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## Dedication to the Honorable Richard D. Simons

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## DEDICATION TO THE HONORABLE

### RICHARD D. SIMONS

Patrick M. Connors<sup>1</sup>

In the early 1950's, a newly admitted lawyer and his wife traveled across Upstate New York from Niagara Falls to Plattsburgh, stopping at many of the cities in between. As they drove from city to city and town to town, the routine became familiar. The young lawyer parked near the courthouse area, where lawyers typically set up their offices, and left his wife with the car. "Pounding the pavement," the lawyer arrived unannounced and presented his resume to the various law firms in the town, hoping for an interview and eventually, a job. Inevitably the lawyer would return to his newly wed bride at the end of the day with the disappointing news: all legal positions in the town had seemingly been filled.

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1. The author is a member of Hancock & Eastabrook, LLP in Syracuse, New York. He is also an Adjunct Professor of Law at Syracuse University College of Law. He clerked for Judge Simons from 1988 to 1991, three of the best years of this young lawyer's professional life.

Disappointed, but not defeated, the young lawyer continued his search for work. On one particular morning after exhausting almost all opportunities, he entered the office of an established lawyer to present his resume and to make known his desire for work. Apparently he caught the older lawyer in a foul mood at the beginning of a hectic workday. Tossing the young man's resume aside, the lawyer exclaimed, "can't you see I'm busy working and have no time for you?" The young lawyer left the law office dreading the fact that he would have to return to the car and, once again, inform his wife, who was pregnant with their first child, that the job search had to continue.

While walking down the street toward his car, he felt a hand on his back and turned to see the lawyer who had only moments earlier dismissed him from his office. The older lawyer apologized and explained that although he did not have a job to offer the young man, he certainly had time to buy him a cup of coffee and discuss legal employment prospects in Upstate New York. The experienced lawyer had developed a substantial practice and an excellent reputation, and was able to provide some helpful advice on possible openings at law offices. Not long thereafter, the lawyer and his wife traveled on a road and over a bridge crossing the Erie Canal into the Upstate city of Rome, New York for the very first time. In Rome, the city where he would work for the balance of the next five decades, the young lawyer found employment in a law office and started his legal practice.

Although nobody realized it at the time, this was the beginning of one of the finest careers ever enjoyed by a lawyer in this great State, that of Richard D. Simons. Within three years, he was appointed Assistant Corporation Counsel of the City of Rome and assumed the helm of that office in 1960. Three years later, at the age of thirty-six, a mere decade after his admission to the Bar, he was elected Justice of the Supreme Court in the Fifth Judicial District for a fourteen year term. After serving on the supreme court for eight years, he was designated Associate Justice of the Appellate Division, Third Department and, one year later, Associate Justice of the Appellate Division, Fourth Department.

After serving on the Appellate Division for twelve years, he received a telephone call from the newly elected Governor of the State of New York, Mario Cuomo. The Governor asked Judge Simons if he would serve as a Judge on New York State's Court of Appeals, one of the most prestigious courts in the world. Judge Simons proudly accepted and Governor Cuomo's choice was heavily applauded in both political and legal circles. The Democratic Governor, as one of his first official acts, appointed the person deemed most qualified for the position by both lawyers and judges alike, even though Judge Simons was a Republican.

The high level of enthusiasm surrounding Judge Simons' appointment to the Court of Appeals was not met with disappointment. During this fourteen year term, Judge Simons distinguished himself as an intellectual leader on the Court. His majority writings, concurrences, and dissents all displayed a keen working knowledge of where the law had been and where it was heading. Judge Simons possessed the rare ability to explain and apply complex legal issues in a simple manner that could be readily understood by a first year law student, while simultaneously demonstrating an intricate knowledge of the law gained from years on the bench that even the most experienced lawyer could appreciate. He is responsible for authoring many of the New York Court of Appeals landmark decisions over the last fourteen years in both criminal and civil matters. Even when the Court charted new territory, his writings explained the evolution of the law so thoroughly and convincingly that the reader was often left to wonder if the Court had any choice other than to recognize the novel legal principles or holdings expressed in the opinion. In addition, many lawyers have shared my experience of only fully understanding the majority opinion in a particular case after reading Judge Simons' cogent dissent. For these reasons, both sitting Judges and practicing lawyers constantly rely on Judge Simons' opinions as starting points to ascertain the law in a particular area when drafting their own opinions and legal memoranda.

Judge Simons' votes and the writings that accompanied them during his fourteen year term on the Court of Appeals were all based on principled reasoning under existing law and are, therefore, difficult to classify from an ideological perspective. Judge Simons was never wedded to a particular ideology and he never had an agenda. This was, however, precisely what made working for Judge Simons so gratifying and exciting. As a law clerk reading the briefs of the litigants and analyzing the law, I knew that my research truly mattered because Judge Simons never cast his vote in a case without fully understanding the law. Even if he had an initial position on a particular case, Judge Simons could always be persuaded by the research of his law clerks because his primary goal was to be true to the law.

I am sure I speak for many judges and former clerks in observing that working with Judge Simons was extremely challenging and, at times, somewhat unnerving. He was truly a force on the bench and Chief Judge Kaye recently recounted the many "battles" waged between them on the Court. Although he always remained collegial, he was a formidable opponent in majority or in dissent and worked with tremendous energy and enthusiasm on his writings. While writing a majority opinion, he welcomed a dissent because he believed that the challenge of meeting the dissenter's criticism improved his own writings. Working for Judge Simons as a clerk was also rather intimidating because of the breadth of his knowledge of New York law. He was always patient and understanding, however, in explaining the constant reworkings and revisions of his clerks' initial draft opinions. I watched on many occasions, simultaneously experiencing terror and amazement, as he completely reworked my initial drafts into carefully reasoned writings. As I observed Judge Simons carefully take apart my draft and reconstruct it into one of his own writings from across the table where we worked, I was receiving one of the most valuable learning experiences available to a young lawyer. I have concurred with the sentiments of many of his former law clerks that Judge Simons played a very large role in our development as attorneys. Likewise, I have heard many judges that sat on panels with Judge

Simons reflect that their writings had improved precisely because they received the benefit of his reasoning and because they had to address his concerns.

Despite all of his remarkable achievements and the important stature he held as the Senior Associate Judge on the Court of Appeals, stories of Judge Simons' modesty and unassuming nature are legion. For most of his tenure as a judge, his chambers were located on the ground floor of the Oneida County Courthouse. I sat with stunned amazement during the first year of my clerkship while Judge Simons patiently assisted the countless number of people that had wandered into his chambers in search of the Family Court offices that were located down the hall. Little did these members of the public realize that they were interrupting one of the highest ranking Judges in the State and Judge Simons never did or said anything to alert them of his importance. Even those familiar with Judge Simons' position in the New York legal system were made to feel at ease in his presence. Frequently, local lawyers would drop in to say "hello" to the judge. Consistent with a practice that had developed in smaller Upstate communities where legal research sources were scarce, many members of the local bar would wander into the library in his chambers to read an opinion or shepardize a case. I became very concerned during the first month of my clerkship when a local lawyer wandered into the library, pulled a few books from the shelf and proceeded to sit in Judge Simons' chair at our working table to read the cases. I rose to inform the lawyer that he was sitting in the judge's chair when Judge Simons suddenly entered the room, happily welcomed the lawyer and retrieved his most recent draft opinion from the table without in any way indicating to the lawyer that he was sitting at his place of work.

Judge Simons was a model public servant of the State for over thirty years and he served in his role on the bench with the highest level of dignity. He also demanded the same level of dignity from other public officials, even when it required him to take positions that were unpopular with his colleagues. In *In re*

*Fuchsberg*,<sup>2</sup> Judge Simons dissented alone from the majority panel of the Court on the Judiciary that refused to find that a Court of Appeals Judge was unfit to continue in judicial office, stating that the “public need not always be convinced of the correctness of the court’s decisions but they must always believe in the integrity of the decision-making process.”<sup>3</sup> In *People v. Ohrenstein*,<sup>4</sup> Judge Simons dissented from the majority of the Court that dismissed indictments against a state senator that had engaged in campaign finance improprieties. Demanding the same level of integrity and respect from the State’s elected legislative officials who “are trustees of the public treasury,”<sup>5</sup> Judge Simons stated in dissent, “I would have thought the use of public funds to finance the election campaigns of the candidates of one party and defeat candidates of the opposition was so clearly unlawful that it was not worthy of discussion.”<sup>6</sup> In one of his last decisions,

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2. 43 N.Y.2d (a), 426 N.Y.S.2d 639 (N.Y. Ct. Jud. 1978). Pursuant to the New York State Constitution article VI, the Court on the Judiciary was convened to investigate the Honorable Jacob D. Fuchsberg’s conduct with respect to the purchase and sale of New York City notes and Municipal Assistance Corporation bonds. *Id.* at (j), 426 N.Y.S.2d at 639. While the Court found that Judge Fuchsberg’s conduct did not rise to the level of “deliberate[] fraudulent conduct, willful violations of the Rules and Cannons, or corrupt actions inspired by financial interest,” the Court admonished future judges to “act in a way that does not cast the slightest doubt on the independence, impartiality, and integrity of the judiciary.” *Id.* at (z), 426 N.Y.S.2d at 649.

3. *In re Fuchsberg*, 43 N.Y.2d at (ccc), 426 N.Y.S.2d at 667 (Simons, J., dissenting).

4. 77 N.Y.2d 38, 565 N.E.2d 493, 563 N.Y.S.2d 744 (1990). The defendant, the New York State Senate minority leader, was not subject to criminal prosecution for allowing Senate staff employees to work on his political campaign under the legislative practice that existed before 1987. *Id.* at 52, 565 N.E.2d at 500, 563 N.Y.S.2d at 751. However, the Court did find that immunity does not extend to legislators who knowingly place “no-show” employees on the Senate payroll. *Id.* at 54, 565 N.E.2d at 501, 563 N.Y.S.2d at 752.

5. *Id.* at 64, 565 N.E.2d at 507, 563 N.Y.S.2d at 758 (Simons, J., dissenting).

6. *Id.* at 55, 565 N.E.2d at 502, 563 N.Y.S.2d at 753 (Simons, J., dissenting).

*Brown v. State of New York*,<sup>7</sup> he wrote for a majority of the Court in ruling that damage claims against the State based upon violations of the State Constitution come within the jurisdiction of the Court of Claims. Once again, Judge Simons echoed a familiar theme in his writings by demanding the highest level of performance from public officials.

The point is that no government can sustain itself, much less flourish, unless it affirms and re-enforces the fundamental values that define it by placing the moral and coercive powers of the State behind those values. When the law immunizes official violations of substantive rules because the cost or bother of doing otherwise is too great, thereby leaving victims without any realistic remedy, the integrity of the rules and their underlying public values are called into serious question. A damage remedy for constitutional torts depriving individuals of their liberty interest is the most effective means of deterring police misconduct, it is appropriate to the wrong and it is consistent

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7. 89 N.Y.2d 172, 674 N.E.2d 1129, N.Y.S.2d 223 (1996). In *Brown*, an elderly white woman was attacked at knife point. *Id.* at 176, 674 N.E.2d at 1131, 652 N.Y.S.2d at 225. The incident occurred in a house near the State University of New York at Oneonta. *Id.* The victim described her attacker as a black male. *Id.* In order to help identify a suspect, the New York State police and the university security personnel prepared a computer generated list taken from the university's computer system that contained the names and addresses of all African-American males attending the University. *Id.* at 177, 674 N.E.2d at 1131-32, 652 N.Y.S.2d at 225-26. The list was used by the State police, University security personnel, and local law enforcement to question each student whose name appeared on it. *Id.* at 177, 674 N.E.2d at 1132, 652 N.Y.S.2d at 226. The students were questioned on campus, in off-campus apartments, and around the city of Oneonta. *Id.* The interrogations consisted of a 'stop' followed by questions regarding potential involvement in the incident, requests for alibis, and an inspection of the students' hands and forearms." *Id.* When these measures failed to identify a suspect, for five days thereafter, the police attempted to systematically interrogate every non-white male who was found in and around Oneonta. *Id.* A class action suit was brought on behalf of the non-white males who were questioned during that five day period. *Id.* at 175, 674 N.E.2d at 1131, 652 N.Y.S.2d at 225.

with the measure by which personal injuries have historically been regulated.<sup>8</sup>

Judge Simons was a role model as a person, a lawyer, a teacher and a public servant. I know I speak for many members of the bar of New York State in thanking him for his contributions as a Judge and for making us all better lawyers.

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8. *Brown*, 89 N.Y.2d at 196, 674 N.E.2d at 1144, 652 N.Y.S.2d at 238.