



Memorial Service

Held in the Supreme Court of Illinois
at the May 2007 Term on the
Life, Character, and Public Service
of the Late Justice Seymour F. Simon

Wednesday, May 23, 2007
2:00 p.m.

Illinois Supreme Court
Springfield, Illinois

SUPREME COURT OF ILLINOIS
JUSTICES

ROBERT R. THOMAS, Chief Justice
Wheaton, Illinois (2nd District)

CHARLES E. FREEMAN
Chicago, Illinois (1st District)

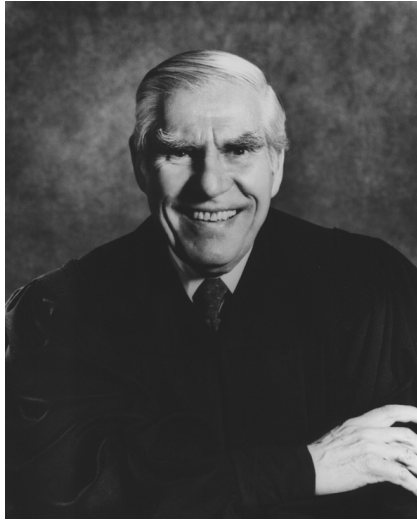
THOMAS R. FITZGERALD
Chicago, Illinois (1st District)

THOMAS L. KILBRIDE
Rock Island, Illinois (3rd District)

RITA B. GARMAN
Danville, Illinois (4th District)

LLOYD A. KARMEIER
Nashville, Illinois (5th District)

ANNE M. BURKE
Chicago, Illinois (1st District)



Justice Seymour F. Simon

August 10, 1915 – September 26, 2006

At 2:00 p.m. on Wednesday, May 23, 2007, other business being suspended, the following proceedings were had:

CHIEF JUSTICE THOMAS:

Good afternoon, everyone. My name is Robert Thomas, and I am the Chief Justice of the Illinois Supreme Court. It is my honor to welcome all of you to this special session of the Supreme Court. The Court convenes today to celebrate and remember the life of Seymour Simon, a man who served as a Justice of this Court for many years and whose intellect and passion served as a model for many people gathered in this room.

We are pleased and honored to have with us today many members of Justice Simon's family including his sons John and Anthony, his daughter Nancy, and his sister Muriel. We are also joined by several former members of the Illinois Supreme Court. Present are Justice Joseph Cunningham, Justice Mary Ann McMorrow, Justice Benjamin Miller, Justice John Nickels, and Justice Louis Rathje. On behalf of the Court, I would like to thank each of you for being

with us today. Your presence is a tribute to Justice Simon's memory, and on a personal note, it is good to see all of you again. I also welcome the Honorable Richard Mills, Federal District Court Judge, and the Honorable Jeanne Scott, also a Federal District Court Judge. Thank you both for being here. Finally, I welcome the many friends of Justice Simon who are here today.

I regret that I never had the opportunity to serve with Justice Simon. His was always a powerful judicial voice, and I greatly admire the spirit and passion that he brought to this Court's deliberations. As Justices, we sometimes get lost in legal debates, forgetting that beneath every legal question, every test of precedent, every clever retort, lies a person or persons for whom our decision will make all the difference. We sometimes forget that the abstract legal questions that we wrestle with have dramatic and real consequences in the lives of our citizens. Although I never worked with Justice Simon and although I only met him on a handful of occasions, I know this about him for certain: he never lost sight of the people or of the lives that are touched by the decisions we render. His decisions and even more so his dissents make that very clear. I always smile when I pull a case off the shelf and find that the decision was written by Justice Simon or, even better, the dissent. Because knowing nothing else, I know that I will be challenged, that the perspective will be fresh, the prose will be charged, and the voice will be unmistakably his. Soon we will hear several personal tributes to Justice Simon, but before we do, my colleague Justice Thomas Fitzgerald would like to make an opening statement of his own, Justice Fitzgerald.

JUSTICE FITZGERALD:

Thank you. I am going to simply focus on one phase of Justice Simon's service on the Supreme Court and the impact of that particular service. On a personal note, I have to observe that every time I would meet Judge Simon, throughout the years, events and that sort of thing, he would always remind me that he knew my grandfather who served on the county board with him and tell me how helpful my grandfather had been to him at that time. Of course, it's something I think about whenever I think about Justice Simon,

so I felt this was an appropriate time to thank him for being with my grandfather.

I had a friend in college. He was a couple years younger than I was, and I knew him pretty well. Later on in law school he appeared about the same time behind me that he had been in college, and I knew him pretty well then, too. I knew that he had graduated from law school, and I knew that he had passed the bar, but we weren't anywhere where we would come together. Then, sometime probably in the late 70s, I heard that he had a disciplinary problem, and I was shocked by that, to tell you the truth, because there was nothing that I had seen in either our college days or the law school days that would suggest that he would ever be guilty of a conversion; the charge was that he was guilty of a conversion. In a sense it was, for a disciplinary case, a pretty ordinary case, but it has had a profound impact upon lawyers in our community. I'm going to read a little bit from the opinion.

My friend's name was Jim Driscoll, and he was, as I noted earlier, alleged to have committed two serious conversions, one against two children, and I want to read a part from the opinion. The reason I'm reading this is I want you to get a full sense of what we're dealing with here. "Driscoll admitted the charges and cooperated fully with the disciplinary process. In mitigation, he offered evidence that at the time of the offenses he was an alcoholic. It appears from the testimony of the respondent, his wife, and the doctor who headed the alcoholism treatment program at Lutheran General Hospital that respondent began drinking heavily in 1973, and his habit and condition worsened progressively until 1978. When the conversions occurred, the respondent had undergone a change in personality. His personal appearance disintegrated, his weight dropped, he ate little, and his nails were falling out. He could not remember where he had been or what he had done. He stayed out every night and had no family or social life. He did not return clients' calls and took no new clients. Nothing mattered to him except a drink. He was, however, competent enough, at least at intervals to earn some money from his legal practice; in particular, he handled adequately the cases that generated the money he converted.

“In August 1978, respondent voluntarily entered Lutheran General Hospital for treatment.” I later talked to my friend about this moment in his life, and it was at the start of the process when the charges had been filed against him but really years before they would be determined, and he told me he was scared and he was looking for a place to hide. His principal concern always was where he could get his next drink.

Lo and behold the treatment took, and he completed his time at Lutheran General as the disciplinary matters progressed and remained free from alcohol use at all. As time went by, the hearing board pronounced its decision, and for those of you who don't know, there's a two-phase hearing in the ARDC cases: there's a hearing board, and there's a review board; there's a trial court, and there's an appellate court. The hearing board rejected the idea of alcoholism as a defense—that's key to what we're talking about today, and it's consistent with what was the rule of law at the time—and recommended that Driscoll be disbarred. The review board recommended that he be suspended for 30 months and thereafter until further order of Court. I now know from my service on the Court that's pretty close to the same thing as being disbarred.

The matter was briefed and argued before the Supreme Court. That doesn't happen very often, but it did here. The evidence that I've shared with you is the evidence that the Court considered, along with the strong precedent of severe sanction regardless of the reason for the wrong. Justice Simon wrote, “In this case we are impressed by Driscoll's sincere, strenuous, and, so far, successful effort to overcome his alcoholism. An exemplary life before and after the incident charged may properly be considered in mitigation.” Remember now the laws of disbarment; that was how the cases of this nation were ruled upon. And Justice Simon writes, “Respondent is suspended for six months. In addition, as an experiment in dealing with impaired attorneys, we shall require that he continue, and report at such intervals as the Attorney Registration and Disciplinary Commission shall specify, and until further order, his personal program of rehabilitation, including active participation in Alcoholics Anonymous, the Lawyers' Assistance Program established by the

Chicago Bar Association and the Illinois Bar Association, or some similar program acceptable to the Commission.”

When these words were written, it was two-and-a-half years after my friend, frightened and alone, reported to Lutheran General Hospital for the first time. He had been, by that time, alcohol-free for two-and-a-half years. The Court noted, with Justice Simon’s pen, “After further experience we may revise our rules, which do not now provide for probation or supervision of impaired attorneys. Meanwhile, this Court has inherent authority to use such methods of discipline,” referring to his holding. “We would like to see respondent restored to an active practice and a position of esteem in his profession. We must also protect the integrity and reputation of that profession and protect the public. Pending further experience with alcoholic attorneys, we are trying our best to manage both.”

In 1983, this Court adopted a rule that permitted probation in cases where lawyers were alcoholically impaired. That simple change was to add language that reads that the order would be, or until further order of the Court, with probation, and it added another tool to deal with the impaired attorney. By the way, my friend Jim Driscoll became a moving force behind the Lawyers’ Assistance Program, became the president of that organization, and practiced law until his death just a year or two ago. He will be forever grateful to Justice Simon, individually, and his family, for what happened here.

I would like to move forward in time and read briefly from another publication, the *Chicago Daily Law Bulletin*, and this is a headline that appeared in the *Chicago Daily Law Bulletin* two weeks ago today. It reads, “Recidivism Low for Lawyers On Probation: ARDC.” I’m not going to read the whole paper to you, but I’m going to read a little bit. “From 1981 through 2006, just 29 probations and one reciprocal probation were revoked for non-compliance with conditions of probation according to a description of the study contained in the 2006 annual report. In all, 250 lawyers were placed on probation during that period.” I make the assumption that except for the 30 we mentioned the others did okay and restored their lives; that would be 220 lawyers. Remember, they were at the point, in most instances, where my friend Jim Driscoll was when his life was out

of control, when he was scared, and he was looking for someplace to hide. Those people, or most of them, the 220 I just mentioned, had been restored at least enough to live their lives as lawyers and as people who had some reason to be proud of themselves, and it happened because one judge had the courage, with the whole Court, to make a way for it to happen. Our Court has recently approved conditional admission for new admittees with the same thought, with building upon the same base that Justice Simon wrote for us in 1981. If this was the only thing that Justice Simon did in his judicial life of note, he would be a great man. So I wait to hear the others who will tell you the additional things that he has done. Thank you all very much, and for those who haven't been here before, welcome to the Supreme Court, and for those that have, it's great to see you.

CHIEF JUSTICE THOMAS:

Thank you, Justice Fitzgerald. We will now hear from another of my colleagues, Justice Anne Burke, who will also present an opening statement, Justice Burke.

JUSTICE BURKE:

Mr. Chief Justice, my colleagues, former members of the Supreme Court, the Simon family, thank you very much for listening to me today. I have never made it a practice of quoting the *Chicago Sun-Times*, but for Justice Seymour Simon I must. Shortly after his death the newspaper asked the question, "How is it possible to live 91 years and still die an untimely death?" Like so many others in Chicago, the newspaper knew Seymour Simon still had great work to do. I am pleased this afternoon to add my voice to all of those across Illinois and across the nation in saluting this extraordinary human being, Justice Seymour Simon.

I am anxious to speak about him this afternoon because so much of my experience with Justice Simon is personal. For many decades the Burkes and the Simons had been friends, allies, political colleagues, and most importantly, deeply valued friends. When Justice Simon was first elected alderman of Chicago's North Side 40th ward, he served from 1955 to 1961 with my father-in-law, the South Side 14th ward Alderman Joseph P. Burke. When Justice Simon

returned to the city council and served again from 1967 to 1974, he served with my husband, Alderman Ed Burke.

Throughout the years, the extraordinary civility and valor for which Justice Simon was well known shaped the remarkable array of his friends, and, I suspect, in many ways that is because Justice Simon never lost that natural Chicago neighborhood way of connecting with people. It was a refined way of putting everyone at ease, and he had the natural ability to make everyone feel respected and valued as a person. I believe that is why he was so comfortable riding the number 151 LaSalle Street bus downtown every day. Not only was it the quickest way to get to the office, but he rode, not with strangers, but with friends; he was there for everyone. “Love takes up where knowledge leaves off,” Thomas Aquinas wrote. I think Justice Simon lived out that philosophy each day of his life. It strengthened his family life, his professional life, and his remarkable sense of public service.

He indelibly touched the lives of the Burkes, a sweet friendship that today remains savored and rich in memory. We have always treasured the special bonds that have made our families committed to working for others. How noble and enriched the landscapes of our lives are for having had such a man of honor walk among us, challenging our prejudices, the limits of our generosity and our political commitments, and all those opportunities that come our way when we can do things for others. He leaves us with the words of the Irish poet on our lips, “Think where man’s glory most begins and ends, and say my glory was I had such friends.”

CHIEF JUSTICE THOMAS:

Thank you, Justice Burke. We would now like to welcome those who have gathered today to offer personal tributes to Justice Simon. We shall begin with Mary Ann McMorro, retired Justice of the Illinois Supreme Court and former Chief Justice of the Illinois Supreme Court, Justice McMorro.

JUSTICE MARY ANN MCMORROW:

May it please the Court. Chief Justice Thomas, members of the Supreme Court, Ms. Hornyak, Julie, staff of the Supreme Court,

family, John Simon and other members of his family, those beautiful grandchildren that are here, friends of Justice Simon. Initially, I would like to thank the members of the Supreme Court for inviting me to participate in this memorial service and to pay tribute to Justice Simon in this beautiful place, in this magnificent edifice, where Justice Simon served so well and labored with distinction. I must say that I enjoyed returning here today, so much so that I was going to ask my good friend Justice Garman to leave her chambers and return them to me. I asked Justice Burke to vacate the seat on which she now sits. It is really a privilege and an honor for me to be here today and to pay tribute to one of the truly “greats” of the profession and the Supreme Court.

I did not serve on the Supreme Court with Justice Seymour Simon; he preceded me and was no longer a member of the Court when I served. I primarily knew Justice Simon socially. I used to see him and his beloved wife, Roz, at the opera all the time. I don't think they missed any; they were subscribers, and they were always there when I was there. I saw Justice Simon always when his firm had beautiful birthday parties for him; they so much revered him that they had these beautiful birthday parties. I knew him from his family and from bar association activities. I really believe it serves no purpose for me to review his biographical data, which is set forth very completely in the program. Rather, in my simple way, I prefer to refer to his human qualities. While we are sad that Justice Simon has gone to his eternal reward—his gravelly voice is missed—we must also be grateful for his life and the lessons that he taught us, grateful for his legacy, and grateful for his significant contributions to the law. I miss Justice Simon already. I got to really know and admire him tremendously for so many, many things.

Justice Simon was being honored by the Appellate Lawyers Association recently. Although I could not accept the Appellate Lawyers Association invitation to speak there, I did pen a letter to them, which was read to that group. What I said then is equally appropriate now. I wrote that Justice Simon is to be admired for his courage, his compassion, and his vision. His vision for things that are right and just. He spoke freely what was on his mind and what was in his heart, and he showed perseverance in the face of adversity. He

exhibited courage and strong moral convictions. He evidenced and voiced concerns that an innocent or an undeserving person might be sentenced to death and executed. Indeed, and this is the most important part of my speech, his concerns have been shown to be well founded, and it was a challenge for him to take the position he did. It was shown that his concerns were well founded because long after Justice Simon advocated abolishment of the death penalty, scientific evidence established that fourteen men who were on death row did not commit the murders with which they were charged. By different processes, four more were exonerated, so that now eighteen men have been exonerated. One of these men escaped execution by only a few hours. All have been exonerated of the crimes that culminated in the imposition of the death sentence on them.

Justice Simon was a respected and revered judge, who used his wisdom to ensure dignity for the oppressed. I think Justice Fitzgerald very eloquently noted his concern for those lawyers who are impaired and who have alcohol addictions. He had an abiding faith in and concern for everyone. He embodied the qualities of an outstanding jurist. Justice Seymour Simon strove for and possessed the human qualities that are so important to create justice in law: courage, caring, independence, and kindness. I refer you to his writings and opinions on the adequate or alternative discipline for impaired attorneys as Justice Fitzgerald referred to. I refer you to Seymour Simon's position in his dissent in *People v. Payne*, and his dissent was later adopted by the United States Supreme Court. Very shortly after I was elected to the Supreme Court, Seymour Simon came to visit me, and he told me—these are his exact words—“Mary Ann, write a lot of dissents because today's dissent is tomorrow's law.” He told me that many times after I had seen him. I can understand why, when you read what he wrote and the circumstances in which he wrote them and the adoption of his opinions by the U.S. Supreme Court.

He strove for and really was perseverant in obtaining a law license for an attorney by the name of Loss. Mr. Loss had some serious problems; there's no question about it. He had some misdemeanor convictions. He had all sorts of problems that made it somewhat understandable why the Illinois Supreme Court denied him a

license to practice law. Justice Simon believed that those imperfections in his character and in his career were not such that he should be prohibited from getting the license, that he was reformed, that he recently had no problems, and that he should be given a license. The Court refused him a license, and it was only until many years later that states other than Illinois gave Mr. Loss a license that Seymour Simon, through his perseverance again, was able to obtain the Supreme Court's agreement that he should be permitted to practice law. There is no question that that man would not be permitted to practice law without the efforts and the continued perseverance of Seymour Simon. The legal community and the citizenry of Illinois have lost a giant among men in the death of Seymour Simon. We here, today, have lost a fine, fine lawyer and a model to emulate. Thank you again, everybody.

CHIEF JUSTICE THOMAS:

Thank you, Justice McMorow. We will now hear from attorney and author Scott Turow.

MR. SCOTT TUROW:

May it please the Court. Mr. Chief Justice Thomas, other members of the Court, former members of the Court, other high officials who join us today, and of course the wonderful Simon family. When I was fourteen years old, my parents ruined my life. It was 1963, and we moved from the North Side of Chicago, where I had been fabulously content, to Winnetka, where I found myself a stranger to everyone my age. Raised in West Rogers Park, I was suddenly in suburbia, where my strong Chicago accent, which you can still hear today, marked me as slightly foreign, even a few miles away from where I'd been born. My classmates found my upbringing in the city utterly imponderable. I remember one young woman who asked me in all earnestness whether I carried a knife. Isolated and more or less landlocked without the CTA, I spent a lot of time moping and getting to know my immediate surroundings, which included the Skokie lagoons where I often wandered. In case I had any doubts, many signs suspended between two four-by-four posts announced in silver letters against a brown backdrop that this was

the property of the Cook County Forest Preserve. Who said so? Seymour Simon, President of the Forest Preserve District. I spent an inordinate amount of time looking at those signs. In retrospect, I was pleased to find one neighbor who was also a North Sider.

Even as a teenager, I knew who Seymour Simon was. I had a precocious interest in politics and—to be blunt—a contempt for the native conservatism and the frequent shenanigans of the Chicago Democratic machine. In the rigorously disciplined ranks of the Cook County Democratic organization, there were only one or two brave voices in the city council willing to publicly challenge the first Mayor Daley. Although Leon Despres was a spirited opponent—you would have expected as much from the representative of those eggheads in Hyde Park—it was Seymour Simon who continually amazed me, not only because he confronted the mayor but also because Seymour Simon managed to survive politically, sometimes ostracized but never bending from principle when principle required it.

Certainly, I counted as one of the remarkable circles in my life that I was able, later in my life, to call Justice Simon a friend. This was really much more a testimonial to Justice Simon's openness than to my seeking out of a boyhood hero. One of the challenges watching the years pass is to avoid that familiar state of being that I will—bearing in mind, the esteemed circumstances where I find myself—I'll just delicately refer to the tendency to become an elderly exhalation of gastrointestinal wind. One of the keys to avoiding that, as Justice Simon surely did, lies in the willingness to take younger people seriously, and Justice Simon did me that favor and honored me with his friendship.

I celebrate Seymour Simon today, both for his private warmth and his countless public contributions that included serving as a Chicago alderman, a commissioner, and later president of the Cook County Board, a member of the Chicago Building Commission, a Justice of the Illinois Appellate Court, and then what I think he regarded as the very pinnacle of his remarkable public life, a Justice of this Court. What I reverence about Justice Simon in all of those roles is the spirit which brought him to public life. Several years ago we were together at a public party which, frankly, neither

one of us was finding especially compelling. We got into a corner, and I fell into a conversation with Justice Simon about how, as a young man, he began to make a beachhead on unwelcoming shores of Chicago politics, and the stories of his dealings with ward bosses who found him suspiciously intellectual were of course very amusing. What sticks with me most was the vision that animated Justice Simon.

Seymour Simon stands as a part of the generation who emerged in local politics in Chicago—Abner Mikva, Paul Simon, Anthony Scariano Sr., are other examples—who were propelled by an outlook that I sometimes think is lost. They chose politics and public life because of their profound fondness for humanity. All of us who have spoken today have commented about that aspect of Justice Simon’s character. He was one of those people who believed that politics was worthwhile because at the root of the process was a struggle to help people become their best selves. Yes, there were issues about resources. Yes, there was a desire to wield power. Yes, there was the civil war, a group against group, but Justice Simon tolerated all of that as part of a human comedy, which never erased his dominating conviction on the fundamental decency and equality of all humans and their right, therefore, to make their government and their law an embodiment of that. He believed that government and the law could represent, not simply a distributive mechanism, but a way to erase unreasonable barriers and inequities and that the law was a human achievement itself, an institution that reflected our best hopes for ourselves as a species and that took as its job, at its heart, helping humans make themselves better people.

Typical of the difficult issues that Justice Simon took on is one that has sometimes dominated my life as a lawyer: his attempt to come to terms with our capital justice system. When former Governor Ryan declared the moratorium on executions seven-and-a-half years ago that still persists in the State of Illinois, much of the legal momentum for that moratorium could be traced to the many dissents that Justice Simon had authored during the course of his years on this Court. At the time the Justice was elected, the Court was divided 4-3 in favor of the death penalty. His ascension to this Court should have changed that balance and led to a state consti-

tutional ban on executions, but other Justices who had previously opposed capital punishment changed their positions. I am certain that those Justices believed that they were acting in the best interest of the Court by keeping it out of the firestorm of controversy that would have engulfed the Court and perhaps made it impossible for it to be effective on any other issue. It was a hallmark of Seymour Simon's public career that he refused to sacrifice principle on the altar of the practical. He raised his voice in dissent on the issue of capital punishment even though some of his colleagues, I'm sure, would have preferred that he remain below the public radar. His careful dissections of the Court's capital rulings have given those in the legal community a footing for more than a generation now to challenge the death penalty in this state, and his observations have been the basis for continuing reforms of capital punishment, which I'm proud to say have been achieved. Briefly put, the death penalty bothered Justice Simon for two reasons: it affronted that profound faith he held in the value of every individual, and it also struck him as completely unworkable.

As a Justice of this Court, Justice Simon is probably best known to the public, and the legal public, for his dissents about the death penalty. I myself treasure the intellectual rigor that he always brought to the law, which is frankly particularly evidenced not only in his dissents but in the opinions that he authored for this court. It should not go unmentioned that Seymour Simon was a formidable intellect, a Phi Beta Kappa who graduated first in his law school class at Northwestern, and a number of his opinions offered fresh perspectives on familiar and sometimes time-worn legal issues. I repeatedly cite and discuss an opinion of his concerning felony murder, the doctrine that says that any killing that occurs in the course committing a forcible felony, robbery for example, ought to be treated as a first-degree murder. This doctrine is so well engrained in American law that it is largely unassailable, but that didn't prevent Justice Simon from revealing many of the contradictions in a rule that by now has been, in my opinion, grossly over-applied.

The earlier achievements of Justice Simon's life before he was on the bench remain equally resonant today. Recently I was in a TV studio, and I asked directions to the washroom. One of the

technicians said first door on your left, and make sure you have a quarter. The guy who gave me directions was just delighted that I was old enough to realize that he was joking. The person who made this a joke was Seymour Simon, who won a long-term battle with the mayor about the pay-toilets at O'Hare, leading, eventually, to the demise of pay-toilets everywhere. Despite the lowly nature of the subject matter of that dispute, his point was actually one of high significance: the importance of public access to public facilities and ensuring that in areas of fundamental need, the government and the law does not favor those who have over those who don't. Nor could there be a more beautiful emblem of his belief in ensuring that the glories of nature do not belong simply to the well-to-do than the Chicago Botanic Garden, whose development is due in large measure to Seymour Simon's efforts at the time that he was the head of the Cook County Forest Preserve District as the president of the Cook County Board.

It is also worth mentioning that Justice Simon's manifold public achievements came without sacrificing his love for his family. In extolling Justice Simon, I would be remiss if I did not remember Roslyn, his cherished partner. One of the most beguiling stories and most romantic stories that I have ever heard in my life was the one the Justice told me of visiting Cleveland as a bachelor lawyer who was there working on a lawsuit, and there at a party meeting a beautiful young widow. He asked her to dance, and as they waltzed, as he told the story and as she told the story, he told her that he was going to marry her, a prediction that took two years and much persistence to fulfill. Roz Simon had her own remarkable record of civic activism and an achievement, while surely obvious, I did not know of until a few years ago. Before Bess Myerson, Roz Simon was the first Jewish contestant in the Miss America pageant as Miss Pennsylvania and nearly a winner, proving that Justice Simon's eye for beauty did not begin with the Botanic Garden.

I also have to mention Justice Simon's oldest son, John, who is a close and loyal friend of mine who embodies all of his father's intelligence, charm, and commitment, as do his brother Anthony and his sister Nancy. I owe thanks to John for helping foster my relationship with Justice Simon, of whom John was and is so boundlessly

proud. I owe thanks to the Simon family, and of course, to the Court for allowing me to speak today about such a rare and distinguished man. He was a person to whom the title Justice was uniquely and fittingly applied. He revered the law as a human institution that represented our best vision of ourselves. He lived a life of enormous consequence, the kind of life we would all dream of living. He was beloved in his career, he was cherished at home, he blessed us, all of us, with his unique force and talents, and we make a brief and halting effort to acknowledge that debt we owe him by blessing his memory now and forever. Thank you.

CHIEF JUSTICE THOMAS:

Thank you, Mr. Turow, and Mr. Turow, I feel compelled to note for the record that this is the first time that anyone has ever evoked sympathy for growing up in Winnetka. Our final tribute will be presented by Justice Simon's son, John Simon.

MR. JOHN SIMON:

May it please the Court. This customary prelude to oral argument is made in deserved deference to the Court. It is also the silent prayer of every lawyer hoping that their client is going to be successful. Today, however, as the Justices of the Illinois Supreme Court graciously memorialize the life of Seymour Simon, his worthiness and value has already been determined. It is his family and countless friends who are pleased and express their sincere gratitude to the Justices of the Court for honoring him in this specially convened memorial session. We are especially appreciative of the favorable judgment of Seymour Simon given by Chief Justice Thomas, Justice Fitzgerald, Justice Burke, former Chief Justice McCormorow, and Attorney Scott Turow, and as he would, we thank his extended family, the Court's staff, for being here with us today.

Seymour Simon led a life of epic proportions. Married to Roz for 52 of his 91 years, they partnered in shaping our cultural and political life. They became one as they selflessly used their incredible talents to better the lives of others, and Scott, he was a terrible dancer, but he did keep his word. Just months after their marriage, Dad lit the rocket of his political career, possessing a powerful

presence with a mind to match. His ascendancy, as Scott has stated, included election as Chicago alderman, ward committeeman, and president of the Cook County Commissioners.

I always have in my mind a photograph of his forty-something profile, arm extended, finger pointing, as he was frozen in time, standing firm, and using his considerable debating skills to carry his position before the Chicago City Council. It symbolized the skill and tenacity he used to accomplish his purpose. I'm daunted by being purged from his party when he angered politicians by refusing to engage in practices that later led to their criminal conviction. The public rewarded his integrity by electing him a Justice of the Illinois Appellate Court and thereafter to the Illinois Supreme Court. It was in that context and this place, which does today feel a few degrees cooler than when he occupied this chamber, that the fullness of his talents, love and respect of the law, character and humanity, merged as he made a remarkable and indelible imprint upon jurisprudence in this state; doing so took stamina, determination, and toughness.

Dad's eight years on this Court were filled with drama and friction. During that time he filed more dissenting opinions than any other Justice ever to have served on this Court. When receiving an award at Northwestern University last year, he joked that he did it without being on steroids. Filing 175 dissents in addition to the 189 majority and 80 concurring opinions he was obliged to write was a prodigious task. He worked so hard that I was beginning to think that he was the only Jewish Calvinist ever to live. He did so because he understood that the only way the judiciary could maintain its credibility with the public and carefully develop the law was to state clearly, logically, and persuasively the reasons behind the decisions of the Court. In particular, he viewed the unique American justice system, anchored by a brilliantly conceived Constitution, as a safety valve that permitted the law to expand to meet the challenges of changing technology and social mores. Dad's opinions were carefully crafted, using powerful declarative sentences and were meticulously studded with apt authorities. Yet certain of his colleagues questioned the motives underlying the dissents, one stating, "If you look at his dissents, you'd think that everybody's out of step with the world but him." In response, Dad maintained, "I gave

much thought and effort to each dissent I filed, and in each instance I fully explained my position based on logic and principle.” In time, other courts and the public have agreed with him.

Consider these important cases in Dad’s mind: *People v. Walker*, in which he dissented over the use of prejudicial victim impact testimony in criminal cases, became the law in Illinois as a result of the United States Supreme Court decision in *Booth v. Maryland*. As mentioned by former Chief Justice McCormack, *People v. Payne*, in which he dissented over the improper use of peremptory challenges to exclude African Americans from juries, which became the law in Illinois as a result of the United States Supreme Court decision in *Batson v. Kentucky*. *People v. Laws*, in which he dissented over the refusal to retroactively apply the requirement that the Court conduct evidentiary hearings of challenges to the issuance of search warrants, which became law in Illinois as a result of the United States Supreme Court’s decision in *United States v. Johnson*.

Then there are the dissents he filed in every death penalty case heard by the Court during his tenure. The death penalty was reinstated in Illinois in 1979, and the first case to challenge it was *People v. Cousins*. In that case the Court split 4-3, it finding that the death penalty statute was constitutional. When *People v. Cornelius Lewis* came before this Court in 1981, asserting that the statute was unconstitutionally vague because it allowed the State’s Attorney in each of Illinois’s 102 counties to use his or her own indiscriminate, subjective judgment in determining whether the defendant would face the death penalty, Dad expected a different result, because three dissenters in *Cousins* could now join with him to become a majority of four. Despite this, the three Justices failed to join Dad in overturning *Cousins*, citing as their reason the doctrine of *stare decisis*, the adherence to prior decisions to determine the outcome of cases.

One expressed, in a concurring opinion of *People v. Albanese*, that the reason he allowed himself to be bound to the ruling he dissented from in *Cousins* was that, “I must accept the fact that I was wrong because four members of this Court said I was wrong. In reality, judicial process does not deal in abstract propositions of right and wrong.” Dad responded, “*Stare decisis* does not require a judge to surrender his belief in a correct legal position for an incor-

rect one, particularly when the death sentence and essential constitutional principles are at stake. If a correct constitutional position were rendered forever incorrect merely because four judges once said it was, then our system of justice would not be one of laws, but one of men, not one of principle, but one of chance.” The majority affirmance of the constitutionality of the statute later proved those words prophetic.

In a different case, Girvies Davis had been sentenced to death and then had his sentence vacated and remanded for resentencing. The State’s Attorney filed a resentencing petition waiving the death penalty. However, he was replaced as State’s Attorney, and his successor withdrew the earlier petition and was successful in re-imposing the death penalty conviction, and Mr. Davis was executed; chance indeed. Chance was again evidenced during an impression-vote conference when Dad realized an attorney in a disciplinary matter that the Court had just finished hearing was the same lawyer that a death penalty defendant had complained in a rehearing petition pending before the Court had inadequately represented him. The lawyer had just told the Court that during the same period he had defended the murder case he couldn’t think straight. Saved by Dad’s memory and fate, the Court granted the petition for a rehearing and remanded the murder case for a new trial.

Dad endured great criticism for taking a strong stance against the death penalty. It took almost 20 years from his first dissent for the public to recognize the severe flaws that allowed happenstance to determine who would be put to death in our collective names. Acknowledging the influence of Dad’s dissents, former Governor George Ryan commuted the sentences of all death row inmates in 2003 and called a halt to all executions, a position maintained by the current administration.

Former Chief Justice McMorrow has mentioned the *Loss* case, and I’m going to bring it up again because it adds a different dimension and because it created the greatest schism between Dad and his colleagues. It was arisen out of a case that was of seemingly little public concern because it involved the fate of one lawyer who was seeking admission to the bar, Edward Loss. Loss had revealed to the Supreme Court’s Committee on Character and Fitness that

prior to his entry into law school, he had a substance abuse problem and had joined the Marines to avoid a petty theft charge. The committee approved his admission. However, in an unprecedented move, the Court convened a special hearing, in which no evidence was elicited from Loss, and then denied Loss a law license. Citing to the committee's record showing that Loss was rehabilitated, Dad filed the lone dissent stating that, "Edward Loss will not be permitted to practice law in this state, not because he has failed to follow the rules, but because we have. The Court has misused its authority, and I dissent." To the Court's credit, Justice McMorroff has indicated, while she was Chief Justice, this Court did admit Mr. Loss as a lawyer in Illinois after many years, and we're very appreciative of that, as was Mr. Loss.

After this opinion was issued, Mike Royko, who was an acerbic columnist up in Chicago, wrote articles on three successive days lambasting the decision. Needless to say, the meals Dad shared with his fellow Justices in the small windowless dining room upstairs were not pleasant. Knowing of the unpleasantness that surrounded him bothered me to the point that I called down here to ask him how he could endure such anger and ostracism. He told me that it didn't faze him, as his allegiance was not to the members of the Court; instead, he said it was to the oath he took to support and defend the Constitution.

Although I might take such a statement as mere bravado coming from many other people, I truly believed him, and here's why. I was ten when I met the man destined to marry our widowed mother, and whose name I would acquire when he adopted me at sixteen. Shortly after Seymour and Mom began seeing each other, Mom began giving me curious small books with different colored covers titled *In the Illinois Appellate Court First District*, telling me that Seymour wanted me to read them. Trying to please, I struggled to absorb the contents of the briefs so that I could discuss them with him. For years it took me to discern the difference between libel, L-I-B-E-L, and L-I-A-B-L-E. It was not until years later in my life that I understood what prompted Dad to send appellate court briefs to a ten-year-old, a practice I don't think he did after that. Dad was 37 when I was 10, he had never been married and, having never had

children, was denied the experience of raising small children. Out of his love for me, his impulse was to share with me something that he valued and truly loved: the law.

The law was then and throughout the remainder of his life the principal tool that he used to craft the type of world he wished for, a world that reflected his values, where conviction prevailed over pride, integrity over guile, charity over avarice, and humanity over intolerance. He believed in the goodness of mankind and in the hope born of redemption. It was this philosophy that gave him the courage to dissent, even though he knew that in doing so he would evoke personal public attacks from others including, at times, some of his colleagues on the bench. Seymour Simon was truly unique, a man who combined an extraordinary intellect with a love of ordinary people. Loaned the power from a trusting public, he reciprocated, by trusting them to find in Lincoln's words, the angels of their better nature, as he worked courageously, tirelessly, and successfully in his insatiable quest for justice.

I thought I had gone over the top in remarks made at an award dinner honoring Dad some years ago—I would do that often—and he kept calling me back to do these the more I went over the top. I said at that dinner, “The constant battle for justice has been advanced by those few throughout history who have stood upon its ramparts and cried ‘follow me.’ We have raised our faces to Seymour Simon who followed the ideals his brilliant mind so eloquently and forcefully advances on behalf of mankind. Each contest may not have brought victory, but the campaign has led to the continuous improvement of the human condition.” After Dad's death so many people, and particularly judges, commented on the high esteem they had for him, that it makes me believe that my remarks were not hyperbole. With him as our guide, we will continue our quest for justice. Let us live his legacy, let us follow him.

CHIEF JUSTICE THOMAS:

Thank you, Mr. Simon, for those warm and inspiring words in honor of your father. The words we have shared today serve two very important purposes. They remind us of the man we have lost, of the friend, colleague, mentor, brother, and father who we miss

and will continue to miss for the rest of our days. They also leave us grateful, grateful for the great good fortune we have known having had Seymour Simon in our lives. Great men leave in their shadows great memories, and the many memories that we shared today do indeed confirm that Seymour Simon was a great man. Justice Simon will be missed, but even more so he will be remembered.

Madam Clerk, the memorial services presented here today are to be memorialized in the *Illinois Reports*. In addition, recordings of these proceedings are to be presented to Justice Simon's family as a token of this Court's gratitude for Justice Simon's immeasurable contributions both to this Court and to the people of this state. I would like to remind everyone that a reception will be held immediately following this ceremony in the old appellate courtroom directly across the hall. You are all welcome, and I hope that you will all attend. Finally, I would like to personally thank Juleann Hornyak and Mary Wight for their tireless efforts in preparation for this memorial service. Once again, on behalf of the Illinois Supreme Court, I thank each and every one of you joining us today to remember and celebrate the life of departed colleague Seymour Simon. Marshal, this special session of the Illinois Supreme Court is now adjourned.

