholarship Award Selection Committee
  - Member, Yarbrough Faculty Award for Writing Excellence Selection Committee

- 2001-2002**
- Member, College of Law Governance Committee
  - Faculty Judicial Clerkship Advisor
  - Member, Outstanding Teacher Award Selection Committee
  - Member, Separk Faculty Scholarship Award Selection Committee

- 2000-2001**
- Faculty Judicial Clerkship Advisor
  - Member, Academic Standards and Curriculum Committee

- 1999-2000**
- Faculty Judicial Clerkship Advisor
  - Member, Search Committee for the Director of the Center for Entrepreneurial Law
  - Member, The University of Tennessee Faculty and Staff Benefits Committee
  - Member, Instructional Technology Committee

- 1998-1999**
- Member, The University of Tennessee Faculty and Staff Benefits Committee
  - Member, Instructional Technology Committee

- 1997-1998**
- Member, Academic Standards and Curriculum Committee
  - Member, Kolwyck Committee