

THOMAS E. SIMMONS

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LEGAL EMPLOYMENT

University of South Dakota School of Law (Vermillion, S.D.), *Assistant Professor* (2013 - 2016); *Associate Professor* (2016 - present)

- *Current Courses*: Estate Planning (2014 - present), Professional Responsibility (2016 - present), Property (2015 - present), and Trusts & Wills (2013 - present)
- *Past Courses*: Business Organizations I (2013), Business Organizations II (2015), and Elder Law (2014 - 2015)
- *Seminar*: Holocaust Law (2016)
- *Taught in China*: Comparative Estates Law (2015) and Comparative [In]tangible Property (2016)

Gunderson, Palmer, Nelson & Ashmore, LLP (Rapid City, S.D.), *Associate* (2000 - 2006); *Partner* (2006 - 2013)

U.S. Courts (Rapid City, S.D.), *Law Clerk for Senior District Court Judge Andrew W. Bogue* (1998 - 2000)

EDUCATION

University of South Dakota School of Law, J.D., Teaching Assistant to Professor John F. Hagemann (1996 - 1997); *South Dakota Law Review*, *Editor-in-Chief* (1997 - 1998); Sterling Honor Graduate (1998)

University of South Dakota, B.S., Education and English (1991)

PUBLICATIONS AND PRESENTATIONS

Articles

“Entail Reanimation” (*work-in-progress*)

“Saving Thomas White Hawk” (*work-in-progress*)

“Actuarial Soundness, the Meaning of ‘Commensurate,’ a Sniff Test, &c” 14 NAELA J. ____ (2018) (*forthcoming*)

“Homestead: A (New) Hope” 63 S.D. LAW REV. ____ (2018) (*forthcoming*)

“Prequel to Homestead” 62 S.D. LAW REV. ____ (2017) (*forthcoming*)

“A Chinese Inheritance” 30 QUINNIPIAC PROBATE LAW J. 124 (2017)

- “Wills Above Ground” 24 ELDER LAW J. 343 (2016)
- “Deploying the Common Law to Quasi-Marxist Property on Mars” 51 GONZAGA LAW REV. 101 (2016)
- “The Intersection of Agency Doctrine and Elder Law: Attorney-in-Fact Authority to Arbitrate Nursing Home Claims” 49 THE JOHN MARSHALL LAW REV. 39 (2015)
- “Testamentary Incapacity, Undue Influence and Insane Delusions” 60 S.D. LAW REV. 101 (2015)
- “What Zombies Can Teach Law Students: Popular Text Inclusion in Law and Literature” 66 MERCER LAW REV. 729 (2015)
- “Medicaid as Coverture” 26 HASTINGS WOMEN’S LAW J. 275 (2015)
- “Decanting and Its Alternatives: Remodeling and Revamping Irrevocable Trusts” 55 S.D. LAW REV. 253 (2010)
- “A Guide to South Dakota’s Disability Discrimination Laws: Limits and Vantages” 47 S.D. LAW REV. 389 (2002)
- “Territorial Justice under Fire: The Trials of Peter Wintermute, 1873-1875” 31 S.D. HISTORY 91 (2001)
- “‘Working’ with the ADA’s ‘Regarded As’ Definition of a Disability” 5 TEXAS FORUM ON CIVIL LIBERTIES AND CIVIL RIGHTS 27 (2000)
- “The ADA Prima Facie Plaintiff: A Critical Overview of Eighth Circuit Case Law” 47 DRAKE LAW REV. 761 (1999)

Book Reviews

- “Nazi Law: From Nuremberg to Nuremberg” 13 LAW, CULTURE, AND THE HUMANITIES ____ (2017) (*forthcoming*)
- “Humans and Paragons: Essays on Super-Hero Justice” 9 IMAGETEXT: INTERDISCIPLINARY COMICS STUDIES ____ (2017) (*forthcoming*)
- “A Tragic Fate: Law and Ethics in the Battle Over Nazi-Looted Art” 26 SOCIAL & LEGAL STUDIES J. ____ (2017) (*forthcoming*)
-
- “Eminent Domain: A Comparative Perspective” 5 KOREAN J. OF INTERNATIONAL AND COMPARATIVE LAW ____ (2017) (*forthcoming*)
- “Supreme Court of India: The Beginnings” INDIAN LAW J. (__, 2017) (*forthcoming*)
- “Shakespeare’s Legal Ecologies: Law and Disputed Selfhood” 24 BEN JOHNSON J. ____ (2017) (*forthcoming*)

“Shakespeare and Judgment” 21 EDINBURGH LAW REV. __ (2017) (*forthcoming*)

“Of Queens, and Kings, and their Wills” 45 HISTORY: REVIEWS OF NEW BOOKS __
(reviewing Suzannah Lipscomb, *The King is Dead: The Last Will and Testament of Henry VIII* and Michael L. Nash, *Royal Wills in Britain from 1509 to 2008*) (2017) (essay)
(*forthcoming*)

“Westerns: A Women’s History” 40 J. OF AMERICAN CULTURE __ (2017) (*forthcoming*)

“The Nazi Past in Contemporary German Film: Viewing Experiences of Intimacy and Immersion” 47 FILM & HISTORY __ (2017) (*forthcoming*)

“Hugh Glass: Grizzly Survivor” 46 S.D. HISTORY 364 (2016)

“International and Comparative Law on the Rights of Older Persons” 12 NAELA J. 159 (2016) (essay)

“The Law in Nazi Germany: Ideology, Opportunity, and the Perversion of Justice” 34 SHOFAR: AN INTERDISCIPLINARY J. OF JEWISH STUDIES 145 (2015)

“The ‘Evil Child’ in Literature, Film and Popular Culture” 47 J. OF POPULAR CULTURE 899 (2014)

“Judicial Memoirs” 16 THE NEBRASKA LAWYER 13 (reviewing Hon. William L. Dwyer, *Ipse Dixit: How the World Looks to a Federal Judge* and Hon. Warren K. Urbom, *Called to Justice: The Life of a Federal Trial Judge*) (Jan.-Feb., 2013) (essay)

JOTWELL “Jots”

“To Authorize Sex with Oneself via Proxy or Advance Directive” JOTWELL (reviewing Alexander A. Boni-Saenz, *Sexual Advance Directives*, 68 ALABAMA LAW REV. 1) (__, 2017)

“Future Interests? Meet Chattels!” JOTWELL (reviewing John Chipman Gray, *Future Interests in Personal Property*, 14 HARVARD LAW REV. 397) (Feb. 10, 2017)

“How to Die: Biomarker Adjuncts to Death Accelerants” JOTWELL (reviewing Rebecca Dresser, *A Fate Worse than Death? How Biomarkers for Alzheimer’s Disease Could Affect End-of-Life Choices*, 12 INDIANA HEALTH LAW REV. 651) (July 8, 2016)

“Mapping Chinese Trusts with a Patrimony Compass” JOTWELL (reviewing Kai Lyu, *Re-Clarifying China’s Trust Law: Characteristics and New Conceptual Basis*, 36 LOYOLA LOS ANGELES INTERNATIONAL & COMPARATIVE LAW REV. 447) (Jan. 28, 2016)

South Dakota Report Articles

“Pregnancy” 32 S.D. REPORT 12 (Nov., 2016)

“Intersectionality Problems with Gendered Disability Discrimination” 31 S.D. REPORT 8 (July, 2016)

“Pooled Trusts” 27 S.D. REPORT 3 (July, 2012)

“Rights of Access to the Courts by Individuals with Disabilities” 19 S.D. REPORT 3 (Mar., 2004)

“How Medication Affects the Existence of an ADA Disability” 16 S.D. REPORT 6 (Nov., 2000)

“State Immunity from Federal Disability Discrimination Laws: Provisions of the ADA and Rehabilitation Act Declared Unconstitutional” 15 S.D. REPORT 8 (Mar., 1999)

Essays and Other Scholarship

MURDER & MAYHEM IN SOUTH DAKOTA (The History Press, 2019) (book) (*under contract*)

“Court Columns” RAPID CITY JOURNAL; YANKTON PRESS & DAKOTAN (2012- 2017)
(monthly newspaper column)

“When Robots Trespass” THE SPACE REV. (Jan. 16, 2017)

“*Oklahoma Tax Commission v. United States*: Death Taxes on Restricted Indian Personality”
42 ACTEC LAW J. 47 (2016)

“‘Granny Goes to Jail’ Redux” 28 NAELA NEWS 27 (Apr.-June, 2016) (case note)

“The Wrongheadedness of the POMS Pooled Trust Rules and an Unfortunate but Recently
Noted Chinese Parallel” 43 RUTGERS LAW RECORD 117 (2016)

“Sexbots; an Obloquy” 2016 WISCONSIN LAW REV. FORWARD 45 (2016)

“Killer Robots; an Apologia” COMMON LAW (Mar. 30, 2016)

“The Unfortunate Provincialism of the Space Resources Act” THE SPACE REV. (Jan. 25, 2016)

“Disability Discrimination in the Form of *Ad Hoc* Examinations” 6 NEBRASKA LAW REV.
BULLETIN 2 (2015)

“Understanding the Challenges and Limitations of Guardianship Proceedings, ESTABLISHING
A GUARDIANSHIP FOR ELDER LAW CLIENTS, pp. 105-24 (Aspatore, 2013) (chapter
contributor)

“Integrating SNTs with IRAs” NAELA SPECIAL NEEDS LAW NEWSLETTER 8 (Fall 2010)

“Using Trusts to Settle Lawsuits” 19 PROBATE & PROPERTY 6 (Nov.-Dec., 2005)

“When Gift Planning Goes Awry” 27 NATIONAL LAW J. 23 (Feb. 14, 2005)

“Boogie Opera: Eddie, Douzi, and Artistic Convention” 33 J. OF POPULAR CULTURE 4 (2000)

“A Brief Survey of Selected South Dakota Supreme Court Cases Decided in 1997” 43 S.D.
LAW REV. 260 (1998) (co-author)

“Highways, Hunters, and Section Lines: Tension between Public Access and Private Rights” 2 GREAT PLAINS NATURAL RESOURCES J. 240 (1997) (comment)

“Twisted Interests: *People in Interest of S.A.H.* and the State of Open Adoptions in South Dakota” 42 S.D. LAW REV. 537 (1996) (case note)

Select Conferences and Papers

“‘Granny[’s Lawyer] Goes to Jail’ Redux” NAELA LUNCH & LEARN (2017)

“Property Law Works-in-Progress” 111th Annual Meeting, ASSOCIATION OF AMERICAN LAW SCHOOLS (San Francisco, Calif.) (2017) (panel)

“UBIT me!” Tax Update XXXVIII, S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2016)

“Donative Trusts and Equity at Common Law” SOUTHWEST UNIVERSITY OF POLITICAL SCIENCE & LAW (Chongqing, People’s Republic of China) (2016)

“Topographical Emphases in Hugh Glass Narratives, 1825-2015” 47th Annual Dakota Conference, CENTER FOR WESTERN STUDIES (Sioux Falls, S.D.) (2015)

“Cutting and Bleeding Edge Medicaid Planning” WEST RIVER ESTATE AND FINANCIAL PLANNING COUNCIL (Rapid City, S.D.) (2014)

“In Defense of South Dakota Asset Protection Trusts” SIOUXLAND ESTATE PLANNING COUNCIL (South Sioux City, Nebr.) (2014)

“How the Crummey Crumbles: Present Interest Planning with Trusts” Tax Update XXXV, S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2013)

“Business Trusts, S-Corp Trusts, Pre-Mortem Planning, and Other Recent Developments in Trust and Estate Law” Business Law, S.D. BAR ASSOCIATION (Rapid City, S.D.) (2013)

“Grantor Trusts” Tax Update XXXIV, S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2012)

“Estate Planning for Individuals with Disabilities” Trusts 101, NATIONAL BUSINESS INSTITUTE (Rapid City, S.D.) (2012)

“Substituted Judgment: Powers of Attorney, Guardianships, and Conservator-Created Estate Plans” SIOUX FALLS ESTATE PLANNING COUNCIL (Sioux Falls, S.D.) (2012)

Elder Law: Representing the Aging Client, S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2011) (program chair)

“Closing the Estate” Probate Process Start to Finish” NATIONAL BUSINESS INSTITUTE (Rapid City, S.D.) (2011)

“Pooled Trusts: An Introduction and Personal History” NAELA SPECIAL NEEDS SUMMIT (New Orleans, La.) (2010)

“Decanting a Vintage Trust: Prepare the Funnel and Cheesecloth” 7th Annual Estate Planning for Professionals Seminar, SECURITY NATIONAL BANK (South Sioux City, Nebr.) (2009)

“South Dakota Uniform Trust Code” S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2006) (panel)

“Domestic Asset Protection Trusts and South Dakota Trust Updates” WEST RIVER ESTATE PLANNING COUNCIL (Rapid City, S.D.) (2006)

“Developing Communication Skills and Relationships with Diverse Clients” NAELA ANNUAL SYMPOSIUM (San Francisco, Calif.) (2005) (panel chair)

Tax Update XXVI, S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2004) (program chair)

“Who and What is Taxed” Real Property Taxation, LORMAN (Rapid City, S.D.) (2003)

“Federal and State Laws Compared” Disability Discrimination, LORMAN (Rapid City, S.D.) (2003)

ADMITTED TO PRACTICE

South Dakota, U.S. Court of Appeals for the Eighth Circuit, U.S. Department of Veteran’s Affairs (accredited attorney), U.S. District Court for the District of South Dakota, U.S. Supreme Court, U.S. Tax Court, and Yankton Sioux Tribal Court

HONORS AND AWARDS

American Bar Foundation, *Fellow* (2016); American College of Tax Counsel (ACTC), *Fellow* (2017); American College of Trust and Estate Counsel (ACTEC), *Fellow* (2013); Best Lawyers® in America, *Trusts and Estates “Lawyer of the Year” for Sioux Falls, S.D.* (2017, 23rd ed.) and *Trusts and Estates “Lawyer of the Year” for Rapid City, S.D.* (2013, 19th ed.); Cutler Award for Excellence in Legal Education, *Recipient* (2016); Martindale-Hubbell®, *AV Preeminent Rating* (2012)

PROFESSIONAL MEMBERSHIPS AND REFEREE ACTIVITY

Access to Justice, Inc.

- Legal Answers, *Volunteer* (limited scope online representation) (2016 - present)
- Pro Bono Program, *Participant* (2010 - present)

American College of Trust and Estate Counsel

- Asset Protection Committee (2016 - present)
- State Laws Committee (2017 - present)

American Bar Association

- Legal Education and Admissions to the Bar Section (2013 - present)
- Real Property, Trust and Estate Law Section (2001 - present)
- Elder Law and Special Needs Planning Group (2016 - present)

- Elder Law and Long-Term Care Committee (2016 - present)
- Special Needs Planning Committee (2016 - present)
- Surrogate Decision Making Committee (2016 - present)
- Income and Transfer Tax Planning Group (2015 - present)
- Estate and Gift Tax Committee (2015 - present)

American Society for Legal History, *Lifetime Member* (2015 - present)

Association of American Law Schools

- AALS House of Representatives, *Representative* (2017)
- Property Law Section (2016 - present)

JOTWELL, Lex Section: Elder Law, *Editor* (2016 - present)

NAELA Journal

- *Co-Executive Editor* (2014 - 2016)
- *Editor* (2012 - 2014)

National Conference of Commissioners on Uniform State Laws, Directed Trust Act Committee, *Observer* (2014 - 2017)

Nebraska State Bar Association (Attorney # 22153), Real Estate, Probate, and Trust Law Section (2001 - 2013)

South Dakota Bar Association (Attorney # 2853)

- Ask-a-Lawyer Program, *Volunteer* (2005 - present)
- Elder Law Committee, *Founder and Chair* (2010 - present)
 - Psychiatric Powers of Attorney Subcommittee (2017 - present)
- Ethics Committee (2015 - present)
- Post-2002 Model Rules Revisions Subcommittee (2016 - 2017)
- Lawyer's Committee on Diversity and Inclusion (2015 - present)
- Liaison with the IRS Committee (2016 - present)
- Real Property, Probate, and Trust Law Section, *Chair* (2007 - 2008; 2010 - 2011)
 - Digital Assets Committee (2014 - 2017)
 - Guardian Training Materials Committee, *Reporter* (2016)
 - Trust Committee, *Chair* (2012 - present)
 - Uniform Trust Code Committee (2005 - 2016)
- South Dakota Bar Foundation, *Fellow* (2016 - present)

South Dakota Board of Pardons and Paroles

- *Auxiliary Member* (2016 - present)
- *Member* (2013-2014) (S.D. Supreme Court appointee)

South Dakota Governor's Task Force on Trust Administration Review and Reform

- *Member* (2014 - present) (gubernatorial appointee)
- *Spokesperson* (2016 - present)

Wyoming State Bar (Attorney # 6-4461) (2009-2013)

REPORTED DECISIONS

Draper v. Colvin, 779 F.3d 556 (8th Cir. 2015) (co-counsel, amici) *In re* Pooled Advocate Trust, 813 N.W.2d 130 (S.D. 2012); Jackson vs. Canyon Place Homeowner's Association, Inc., 731 N.W.2d 210 (S.D. 2007); Hanks vs. Corson County Board of County Commissioners, 727 N.W.2d 296 (S.D. 2007); *In re* Estate of Trautman, 713, N.W.2d 600 (S.D. 2006); Hanks vs. Corson County Board of County Commissioners, 694 N.W.2d 698 (S.D. 2005) *In re* Discipline of Mattson, 651 N.W.2d 278 (S.D. 2002) (on brief)

CIVIC SERVICE, VOLUNTEERISM, AND MEMBERSHIPS

Alzheimer's Association-South Dakota, *Past Board Member*; American Society for Yad Vashem, *Member*; Black Hills Area Habitat for Humanity, *Past Executive Board Member*; Canyon Lake United Methodist Church, *Past Trustee*; Clay County Historical Society, Inc., *Lifetime Member*; Dakotas United Methodist Foundation, *Past Executive Board Member*; Friends of the Rapid City Public Library, *Past President*; Friends of the Vermillion Public Library, *Member*; Lifeways, Inc., *Past Board Member*; Mount Rushmore Society, *Lifetime Member*; Pooled Advocate Trust, Inc., *Past President*; Rapid City Arts Foundation, *Past President*; Science Fiction Research Association, *Emeritus Member*; South Dakota State Historical Society, *Member*; Union County Historical Society, *Lifetime Member*; United Way of the Black Hills, *Past Board Member*; West River Estate and Financial Planning Council, *Past Vice President*; Western Dakota Technical Institute Foundation, *Past Board Member*

LAW SCHOOL SERVICE

Academic Affairs/Curriculum Committee (2013 - 2016); Admissions Committee (2014 - 2015); China Honorary Ambassadors Student Association, *Founder and Faculty Advisor* (2015 - present); Faculty Secretary (2013 - 2016); Financial Aid and Scholarships Committee (2014 - present); Grading Committee (*ad hoc*) (2016); Library Committee (*ad hoc*) (2013 - 2015); Property Committee (*ad hoc*), *Chair* (2013-2014); South Dakota Law Review, *Faculty Advisor* (2013 - present)

UNIVERSITY SERVICE

Belbas-Larson Award Committee (2017); UK Scholarship Committee (2016); University Honors Program Committee (2016 - present)

PERSONAL

Married; father of two

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No representation is made that the quality of legal services performed by Thomas E. Simmons are greater than the quality of legal services performed by other lawyers. The South Dakota Supreme Court does not recognize certifications in the practice of law and no certification is needed to practice law in South Dakota.

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