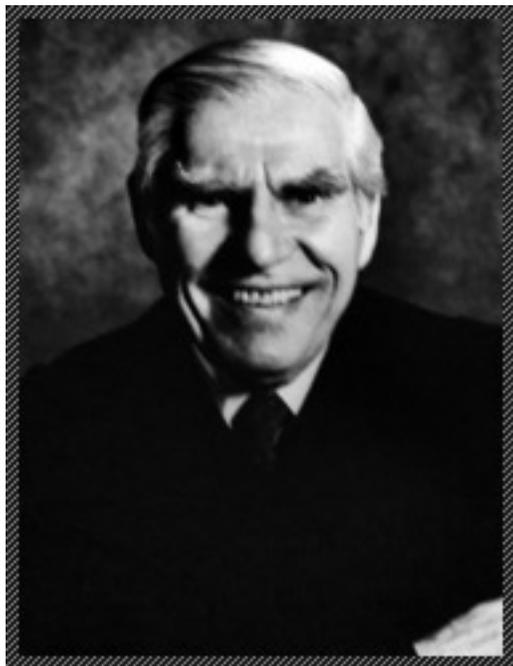


## Seymour Simon 1980-1988

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A fiercely independent voice on the Illinois Supreme Court, Seymour Simon was born in Chicago on August 10, 1915, the son of Russian immigrant Benjamin Simon, and his wife, Gertrude Simon. He attended Roosevelt High School and graduated from Northwestern University, Phi Beta Kappa, in 1935. In 1938, he graduated from the Northwestern University Law School and received his license to practice law. Simon began working as an attorney in the Antitrust Division of the U.S. Department of Justice, and during World War II, he served in the U.S. Navy in the Pacific theater, receiving the Legion of Merit award.



On his return to Chicago, Simon opened a law firm in 1946, handling primarily anti-trust and corporate cases. He also became politically active by helping his Democratic precinct captain during the 1948 election campaign of President Harry S Truman. In 1954, Simon married a widow, Roslyn Schultz Biel, and adopted two of her three children. The family resided in the Hollywood Park neighborhood.<sup>1</sup>

Simon became the 40<sup>th</sup> Ward Democratic precinct captain and built a power base among liberal independents, winning election as alderman in 1955. He served on the City Council until 1961, when he became the influential president of the Cook County Board of Commissioners as well as president of the Cook County Forest Preserve District and a member of the Chicago Public Building Commission. In 1967, he won reelection to the City Council and then resigned in 1974 for a successful bid to the First District Appellate Court.

In 1980, Justice Simon challenged the Democratic machine candidate, Francis Lorenz, and four others in the primary election for the Illinois Supreme Court seat vacancy created by the death of Justice James A. Dooley.<sup>2</sup> The Chicago Bar Association endorsed Simon, and the Council of Lawyers termed him “one of the most impressive judges” on the Appellate Court. “He has been willing to dissent where appropriate, and those dissents have helped sharpen the issues.” Winning the primary by a large margin, Simon waged a successful, hard-fought campaign in the general election, defeating Republican Criminal Court Judge Robert Sklodowski by 435,000 votes.<sup>3</sup>

In 1983, Simon broke ranks with fellow Democrats on the Supreme Court, joining the three Republican justices in denying a recount of the 1982 Illinois gubernatorial election results. He brushed aside charges that prior differences with the Democratic candidate, Adlai Stevenson III, influenced his key vote against the petition. “It certainly never crossed my mind in connection with the events of the past few months (recount controversy),” Simon said at the time, explaining that “he voted his conscience.”

Republican incumbent James R. Thompson officially won the office by approximately five thousand votes of more than three million cast.<sup>4</sup>

Simon wrote the 1984 Court opinion in *Michael Kalodimos v. Village of Morton Grove*, in which the Court upheld the Chicago suburb's ban on handgun possession and handgun sales. The U.S. Court of Appeals upheld the decision, and the U.S. Supreme Court refused to hear the case, leaving intact the ruling that the ban did not violate citizens' Second Amendment rights to keep and bear arms.<sup>5</sup>

In a heavily publicized 1987 case, *In re Edward A. Loss III*, Simon openly clashed with the other Justices regarding their decision to deny a law license to a reformed petty thief and drug addict. Loss graduated near the top of his class at DePaul University Law School in 1984, then employed former convicts at his moving company. Both the State Board of Law Examiners and the Supreme Court's Committee on Character and Fitness deemed Loss rehabilitated. After the other six Justices voted to deny his application for a law license, Simon wrote a stinging eight-page dissent. "The court's departure from any concept of fairness or regularity has been complete, and I would say, almost Kafkaesque," Simon fumed, adding that the Court violated its own rule for automatically admitting an applicant approved by the State Board of Law Examiners. "Edward Anthony Loss will not be permitted to practice law in this State," Simon wrote, "not because he has failed to follow the rules, but because we have."<sup>6</sup>

When Simon joined the Supreme Court in 1980 he had hoped that the Justices would rule the Illinois death penalty unconstitutional. Three had already voted against the law, but "they got timid when Simon's election gave them what should have been the

decisive fourth vote,” analyzed *Chicago Sun-Times* columnist Steve Neal. Simon “was appalled,” according to Neal, “when two justices who had previously opposed capital punishment flip-flopped and voted to impose the death penalty” in the 1981 *People v. Cornelius Lewis* case. “It would be blatant folly,” Simon wrote in dissent of the decision, “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.” He continued, “[b]ecause of the nature of the death penalty I do not believe that any judge should be expected to stifle his own viewpoint in the interest of uniformity. To follow the dictates of *stare decisis* in a case like this is to allow the conclusions of the past to be stamped indelibly upon the law without opportunity for correction. As the late Mr. Justice Douglas put it, ‘It is, I think, a healthy practice (too infrequently followed), for a court to reexamine its own doctrine.’”<sup>7</sup>

After *People v. Lewis*, Simon steadfastly dissented in every case, at least twenty-six times, in which the Supreme Court affirmed a death sentence, in part because the statute allowed each of the 102 state’s attorneys arbitrarily to decide whether to pursue the death penalty. Consequently, Simon argued, “the death penalty is applied freakishly and unpredictably across the state, in violation of federal rulings.”<sup>8</sup>

Simon dissented in the 1985 *People v. Charles Walker* case. Walker confessed in the St. Clair County Circuit Court to the murders of a young engaged couple but then appealed his death-penalty sentence. While the other Supreme Court Justices affirmed the punishment, Simon maintained that the state’s improper appeal “to the emotions of the jurors” flawed the penalty process, referring to the only two witnesses, both relatives of

the murder victims, who testified during the sentencing hearing. “The obvious purpose for which the prosecution called these witnesses was to play upon the jurors’ emotions in viewing the tragic deaths of the young victims.” Simon also reiterated his firm belief “that the Illinois death penalty statute is unconstitutional and that therefore no sentence imposed under that statute can stand.”<sup>9</sup>

In January 1988, Simon delivered the opinion overturning the DuPage County Circuit Court conviction in *People v. Alejandro Hernandez*. That jury had found Hernandez guilty of the 1983 murder of ten-year-old Jeanine Nicarico and imposed the death penalty. Simon wrote that prosecutors had denied Hernandez a fair trial and that the physical evidence was not probative of his guilt. In addition, his statements to authorities contained widely varying accounts of the crime that were inconsistent with the known facts. Simon noted that Hernandez was “implicated by a witness whom he had no opportunity to confront and cross-examine, a violation of this court’s precedents and an error of constitutional magnitude.”<sup>10</sup> Justice Howard C. Ryan wrote the opinion that overturned the conviction of Rolando Cruz for the same crime. Both defendants were convicted at second trials, but Cruz was exonerated in a third trial and the charges against Hernandez were eventually dropped.<sup>11</sup>

When the “strong, intelligent, independent voice on the Illinois Supreme Court,” retired at age seventy-two in February 1988, the *Chicago Tribune* editorialized that Simon “often was the lone angry man, a prod and a scold on a court that tended to be bland and lethargic.”<sup>12</sup> Having written some 200 majority opinions, 80 concurring opinions, and 175 dissents, “Simon’s influence has been enormous,” reported *Chicago*

*Lawyer*. “Significantly, several of the minority positions he has taken on the court have been adopted later as the law of the land by the U.S. Supreme Court.”<sup>13</sup> His only major regret, he said at the time, was that the legal debate over the state’s death penalty statute had not been resolved.<sup>14</sup>

After retirement from the bench, Simon became a senior partner in Rudnick and Wolfe, one of Chicago’s largest law firms, which later became DLA Piper.<sup>15</sup> “I’m excited about the prospect of starting a whole new career,” the seventy-two-year-old Simon told reporters at the time. “Heck no, I’m not ready to retire. My mother’s birthday is today, and she is 97.”<sup>16</sup>

In addition to his law practice, Simon continued working for death-penalty reform. He advised Governor George H. Ryan that such penalties “could not be imposed fairly and uniformly because of the absence of sufficient standards to guide the 102 Illinois state’s attorneys in deciding whether to request the death sentence.” Simon described to Ryan the case of Girvies Davis, whose appeals had reached the Supreme Court five times. “If you were searching for individual Death Row occupants who were deserving of having their death sentences commuted,” Simon wrote, “he would be a leading candidate were it not for the fact that he has already been executed (in 1995).” Ryan cited Simon’s letter and the Davis case in his historic and controversial 2003 decision to commute the sentences of all Illinois’ death-penalty inmates.<sup>17</sup>

In a sixty-eight-year career as a lawyer and a public official, Simon was “both a loyal Democrat and a party maverick at the same time,” assessed the *Chicago Law Bulletin*. On September 26, 2006, at the age of ninety-one, Simon died in Northwestern

Memorial Hospital. Funeral services were held in the temple of Chicago Sinai Congregation. “This giant of the legal profession dedicated his life to public service,” said Chicago Mayor Richard M. Daley, “and we will miss his many contributions and tremendous leadership.”<sup>18</sup> He was buried in Rosehill Cemetery in Chicago.

Seymour Simon Papers: Chicago History Museum

<sup>1</sup> *State Journal-Register* (Springfield), Dec. 20, 1987, p. 6; *Chicago Tribune*, Sept. 27, 2006, p. 27.

<sup>2</sup> *State Journal-Register*, Jan. 13, 1983, p. 10.

<sup>3</sup> *Chicago Lawyer*, Nov. 1980, Simon file, Illinois Supreme Court Library; *Chicago Sun-Times*, Nov. 6, 1980, p. 28; *Illinois Issues*, Jan., 1983, p. 11.

<sup>4</sup> *Chicago Daily Law Bulletin*, May 13, 1983, pp. 1, 8; *State Journal-Register*, Jan. 16, 1983, p. 14.

<sup>5</sup> 103 Ill. 2d, 483-511.

<sup>6</sup> 19 Ill. 2d, 186-228.

<sup>7</sup> 88 Ill. 2d, 129-210.

<sup>8</sup> *State Journal-Register*, April 13, 1988, p. 3.

<sup>9</sup> 109 Ill. 2d, 484-513.

<sup>10</sup> 121 Ill. 2d, 293-320.

<sup>11</sup> 121 Ill. 2d, 321; *Chicago Sun-Times*, Nov. 5, 2003, p. 55.

<sup>12</sup> *Chicago Tribune*, Jan. 8, 1988, Sec. 1, p. 18.

<sup>13</sup> *Chicago Lawyer*, Feb. 1988, Simon file, Illinois Supreme Court Library.

<sup>14</sup> *Sunday Journal* (Kankakee), Jan. 31, 1988, p. 12.

<sup>15</sup> *State Journal-Register*, Jan. 7, 1988, p. 1.

<sup>16</sup> *St. Louis Post-Dispatch*, Jan. 7, 1988, p. 6A.

<sup>17</sup> *Chicago Sun-Times*, Nov. 5, 2003, p. 55. In 2011 Governor Pat Quinn signed legislation abolishing the death penalty in Illinois.

<sup>18</sup> *Chicago Tribune*, Sept. 27, 2006, pp. 1, 27.