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Jewish Identity and Judging: Seymour Simon of Illinois

Jack M. Beermann*

Seymour Simon was a politician-turned judge who consistently turned away from power in favor of principle. Justice Simon had a long career in public service and served in the military and in all three branches of government. He served as an attorney in the Justice Department, as an Alderman in the City of Chicago and in the judicial branch of Illinois as Justice of the Illinois Appellate Court and the Illinois Supreme Court. He was a brilliant man who had one guiding principle: Justice. And he did not compromise his principles, which as a judge meant he was the hardest working member of his court, probably filing more dissenting and concurring opinions than all the other Justices combined during his time on the Illinois Supreme Court.

Justice Simon's Jewishness was an important part of his identity throughout his life, including his political and judicial career. Chicago politics of the mid-twentieth Century were dominated by an Irish-run political machine but Jews were elected as representatives of heavily Jewish neighborhoods.¹ Justice Simon was active in his synagogue and in any Jewish civic organization that asked, and there is no question that his Jewish identity worked hand in hand with his

* Professor of Law and Harry Elwood Warren Scholar, Boston University School of Law. An earlier version of this article was presented at the conference on "Jewish Justices: A Comparative Exploration of Jewish Identity to Judging" at Tel Aviv Law School, Tel Aviv, Israel, December 7, 2010. Thanks for Miles Beermann, Pnina Lahav and John Simon (Justice Simon's son) for comments on an earlier draft of this article, and special thanks to John Simon, and Lester Munson, ESPN writer who worked with Justice Simon on his uncompleted memoirs, for generously discussing Justice Simon's life and career with me.

¹ Illinois had elected a Jewish governor, Henry Horner, who served from 1933 to 1940. Another Jew, Samuel Shapiro, was elected Lieutenant Governor in 1960 and 1964, and served as governor from 1968-69 when Governor Otto Kerner resigned to become a federal judge. Kerner resigned his judgeship in 1974 after being convicted for taking bribes while governor. Shapiro ran for governor but was defeated by Republican Richard Ogilvie. In 2011, Rahm Emanuel was elected as the first Jewish mayor of Chicago.

commitment to social justice as both a politician and judge. His appearance and bearing brought to mind the image of the righteous Jew pointing the accusatory finger at those who failed to live up to community standards and showering unconditional affection and loyalty on those who did. Justice Simon made many more friends than enemies during his career. As Ward Committeeman, he held open office hours in which constituents would line up with requests and concerns. No matter the problem or the petitioner's social standing, Justice Simon always did whatever he could to assist constituents in need. His devotion to the problems of everyman carried over to his views as a judge, where he fulfilled the basic judicial obligation to dispense justice without regard to persons.

Justice Simon made many contributions to the law of Illinois, some of which paved the way for legal reforms at the national level. In this essay, after providing some background on Justice Simon's life, I turn to one area of law which was often the focus of Justice Simon's work, the death penalty. While on the court, Justice Simon dissented in every case in which the death penalty was imposed in Illinois, on the basis that this ultimate punishment could not be fairly administered. Although he failed to convince his colleagues to strike down the death penalty, his views triumphed when, in light of numerous exonerations of convicted criminals, the governor of Illinois commuted all death sentences in the state to life imprisonment and later the legislature passed a bill abolishing the death penalty in Illinois. I also examine the case that led to Justice Simon's departure from the Illinois Supreme Court, a decision of the Supreme Court to deny a license to practice law to a man who had previously been a heroin addict and a petty criminal. Justice Simon, in dissent, accused his colleagues of impropriety in the handling of the case, and his relationship with those colleagues was fatally fractured. A short time after this case was

decided, Justice Simon resigned from the Illinois Supreme Court, three years before the expiration of his term. Thus ended the judicial career of one of the great Justices of the Illinois courts. Justice Simon then returned to the private practice of law, although he remained active in political and civic causes until his death in 2006 at the age of 91.

I. Seymour Simon the Man and Politician.²

Seymour Simon was raised in the Albany Park neighborhood of the City of Chicago. This neighborhood has long been home to immigrants and was predominantly Jewish between the 1910s and 1950s.³ Justice Simon attended the local public schools including Roosevelt High School which, at the time, had a largely Jewish population. He was a member of a Reform synagogue, Temple Beth Israel of Albany Park, which has since moved to Skokie, Illinois. It apparently had a left-wing orientation and today co-sponsors a lecture named in honor of one of Justice Simon's rabbis together with the Labor Zionists of America organization, a socialist-Zionist group. This was also reportedly the synagogue of future Israeli Supreme Court Justice Simon Agranat, although it is unknown whether Justices Simon and Agranat ever met.⁴ Justice

² The information on Justice Simon's life and career, unless noted otherwise, is drawn primarily from four sources, conversations with John Simon, Justice Simon's son, a conversation with Lester Munson, the interview of Justice Simon reported in Milton Rakove, *We Don't Want Nobody Nobody Sent: An Oral History of the Daley Years 331-345* (1979) and my personal recollections.

³ Chicago is a notoriously segregated city although perhaps less so now than in the early to mid-20th Century. For example, in 1930, the Albany Park neighborhood was 99.9 percent white, while in 1960 it was 99.6 percent white, and none of the other .4 percent of the residents was black. See <http://www.encyclopedia.chicagohistory.org/pages/36.html>. Today, Albany Park has an enormously diverse immigrant population with Mexicans being the largest single group.

⁴ See Irving Cutler, *The Jews of Chicago: from Shtetl to Suburb*, 238 (1996) ("Shimon Agranat, one of its members, later became one of the Chief Justices of Israel, and another member, Seymour Simon, became a Justice of the Illinois Supreme Court.") Justice Agranat attended the Von Humboldt Public Elementary School and Tuley Public High School which means he was probably living in the Humboldt Park neighborhood, which is about 5 miles south of the Albany Park neighborhood. See Pnina Lahav, *Judgment in Jerusalem: Chief Justice Agranat and the Zionist Century 10* (1997). Both neighborhoods have long attracted immigrant populations. Today, Humboldt Park is known as "Little Puerto Rico" due to the Puerto Rican origins of its largest population group.

Simon was an active member and supporter of the synagogue and developed a close personal relationship with its rabbi. He also supported other synagogues and Jewish organizations regardless of whether they were affiliated with the reform, conservative or orthodox communities. He lent his name and his support to virtually every Jewish civic organization that asked.

Justice Simon graduated first in his class from Northwestern University Law School in 1938. He had a brilliant mind with a scholarly orientation that was evident in his opinions. After graduating law school, he served in the Antitrust Division of the United States Department of Justice until 1942, when he began service in the Navy for the duration of World War II. In 1946, he began a career in private practice that lasted nearly 30 years, practicing antitrust law in Chicago.

A decade after returning from his Navy service, while continuing in the private practice of law, Justice Simon began a political career, winning a seat as a City of Chicago Alderman for the 40th Ward in 1955.⁵ During his service as Alderman, Justice Simon also became the Ward Committeeman for the Democratic Party. He served as Alderman from 1955-1961, when he was appointed to the Cook County Board to fill a “Jewish seat” on that Board after the previous Jewish member died in office. (Mayor Daley selected him for that position.) When the President of the County Board became ill and was unable to run again, Mayor Daley and the party leadership decided to slate Seymour Simon. He was elected President of the Cook County Board and served in that role from 1962-1966. This move by Mayor Daley may have been

⁵ “Alderman” is the title of Members of the Chicago City Council, the City’s legislative body. There are 50 Wards in the City, and each elects one Alderman to the City Council.

politically motivated—he was facing his only really tough reelection fight, and the Jewish vote contributed substantially to his victory. Justice Simon also served as President of the Cook County Forest Preserve District during his time as County Board President and was a member of the Chicago Public Building Commission from 1961-1967. After his term as County Board President he returned to the Chicago City Council after being reelected in 1967 to his old seat as 40th Ward Alderman. (He had retained his position as Ward Committeeman during his service on the County Board.) He served in that role until he was elected to the Illinois Appellate Court in 1974.

It is not obvious how remarkable Justice Simon’s political career was without understanding the nature of Chicago politics during this period. Cook County Board President is the second most powerful political office in the Chicago area, after Mayor of Chicago. The reason that Justice Simon did not seek reelection as County Board President in 1974 was that he lost the support of the Democratic Party machine. The Democratic Party is the only party with any electoral power in the City of Chicago. It was run in a fashion that we call “machine politics.” The head of the machine was Mayor Richard J. Daley, the father of the second mayor Richard M. Daley (who retired recently). The first Mayor Daley served from 1955 to 1976 when he died in office. The party would dispense favors, control the city government and use the largess of government and party discipline to maintain power. Abner Mikva, another American Jewish Judge with a long and varied political career from Chicago reported that when he went to volunteer at the local Democratic party office, he was asked him who sent him, to which he replied “nobody.” This led to the famous rejection of his offer on the basis that “we don’t want nobody nobody sent.”⁶

⁶ See Milton Rakove, *We Don't Want Nobody Nobody Sent: An Oral History of the Daley Years* (1979).

Justice Simon lost the support of the machine because he would not go along with the way the machine did business. Apparently the last straw was that, as County Board President, he refused to push for a zoning change was being pressed by a powerful alderman, Thomas Keane, who was one of Mayor Daley's closest allies.⁷ Keane requested that Justice Simon and the other Democratic members of the County Board vote in favor of rezoning some land north of Chicago for use as a garbage dump despite vehement local opposition. Keane's interest was that the lawyer for the owner (a religious order) was a political ally. When Simon pointed out to Keane that even if all the Democrats on the County Board voted in favor of the change, the Republicans had enough votes to prevent it, Keane insisted that the Democrats vote in favor anyway, to satisfy his promise to the lawyer. Justice Simon refused and Keane went to Daley insisting that Simon be purged from the party.⁸ Without the support of the party, Justice Simon knew he could not be reelected President of the County Board,⁹ so he gave up that position and remarkably won back his aldermanic seat without the support of the party. That he could do this is testimony to his stellar record and reputation.

Justice Simon's connection to the common person and his or her problems was instrumental in forming his judicial persona. His years as Alderman and Ward Committeeman forced him to see the world through the eyes of his constituents. One of the practices of the Ward Committeeman was to hold "Ward nights" during which constituents would come to open office hours and seek

⁷ Keane eventually went to jail after being convicted in federal court of mail fraud and conspiracy. Thomas J. Gradel et al Curing Corruption in Illinois: Anti-Corruption Report Number 1 (2009) available at <http://www.uic.edu/depts/pols/ChicagoPolitics/Anti-corruptionReport.pdf>. This Report lists 30 Chicago Alderman who were convicted of corruption-related offenses between 1973 and 2008 and two more who died after being indicted but before trial. See id.

⁸ See Trevor Jensen and Joseph Sjoström, An independent political mind: Chicagoan was true to his beliefs in a career in politics and law that spanned nearly 70 years (Chicago Tribune, September 27, 2006).

⁹ Republican Richard Ogilvie, who had been County Sheriff (also an elected position) defeated the Democratic machine candidate and succeeded Justice Simon as President of the County Board. Ogilvie went on to become Governor of Illinois.

help solving their problems. His conduct of this aspect of his responsibilities is reminiscent of the empathy that another Illinois politician was famous for, Abraham Lincoln. As it was described to me, “each person’s problem became Seymour’s problem. He extended himself for everyone.”¹⁰

A pair of the issues that Justice Simon was active on as County Board President and Alderman are illustrative of his constant concern for everyday people. In a revenue-raising measure, pay toilets were installed at Chicago’s O’Hare Airport. As County Board President, Simon led a successful effort to have these removed on the basis that the people should not have to pay a quarter to use the toilet. Given the general tenor of Chicago politics at the time, this likely spoiled the sweetheart deal of some vendor with the contract to install and maintain the toilets. During his service on the City Council, an attempt to raise the rates at City-owned parking garages came before the Council. The garages were maintained by a politically connected person, which likely means that political clout and other favors were involved. In Alderman Simon’s view, the garages were filthy and were not being properly maintained, and he railed in the City Council against the effort to raise fees. That very day, Alderman Simon’s car was stolen from a City garage. It is unknown whether this was a coincidence or another bit of evidence of the hardball nature of Chicago politics.

Justice Simon had a life of experience that prepared him well for his service on the Supreme Court of Illinois. With regard to recent nominations to the Supreme Court of the United States, there has been some talk about the relatively narrow life experiences of the members of the Court. Until the recent appointment of Elena Kagan, all nine members of the Court had been

¹⁰ Telephone conversation with John Simon, November 9-10 (2010).

Federal appeals court judges prior to their service on the Supreme Court. These critics would have viewed Justice Simon as a perfect addition to the Court, with service in the military, the U.S. Department of Justice, private practice and the City and County Governments in Illinois. Justice Simon's background and credentials certainly contributed to his ability to humanize justice as a member of the Illinois Supreme Court.

II. Seymour Simon the Justice

In 1974, with the backing of the Democratic Party machine, Seymour Simon ran for Justice of the Illinois Appellate Court.¹¹ In Illinois, judges at all levels, trial, appellate and supreme, are elected by district in partisan elections. Once a judge is elected, he or she must receive 60 percent of the votes cast in periodic retention elections to remain on the bench. After Justice Simon won election to the Appellate Court, the machine funded an anti-retention campaign at least once, but Justice Simon received sufficient votes to retain his position on the Appellate Court. He immediately distinguished himself as a hard-working and excellent member of the Appellate Court. His opinions were always clear and well-reasoned. After several years on the Appellate Court, Justice Simon was elected to the Supreme Court of Illinois, without the backing of the machine. He defeated the machine candidate in a primary election and then won the seat in the general election.

¹¹ In the vernacular, the Democratic Party "slated" Justice Simon for election, which, due to the Party's dominance in Chicago, all but assured election. To get a sense of the way the Party controlled judicial elections, consider the following story that I was told while studying law in Chicago. The Democratic Party Convention in Chicago in 1968 was the site of massive protests mainly by anti-war groups and leftist opponents of U.S. government policy. Mayor Daley famously ordered the police to stop the protests by shooting to kill. Lawsuits were filed over the City's refusal to grant permits for the protestors to use public facilities. (The permit denials were a huge mistake since the protests would have moved off the street.) During negotiations to settle the lawsuits, I was told that one of the defendants' initial offers was that the plaintiffs could name three candidates to be slated in the next judicial election. This offer was not accepted.

In a sense, Justice Simon was banished to the courts for his political sins. Due to the changing demographics of the City, it is unclear how long he could have retained his seat on the City Council after 1980 especially without the Party's backing. Any effort for City, County or State office was virtually hopeless without the backing of the Democratic Party. He realized that, and although early on he had thrived on the shouting and finger pointing in the City Council, over time he began to tire of the fighting and rancor. The Party agreed to slate him for the Appellate Court, and the City's loss was the legal system's gain, as Justice Simon was probably the most able and distinguished judge in the State of Illinois during the time he served on the Appellate and Supreme Courts. Although Appellate Court Justice Simon found that position intellectually rewarding, he felt somewhat isolated and lonely as an appellate judge. Of course, there is nothing remotely like Ward night or a City Council meeting at an appellate court, and none of the daily close contact with lawyers and parties that exists at a trial court. Justice Simon once said that he wished someone would tell him that one of his opinions stunk just so he would know someone was reading them and that, if he had it to do all over again, he would stick to private practice.¹² Instead, he moved up from the Appellate Court to the Supreme Court.

Although much could be written about Justice Simon's contributions to the law of Illinois, I will focus on two elements of his judicial career, his opinions concerning the death penalty and a case involving the eligibility of a former heroin addict and petty criminal to become a lawyer in Illinois.

A. Death penalty

¹² See Milton Rakove, *We Don't Want Nobody Nobody Sent: An Oral History of the Daley Years* 344 (1979).

As Justice of the Illinois Supreme Court, Seymour Simon voted against every death sentence that came before the court. Since appeal to the state Supreme Court is automatic, this means that he voted against every death sentence imposed in Illinois during his years on the Supreme Court. It is unknown whether his opposition to the death penalty pre-dated his service on the Supreme Court. Because death penalty appeals went directly to the Supreme Court, Justice Simon did not sit on any death penalty case during his 14 years on the Appellate Court. Given his generally liberal political orientation, his opposition to the death penalty is not surprising, but to outside observers, it may have come out of the blue when he assumed his seat on the Illinois Supreme Court.

A brief history of the death penalty in the United States is necessary to set the stage for exploring Justice Simon's views on the death penalty in Illinois. In 1972, the Supreme Court of the United States held virtually all state death penalty statutes unconstitutional on procedural grounds.¹³ The Court did not rule categorically that capital punishment was "cruel and unusual punishment" prohibited by the Constitution, but rather that the arbitrary manner in which it had been administered made it, under the circumstances, cruel and unusual. Almost immediately, 35 of the 50 states enacted new death penalty statutes and in 1976, the Supreme Court upheld some of these new statutes as constitutional, meeting the concerns that led to its previous ruling.¹⁴

In Illinois, the story is a bit more complicated. Like many other states, the legislature revamped the procedures for imposing the death penalty almost immediately after the Supreme Court's

¹³ *Furman v. Georgia*, 408 U.S. 238 (1972).

¹⁴ *Gregg v. Georgia*, 428 U.S. 153 (1976).

decision. After Illinois passed a new death penalty statute, the Illinois Supreme Court struck it down in 1975 for a mixture of procedural and substantive reasons.¹⁵ The first procedural problem the Court found with the new statute was that it designated a three judge panel of trial judges to impose sentence in capital cases. This, according to the Court, violated the autonomy of each trial judge who could not constitutionally be required to act in concert with other trial judges. The second procedural problem the Court found was that the statute provided for review of death sentences by the Appellate Court, contrary to a provision in the Illinois Constitution of 1970 that designated the Supreme Court as the appellate tribunal for capital sentences. The Court also found the statute infirm on the substantive ground that its provision regarding mercy was too narrow because it allowed the sentencing body to consider only issues related to the crime itself, not matters relating to characteristics of the defendant unrelated to the crime. It also found that the mercy provision lacked sufficient guidelines.

Interestingly, the invalidated statute seemed to require the prosecutor to seek the death penalty in all cases of murder when one of a list of aggravating factors was present.¹⁶ The mandatory provision was repealed in 1977 at which time the statute was amended to read that “the State may either seek a sentence of imprisonment, or where appropriate seek a sentence of death.” The sentence of death is appropriate only where at least one aggravating factor is found, from a list included in the statute. Under U.S. Supreme Court precedent, the defendant is allowed to argue that mitigating factors counsel against imposition of the death penalty, including mitigating factors not listed in the state statute. The state must, however, prove the existence of

¹⁵ People ex rel. Rice v. Cunningham, 61 Ill.2d 353 (1975).

¹⁶ See Illinois Revised Statutes, ch. 38, par. 1005-8-1A (1973).

at least one statutory aggravating factor beyond a reasonable doubt for the death penalty to be imposed.

In 1979, in *People ex rel Carey v. Cousins*, the Supreme Court of Illinois upheld the death penalty statute against a challenge focusing on the discretion of prosecutors to seek the death penalty.¹⁷ Under Illinois law, the prosecutor may seek the death penalty only when one of seven listed aggravating factors are present, but under the 1977 amendment, this is not mandatory, and there are no guidelines concerning when the prosecutor should not seek the death penalty even when one or more aggravating factors is present. If the prosecutor decides not to seek the death penalty in a particular case, there is no possibility that the defendant will be sentenced to death. The majority rejected the contention that this unbridled discretion of the prosecutor over whether to seek the death penalty meant that the imposition of the death penalty in Illinois was arbitrary in violation of the constitutional prohibition of cruel and unusual punishment. Three of the seven Justices dissented from this decision. They explained their view as follows:

In appraising the effect of the prosecutor's discretion, it must be remembered that the statute confers this discretion not upon one individual, but upon the State's Attorney in each of the 102 counties in this State. In view of the absence of statutory directives to the prosecutor, each State's Attorney is free to establish his own policy as to when sentencing hearings will be requested. Some prosecutors may look to sections 9-1(b) and 9-1(c) for guidance. Others may consider some of the listed factors controlling and disregard the remaining, while others may totally ignore these sections. Such unguided discretion will inevitably lead to an arbitrary and capricious application of the death penalty similar to

¹⁷ *People ex rel. Carey v. Cousins*, 77 Ill.2d 531 (1979).

that condemned in *Furman*. There can be no doubt that under this statute some offenders will be chosen as candidates for the death penalty by one prosecutor, while other offenders with similar qualifications will be spared, not as a result of mercy, but because of the uneven application of the law due to the lack of statutory direction to the prosecutor. There will inevitably be cases where there will be no reasonable basis for the distinction between one on whom the penalty of death is imposed and another who is passed over.¹⁸

This reasoning resonates with the theme of a leading anti-death penalty book by law professor Charles Black, Jr., that was widely read at the time, *Capital Punishment: The Inevitability of Caprice and Mistake* (1974). One of Black's themes was that caprice results from the prosecutor's broad discretion in deciding whether to pursue the death penalty in any particular case.

Justice Simon's election to the Illinois Supreme Court took place after the *Cousins* decision was rendered. He had no record on the death penalty as an Appellate Court Justice, although he had criticized prosecutors in his opinions and was attacked during the campaign as soft on crime. When he took his seat on the Court, he replaced one of the members of the *Cousins* majority and knowing that he agreed with the *Cousins* dissenters, he must have thought that the vote in the next case would be 4-3 to strike down the Illinois statute on the grounds raised in *Cousins*.

There were undecided cases on the Court's docket when Justice Simon took his seat, and he sometimes participated in the decision of those cases. One case that had already been argued but

¹⁸ *Cousins*, at 557-58 (Ryan, J. dissenting).

not decided when Justice Simon joined the Supreme Court was a death penalty case, *People v. Lewis*.¹⁹ Lewis had been convicted of murder and sentenced to death. One of Lewis's grounds for appeal was the same as in *Cousins*, that the prosecutor's discretion rendered the penalty too arbitrary to survive Eighth Amendment scrutiny. It is not clear from the opinions in the case whether Justice Simon's membership on the Court required a re-vote of the case or whether the Justices simply maintained the votes they had cast when the case was argued prior to the election, but in any case the Illinois Court this time voted 6-1 to reject the challenge to the Illinois statute. Incredibly, the three Justices who had been in the minority in the *Cousins* case continued to express the view that the Illinois statute was unconstitutional but concluded that the doctrine of *stare decisis* required them to acquiesce in the prior majority decision upholding the provision. One reason for adhering to *stare decisis* was that the Supreme Court of the United States could reverse the Illinois Court. As Chief Justice Goldenhersh put it:

I joined Mr. Justice Ryan in his dissent in *People ex rel. Carey v. Cousins*, 77 Ill.2d 531 (1979), and for the reasons therein stated am of the opinion that the death penalty provisions of section 9-1 of the Criminal Code are unconstitutional. Following the decision of *People ex rel. Carey v. Cousins* I have concurred in several opinions pertaining to the application of certain provisions of section 9-1. . . . Because it was held that the death penalty could not be imposed in those cases, there was no reason to explain my concurrence in the court's opinions.

It is apparent that the General Assembly and a majority of the electorate of this State desire that the death penalty be available as a sanction in certain types of cases. If this

¹⁹ 88 Ill.2d 129 (1981).

court were the final tribunal to determine the validity of the statute in its present form I would continue to dissent in the hope that ultimately a majority of the court would agree or that the General Assembly might be persuaded to effect the amendments which I consider necessary to render the statute valid. In this situation, however, the Supreme Court can grant certiorari and decide the questions on which this court is divided.

Once this court has spoken, I, like any other citizen of Illinois, must acquiesce in its decision. That there be a final decision on the issue is of great importance for the reason that there are now pending before this court 26 cases wherein death penalties have been imposed. It is essential that the question of the validity of the statute be determined. Consequently, with considerable reluctance, under the compulsion of *People ex rel. Carey v. Cousins*, I concur in the opinion affirming the judgment of the circuit court of Champaign County.²⁰

Justice Simon did not take kindly to this basis for upholding the death penalty. His reaction to this reasoning was a bad start for any hope of a collegial relationship with his fellow Justices. In response to his colleagues' plea for stability in the law, Justice Simon put it bluntly, that "[i]t would be blatant folly for this court to acquiesce in the execution of Cornelius Lewis without disclosing that four of the judges comprising the present court, either now or in the past two years, have viewed the death penalty statute as unconstitutional. How much confidence can any member of the judiciary, any State official or any member of the General Assembly have that this statute will continue to be viewed as constitutional?"²¹ In addition to forcefully arguing that

²⁰ 88 Ill.2d at 165-66 (Goldenhersh, J. concurring).

²¹ 88 Ill. 2d at 180 (Simon, J. dissenting).

the death penalty as administered violated the Illinois Constitution, Justice Simon cited numerous examples in which the Illinois Supreme Court had overruled prior decisions, including examples of decisions being overruled within a few years which resulted from changes in the Court's membership. Justice Simon's opinion exposed the prior dissenters' pleas for stability in the law as disingenuous.

Is there a different explanation for the switch in votes by the three former dissenters? It may be that they were comfortable dissenting from a decision upholding the death penalty but would never have struck it down even if they had a majority. This is the only explanation for Chief Justice Goldenhersh's reference to the desire of the people and the General Assembly to have a death penalty in Illinois. Justice Simon himself raised another possibility. In an article he published in the Chicago Bar Association Record years after he left the Court entitled "Twelve Executions Which Should Not Have Been"²² Justice Simon discussed speculation that his colleagues' change of heart was related to the conviction of serial killer John Wayne Gacy. Gacy had killed 33 people and was convicted and sentenced to death after *Cousins* and before the *Lewis* case reached the Supreme Court.²³ The thought is that no judge, especially one who needed to periodically win 60 percent of the vote in a retention election, wanted to be identified as one who helped prevent the execution of a monster like Gacy. In the article, Justice Simon also pointed out that Cornelius Lewis himself was not executed for reasons consistent with Justice Simon's view that the death penalty was not administered properly in Illinois. It turned out that Lewis's appointed lawyer, who had not tried a criminal case for many years, agreed to

²² See Seymour Simon, *Twelve Executions Which Should Not Have Been*, 18 Chicago Bar Association Record 24 (2004).

²³ See Terry Sullivan & Peter T. Maiken, *Killer Clown: The John Wayne Gacy Murders* (1983).

the existence of an aggravating factor of two prior felony convictions when one was a misdemeanor and another was a charge without a conviction.²⁴ At a resentencing hearing the jury decided against capital punishment.

In any case, Justice Simon was not content to limit his dissenting opinion in *Lewis* to an explication of his views on the merits of the constitutional challenge to the Illinois statute and criticism of his colleagues for hiding behind *stare decisis* in voting to uphold the death sentence imposed on Cornelius Lewis. Justice Simon declared that the former dissenters' explanation in *Cousins* for why the Illinois statute violates the Illinois Constitution "cannot be surpassed," and he reprinted that opinion as an appendix to his dissent in the *Lewis* case. The clear message of this was righteous indignation, again not a way to get off to a good start in terms of collegial relations with the rest of the Court.

I was studying law at the University of Chicago at the time *Lewis* was decided, and it was during this period that I became personally acquainted with Justice Simon. I had several conversations with him about legal issues, and in one such conversation, he asked me what I thought of that application of *stare decisis*. I offered to ask Professor Edward Levi what he thought. Levi had been Attorney General of the United States under President Gerald Ford, brought in to clean up the mess left behind by the Nixon Justice Department. He was also author of a widely read book *An Introduction to Legal Reasoning* and he taught a course called "Elements of the Law" which focused on issues related to the role of precedent and the proper judicial role in our legal system. I approached Professor Levi and asked him. His response was to ask me to write the question out and provide supporting materials, i.e. the opinions in the cases. I did so and a couple of

²⁴ See *Lewis v. Lane*, 832 F.2d 1446 (7th Cir.1987); *People v. Lewis*, 191 Ill. App. 3d 155 (1989).

weeks later I received a four-page single-spaced typed letter in reply with numerous citations to cases and quotations from opinions, all pointing to the conclusion that this was an improper use of the rule of *stare decisis*.²⁵

I showed Professor Levi's letter to Justice Simon and he asked me for a copy of it, which I provided. He was very excited about it. He told me later that he showed it to his colleagues on the Illinois Supreme Court and informed them that he was going to print it as an appendix to his next dissenting opinion on the constitutionality of the Illinois death penalty. He reported to me that their reaction to this proposal was to state that "Edward Levi is not a member of this Court." My recollection is that this episode got back to Edward Levi and he was not particularly happy about being dragged into the middle of the dispute. I recall uncomfortably apologizing to Professor Levi for not having sought his permission before providing Justice Simon with a copy of the letter addressed to me.

Justice Simon continued to dissent in every case in which the death penalty was approved in Illinois, always on the same ground, that the prosecutor's discretion was contrary to the Illinois Constitution's separation of powers requirement. Further, when other issues were presented in a death penalty case, he would seize on those to argue against imposition of the death penalty in that particular case. He never expressed the view that the capital punishment was wrong in principle as cruel and unusual punishment or contrary to human dignity. In the main, Justice Simon pressed two themes, first that "the statute is unconstitutional because it allows prosecutors

²⁵ It may raise an eyebrow that a Justice was discussing this issue with me, since I was not a member of the court's staff. The discussion was not in the context of any particular case pending or likely to come before the court, but was rather of the general sort of discussion of legal theory that is common for judges to have with lawyers and academics.

too much discretion in choosing whether to seek the death penalty and that this may result in arbitrary application of the statute” and second that “[a] person should not be put to death in order to perpetuate the doctrine of *stare decisis*.”²⁶

Justice Simon’s continued focus on the doctrine of *stare decisis* must have been received by the prior dissenters as a personal jab. Justice Simon blamed them for wrongful executions, even virtually accusing them of being accessories to murder. In the article mentioned above that was published years after he left the Court, he again attacked his former colleagues for their use of *stare decisis*, and he ruefully observed that if the real reason they changed their votes was to allow the execution of serial killer John Wayne Gacy, “Gacy has the distinction of taking the eleven other persons who were executed in Illinois before Governor Ryan declared a moratorium on executions to death with him as well as the 33 young men he murdered.”²⁷

An obvious question is whether Justice Simon’s opposition to the death penalty was influenced by his Jewish identity either directly as the result of religious views or indirectly as part of the general liberal political orientation of Jews in the United States at the time. It is impossible to say with any confidence whether Justice Simon’s religious beliefs or membership in the Jewish community influenced his views on the death penalty. The Reform Movement in the United States opposed the death penalty beginning in at least 1959 when the governing body of reform Judaism issued the follow statement: “We believe that there is no crime for which the taking of human life by society is justified and we call upon our congregations and all who cherish God’s mercy and love to join in efforts to eliminate this practice which lies as a stain upon civilization

²⁶ *People v. Silagy*, 101 Ill.2d 147 (1984).

²⁷ See Seymour Simon, *Twelve Executions Which Should Not Have Been*, 18 *Chicago Bar Association Record* 24 (2004).

and our religious conscience.”²⁸ One person familiar with Justice Simon stated that “his views on the death penalty were guided by the Jewish conception of value of each human life and the possibility of redemption.”²⁹

One thing is clear, that Justice Simon’s opposition to the death penalty was consistent with his overarching commitment to integrity in law and politics and consistent with the way he related to people and their problems. Reading Justice Simon’s opinions, it is clear that he always viewed them as resolving disputes concerning real people and their lives, not as primarily involving abstract principles of law. His background in local politics solving constituents’ problems was clearly an influence on his view of the role of a judge. If the system was not working, it certainly should not be allowed to decide matters of life and death.

B. The Case of Ed Loss

Justice Simon’s tenure on the Supreme Court was marked by tension with his colleagues which culminated in a decision in 1987 concerning the application for a license to practice law of a recent law school graduate named Ed Loss.³⁰ Ed Loss graduated DePaul University Law School, Chicago, in 1983. In 1984, he applied for membership in the Illinois Bar. Bar membership involves two issues, qualifications and character and fitness. Loss apparently met the standards in terms of qualifications, which essentially require graduation from an accredited law school

²⁸ This resolution was issued by the Union of American Hebrew Congregations, a Reform umbrella organization. The full text of the 1959 resolution is available at <http://www.reformjudaismmag.net/02summer/focus.shtml>. This opposition continues to the present day. See Religious Action Center of Reform Judaism, Death Penalty through a Jewish Lens, http://rac.org/Articles/index.cfm?id=1665&pge_prg_id=8089&pge_id=2396.

²⁹ Telephone conversation with John Simon, November 9-10 (2010).

³⁰ *In re Loss*, 119 Ill.2d 186 (1987).

and a passing score on the state bar examination. Loss ran into trouble in the character and fitness aspect of bar membership. Because of doubts about Loss's character, his application was referred to a committee which referred the matter to a second, larger committee that voted in favor of admission but by a very close vote of 14-13.

Rather than simply admit Loss to the Illinois Bar as was the usual practice after committee certification, the Illinois Supreme Court issued an order requiring Loss to file a petition in the Supreme Court for admission to the bar addressing the issue of his character and fitness to practice law in Illinois. As the opinions in the case reveal, this was the first time the Supreme Court of Illinois had requested such a petition after committee approval. The Supreme Court essentially placed the burden on Loss to show "by clear and convincing evidence that petitioner has been rehabilitated and is fit to practice law." The Court found against Loss, concluding that "the evidence does not support the finding that petitioner is presently of good character and sufficiently rehabilitated to be admitted to the practice of law." The Court did leave open the possibility that it would reconsider its decision on a later re-application by Loss.

There was plenty of evidence in the record against Loss. The Court's opinion explains that Loss

was involved in juvenile delinquencies, criminal activity, and drug and alcohol addiction. While a student at high school, petitioner was suspended on approximately 23 occasions, and on his first job was discharged for stealing money from vending machines. He was charged with robbery and, as an alternative to conviction, was given an opportunity to enter military service. He enlisted in the Marine Corps. While in the Marine Corps, he

was absent without leave for a period of 71 days and ultimately was given an undesirable discharge. Petitioner was also arrested and convicted on charges of disorderly conduct (for stealing money), selling marijuana, and possession of heroin, cocaine and marijuana. The record is not clear as to the number of convictions. He used various aliases. In 1975, petitioner was arrested for possession of marijuana, selling heroin, and for theft from a gasoline station.³¹

It also appears that Loss did not reveal his criminal history to DePaul University when he applied to law school. However, the Court noted that “In contrast to his application for admission to law school, his application for admission to the bar candidly reveals facts and details about his background, including arrests and convictions not previously noted. During his law school years he was an excellent student, started a business by means of which he supported his family, and aided and befriended many of his fellow students.”³²

The Court’s opinion in support of its decision to deny Loss a license to practice law does not specify what facts the Court found persuasive. After reciting facts both in favor and opposing Loss’s claim of rehabilitation, the opinion simply concludes that “[u]pon consideration of the record in its entirety, we conclude that the evidence does not support the finding that petitioner is presently of good character and sufficiently rehabilitated to be admitted to the practice of law.”

Justice Simon vehemently dissented from the Court’s decision to reject Loss’s bar application, and this dissent apparently caused an irreparable rift between Justice Simon and his colleagues.

³¹ *In re Loss*, 119 Ill.2d 186, 190-91 (1987).

³² *Id.* at 191.

Justice Simon had two basic grounds for dissenting, first that the Illinois Supreme Court did not have the power to overturn the Committee on Character and Fitness's determination that Loss was fit to practice law, and second that the Court had violated basic procedural norms including reliance on off the record communications in the case.

Justice Simon began his dissent by quoting the Supreme Court's rule which, at the time of Loss's application, stated that "If the committee is of the opinion that the applicant is of good moral character and general fitness to practice law, it shall so certify to the Board of Law Examiners and the applicant shall thereafter be entitled to admission to the bar."³³ The majority did not explain how the language of the rule allowed the Court to review the committee's determination. It relied, instead, on non-textual reasoning for its determination that it had the power:

A rule, like a statute, must be construed to avoid an absurd or unconstitutional result. Were we to construe Rule 708(c) in the manner urged by petitioner we would face the absurd situation that, confronted with the record here, we were powerless to consider the correctness of the decision to certify and would be required to blindly admit petitioner. This does not comport with our duty to protect the People against incompetency and dishonesty on the part of members of the bar. . . . To read literally the language of the rule would divest this court of jurisdiction to review the finding of the committee and thereafter deny admission, resulting in an unconstitutional delegation of our jurisdiction and an abdication of our duty to regulate the bar of this State.³⁴

³³ See *In re Loss*, 119 Ill.2d 186 at 218 (Simon, J. dissenting), quoting 107 Ill.2d R. 708(c).

³⁴ 119 Ill.2d at 194-95.

Justice Simon responded to this argument with the conclusion that the Court had violated a basic norm of due process that requires courts to follow their own rules unless and until they are changed. “Due process demands that we follow our own rules while they remain in force, and they are binding on this court the same as on litigants. . . . It is no answer to say that Mr. Loss has been afforded a hearing, for the *ad hoc* proceeding ordered by this court was itself fundamentally unfair. In their expressed desire to avoid an absurd and unconstitutional result, my colleagues have wrought just that.”³⁵

This procedural issue led Justice Simon to another problem with the majority’s decision. Because the Court’s rule on its face makes bar admission automatic upon a favorable committee decision, there is no provision in the rules, and no precedent for, a Supreme Court hearing after a favorable committee determination. Justice Simon noted that that the Court’s order requiring Loss to petition the Court for admission to the bar was issued without explanation and “failed to advise Loss of how this matter even came before us.”³⁶ Justice Simon elaborated on this problem, moving toward an explosive allegation of misconduct by his colleagues:

Nothing in the record indicates the source of the information which triggered this extraordinary proceeding. Such review has not taken place--in even a single instance--since I have been a member of this court. Moreover, as the majority concedes, there are no formal procedures for keeping the court apprised of an applicant's interaction with the Committee on Character and Fitness. . . . The only way this court could have been advised of Loss' situation, therefore, was through an informal communication. The

³⁵ 119 Ill.2d at 220.

³⁶ *Id.* at 220.

possibility that this unusual proceeding was initiated on the basis of rumors or gossip turns the entire admission process into a sham. It appears that those who can grab the court's ear and are displeased with an applicant can trigger an additional inquiry, by this court itself, into the applicant's moral character. To adequately address the question of his good character and fitness Loss has a right to know how and why his application was singled out for such special attention.³⁷

This passage contains two criticisms of the Court's action. The milder critique is that the Court did not sufficiently inform Loss of the basis for its concern so that Loss could prepare for the hearing. The second, which goes to the heart of the judicial process, is that the Court's decision to hold a hearing was based on "informal communication," "rumors" or "gossip." It would be completely inappropriate for the Court to make its decision based on factors outside the record, certainly without allowing the parties to address the matters not reflected on the record.

That Justice Simon was accusing the other Justices of serious judicial misconduct was not lost on the other members of the Court, or apparently on the media or general public. Justice Ryan, who was a target of Justice Simon's *stare decisis* missives regarding the death penalty, wrote a long concurring opinion in which he detailed the reasons why he found Loss to be unfit to practice law. Justice Ryan thought that Loss continued to be dishonest and pointed out that Loss's problem with alcohol continued during his time in law school. Justice Ryan also responded at length to Justice Simon's charge of procedural impropriety:

³⁷ Id. at 220-21.

The author of the dissenting opinion has, inadvertently I hope, used innuendos, general accusations, and emotionally charged language, which were seized upon by segments of the media, expanded and used to create a *cause celebre* over a “reformed drug addict and petty thief” whom this court has refused to license to practice law. I feel I must respond to the misleading and unfortunate statements by the author of the dissent, which have caused the media and the public to challenge the integrity of those who joined in the majority opinion.³⁸

After quoting the passage from Justice Simon’s dissent quoted above, Justice Ryan continued:

I find [the dissent’s] language offensive because it implies that there was some clandestine, unethical, and possibly illegal communications from some unspecified person or persons to certain members of the court, which caused Loss' application for admission to the bar to be “singled out for such special attention.” . . . The author of the dissent was given every bit of information that other members of the court were given. Why did he not then, in the dissent, specify that about which he was complaining? Why was it necessary to resort to such damaging innuendos and general accusations? Why was it necessary to invite the public to speculate as to what sinister activity had produced this result and the media to publicly imply that the “fix is in” on the court?

In an attempt to clarify the murky innuendos of the dissent, I set forth herein the facts as they occurred. If the following constituted “informal communication, or “rumors or gossip,” or grabbing “the court's ear,” why did the author of the dissent not complain

³⁸ Id. at 198 (Ryan, J. specially concurring).

about it in the conference room, when the matters to which he now apparently alludes were openly discussed?³⁹

Justice Ryan then explained why, in his view, it was proper for the Supreme Court to take up the matter. Justice Ryan's defense of the Court's actions comes down to three essential points, first that under the Court's rules and organization, the matters heard by the Committee on Character and Fitness are structurally open to scrutiny by the Court, second that the Supreme Court itself is the final arbiter of any applicant's fitness to practice law, and third that Loss received due process by virtue of notice concerning what matters were of interest to the committee, the hearing before the committee and the briefs and argument to the Supreme Court. Justice Ryan denied that information had reached the Court through any channel other than its connection to the established character and fitness committees. It appears that Justice Simon disputed this as a matter of fact.

Justice Ryan then went into great detail about what he viewed as overwhelming evidence that Loss was not fit to practice law and had continued his practice of deceit in connection with his application to practice law and in his application to DePaul Law School. Justice Ryan pointed out that Loss had at least one bout with drunkenness during law school, so that his problems were not confined to the distant past as Loss and Justice Simon made out to be the case. After the long recitation of all the reasons why Loss should not be allowed to practice law, Justice Ryan concluded by observing that he found it difficult to understand the public's outrage over his Court's handling of the matter given that, at the time, the Cook County Circuit Court was under Federal investigation for corruption and "the media and the public have soundly

³⁹ Id. at 199.

condemned the legal profession for harboring too many crooks and cheats.”⁴⁰ To Justice Ryan, the charges of procedural impropriety would only further weaken the public’s confidence in the courts.

Justice Simon would not have any of this. To him, the Court had invented a procedure to deny bar membership to an applicant who had met all of the pre-existing substantive and procedural requirements in the rules. Worse, the Court must have heard about Loss’s application through some sort of *ex parte* contact. Although he did not respond directly to Justice Ryan’s invocation of the scandal confronting the Cook County courts, I assume that Justice Simon would have denied that violating their own rules and norms of judicial conduct would help restore the public’s confidence in the Illinois courts.

After the *Loss* decision, any semblance of a normal collegial relationship between Justice Simon and other members of the Court, especially Justice Ryan, was completely gone. Justice Simon was ostracized by his colleagues, and even his involvement in the Court’s administrative matters did not continue in a normal fashion. At this point, Justice Simon’s feeling of comparative isolation as a judge must have been overwhelming. He had no hope of persuading his colleagues to strike down the death penalty in Illinois and he could not have enjoyed the tense environment at the Court. He remained on the Court only a few months after the *Loss* decision, announcing in January, 1988, that he would resign effective February 15, 1988. He gave as the reason that he was tired of spending 16 weeks per year in the state capital Springfield, but it seems likely that

⁴⁰ This reference was to the Greylord scandal in which it was revealed that numerous state court judges in Cook County were accepting bribes. The irony of Justice Ryan’s reference to this is that it was common knowledge in Chicago that this activity was going on. In fact, one large law firm, since disbanded, was referred to in part as “Bagman.” I knew about this as a law student in Chicago and I would thus have to believe that it was widely known in the legal establishment before the federal investigation took place.

he resigned either over the conduct of his colleagues or because of the effects of the tensions on the Court.

III. Seymour Simon the “Outsider”

One of the themes that often arises in considering the careers of Jewish judges (outside of Israel, of course) is the theme of the outsider. Although society in the United States is relatively tolerant, Jews were and perhaps still are considered outside the mainstream Protestant culture. Remarkably, today there are no Protestants on the Supreme Court of the United States, but rather six Catholics and three Jews. Seymour Simon presents a puzzling example. He worked within the political establishment to become a City Council member and County Board President. The ethnic politics and residential segregation of Chicago made it inevitable that some Jews would succeed in politics, but at the City level, the Irish establishment had a pretty firm grip on control, with Italian, Jewish, Polish and Black minorities tagging along. Interestingly, the Irish establishment was Catholic, which may have made them more open to the aspirations of non-Protestant ethnics. The voices of Blacks may have been somewhat suppressed relative to their numbers until the ascendancy of Harold Washington as the City’s first black mayor in 1983.

Jews were clearly outsiders in Chicago’s legal establishment during the time of Justice Simon’s political and judicial ascendancy. Jewish lawyers were not hired by the large, established law firms at least through the 1950s, and many found it necessary to establish their own firms. During the Civil Rights Movement in the United States during the 1950s and 1960s, Jews were among the strongest supporters of rights and equality for Blacks, and many of the white civil

rights lawyers who headed south to aid protesting Blacks were Jewish. The Red scare of the 1950s focused attention on Jews thought to be disloyal to the United States as part of an international communist conspiracy.

Despite the clear placement of Jews as outsiders relative to the establishment in the United States, due to the ethnic politics of Chicago and Justice Simon's repeated electoral successes, it is difficult to place Justice Simon on an "insider-outsider" spectrum. Other Jews held powerful positions in Chicago and Cook County Politics. He worked within the machine to gain election, and always used the traditional political method of casework and networks of relationships to maintain his political position. At the County Board, he was chosen by the machine for the seat reserved for a Jew. He was, however, unable to suppress his values and sacrifice his integrity, and thus assumed the role of the outsider both as an opposition politician and judicial dissenter. The status of Jew as an outsider may have made it more likely for Justice Simon to assume those roles than, for example, an Irish politician who would have a closer relationship and stronger self-identification with the political machine. It is unlikely a simple twist of fate that both of Seymour Simon's careers in public service ended with him alienated from the leadership of the institution in which he served. There seems to be some quiet, constant reminder of difference that cannot be suppressed.

IV. Epilogue

A. The Death Penalty

Controversy over the death penalty in Illinois did not end with the departure of Seymour Simon from the Supreme Court. Slowly but surely, evidence mounted that something was seriously wrong with the administration of the death penalty in Illinois. Convicts on death row began to be exonerated, first through testimony revealing schemes to implicate innocent persons and later through DNA evidence. The story of the death penalty in Illinois had all of the ingredients of pulp fiction—innocent defendants tortured into confessing, police aiding in capital prosecutions knowing the defendant was innocent, police fabricating confessions never made, crooked judges acting tough on crime with regard to defendants who had not paid a bribe,⁴¹ DNA evidence establishing convicts' innocence years after the trial and an execution stopped hours before it was scheduled to be carried out with the death sentence ultimately commuted to life in prison. In 2006, an Illinois Supreme Court Justice wrote that, [t]o my knowledge, 18 men were ultimately determined to have been wrongly convicted and sentenced to death."⁴² One of the exonerations occurred just 48 hours before the scheduled execution.⁴³

One of the most striking examples of abuse of the Illinois criminal justice system involving capital punishment is the case of George Jones, an 18 year old high school student who was charged with murder in Chicago in 1981. Jones was taken to the hospital room of a seven year old boy who survived the crime, and when the boy did not identify Jones, the police officers lied and said that he had. Another Chicago police officer had discovered evidence that Jones was not the killer, but the prosecution went forward anyway, much to that officer's dismay. That officer

⁴¹ *People v. Cruz*, 121 Ill.2d 321 (1988).

⁴² *People v. Morris*, 219 Ill.2d 373, 394 (2006) (Karmier, J. dissenting).

⁴³ See Rob Warden, 30 years of the death penalty (January 12, 2003), available at <http://truthinjustice.org/dphistory-IL.htm>. Warden is executive director of the Center on Wrongful Convictions, Northwestern University School of Law, Chicago, Illinois.

then came forward during the trial at which the prosecution was seeking the death penalty and explained that the police kept two sets of files, one with inculpatory information that was turned over to the defense before trial and one with exculpatory information that was, contrary to law, not turned over to the defense. Incredibly, after the existence of two sets of files became public, the Police Department issued a notice that *files under the department's control* should be preserved, which some detectives interpreted as instructions to treat their personal investigative notes (which would not be “under the department’s control”) as their own personal property to dispose of as they saw fit. It took a series of federal court injunctions to convince the Chicago Police that they should preserve all of their investigative files. Ultimately, the federal court of appeals in Chicago overturned much of the injunction on standing grounds.⁴⁴

In early 2000, amid the mounting number of exonerations and media coverage of hundreds of examples of prosecutorial misconduct in Cook County alone and the unreliability of death penalty convictions in Illinois, the Governor, George Ryan, declared a moratorium on executions. He expressed concern that innocent people might be executed. In 2002, the Governor’s Commission on Capital Punishment issued a report that recommended substantial reforms in the practice of capital punishment in Illinois. Throughout 2002, evidence continued to emerge of tainted confessions and that innocent people have been convicted of murder, some with death sentences. Governor Ryan was urged by many different groups to commute all death sentences in Illinois, which he finally did in January, 2003, shortly before the end of his term. He had been under investigation for a long time, and in December, 2003, former Governor Ryan was indicted on charges related to official corruption.

⁴⁴ See *Palmer v. City of Chicago*, 755 F.2d 560 (7th Cir. 1985). The court did affirm a jury civil rights damages award of \$801,000 to Jones. *Jones v. City of Chicago*, 856 F.2d 985 (7th Cir. 1988).

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Eight years after those commutations, the death penalty was abolished in Illinois. Senate Bill 3539, repealing Illinois' capital punishment laws, was passed by the Illinois legislature on January 11, 2011, and on March 9, 2011, Illinois Governor Pat Quinn signed it into law.

Justice Simon was proven right about the administration of capital punishment in Illinois.

B. Ed Loss

Ed Loss became a practicing attorney in Arizona, specializing in defense of driving under the influence cases, until his death in 2009. He described his practice as limited to “the aggressive defense of the accused, impaired driver from Misdemeanor DUI cases to Vehicular Homicides in AZ [Arizona].”⁴⁵ It appears that he was licensed to practice only in Arizona. Loss was also active in national organizations devoted to the defense of drunk driving cases. In terms of professionalism and ethics, the website advertising his practice, which has been taken over by another attorney proclaims, still in the present tense: “Ed is proud of his Martindale-Hubbell ‘AV’ rating which identifies him as an attorney of the highest professional expertise and ethical standards.”⁴⁶

V. Conclusion

⁴⁵ <http://www.azduiatty.com/arizona-dui-defense-law-firm.htm>.

⁴⁶ See <http://www.azduiatty.com/arizona-dui-defense-law-firm.htm>.

I thought it would be nice to conclude this article on a lighter note, which also reveals something about Justice Simon's character and personality. After I graduated law school, I served as law clerk to a Judge of the U.S. Court of Appeals in Chicago. I continued to live in the same building as Justice Simon, and we would sometimes take the bus or even walk the 2 miles downtown together. Many people sometimes dozens, would greet Justice Simon every day, and he seemed to know them all by name. I once saw him shake three people's hands at once—one with each hand and one with an extended elbow.

Sometime during this year, two friends of mine who were still in law school confided in me that they planned very soon to get married at Chicago City Hall. They had reasons for keeping their marriage a secret. I discouraged them from going to City Hall and promised to ask Justice Simon to perform the ceremony. He readily agreed. I was to be one of the witnesses so I met them at the courthouse (in the Richard J. Daley Center) and brought them up to Justice Simon's chambers. There, we were greeted by one of Justice Simon's law clerks who happened to be a law school classmate of mine, so we had to swear her to secrecy. Justice Simon greeted the couple warmly, and performed a beautiful ceremony, so beautiful that the bride and groom were crying and even I was a bit teary-eyed.

I recounted this story recently to Justice Simon's son, and I told him that Justice Simon ended the story by saying something about how he kissed the beautiful brides and then leaned over and kissed my friend. Justice Simon's son then reminded me of the whole story that Justice Simon told, which was a stock element in the numerous weddings he performed.⁴⁷ The story is that when he was an alderman, Justice Simon and his wife were traveling in France. They arrived at

⁴⁷ Telephone conversation with John Simon, November 9-10 (2010).

a beautiful building in some small French town and, realizing it was the City Hall, decided to go inside. There, in an upstairs corridor, they observed a man in a fancy outfit performing wedding ceremonies one after the other. The Simons watched this for a while, and when the official took a break to have a cigarette between ceremonies, Justice Simon asked him if he was the mayor. The man replied that the mayor was away and he was an alderman filling in. Justice Simon identified himself as an alderman from Chicago and then asked him why there were so many weddings. He explained that in France, all couples must have a civil ceremony which is usually followed by a religious ceremony. Justice Simon then asked him why he kissed some of the brides at the end of the ceremony but not others. Justice Simon reported that the alderman's answer was that he kissed the beautiful ones, at which point Justice Simon would always lean over and kiss the bride in his ceremonies.

As it was described to me, whenever Justice Simon performed a wedding ceremony, the warmth and love that he exhibited in a sense married or re-married every couple in the room. Couples would move closer together, hold hands and fight back the tears. When it was first suggested to Seymour Simon relatively early in his political career that he might want to become a judge, Mayor Daley discouraged him, saying "you're an active fellow, you wouldn't be happy there." Perhaps performing wedding ceremonies was the closest Justice Simon had as a judge to those ward nights as committeeman and alderman when he would meet his constituents and do whatever he could to improve their lot in life.

After resigning from the Supreme Court, Justice Simon spent the rest of his life in the private practice of law, although he remained active in numerous civic organizations including Jewish

groups. In recognition of his contributions to law and justice in Illinois, The Jewish Judges Association of Illinois' awards an annual Seymour Simon Justice Award. He was a judge and a man of the people, who was unwilling to compromise on matters of justice. It is no accident, I believe, that his character and personality evoked the image of the great rabbi, the righteous Jew who was beloved and admired and a little bit frightening at the same time.