

THOMAS E. SIMMONS

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CURRENT POSITIONS

Knudson School of Law (Vermillion, S.D.), *Assistant Professor* (2013-16); *Associate Professor* (2016-19); *Professor* (with tenure) (2019-present)

S.D. Advisory Committee to U.S. Commission on Civil Rights, *Member/Whip*, study: Maternal Death Rate Disparities of Native American Women (2019-present)

EDUCATION

Holy Apostles College and Seminary (Cromwell, Conn.), Graduate Certificate, Christian Wisdom (*anticipated, 2022*)

University of S.D. School of Law (Vermillion, S.D.), J.D., Thomas Sterling Honor Graduate; Teaching Assistant to Professor John F. Hagemann (1996-97); S.D. Law Review, *Editor-in-Chief* (1997-98)

University of S.D. (Vermillion, S.D.), B.S., Education; English (1991)

ADMITTED TO PRACTICE

Flandreau Santee Sioux Tribal Court; Rosebud Sioux Tribal Court (Sicangu Oyate Bar Association); Yankton Sioux Tribal Court; South Dakota; U.S. Tax Court; U.S. District Court for the District of S.D.; U.S. Court of Appeals for the Eighth Circuit; U.S. Supreme Court

EMPHASES

Trusts; wills; estate planning; transfer taxes; fiduciary duties; fiduciary administration; ethics

PUBLICATIONS & PRESENTATIONS

Articles

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

An Estate Plan for Kanye West, 39 CARDOZO ARTS & ENTERTAINMENT LAW J. __ (2021)

Restraining the Unsupervised Fiduciary, 66 S.D. LAW REV. __ (2021) (*co-author*)

Christian Purpose Trusts, 53 CREIGHTON LAW REV. __ (2020)

Conflict-of-Interest-Infected Virtual Representatives and a Cure, 64 S.D. LAW REV. 1 (2019)

A Will for Willa Cather, 83 MISSOURI LAW REV. 641 (2018)

Homestead: A (New) Hope, 63 S.D. LAW REV. 75 (2018)

Prequel to Homestead, 62 S.D. LAW REV. 332 (2017)

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

Wills above Ground, 25 ELDER LAW J. 343 (2016)

Deploying the Common Law to Quasi-Marxist Property on Mars, 51 GONZAGA LAW REV. 25 (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 (2016)

Testamentary Incapacity, Undue Influence and Insane Delusions, 60 S.D. LAW REV. 175 (2015) (cited in *Estate of Tank*, 2020 SD 2, ¶ 25, ¶ 31 n.3, 938 N.W.2d 449, 457, 458 n.3)

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)

Essays, Etc.

South Dakota's "Trust Task Force," 26 TRUSTS & TRUSTEES ____ (Aug. 2020) (*co-author*)

Saint Paul's Trial Narrative in Acts: *Imperium Rōmānum vs. Vasileía tou Theoú*, 65 S.D. L. REV. 317 (2020)

Remote Execution of Wills and Living Wills under the Supreme Court's Emergency Order, S.D. BAR NEWSLETTER 28 (May 2020)

Protecting Plaintiffs Post-Settlement with a Trust, BARRISTER 6 (Mar./April 2020)

A Trust for Ted's Head, 88 MISSISSIPPI LAW J. SUPRA 20 (2019) (reviewed by Gerry W. Beyer, *A Cold Head is not Just for Beer Anymore*, JOTWELL (May 31, 2020))

Purpose Trust *Cy Pres*, 45 ACTEC LAW J. 67 (2019)

Innovative Strategy for Creating a Quasi-Dynastic Trust, 46 ESTATE PLANNING 3 (June 2019)

Leach v. Hyatt: Recasting Indefiniteness, 43 ACTEC LAW J. 121 (2018) (*festschrift essay*)

Wrongful Death Conflicts for Plaintiffs' Attorneys, BARRISTER 7 (Nov./Dec. 2017)

Actuarial Soundness, the Meaning of "Commensurate," and a "Sniff Test," 13 NAELA J. 167 (2017)

Oklahoma Tax Commission v. United States: Death Taxes on Restricted Indian Personalty, 42 ACTEC LAW J. 47 (2017)

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

Court Columns, PRESS & DAKOTAN (2014-17); RAPID CITY J. (2012-14) (*monthly newspaper column*)

"Granny Goes to Jail" Redux, 28 NAELA NEWS 27 (Apr.-June 2016)

The Wrongheadedness of the POMS Pooled Trust Rules and an Unfortunate but Recently Noted Chinese Parallel, 43 RUTGERS LAW RECORD 215 (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)

Problems that Result from Granting Freedom of Religious Exercise to US Corporations, 8 INTERNATIONAL J. OF RELIGIOUS FREEDOM 63 (2015)

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

Understanding the Challenges and Limitations of Guardianship Proceedings, in ESTABLISHING A GUARDIANSHIP FOR ELDER LAW CLIENTS 105-24 (Aspatore 2013) (*book chapter*)

Joel Higgins Births New Church, 3 BLACK HILLS FACES MAGAZINE 23 (Spring 2007)

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

Using Trusts to Settle Lawsuits, 19 PROBATE & PROPERTY 6 (Nov./Dec. 2005) (reprinted in BARRISTER 11 (Jan./Feb. 2006))

- 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*)
- Issues and Etiquette in Mixed Marriages: A Formal and Personal Perspective, 5 DAKOTA COUNSELOR 15 (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*)
- Book Reviews**
- Irreducible Core of the Trust, 66 S.D. LAW REV. __ (2021) (*work-in-progress*)
- No Justice for Agnes: The Strange Death of Agnes Polreis and the Sensational South Dakota Murder Trials of Emma Kaufmann, 51 S.D. HISTORY __ (2021) (*work-in-progress*)
- Exploring the Horror of Supernatural Fiction: Ray Bradbury's Elliot Family, IRISH J. OF GOTHIC & HORROR STUDIES __ (2020) (*work-in-progress*)
- Law and Justice in Japanese Popular Culture: From Crime Fighting Robots to Dueling Pocket Monsters, 5 J. OF ASIA-PACIFIC POP CULTURE __ (2020) (*forthcoming*)
- Hell: A Guide, CATHOLIC BOOKS REV. (June 25, 2020)
- The Day Is Now Far Spent, CXXVIII LATIN LITURGY ASSOCIATION NEWSLETTER 7 (2019)
- Let's Discuss the Moral Status of Liminal Others, 46 SCIENCE FICTION STUDIES 412 (reviewing ROBOT RIGHTS) (2019)
- Living in Technical Legality: Science Fiction and Law as Technology, 3 MOSF J. OF SCIENCE FICTION 54 (2019)
- Why Comics? From Underground to Everywhere, 10 J. OF GRAPHIC NOVELS AND COMICS 479 (2019)
- Supreme Court of India: The Beginnings, INDIA LAW J. (April 15, 2019)
- Law and Politics of Constitutional Courts: Indonesia and the Search for Judicial Heroes, 8 INDONESIA LAW REV. 328 (2018)
- Hitler's Ostkrieg and the Indian Wars: Comparing Genocide and Conquest, 57 J. OF THE WEST 106 (2018)
- Corporate Spirit: Religion and the Rise of the Modern Corporation, 11 INTERNATIONAL J. OF

RELIGIOUS FREEDOM __ (2018) (*forthcoming*)

Law at Little Big Horn: Due Process Denied, 57 J. OF THE WEST 107 (2018)

Unmasked Lex Text: A Review of On Comics and Legal Aesthetics – Multimodality and the Haunted Mask of Knowing, 8.2 THE COMICS GRID 17 (2018)

Humans and Paragons: Essays on Super-Hero Justice, 9.3 IMAGETEXT (June 17, 2018)

The Law of Blood: Thinking and Acting like a Nazi, 36 SHOFAR 190 (2018)

Nazi Law: From Nuremberg to Nuremberg, 14 LAW, CULTURE AND THE HUMANITIES 533 (2018)

The Nazi Past in Contemporary German Film: Viewing Experiences of Intimacy and Immersion, 48 FILM & HISTORY 61 (2018)

Law and the Holocaust: U.S. Cases and Materials, 52 THE LAW TEACHER 236 (2018)

Shakespeare’s Legal Ecologies: Law and Disputed Selfhood, 24 BEN JONSON J. 137 (2018)

Shakespeare and Judgment, 21 EDINBURGH LAW REV. 463 (2017)

Eminent Domain: A Comparative Perspective, 5 KOREAN J. OF INTERNATIONAL AND COMPARATIVE LAW 245 (2017)

Westerns: A Women’s History, 40 THE J. OF AMERICAN CULTURE 301 (2017)

Of Queens, and Kings, and their Wills, 45 HISTORY: REV. OF NEW BOOKS 109 (reviewing THE KING IS DEAD: THE LAST WILL AND TESTAMENT OF HENRY VIII and ROYAL WILLS IN BRITAIN FROM 1509 TO 2008) (2017)

A Legal Theory for Autonomous Artificial Agents, PRAIRIE LAW BLOG (Feb. 1, 2016)

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)

Modern Chinese Real Estate Law: Property Development in an Evolving Legal System, PRAIRIE LAW BLOG (Oct. 23, 2014)

History of the Common Law: The Development of Anglo-American Institutions, PRAIRIE LAW BLOG (Jan. 23, 2014)

The Law in Nazi Germany: Ideology, Opportunity, and the Perversion of Justice, 34 SHOFAR 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 IPSE DIXIT: HOW THE WORLD LOOKS TO A FEDERAL JUDGE and CALLED TO JUSTICE: THE LIFE OF A FEDERAL TRIAL JUDGE) (Jan. /Feb. 2013)

Editorials

Mashpee Wampanoag Tribe versus Bernhardt, NATIVE SUN NEWS TODAY A6 (July 23, 2020)

Mask wearing has become a kind of badging, sorting people into two groups, S.D. STANDARD (July 15, 2020)

IHS COVID-19 and Rationing Health Care, LAKOTA TIMES B2 (June 18, 2020)

The Trouble with Tweets, PRESS & DAKOTAN 4 (May 26, 2020)

The More Virtuous a Society, the More Freedom It Can Exercise, PLAIN TALK 4 (May 22, 2020)

A Letter to (the late) William. F. Buckley Seeking Clarification, S.D. WAR COLLEGE (May 21, 2020)

Why Liberals Simply Adore Profitable Private Enterprise (Even if They Don't Know it), S.D. WAR COLLEGE (Aug. 16, 2019)

Communicate, Listen during Race Discussions, ARGUS LEADER B2 (June 29, 2016)

Americans don't have to be like Japanese, RAPID CITY J. A4 (Nov. 14, 1992)

Raw Deal, RAPID CITY J. 5 (Mar. 4, 1982) (*letter*)

Dear Uncle Creepy, 117 CREEPY 4 (Jan. 1980) (*letter*) (reprinted in 24 CREEPY ARCHIVES 88 (Dark Horse Comics, Inc. 2016))

JOTWELL "Jots"

Medicaid Algorithmic Opacity and a Transparent Solution, JOTWELL (reviewing *Access to Algorithms*, 88 FORDHAM LAW REV. 1265) (Oct. __, 2020)

An Incapacity Push-Back, JOTWELL (reviewing *Contractual Incapacity and the Americans with Disabilities Act*, 124 DICKINSON LAW REV. 253) (Oct. 11, 2019)

Privacy and Surveillance in Nursing Homes, JOTWELL (reviewing *Regulating Privacy in Public/Private Space: The Case of Nursing Home Monitoring Laws*, 26 ELDER LAW J. 323) (Oct. 8, 2018)

Dispensing (with) Electronic Wills, JOTWELL (reviewing *Absorbing South Australia's Wills Act Dispensing Power in the United States: Emulation, Resistance, Expansion*, 3 ADELAIDE LAW REV. 1) (Apr. 5, 2018)

To Authorize Sex with Oneself via Proxy or Advance Directive, JOTWELL (reviewing *Sexual Advance Directives*, 68 ALABAMA LAW REV. 1) (Sept. 13, 2017)

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

How to Die: Biomarker Adjuncts to Death Accelerants, JOTWELL (reviewing *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 *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

Supported Decision-Making with DPOAs, 34 S.D. REPORT __ (___ 2020)

Post-obit ADA Claims, 33 S.D. REPORT 11 (Nov. 2017)

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)

Select Poetry

TOD BROWNING LOOSE-LEAF ENCYCLOPEDIA (Cyberwit 2020) (*collection*) (*forthcoming*)

Unwrought, S.D. IN POEMS __ (S.D. Poetry Society 2020) (*anthology*)

Slim Buttes Sonnet (1876), SCARLET LEAF REV. (Nov. 2020)

Oscar Howe and the Palace of Corn, 90:6 PASQUE PETALS 26 (Spring 2020)

Hamlet Act V Sc. 2, ESKIMO PIE (April 2020)

Deuel County Flocks, S.D. MAGAZINE 90 (Mar./April 2020)

Crossing the Threshold, 1 UTOPIA SCIENCE FICTION 45 (Feb. 2020)

At the Gym, ANTI-HEROIN CHIC (Feb. 27, 2020)

Keya Pouch, EKPHRASTIC REV. (Feb. 8, 2020)

exspiro, THE WRITE LAUNCH (Feb. 2020)

Tardigrade Nomenclature; Tardigrade Morphology & Reproduction; and Tardigrade Physiology, THE SHOWBEAR FAMILY CIRCUS (Jan. 11, 18, and 25, 2020)

That Chicken Heart Which Consumed the World, THIRTEEN MYNA BIRDS 4 (Dec. 2019)

Stilled-Life w/ Land-Scraped, 77 EL PORTAL 42 (Fall 2019)

Swaying to Potassium, 13 CORVUS REV. 6 (Fall/Winter 2019)

A Tax Thicket: 26 U.S.C. §§, 86 NORTH DAKOTA QUARTERLY 274 (2019)

No Nukes, 90:1 PASQUE PETALS 109 (Spring 2019)

I Just Flew in from Newark and Boy Are My Arms Tired, 33 NEBO 51 (Fall 2015)

On First Looking into Neihardt's Hugh Glass, 88 PASQUE PETALS 14 (Fall 2014)

Select Presentations & Papers

St. Thomas à Becket, *Thomas More Society*, USD KNUDSON SCHOOL OF LAW (Vermillion, S.D.) (2021) (*forthcoming*)

Who is the Client? S.D. BAR ASSOCIATION, (Wendy Kloepfner, co-presenter) (2020) (*webinar*) (*forthcoming*)

Directed Trusts: Making Them Work, ACTEC-ALI CLE (Richard Nenno, co-presenter) (2020) (*webinar*)

Remote Estate Planning 2.0, S.D. BAR ASSOCIATION (Cameo Anders, co-presenter) (2020) (*webinar*)

Foundational Issues, *The 21st Century Trust: Evolution, Innovation, and Adaptation*, CREIGHTON LAW REV. SYMPOSIUM & TEPOEL LECTURE (Omaha, Nebr.) (2020) (*panel*)

St. Thomas More, *Thomas More Society*, USD SCHOOL OF LAW (Vermillion, S.D.) (2020)

Fiduciary Train Wrecks: Causation and Casualties, SIOUXLAND ESTATE PLANNING COUNCIL (S. Sioux City, Nebr.) (2020)

Governor's Trust Task Force Updates, *2019 Fall Forum*, S.D. TRUST ASSOCIATION (Sioux Falls, S.D.) (2019) (*panel*)

Estate Planning Ethics, *17th Annual Estate Planning for Professionals*, SECURITY NATIONAL WEALTH MANAGEMENT (S. Sioux City, Nebr.) (2019)

Purpose Trusts as a Planning Tool for the 21st Century, *Rocky Mountain Regional Meeting*, ACTEC (Jackson, Wyo.) (Professor Bradley Myers, co-presenter) (2019)

Unwinding Irrevocable Trusts, *87th Annual Meeting*, S.D. BAR ASSOCIATION (Rapid City, S.D.) (2019)

LTC & Assisted Living: Estate Planning; Management of Costs, OSHER LIVELONG LEARNING INSTITUTE (Vermillion, S.D.) (2019)

The Ethics of Practicing Law in Nazi Germany, USD SCHOOL OF LAW (Vermillion, S.D.) (Dr. Dale Clark, co-presenter) (2019)

Legalities with Charitable Gifts, *Fiesta at the Falls*, MID-AMERICAN CONFERENCE ON FUNDRAISING (Sioux Falls, S.D.) (2018)

Income Tax Concerns with Purpose Trusts, *Tax Update XXXIX*, S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2017)

Planned Giving, ASSOCIATION OF FUNDRAISING PROFESSIONALS (Sioux Falls, S.D.) (2017)

Introducing Virtual Representation, *1st Annual Fall Forum*, S.D. TRUST ASSOCIATION and AMERICAN BANKERS ASSOCIATION (Sioux Falls, S.D.) (2017)

Estate Planning Demystified, *Developing Individual and Institutional Financial Savvy*, USD WOMEN IN MEDICINE & SCIENCE (Sioux Falls, S.D.) (2017)

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

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 (S. 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)

Estate Planning, *Annie’s Project*, S.D. STATE UNIVERSITY EXTENSION (Sturgis, S.D.) (2012)

Grantor Trusts: The Who, the Where, the Wherefore, and the Wherewithal, *Tax Update XXXIV*, S.D. BAR ASSOCIATION (Sioux Falls, S.D.) (2012)

Ranch Succession Planning, *Estate Planning and Farm/Ranch Transitions*, S.D. STATE UNIVERSITY EXTENSION (Lemmon, 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 from Start to Finish*, NATIONAL BUSINESS INSTITUTE (Rapid City, S.D.) (2011)

End-of-Life Law, PENNINGTON CO. REPUBLICAN AMBASSADORS (Rapid City, S.D.) (2010)

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*, SECURITY NATIONAL BANK (S. Sioux City, Nebr.) (2009)

Living Trusts, Joint Tenancies, and Other Non-Probate Issues, BLACK HILLS LEGAL PROFESSIONALS ASSOCIATION (Rapid City, S.D.) (2006)

The South Dakota UTC, 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)

Guardianships, BLACK HILLS LEGAL PROFESSIONALS ASSOCIATION (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)

Estate Planning, BLACK HILLS LEGAL PROFESSIONALS ASSOCIATION (Rapid City, S.D.) (2003)

Who and what is Taxed, *Real Property Taxation*, LORMAN (Rapid City, S.D.) (2003)

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

PRIOR LEGAL EMPLOYMENT

Minnehaha Co. Public Defender (Sioux Falls, S.D.), *Intern Defender* (summer 2018)

Gunderson, Palmer, Nelson & Ashmore, LLP (Rapid City, S.D.), *Associate* (2000-06);
Partner (2006-13); *Compensation Committee* (2011-13)

S.D. Board of Pardons & Paroles, *Member* (2013-14); *Auxiliary Member* (2014-18)

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

National American University (Rapid City, S.D.), *Paralegal Program Instructor* (1999-2000)

Davenport, Evans, Hurwitz & Smith, LLP (Sioux Falls, S.D.), *Intern* (summer 1997)

AWARDS, APPOINTMENTS, & RECOGNITIONS

AALS-Knudson USD School of Law, *Law School Teacher of the Year* (2018 and 2020); American Bar Foundation, *Life Fellow* (2016-present); American College of Tax Counsel (ACTC), *Fellow* (2017-present); American College of Trust and Estate Counsel (ACTEC), *Fellow* (2013-19) and *Academic Fellow* (2019-present); Best Lawyers® in America (2011-present), *Trusts and Estates “Lawyer of the Year” for Sioux Falls, S.D.* (2017, 23rd ed. and 2021, 27th ed.) and *Trusts and Estates “Lawyer of the Year” for Rapid City, S.D.* (2013, 19th ed.); Corson County, *State’s Attorney Pro Tem* (2006-07); Cutler Award for Excellence in Legal Education, *Recipient* (2016); Jack and Anita Hess Faculty Seminar at the Jack, Joseph and Morton Mandel Center for Advanced Holocaust Studies, U.S. Holocaust Memorial Museum, *Invited Attendee* (2018); John Wesley Jackson Memorial Award for Outstanding Professor of Law, *Recipient* (2018 and 2020); Martindale-Hubbell®, *AV Preeminent Rating* (2012); Rapid City Area Chamber of Commerce: Leadership Rapid City, *Graduate* (2004); S.D. Bar Foundation, *Fellow* (2016-present)

MOOC CERTIFICATIONS

Augustine Institute, *God* (2020) and *Letters of St. Paul* (2020); Hillsdale College, *Genesis Story: Reading Biblical Narratives* (2020), *Introduction to C.S. Lewis: Writings and Significance* (2020), and *Theology 101: The Western Theological Tradition* (2020); Lancaster University & Woodbrooke Quaker Study Centre, *Radical Spirituality: The Early History of the Quakers* (2019); Ligonier Ministries, *Book of Job* (2019) and *Life & Thought of Jonathan Edwards* (2019); Signum Dei, *Dominican Spirituality* (2019); Universitat Autònoma de Barcelona, *Emotions: A Philosophical Introduction* (2019); Word on Fire Institute, *Science for Evangelists* (2020) and *Theology of Hans Urs Von Balthasar* (2020); Yeshiva University, *Arch of Titus: Rome & the Menorah* (2019)

OTHER CERTIFICATIONS

Catholic Distance University, *Old Testament* (2020); Center for Teaching and Learning, *Digital Learning Accessibility* (2020); McGrath Institute for Church Life at the University of Notre Dame, *Catholic Theology: Doctrine (anticipated, 2021)*; U.S. Department of Veteran’s Affairs, *Accredited Attorney* (2012-present)

PROFESSIONAL MEMBERSHIPS & REFEREE ACTIVITY

Access to Justice, Inc.

- Legal Answers, *Volunteer* (2016-present)
- Pro Bono Program, *Participant* (2010-present)

American College of Trust and Estate Counsel (ACTEC)

- *State Chair-Elect* (2019-20); *State Chair* (2020-present)
- Asset Protection Committee (2016-19)
- Fiduciary Litigation Committee (2020-present)
 - Choice of Law & Situs of Property Subcommittee (2020-present)
- Legal Education Committee (2019-present)
- State Laws Committee (2017-present)
 - End of Life Decisions Subcommittee (2018-present)

American Bar Association (ABA)

- Legal Education and Admissions to the Bar Section (2013-present)
- Real Property, Trust and Estate Law Section (2000-present)
 - Elder Law and Special Needs Planning Group (2016-present)
 - Elder Law & Long-Term Care Committee (2016-present)
 - Special Needs Planning Committee (2016-present)
 - Surrogate Decision-Making Committee (2016-present)
- Income & Transfer Tax Planning Group (2015-present)
 - Estate & Gift Tax Committee (2015-present)

Association of American Law Schools (AALS)

- AALS House of Representatives, *Representative* (2017)
- Section on Property Law (2016-18)
- Section on Trusts & Estates (2018-present)

Clay County Teen Court, Judge (2017-present)

Governor's Task Force on Trust Administration Review and Reform, Member (2014-present) (re-appointed, 2017)

- Style/Drafting Committee, *Chair* (2020-present)

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

NAELA Journal, Co-Executive Editor (2014-16) and *Editor* (2012-14)

Nebraska State Bar Association (Attorney #22153) (2001-14)

- Real Property, Probate, & Trust Law Section, *Member* (2001-14)

Real Property Trust and Estate Law Journal, Acquisitions Editor, Trusts & Estates (2020-present)

S.D. Bar Association (Attorney # 2853)

- Ask-a-Lawyer Program, *Volunteer* (2005-present)
- Elder Law Committee, *Founder* (2010); *Chair* (2010-19)
 - LifeCircle S.D., S.D. MOST Advisory Committee, *Liaison Member* (2017-20)

- Ethics Committee (2015-present)
- Indian Law Committee (2018-present)
- Liaison with IRS Committee (2016-20)
- Lawyer's Committee on Diversity & Inclusion (2015-present)
- Real Property, Probate, & Trust Law Section, *Chair* (2007-08; 2010-11)
 - CLE Committee, *Co-Chair* (2019-present)
 - Guardian Training Materials Committee, *Reporter* (2016-17)
 - Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) Committee (2014-18)
 - Trust Committee, *Chair* (2012-present)
 - Uniform Power of Attorney Act (UPOAA) Committee, *Chair* (2017-20)
 - Uniform Trust Code (UTC)/South Dakota Trust Code Committee (2005-18)

Uniform Law Commission

- Drafting Committee on Electronic Wills Act, *Observer* (2017-19)
- Drafting Committee on Uniform Directed Trust Act, *Observer* (2013-17)
- Study Committee on Health Care Decisions Act, *Observer* (2020-present)

Wyoming State Bar (Attorney #6-4461) (2009-13)

OTHER MEMBERSHIPS

American Society for Legal History (*Lifetime Member*); Black Hills Astronomical Society; Clay Co. Historical Society, Inc. (*Lifetime Member*); Clay County Republicans; Clay-Union Bar Association; Great Plains Black History Museum (*Lifetime Member*); Latin Liturgy Association (*Lifetime Member*); Mount Rushmore Society (*Lifetime Member*); National Congress of American Indians (*Associate Lifetime Member*); S.D. State Historical Society; S.D. Poetry Society; Sioux City NAACP (*Bronze Life Member*); Union Co. Historical Society (*Lifetime Member*)

CIVIC SERVICE

Alzheimer's Association-S.D., *Past Board Member*; Black Hills Area Habitat for Humanity, *Past Executive Board Member*; Canyon Lake United Methodist Church, *Past Trustee*; Dakotas United Methodist Foundation, *Past Executive Board Member*; Friends of the Missouri National Recreational River, *Member*; Friends of the Rapid City Public Library, *Past President*; Friends of the Vermillion Public Library, *Member*; Lifeways, Inc., *Past Board Member*; Pooled Advocate Trust, Inc. (PATI), *Founder/Past President*; Rapid City Arts Foundation, *Past President*; 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*

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); I.R.S. Private Letter Ruling 201033025 (May 13, 2010); Jackson v. Canyon Place Homeowner's Association, Inc., 731 N.W.2d 210 (S.D. 2007); Hanks v. Corson Co. Board of Co. Commissioners, 727 N.W.2d 296 (S.D. 2007); *In re* Estate of Trautman, 713 N.W.2d 600 (S.D. 2006); Hanks v. Corson Co. Board of Co. Commissioners, 694 N.W.2d 698 (S.D. 2005); *In re* Discipline of Mattson, 651 N.W.2d 278 (S.D. 2002) (on brief)

USD LAW SCHOOL COURSES TAUGHT

Current courses: Estate Planning (2014-present); Federal Estate & Gift Tax (*anticipated*, 2022) (*seminar*); Professional Responsibility (2016-present); Remedies in Law & Equity (2018-present); Tribal Wills Practicum I (2019-present); Tribal Wills Practicum II (2020-present) (co-taught with Experiential Learning Director Ramón Ortiz-Vélez); Trusts & Wills (2013-present)

Past courses: Business Organizations I (2013); Business Organizations II (2015); Comparative Estates Law (co-taught with Lecturer Lin Shaowei) (2015); Comparative [In]tangible Property (co-taught with Lecturer Yuanyuan Bai) (2016); Elder Law (2014-15); Holocaust Law (2016, 2019) (*seminar*); Property (2015-18)

KNUDSON SCHOOL OF LAW SERVICE

Accreditation Self-Study Committee, *Chair/Principal Reporter* (2017-19) (*ad hoc*); Academic Affairs/Curriculum Committee (2013-16); Admissions Committee (2014-15); China Honorary Ambassadors Student Association (CHALSA), *Founder/Faculty Advisor* (2015-present); Faculty Secretary (2013-16); Faculty Diversity & Inclusiveness Committee (2017-present); Faculty Performance Evaluation Committee (2019-present); Financial Aid & Scholarships Committee (2014-19); Library Committee (2013-15) (*ad hoc*); Property Committee, *Chair* (2013-14) (*ad hoc*); S.D. Law Review, *Faculty Advisor* (2013-18); Thomas More Society, *Faculty Advisor* (2019-present); Voting Rights Committee, *Chair* (2020-present) (*ad hoc*)

USD SERVICE

Belbas-Larson Award for Excellence in Teaching Committee (2017-20); Conflicts of Interest Committee (2019-22); UK Scholarship Committee (2016); University Honors Program Committee (2016-21)

MEDIA

Candace Taylor, *A High-Stakes Divorce Illustrates How the Rich Play Real-Estate Tug of War*, WALL ST. J. (Apr. 10, 2020) https://www.wsj.com/articles/a-high-stakes-divorce-illustrates-how-the-rich-play-real-estate-tug-of-war-11586458598?shareToken=st483c2c460f694ff3a5de0f77cbdacba2&reflink=article_email_share (commenting on South Dakota trust privacy laws)

Oliver Bullough, *The Great American Tax Haven: Why the Super-Rich Love South Dakota*, THE GUARDIAN (Nov. 14, 2019) <https://www.theguardian.com/world/2019/nov/14/the-great-american-tax-haven-why-the-super-rich-love-south-dakota-trust-laws> (quoted re: trust laws as economic development)

Cory Allen Heidelberger, *USD Law Prof Suggests Thune Rechisel Lady Liberty's Welcome*, DAKOTA FREE PRESS (Aug. 15, 2019) <http://dakotafreepress.com/2019/08/15/usd-law-prof-suggests-thune-rechisel-lady-libertys-welcome/> (comments re: textual honesty)

Luce Nguyen, host, IPSE DIXIT season 1, ep. 311 (podcast) (July 7, 2019) <https://shows.acast.com/ipse-dixit> (interviewed re: virtual representation)

Rich Koz, host, SVENGOOLIE on MeTV (March 16, 2019) (quoted re: show comments)

Christopher Vondracek, *S. Dakota Judge Sends 'Alienation of Affection' Case to Trial*, COURTHOUSE NEWS SERVICE (Jan. 17, 2018) <https://www.courthousenews.com/s-dakota-judge-sends-alienation-of-affection-case-to-trial/> (quoted re: spousal alienation of affections)

Richard Bernardo, *2016's Safest States in America*, WALLETHUB (June 6, 2016) <https://wallethub.com/edu/safest-states-to-live-in/4566/#thomas-e-simmons> (quoted relative to tips for consumers looking to improve their financial safety)

Dan Loney, host, KNOWLEDGE@WHARTON on SiriusXM (May 4, 2016) (panel discussion on placements of individuals with disabilities in nursing homes)

Ben Boyett, anchor/host, NEWSCENTER1 on KNBN-TV, Rapid City, S.D. (June 5, 2003) (interviewed re: estate planning)

ENGAGEMENTS WHERE A REPORT WAS PREPARED/TESTIMONY OFFERED

In re Keith S. Wellin (consolidated cases) (court file nos. 2:13-cv-01831-DCN, 2:13-cv-03595-DCN, 2:14-cv-04067-DCN, Federal District Court, Charleston, S.C., the Hon. David C. Norton, presiding)

Whether testified at trial or by deposition: Testified by deposition

Engaging attorney and who that attorney represented: Robert Brunson, Patrick Wooten, and Merritt Abney of Nelson, Mullins, Riley & Scarborough, LLP, representing Peter Wellin, Marjorie King, and Cynthia Plum, co-trustees/beneficiaries, Friendship Partners, LP, and Friendship Management, LLC

Dates: May, 2014 - present

Scope of testimony/report: Grantor trust status; distribution standards; trustee and trust protector conduct

In the Matter of the Estate of Russell O. Tank, Deceased (court file no. 43Pro.16-14, Fifth Judicial Circuit, Marshall County, Britton, S.D., the Hon. Richard Sommers, presiding)

Whether testified at trial or by deposition: Testified by deposition

Engaging attorney and who that attorney represented: Reed Rasmussen of Siegel Barnett & Schultz, LLP, representing Jason Bender, devisee

Dates: December, 2017 - January, 2020

Scope of testimony/report: Rebuttal of undue influence, insane delusion, and testamentary incapacity testimony of the Hon. David Gienapp (ret.) and Dr. Rodney A. Swenson

Forster P.J. & Forster J.B. (court file no. MLC8587/2015, Family Court of Australia, Melbourne, Australia, the Hon. Justice Victoria Jane Bennett AO, presiding)

Whether testified at trial or by deposition: Testified at hearing by affidavit

Engaging attorney and who that attorney represented: Corey Denevan of Boyce Law Firm LLP, representing BTC Trust of South Dakota Inc.

Dates: June, 2019 - July, 2019

Scope of testimony/report: *In rem* and *in personam* jurisdiction, choice of law, and venue

Theresa Souvignier, *et al.* v. Ruthanne Ranschau as Trustee of the Charles T. Ranschau Revocable Living Trust (court file no. EQCV024931, Iowa District Court for Sioux County, Orange City, Iowa, the Hon. Duane Hoffmeyer, presiding)

Whether testified at trial or by deposition: No

Engaging attorney and who that attorney represented: William Beck and Sander Morehead of Woods, Fuller, Schultz, & Smith, P.C., representing Ruthanne Ranschau, trustee

Dates: March 2017 - October 2017

Scope of testimony/report: Rebuttal of report of attorney Kent Vriezelaar *re:* trustee duties and funding of creditor shelter trust

Ronna Tekrony v. Todd Boyd (court file no. 28Civ.16-41, Third Judicial Circuit Court, Hamlin County, Hayti, S.D., the Hon. David Gienapp (ret.), presiding)

Whether testified at trial or by deposition: No

Engaging attorney and who that attorney represented: Phillip Stiles of Costello, Porter, Hill, Heisterkamp, Bushnell, & Carpenter, LLP, representing attorney Todd Boyd, defendant

Dates: April 2017 - July 2017

Scope of testimony/report: Damages and causation analysis in legal malpractice case arising out of estate planning and estate administration

In re Estate of James T. Goetz, Deceased (court file no. Civ.14-110, First Judicial Circuit Court, Yankton County, Yankton, S.D., the Hon. Cheryle Gering and Hon. Timothy Tucker, presiding)

Whether testified at trial or by deposition: No

Engaging attorney and who that attorney represented: John Blackburn of Blackburn & Stevens, Prof. LLC, representing Sally Goetz, heir

Dates: March 2017 - June 2017

Scope of testimony/report: Calculation of elective share claim against estate

In the Matter of Equity Trust Co. (administrative proceedings file no. 3-16594, Securities and Exchange Commission, Washington, D.C., the Hon. Carol Fox Foelak, presiding)

Whether testified at trial or by deposition: Testified at trial by affidavit

Engaging attorney and who that attorney represented: Andrew Dean of Securities Exchange Commission, New York, NY, representing Securities Exchange Commission, plaintiff

Dates: November 2015 - December 2015

Scope of testimony/report: Rebuttal of report of attorney Terry Prendergast *re:* scope of duties of self-directed IRA custodian under directed trust rubric

Randy Mack and Cheryl Fischbach, as Guardians *ad litem* for Gerald Mack, an incapacitated person, and Marjorie Mack v. Keith Marquandt and Senior Security Estate Plans, Inc. (court file no. Civ.09-5079-JLV, Federal District Court, Rapid City, S.D., the Hon. Jeffrey Viken, presiding)

Whether testified at trial or by deposition: No

Engaging attorney and who that attorney represented: Michael Loos of Clayborne, Loos & Sabers, LLP, Rapid City, S.D., representing Keith Marquandt, defendant

Dates: April 2012 - November 2012

Scope of testimony/report: Analysis of claims against financial advisor regarding alleged long term care Medicaid eligibility planning recommendations

In re Guardianship and Conservatorship of Jessica Kay Weedon (court file no. Gdn.11-38, Seventh Judicial Circuit Court, Pennington County, Rapid City, S.D., the Hon. Jeff Davis,

presiding)

Whether testified at trial or by deposition: No

Engaging attorney and who that attorney represented: Randy Cullers, of Crites, Shaffer, Connolly & Watson, P.C., Chadron, Neb., representing Steve Cleveland, guardian

Dates: January 2011 - January 2012

Scope of testimony/report: Analysis of proposed supplemental needs trust and first party supplemental needs trust options for an individual with disabilities

PERSONAL

Married with two children

last updated: 08/09/2020