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By J. Minos Simon,* with David Leon Chandler.
Lafayette: Prescott Press, 1993. Pp. xiii, 223. \$21.99.

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BOOK REVIEW

Louisiana Legal Memoirs

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Paul R. Baier**

Henry P. Dart's bronze bust sits in silence on the second floor at 301 Loyola Avenue. Countless lawyers, knowing nothing of Dart, pass his pedestal by, argue their cases in Louisiana's Supreme Court, and lose their identity in the seamless web of the reports.

"[V]erily, 'the history of men, their deeds grow dim and none recall,'" Dart exclaims in his *Personal Memoirs* (1858-1883) (p. 18), an unpublished typescript shelved in the rare book room at LSU's law library. "I have written what after all is close to my heart,—these reminiscences of the day when a \$5.00 fee was a big thing to a poor young lawyer also striving to the best of his light, to grow up straight and honest and strong" (p. 94). Henry P. Dart, Esq., of New Orleans, practiced in a one-room office at 114 Common street: "No gas, no modern closets, no elevator. It was simply a hole" (p. 102), although the clients of 1882 didn't mind. "The men of 1915 with their big buildings, electric lights, elevators, type writers, dictaphones, telephones and steam-heat have really no conception of the primitive conditions of their forbears of the early eighties" (p. 103).

Like countless lawyers after him, Henry Dart struggled to make out a life for himself: "[A]bove all things I was anxious to be my own master and to be working for some permanent object" (p. 107). Dart died in 1934, his memoirs unfinished, his permanent object lost to the shroud of time.

Next, Ben Miller's *Memoirs of a Southern Lawyer* (1973) tell of a life lived greatly in the halls of the American Bar Association, and on its Board of Governors, as Louisiana's delegate for more than a decade. Improving judicial administration, looking out for quality judges on the federal bench (to his credit he pushed hard to put Lewis F. Powell, Jr., on the Supreme Court), advocating a balanced view of the rights of the accused and the public weal—these are the aims well-recounted by Baton Rouge's Ben Miller, who tells us what in his later years he turned "more realistic than idealistic, more conservative than liberal" (p. 282). The Warren Court, *Mapp* and *Miranda*, and reapportionment by federal judicial decree all take their lumps in Mr. Miller's memoirs.

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Now comes Lafayette lawyer J. Minos Simon's *Law in the Cajun Nation*. These memoirs, only the third ever written by a Louisiana lawyer, bristle with the fire of freedom. Simon's French blood courses with the ideals of the Revolution: *Liberté, égalité, des droit de l'homme*. Here is a *Philosophe* turned lawyer. Simon aims his memoirs at lay people, citizens at large—all who have felt the pinch of tyranny—and lawyers, especially young lawyers:

More than any other citizen, the opportunity to discover and condemn the arbitrary exercise of power is more readily available to lawyers So long as lawyers remain vigilant in detecting and condemning the abuse of power, the integrity of our institutions of freedom will continue as vibrant and meaningful instruments of government securing to the people equality and justice. If nothing else, I hope my comments in this book will inspire young lawyers to assume the mantle of this noble function by remaining ever vigilant to detect and condemn the rule of men whenever its ugly head rises from the bowels of official corruption or callous indifference (p. 223).

Memoirs, if they are any good, teach by example; if they are very fine their lessons inspire. *Law in the Cajun Nation* is passionate and inspiring. It answers a timeless question about our profession: "[W]hat have you said to show that I can reach my own spiritual possibilities through such a door as this?"¹

I remember seeing J. Minos Simon for the first time. This was at the Bar of the United States Court of Appeals for the Fifth Circuit. He was there to argue the appeal of *The Buckeye Three*. I was there on behalf of the school children, parents, and teachers of Forest Hill, Louisiana, in what for me was *The Forest Hill School Case*.² Both of us challenged federal court desegregation orders that disrupted our clients' lives and closed a rural community's only school. I believed with all my heart and mind that the federal district court's order closing Forest Hill Elementary School was arbitrary, as lawyers are supposed to know arbitrariness when they see it. I took offense at the district court calling itself "a big cheese" and reciting on the record: "I'm the best expert I know and I intend to draw this plan myself."³ This kind of judicial hubris is wrong, measured against Learned Hand's immortal admonition:

The spirit of liberty is the spirit that is not too sure that it is right; the spirit of liberty is the spirit that seeks to understand the minds of other men and women; the spirit of liberty is the spirit which weighs their

1. Oliver Wendell Holmes, Jr., *The Profession of the Law* (1886), in *The Occasional Speeches of Justice Oliver Wendell Holmes* 28 (M. DeW. Howe ed., 1962).

2. *Valley v. Rapides Parish Sch. Bd.*, 646 F.2d 925 (5th Cir. 1981), cert. denied, 455 U.S. 939, 102 S. Ct. 1430 (1982) [hereinafter *Forest Hill I*].

3. The quotations are documented in Paul R. Baier, *Framing and Reviewing a Desegregation Decree: Of the Chancellor's Foot and Fifth Circuit Control*, 47 La. L. Rev. 123, 125 (1986).

interests alongside its own without bias; the spirit of liberty remembers that not even a sparrow falls to earth unheeded⁴

I left it to the panel to fit Learned Hand's words, quoted by way of peroration, to the facts of Forest Hill.

Well, the Fifth Circuit reversed the order closing Forest Hill School and remanded for reconsideration.⁵ But all for naught. On reconsideration the district court kept the school shut; a second appeal was lost, 2 to 1; certiorari was denied.⁶ Out of six appellate judges I got four votes and lost. Mr. Simon, on behalf of The Buckeye Three, quoted the Tenth Amendment. He lost too. We were licked lawyers at the Bar of the Fifth Circuit.

But what of it? Out of our mutual effort flowed the camaraderie that encircles our profession. I admired Simon's baritone dignity—the first time I heard his voice in a court of law. His briefs were powerful for their simplicity and conviction, from the pen of a Cajun for whom “English was an acquired skill” (p. 21). Mr. Simon—I dared not yet call him Minos—had a style of his own, laden with philosophy, spun of “the golden thread of freedom” (p. xiii), like the Magna Carta he describes in his memoirs. Here was an older lawyer worth watching I thought, as I straddle the fence between classroom and courtroom.

One chapter of Simon's memoirs, “The Emperor in Black Robes” (Ch. 9, pp. 164-179), unfolded before my very eyes. It tells of “judicial imperialism” (p. 177) and of federal courts gone overboard, blindly enforcing *Brown* to its logical extreme, regardless of competing interests and due process of law. As a lawyer I felt this remedial pinch myself.⁷ Other lawyers, I daresay, could expose similar injustices lurking beneath the surface of judicial opinions. Simon's memoirs teach vital lessons of courage and undaunted enthusiasm for our profession, never mind the agony of unjust judgments:

The true trial lawyer is a foot soldier in the juridical battle field of social and political warfare. He is the catalytic agent at work and in battle, taking on all comers, including government, in the quest of making democracy a reality. His is a destiny of triumph and failure, of hope and despair, of frustration and exhilaration. His struggle is constant, his hope eternal. I truly believe that without him democracy

4. Learned Hand, *The Spirit of Liberty*, in *The Spirit of Liberty: Papers and Addresses of Learned Hand* 189, 190 (I. Dilliard ed., 3d ed. 1974).

5. *Forest Hill I*, 646 F.2d 925.

6. *Valley v. Rapides Parish Sch. Bd.*, 702 F.2d 1221 (5th Cir. 1983) (per Politz, J., joined by Randall, J.; Clark, C.J., dissenting), *cert. denied*, 464 U.S. 914, 104 S. Ct. 276 (1983) [hereinafter *Forest Hill II*].

7. And, of course, my teaching was better for having “seen a real writ,” Oliver Wendell Holmes to Frederick Pollock, March 7, 1924, in *II Holmes-Pollock Letters, The Correspondence of Mr. Justice Holmes and Sir Frederick Pollock 1874-1932*, at 127 (M. DeW. Howe ed., 1941). So too, my scholarship was fired by experience. See, e.g., Baier, *supra* note 3.

would become only an autocracy and human liberty but an attractive illusion (p. 178).

Like Dart before him, Simon writes of what is dear to his heart: of Magna Carta come to life "in the bowels of Cajun country" (p. x).

From his earliest days, through forty-five years and a thousand trials, I felt (and this feeling has abided with me throughout my career as a lawyer) that I had to inculcate in the jurors' minds the profound meaning of human freedom by placing it in the context of its origin and development. I had to make them understand the relevance of what was said more than seven hundred years ago in the Magna Carta to the meaning of my client's freedom at stake in his trial (p. xi).

As a boy, Simon grew up in his beloved Acadiana, "a small triangular nation" (p. 14) of marshland—"a land of back roads and small towns where French is the mother tongue and roadside diners serve crawfish etouffe" (p. 14). He tells the story of "*La Nouvelle Acadie*" (pp. 18-28), the settlement of St. Martinville by ousted French Acadians. He writes of the first American Simons, Jean Baptiste and his bride Marie, who came across swamps and prairies to settle in the Attakapas District, along the Vermillion River, in 1786—"the same year that Mozart wrote his first opera" (p. 20). His ancestors were hardworking farmers, plowing fields by the moon's light. Cajun life was sparse: "My world was one of well-water, cotton fields, rice paddies, subsistence farming, illiteracy, heavy Roman Catholic authority, outhouses, and dirt roads. I was the first in my family to fully read and write My horizons, my whole people's horizons, extended physically and imaginatively no more than twenty miles" (p. 15).

There were no newspapers, no books, no radio. "My father worked and worked and worked, and he made sure his kids did, too. He didn't speak English nor did the household, so I practiced by reading school books to the milk cow in the family barn" (p. 16).

One wonders what turns a young Cajun boy into a lawyer? "I wanted to be an alter boy, and then I wanted to be a priest, of all things, until I reached the age of puberty when I realized that I might have an interest in girls, and I abandoned that notion in a hurry" (p. 22). Young Minos knew nothing of the Depression or of Huey Long, let alone of Magna Carta or of Oliver Wendell Holmes. "I lived in a blissful state of ignorance" (p. 22). His family ran a rice mill at Kaplan and he witnessed "some little man from town, who wasn't one-tenth the man my father was, playing the boss. I was hugely angry. I couldn't have been more than eight-years-old" (p. 16). It was this burning insult that turned a Cajun boy into a lawyer:

Because of this, I had a strong feeling that I must move into an area where I would know what the law was, what my rights were, so that I could never be abused that way. I would be independent. No

one was ever going to talk down to me. No one was going to control my life.

.....
As I matured, I focused on being a lawyer. To me, the practice of law was a spiritual experience. Personal dignity was so essential to freedom of the individual, that someone must fight to preserve it. I think I was born to do this one thing. I know that I am not an intellectually profound thinker, but within my limitations, I have tried to do what I do best. To vindicate the rights of the individual is gratifying to me. to perform a service in the overall scheme of things (pp. 16-17).

After working his way through high school, "I realized I'd have to get out of this quagmire of ignorance and illiteracy" (pp. 24-25). In the summer of 1939, Simon went to business school in Beaumont, Texas, and took up shorthand and typing. His first job was taking minutes at a labor union meeting, amidst threats of murder, knives, and guns. "That was the end of that career" (p. 25). Prize fighting was next, against a big Irishman, "Ironhead McGinnity" (p. 25). "This guy was a regional champion. But I wasn't going to back away because I'd look like a coward" (p. 25). In a clinch, Minos made the mistake of telling Ironhead, "Hey buddy, you're wasting your time" (p. 26). The next blow was Simon hitting the floor. That was the last Beaumont, Texas saw of him.

Simon enlisted in the Marines but was discharged because of an injury. "In the hospital at San Diego, I took up reading and a light came on. For the first time in my life I was introduced to thought" (p. 26). Reading became an unquenchable thirst for Simon, who decided to get an education, first at the University of Wisconsin, where he sat next to a black: "I'd never been to school with a black in my life. But there as no discomfort, and we became friends. I felt comfortable with blacks, since I was a minority—a displaced Cajun" (p. 26). Thence to the Library of Congress, where he worked four hours a day and studied the classics at night. Rousseau's *Social Contract* was a new roommate: "*L'homme est ne libre, et partout il est dan les fers*" (p. xiii). Like Alabama's Hugo Black before him, Acadiana's J. Minos Simon made Jefferson's library his own.

Simon returned to Louisiana and graduated from LSU Law School in May 1946. "Now I was a lawyer, and I realized I had the advantage of speaking French. I identified with the Cajun people, and they needed lawyers. So I opened a practice in Lafayette, cold, without knowing anyone" (p. 27). The older lawyers were members of the establishment, "men who did not believe in confrontation" (p. 32). Simon decided to make enough noise so that people would know he was in town:

My duty engaged me in myriad confrontations—confrontations with lawyers, officials (including judges), and the system in general, commonly regarded as the rule of men. The rule of men of which I speak subscribes to that simplistic but devastating behavioral equation

that one must "go along" in order to "get along." It is devastating to individual freedom because self-interest is elevated above the common weal or the public interest (p. xii).

In less than a year, Simon earned a reputation "for giving unshirted hell to police, attorneys, and judges who abused the rights of [his] clients. [His] standard fee was five dollars a case, and usually [he] was dealing with misdemeanors in city court" (p. 30). One of his clients, accused of vagrancy, was held *incommunicado* for a month in the Lafayette Parish Jail. "How did he finally get in touch with you?" Justice William J. Brennan, Jr, of the Supreme Court of the United States, wanted to know. This was J. Minos Simon's first appearance at the Bar of the Warren Court, a notch above City Court in Lafayette. His answer: "He had asked to talk to two or three other lawyers, and they had completely refused to let him use the telephone. And he mentioned my name and they let him use it. Of course, I'd filed a suit against the Sheriff; maybe that inspired him to let him use the telephone."⁸

Simon describes his first felony trial in 1947, his defense of Roy Senegal, a black carpenter accused of burglary (pp. 34-41). "This was the pre-civil rights era in the South so I got an all-white jury from an all-white venire. The prosecutor was white, the police witnesses were white, the jury was white, and the judge was white. I was white" (p. 36). Young Simon, "New Lawyer in Town" (Ch. 3, pp. 29-46), urged the jury to reject the bigotry and prejudice against black defendants that was commonplace at the time. "I had that jury identifying with the defendant" (p. 40), viewing him as a human being entitled to the presumption of innocence, not guilt, and to due process of law. "I did not go quite as far as to quote the Shylock speech in Shakespeare, but I got close. Very close" (p. 40).

Forty-five years later, the reader sits in "the old wooden courthouse at Vermillion and Main" (p. 34), and is witness to Simon's vivisection of the arresting officer and the alleged victim. Stark contradictions in testimony emerge, all stemming from the nineteen-day delay in the arrest. Roy Senegal was found not guilty. "I still savor that victory because it was a triumph by a young lawyer over bigotry, prejudice, and a fixed system . . . I had in a very real sense saved a man's life—not only his but his family's, because Roy Senegal went on to father a fine family" (p. 41).

8. The quotations are from the sound recording of the Oral Argument, *Arceneaux v. Louisiana*, Oct. Term 1963, No. 76, 376 U.S. 336, 84 S. Ct. 777 (1964), which the author obtained from the Sound Recordings Division of The National Archives, Wash., D.C. Lawyers who argue cases in the United States Supreme Court may be pleased, or shocked, to learn that their sound effects are preserved on tape, with the Court's recordings of oral argument eventually going to The National Archives where they are available for scholarly and historical purposes. For the use of these tapes in teaching, see Paul R. Baier, *What Is the Use of a Law Book Without Pictures or Conversations?*, 34 J. Legal Educ. 619 (1984).

I'm sure other lawyers recall their first felony defenses. Perhaps they share J. Minos Simon's zeal for our profession: "To me this was and continues to be a spiritual experience" (p. 41). The establishment, Simon recalls, was not happy. "It was not part of the local culture or the legal community to vigorously accord a black person due process of law" (p. 41).

I have tracked Minos Simon's memoirs as he lived them day to day in the law reports. There are brilliant achievements left unmentioned in *Law in the Cajun Nation*, just as other lawyers have achieved greatly in the vast, anonymous reservoir of the law. Parties wishing to file suit *in forma pauperis* need not plead their indigency in person before a deputy clerk of court, not while lawyer Simon represents poor people in the courts of his Cajun Nation. Such a local rule converts an affidavit procedure "into an inquisitorial mini-hearing" inhibiting indigent access to courts, said our Supreme Court in striking down the rule.⁹ The opinion was written by Justice Tate—himself a Cajun guardian of equal justice for Louisiana's Cleburne Moutons and Minerva Futches.

*Lindsey v. Escudé*¹⁰ is another Simon landmark. Thereafter, a court-ordered physical examination of a party litigant may proceed only upon notice and an opportunity to be heard. Here is a case involving "a sensitive question touching closely upon the constitutionally protected sanctity of the person,"¹¹ said the Court, echoing the faith of Lafayette's Cajun Lawyer of *Liberté*.

Ben Miller's memoirs record his American Bar Association efforts to reverse *Baker v. Carr* by constitutional amendment and to keep federal courts from reapportioning Louisiana's police juries. By way of stark contrast, the *Federal Reporter*¹² shows J. Minos Simon succeeding in precisely the opposite direction when he sued to force reapportionment of Lafayette Parish's Police Jury along constitutional lines—another achievement on the wing.

* * *

An advocate, according to Justice Frankfurter, is a "practitioner in the art of persuasion."¹³ I have listened to Minos Simon's oral argument in his first appearance at the Bar of the Supreme Court of the United States. "Petitioner is an illiterate person, and a poor person," he told the highest court in the land.¹⁴

9. *Futch v. Coumes*, 347 So. 2d 1121, 1123 (La. 1977).

10. 179 So. 2d 505 (La. App. 3d Cir. 1965) (per Tate, J.).

11. *Id.* at 508.

12. *Simon v. Landry*, 286 F. Supp. 60 (W. D. La. 1968).

13. Quoted in Frederick Bernays Wiener, *Briefing and Arguing Federal Appeals* 357 (1967), the *locus classicus* of appellate advocacy instruction. Although out of print, Colonel Wiener's book shows up once in a while in used law book stores; F. B. W.'s advice is timeless and his book is well worth a search.

14. The quotation, and those following, are from the sound recording of the oral argument. See *supra* note 8.

Thereafter, Minos Simon lays out the facts of a due process nightmare: Sidney Arceneaux's arrest for trespassing, although he had permission to leave his belongings in a farm laborer's shack after the boss fired him for complaining about not being paid; Arceneaux's *incommunicado* incarceration for a month in the Lafayette Parish Jail on a substituted charge of vagrancy—without bail, without being allowed to call a lawyer, without a judicial hearing of any kind. To hear Minos Simon's plea before Chief Justice Earl Warren, Hugo Black, and a different sort of Irishman, William J. Brennan, Jr., is to revisit Runnymede. This is sparring of the highest order, where *Liberté* herself is the prize, and due process of law hangs in the balance.

"Believe me, I'm not 'a'gin' you," exclaims Justice Brennan in an Irish brogue. "This certainly sounds outrageous," Tom Clark's Texas voice adds: "Your statement is very appealing as to what this man suffered and I would like to help you on it . . ." But Justice Harlan, a stickler for jurisdictional niceties, points to Arceneaux's guilty plea and his release from jail. The plea was coerced, and Louisiana's vagrancy law is unconstitutional, Simon counters. He quotes a deputy sheriff's affidavit reciting a call Arceneaux made to Simon's office: "If he don't do something about it today, I will go plead guilty because I cannot stand the jail no more." The District Attorney advised Arceneaux that the only way he could get out of jail was to fire his lawyer and plead guilty. He did so.

Was Arceneaux's case moot? Should Simon have challenged the plea first in state court? Was the final judgment rule satisfied? These are questions fit for Professor Pugh's federal jurisdiction seminar.

Simon pushed ahead, trying to cut through what Justice Douglas was fond of calling "the flypaper of procedure," trying to reach the merits of his constitutional challenge to Louisiana's vagrancy law—eight years ahead of *Papachristou v. City of Jacksonville*.¹⁵

15. 405 U.S. 156, 92 S. Ct. 839 (1972), holding Jacksonville's vagrancy ordinance void for vagueness. Justice Douglas's closing lines for a unanimous Court echo the faith of J. Minos Simon's earlier plea:

[T]he rule of law implies equality and justice in its application. Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.

Id. at 171. *Law in the Cajun Nation* teaches the same philosophy of freedom:

[T]he rule of law is the *sine qua non* or reciprocal of human freedom. It is an objective rule, which compels equal application of law regardless of the station in life of the persons involved and regardless of the race, religious creed, sex, or color of the persons involved. It is a principle of law at work securing the development of creative cultures, a dynamic activity universally considered to constitute the essence of human progress. And the goal of such progress is to secure the dignity of man in an environment of ordered freedom (pp. xii-xiii).

"But he has a criminal record. I think this Court certainly could reach out and clear this for him without him having to go through another procedure to bring it before the Court."

At the conclusion of oral argument, the Chief Justice of United States told a Cajun from Lafayette:

Mr. Simon, regardless of the outcome of the case, on behalf of the Court, I want to express my thanks to you for having carried the case of this prisoner to all the courts, and to this Court. We're always confident to know that lawyers are willing to do that, and to give their time and energy to such causes. It is a public cause.

Surely this is a tribute—rendered in Chief Justice Warren's raspy voice—that ennobles Louisiana's legal memoirs. Am I wrong to believe that hearing Simon's plea would enliven our learning in the law schools?¹⁶

As for the memoirs proper, David Chandler's *Foreword*, "The Name is 'See-Moan'" (pp. v-ix) sets the stage:

Minos Simon is a physically powerful man, not tall or fat, but large; neatly dressed with enormous shoulders and a barrel chest; a fine Roman head and a deep, pleasing, if sometimes oratorical voice. Commanding in presence, he is courteous, generous, and attentive, possessing an enormous vocabulary; an outdoorsman and a scholar, he is equally comfortable quoting Rousseau or hunting alligators in the swamp. His accent is mellow rather than strident, and he carries an old-fashioned courtesy (p. vii).

Chandler, whose political journalism has won the Pulitzer Prize and who urged Simon to write his memoirs, reports how Governor McKeithen "deflated like a balloon" (p. v) when he heard that "See-Moan" had put himself between the Governor; the Legislature's "Labor-Management Commission of Inquiry"; two law school deans, Messrs. Cecil Morgan and Paul M. Hebert, who served on the Commission; and Baton Rouge Teamster Roderick Jenkins. "Well, I guess that finishes that," McKeithen groaned. It did. Simon covers *Jenkins v. McKeithen*¹⁷ in two pages of *Law in the Cajun Nation*, as a sort of afterthought (pp. 182-183). Yet what a triumph of tough lawyering. The Commission and

16. Compare Sir Edward Coke's admonition, laid down more than three hundred years ago: "Reading without hearing is dark and irksome." 1 Coke Rep. xxviii (1600). I have put the sound recordings of Supreme Court arguments to good use in the classroom. "No law student wants to be a mediocre lawyer. Am I wrong to believe that hearing a master at work is the best teacher?" Baier, *supra* note 8, at 632. The Supreme Court tapes idea is a sort of twentieth-century cut of Leibnitz's *Nova Methodus discendae docendaeque Jurisprudentiae* (1667).

17. 395 U.S. 411, 89 S. Ct. 1843 (1969).

its trampling upon due process was "an ugly recrudescence of the infamous days of Salem."¹⁸

Suing Dean Morgan of Tulane Law School, Simon lost the issue first in the Louisiana Supreme Court¹⁹ and next in Washington. "The appeal is dismissed for want of a substantial federal question," says the published order.²⁰ Less than two months later, in the very same Volume 393 of the *United States Reports*, the Justices noted probable jurisdiction of an appeal brought by Simon from the dismissal of a tandem federal suit raising precisely the same due process question.²¹ This is the lawyer's dream come true. I marvel at Minos Simon's tenacity in the face of judicial rejection and impatience at home.²² His triumph before The Warren Court at Washington dwarfs the cloistered achievement of the academy. "It is one thing to utter a happy phrase from a protected cloister; another to think under fire—to think for action upon which great interests depend."²³

Viewing the challenged Louisiana Commission precisely as Simon did, the High Court condemned it as an accusatory body lacking fundamental due process protections.

"The Louisiana law here," said Justice Black, "is, in my judgment, nothing more or less than a scheme for a nonjudicial tribunal to charge, try, convict, and punish people without courts, without juries, without lawyers, without witnesses—in short, without any of the procedural protections that the Bill of Rights provides."²⁴

Like Lawyer Minos Simon, Justice Hugo Black recites lessons of liberty: "The Louisiana law is reminiscent of the old Parliamentary and Ecclesiastical

18. Brief for Appellant at 15, *Jenkins*, 395 U.S. 411.

19. *Martone v. Morgan*, 251 La. 993, 207 So. 2d 770 (1968).

20. 393 U.S. 12 (Oct. 14, 1968). "MR. JUSTICE BLACK dissents." *Id.*

21. 393 U.S. 975 (Dec. 9, 1968).

22. The three-judge federal district court plainly looked askance at Simon's renewed pleadings: "The constitutionality of this Act has been challenged previously in the state courts of Louisiana in the case of *Martone v. Morgan* . . . , wherein the plaintiff was represented by the same attorney now representing the plaintiff *Jenkins*." *Jenkins v. McKeithen*, 286 F. Supp. 537, 538 (E.D. La. 1968), *rev'd*, 395 U.S. 411, 89 S. Ct. 1843 (1969) (citation omitted). "A careful reading of the Act shows that plaintiffs' analysis thereof, as set forth in rather strained and extreme terms in the complaints filed herein, is simply not an accurate analysis of the powers, duties, and functions of the Commission created thereby." *Id.* at 542. *Law in the Cajun Nation* explains J. Minos Simon's tenacity this way:

When I believed that a ruling by the court was at war with the spirit and/or letter of the law, I felt I had no choice but to seek reversal of that ruling. And I did the best I could to bring this about. Some judges took umbrage over my efforts to reverse these rulings.

But that was of no consequence to me, because I always considered that I was in partnership with all judges to make sure that the rule of law prevailed (p. xiii).

23. Oliver Wendell Holmes, Jr., *George Otis Shattuck* (1897), in *The Occasional Speeches of Justice Oliver Wendell Holmes* 92, 95 (M. DeW. Howe ed., 1962).

24. *Jenkins v. McKeithen*, 395 U.S. 411, 432-33, 89 S. Ct. 1843, 1854 (1969) (Black, J., concurring).

Commission trials which took away the liberty of John Lilburne and his contemporaries without due process of law—that is, without giving them the benefit of a trial in accordance with the law of the land.”²⁵

Having edited Justice Black's *Memoirs*,²⁶ I am sure that Hugo Black and Minos Simon would have enjoyed a good supper together, with talk of Lilburne, *Liberté*, and Lafayette.

* * *

Law in the Cajun Nation is a casebook of sorts, although hardly the usual stuff of legal education. Each chapter recounts a jury trial,²⁷ for trial by jury is J. Minos Simon's bone marrow: “[A]n informed jury is the most reliable bulwark against tyranny, and its continuance in our system of justice must be assured if equality and justice for all is to be a reality” (p. x).

A student picking up the book would find herself enrolled in a seminar in Trial Practice, The Legal Profession, and Jurisprudence, all neatly packaged in paperback. Witnesses are cross-examined and caught in lies. Evidence of motive to murder is copied from corporate files in “The Saturday Morning Raid” (Ch. 6, pp. 91-119), a chapter featuring former Judge Sue Fontenot (“Dark-haired and sassy, sort of an Elizabeth Ashley type”) (p. 91).

Lawyers in droves are reading *The Pelican Brief*.²⁸ Simon's chapter “The Widow and the Tontine” (Ch. 4, pp. 47-61), which tells of oil and gas machinations and murder in Abbeville is equally magnetic, with one vital difference. Simon's rescue of the Widow Faye Warren is real.

Other lawyers, I'm sure, have saved other lives. They have felt the joy of our profession: “We had accomplished the near impossible. We had convicted

25. *Id.* at 433.

26. Mr. Justice and Mrs. Black: The Memoirs of Hugo L. Black and Elizabeth Black (Paul R. Baier ed., 1986).

27. The final chapter of *Law in the Cajun Nation* (Ch. 13, pp. 208-14) details *Gaspard v. LeMaire*, 245 La. 239, 158 So. 2d 149 (1963), and Simon's spirited effort to vouchsafe jury assessment of general damages from appellate second-guessing. Sixteen years later, Justice Tate called *Gaspard v. LeMaire* “the fountainhead decision of modern jurisprudence” interpreting and applying the “much discretion” rule of Louisiana Civil Code article 1934(3). *Reck v. Stevens*, 373 So. 2d 498, 499 (La. 1979). “Thus did one small case make larger law,” says Simon. “It is a major reward of being a lawyer” (p. 214).

Compare Holmes's *Remarks to the Essex Bar* (1884), in *The Occasional Speeches of Justice Oliver Wendell Holmes* 48, 49 (M. DeW. Howe ed. 1962):

You argue a case in Essex. And what has the world outside to do with that, you say. Yet you have confirmed or modified or perhaps have suggested for the first time a principle which will find its way into the reports and from the reports into the text-books and so into the thought of the common law, and so into its share in governing the conduct of civilized men. Our every act rings thorough the whole world of being.

28. John Grisham, *The Pelican Brief* (1992). Mr. Grisham's book is a fine piece of lawyer's fiction, set in New Orleans and Washington. Mr. Justice Hugo Black, *nota bene*, never read fiction. He preferred history, philosophy, and memoir, especially Diogenes Laertius's *Lives of Eminent Philosophers* (R. D. Hicks trans., 1925).

Ned Bergeron of conspiracy to murder, despite an earlier acquittal. We had restored Faye's name" (p. 132).

The other day Roman Catholic Bishops met in New Orleans. Their National Conference agonized over sex abuse by parish priests.²⁹ I suspect only a handful of Bishops knew the name J. Minos Simon, or would care to read "The Alter Boy and the Priest" (Ch. 8, pp. 134-163), a sorry chapter in the Church's memoirs written by a Cajun lawyer in the Lafayette Parish Courthouse. "I want you to bring this out into the light," a parent pleaded. Lawyer Simon's response: "No problem" (p. 139). The Church eventually caved in on liability, with only damages being tried. The jury returned a verdict in one hour and forty-five minutes: \$1 million *ad damnum* to the alter boy, \$250,000 to the parents (p. 157).

Lawyers daily confront the squalid side of life, "the manner-less conflicts over often sordid interests."³⁰ The social scientist and the journalist alike find much raw data in law office files.³¹ "Looking under the Rock" (p. 139), as Simon describes his Church encounter, is a shared destiny.

As party plaintiff protecting his own rights, J. Minos Simon is relentless. He complained loudly when strip searched and locked in an Atlanta jail, counting roaches to kill time (p. 186), on his birthday, February 27, 1973. All of which stemmed from a subpoena naming "Minor Simone; 1408 Pinbrook Road; Baton Rouge, Louisiana" (wrong name! wrong address! wrong city!), and served by federal marshals "converging on him in the bayous of Louisiana."³²

Minos Simon found himself caught "between Hell and Malice" (p. 184), between a state court in Lafayette and a federal judge in Atlanta vying for his corpus. "Simon, as an able lawyer, properly felt the validity of this subpoena was highly questionable," recites Judge Tate's Fifth Circuit opinion on review.³³ It took Simon ten years to vindicate his personal dignity against "the naked conceit of power" (p. 188) of a federal judge, "Another Emperor in Robes" (Ch. 10, pp. 180-195), and the suspect subpoena of Mr. James Neal of Nashville, the source of Simon's soiled birthday. It all ended when "I got Neal back in court in October 1984. The Nashville attorney was on my home ground now—in the federal court in Lafayette" (p. 194). With a jury seated and the stage set for trial, Neal offered to settle for \$25,000. Simon's attorney thought this wasn't enough. "How long do you think the line would be if you offered any lawyer

29. N.Y. Times, June 18, 1993, at A1, col. 1, viz.: "Confronting a problem that has increasingly undermined confidence in their leadership, the nation's Roman Catholic bishops today took their first steps toward creating a nationwide policy for investigating and preventing the sexual abuse of minors by priests."

30. Holmes, *supra* note 1, at 28.

31. See, e.g., Jason Berry's award-winning exposé, *Lead Us Not Into Temptation: Catholic Priests and the Sexual Abuse of Children* (1992), with its chapter iv., "The Passion of J. Minos Simon."

32. *Simon v. United States*, 711 F.2d 740, 742 (5th Cir. 1983).

33. *Simon v. United States*, 644 F.2d 490, 495 (5th Cir. 1981).

in Lafayette \$25,000 to spend the night in jail?" queried Simon. "So we settled and went home" (p. 194).

Surely David Chandler's *Foreword* gets it right: "In the Cajun parishes, they say when you take on lawyer J. Minos Simon, you'd better pack a lunch, because it won't be any half-day job" (p. v). Simon's war against Neal, *et al.*, will doubtless make Louisiana lawyers smile, to say nothing of covering *Simon v. United States*³⁴ in Torts or Civil Procedure.

* * *

Mr. Justice Black used to speak of "lawyers in the great tradition."³⁵ Reading *Law in the Cajun Nation* brings to my ear Hugo Black's immortal exhortation to the bar, words which bear repeating to every new generation of lawyers seeking to make out a life for themselves:

The legal profession will lose much of its nobility and glory if it is not constantly replenished with lawyers like these. To force the Bar to become a group of thoroughly orthodox, time-serving, government-fearing individuals is to humiliate and degrade it.

. . . We must not be afraid to be free.³⁶

J. Minos Simon has lived a lawyer's life of freedom, in Hugo Black's great tradition. "I was always amazed at what a quantum leap my function as a lawyer was from my boyhood days" (p. xiii) this Cajun lawyer tells us. J. Minos Simon's faith will encourage others to make the same leap: "[I]n a society of ordered liberty, where the rule of law applies, anything is achievable if one possesses the determination and industry to develop his potentials as a human being" (p. xiii).³⁷

* * *

And what of the place of legal memoirs in the law schools? Our casebooks edit out the lawyers names, and memoirs have no place on the usual syllabus.

34. 644 F.2d 490 (5th Cir. 1981); 711 F.2d 740 (5th Cir. 1983).

35. *Ex rel. Elizabeth Black*.

36. *In re Anastaplo*, 366 U.S. 82, 115-16, 81 S. Ct. 978, 996-97 (1961) (Black, J., dissenting)

37. Justice Black had the same idea:

I was born in a frontier farm home in the hills of Alabama . . . and my early life was spent in plain, country surroundings. There I became acquainted with the "short and simple annals of the poor," among plain folks who learned most of their law and sound philosophies from the country schools and churches. . . . It is a long journey from a frontier farmhouse in the hills of Clay County, Alabama, to the United States Supreme Court, a fact which no one knows better than I. But this nation, created by our constitution, offers countless examples just like mine.

Hugo L. Black, *Epilogue to A Constitutional Faith* 65 (1968).

This seems a mistake to me, if the use of law schools is "to teach law in the grand manner, and to make great lawyers."³⁸

I think it obvious that the young professionals in our law schools are hungry for models of professional excellence. Having a lawyer of stature in class not only narrows the gap between Langdell Hall and Lafayette Square, so to speak, but also adds life to the ink casket of the casebook. "Practicing lawyers can teach by the power of example," the *MacCrate Report*³⁹ advises us. Erwin N. Griswold has taught by example in my classes. And last semester I distributed the final page of his memoirs, *Ould Fields, New Come*,⁴⁰ to each student by way of reinforcing my own teaching.

Memoirs and biography are "history teaching by example, stimulating our ambition, and guiding our footsteps, and forcibly illustrating the means of improving various kinds of talent."⁴¹ This from David Hoffman's *A Course of Legal Study Addressed to Students and the Profession Generally*, published in 1817 when John Marshall was Chief Justice of the United States. Most good ideas, it seems, are old ones.

I intend to put Minos Simon's memoirs to the test of the classroom. Next semester Lafayette's Lawyer of *Liberté*, memoirs in hand, will join me for an after-hours seminar on law and the legal profession at LSU. No gap will divide

38. Oliver Wendell Holmes, Jr., *The Use of Law Schools* (1886), in Oliver Wendell Holmes, Jr., *Speeches* 28, 30 (1891).

39. Legal Education and Professional Development—An Educational Continuum, Report of The Task Force on Law Schools and the Profession: Narrowing the Gap 236 (A.B.A. Sect. of Legal Ed. and Admiss. to the Bar, July 1992) [hereinafter *MacCrate Report*].

40. Erwin N. Griswold, *Ould Fields, New Come: The Personal Memoirs of a Twentieth Century Lawyer* 406 (1992). On the last page of his memoirs, Mr. Griswold, former Dean of Harvard Law School and Solicitor General of the United States, quotes an anonymous eighteenth century British schoolmaster by way of reciting timeless aims of legal education:

You go to a great school not so much for knowledge as for arts or habits; for the art of expression, for the art of entering quickly into another person's thoughts, for the art of assuming at a moment's notice a new intellectual position, for the habit of submitting to censure and refutation, for the art of indicating assent or dissent in graduated terms, for the habit of regarding minute points of accuracy, for the art of working out what is possible in a given time, for taste, for discrimination, for mental courage and mental soberness.

Over the years, I have learned much from Dean Griswold's sturdy example. Each semester, in constitutional law, he makes a special appearance on videotape, "A Life Lived Greatly in the Law," a television interview I did with him at LSU's Instructional Resources Studio in the spring of 1980. Dean Griswold's video memoirs also teach by powerful, professional example.

41. II D. Hoffman, *A Course of Legal Study Addressed to Students and the Profession Generally* 639 (Joseph Neal, Baltimore, 2d ed. 1836). "[H]e is to seek his lights chiefly in his own heart and understanding, and from the numerous examples, for weal and for wo, afforded him in the lives of others." *Id.* at 635.

Roger Crampton, a reflective thinker on twentieth century legal education, has voiced a similar chord: "[T]he young professional hungers for mature professionals on which he can model his conduct." Roger C. Crampton, *The Ordinary Religion of the Law School Classroom*, 29 J. Legal Educ. 247, 259 (1978).

us: "Legal educators and practicing lawyers should stop viewing themselves as separated by a 'gap' and recognize that they are engaged in a common enterprise—the education and professional development of the members of a great profession."⁴²

* * *

Moments of self-doubt and distrust strike every lawyer. Suing government is never comfortable. "Why rock the boat," a local news director told me when I sued the Chief Judge of the United States District Court for the Middle District of Louisiana over a judicial gag order that, to my lights, violated the First Amendment.⁴³ I got a needed lift from J. Minos Simon: "If you listen to that advice, you are not a lawyer." I pressed ahead and the district court "*sua sponte*" lifted its gag order eighteen months later, while three appeals, including *Baier v. Parker*, were pending in the Fifth Circuit.⁴⁴

Minos Simon's memoirs, I'm sure, will similarly inspire others. Turning its pages, reminded me of what Holmes said of lawyers a hundred years ago, in his speech "Anonymity and Achievement":

I think one of the best things an older man can do for younger men is to tell them the encouraging thoughts his experience has taught him. It is better still if he can lift up their hearts—if after many battles which were not all victories, the old soldier still feels that fire in him which will impart to them the leaven of his enthusiasm.⁴⁵

J. Minos Simon's fire is the golden gift of *Law in the Cajun Nation*.

42. *MacCrate Report*, *supra* note 39, at 3.

43. *Baier v. Parker*, 523 F. Supp. 288 (M.D. La. 1981). The East Baton Rouge Parish School Board also objected to the district court's permanent confidentiality orders. *See id.* at 296-300.

44. No. 81-3622 (5th Cir. 1982) (unreported) (on petition for rehearing en banc). This meant, of course, that the constitutional challenge was moot, and it was so held in *Davis v. East Baton Rouge Parish Sch. Bd.*, 721 F.2d 1425, 1441 n.15 (5th Cir. 1983), wherein the First Amendment question was quietly laid to rest, deep in a footnote, without facing the merits.

45. Oliver Wendell Holmes, Jr., *Anonymity and Achievement* (1890), in *The Occasional Speeches of Justice Oliver Wendell Holmes* 59, 61 (M. DeW. Howe ed., 1962).

