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JOHN SIMONETT—REFLECTIONS FROM RECENT COLLEAGUES

Larry D. Espel[†]

When John Simonett reached the mandatory retirement age at the Minnesota Supreme Court, he was not ready to devote his remaining years to honing his shuffleboard skills. He joined Greene Espel PLLP, a fledgling firm with its oldest partners then in their early forties. John spent more than a decade with his new firm, before finally retiring after his eighty-second year. During his stay at this firm, John shared his wisdom, gravitas, and gentle humor with colleagues as well as with those who came to him as a mediator, arbitrator, and consultant. The purpose of this commentary is to provide a few recollections of John's role in our firm during his last dozen professional years.

John came to our firm as a well-known trial lawyer and supreme court justice. He was a much-published author. Some of his famous pieces include *The Common Law of Morrison County*, his article on *Pierringer* releases, and *Civility and "Generalized Reciprocity."* Some of these are scholarly. Some of these are gems of practical common sense. Of course, as a justice, he wrote numerous opinions for the court as well as concurring and dissenting opinions. Simply put, he had a prominent name and reputation. Thus, it came as no surprise that his decision to join our small litigation firm bestowed upon us a considerable measure of recognition. Even so, we were gratified to hear over and again the enormous good will that John's name carried in professional, civic, and social settings. It must have been the case that there were a few

[†] Larry Espel graduated from the University of Minnesota Law School in 1977. In 1993, he was a founding partner, along with Clifford Greene, of Greene Espel PLLP, a twenty-two-lawyer litigation boutique. He is a certified Civil Trial Specialist and concentrates on commercial, construction, and environmental litigation, along with public sector litigation. He is also an experienced arbitrator and mediator. He would like to express appreciation to his partner, Clifford Greene, who first envisioned the possibility that John Simonett might join their law firm and who maintained a special connection with John Simonett and his family throughout the later years of John's remarkable life.

folks out there who did not hold John Simonett in high regard and with warm affection. We never met them.

As John joined us for firm meetings, client interviews, work sessions, and the typical social gatherings of a small law firm, we came to know him very well. John listened carefully as we identified issues, expressed concerns about proposals, or found ourselves in disagreement. John did not jump into debates in a rash manner. But with a superb sense of timing, he would often contribute a pithy comment just when it seemed that tensions were about to become unruly. John rarely tried to solve our controversies with any kind of edict or fixed position of his own. Rather, he seemed to design his comments to disarm, to encourage compromise, or to remind contestants of a larger perspective and common ground. John brought patience, humor, and a calming influence to every discussion. Almost always, after he weighed in, we were able to reach enough consensus to put division behind us and to move on in a constructive manner.

Not long after John came to our firm, one of our clients (involved in a long list of class actions and individual cases filed in multiple jurisdictions, subject to various multi-district procedures) needed a host of depositions, mostly of plaintiffs and their treating physicians. John agreed to help with those. He engaged witnesses in much the same manner as he would engage other judges, lawyers, and colleagues. This was true for the plaintiff depositions and also for the depositions of physicians. He asked questions in a simple, clear, and courteous manner. He conveyed a sense of respect for every witness and their experiences, as well as for opposing counsel. It seemed as if John elicited from witnesses reciprocal forthrightness and completeness. Witnesses seemed unable or unwilling to dissemble, lie, or evade in John's presence. Sometimes, the witnesses seemed almost grateful to have an opportunity to concede points that undermined some aspect of the case. We were able to settle all of the cases. We were able to learn a lot about what can be accomplished in depositions with preparation and an open demeanor, even if none of us could bring John's unique personality into the room.

After John became a member of our firm, our cases from time to time generated appeals. Many of our colleagues, and our clients, inquired about John's willingness to assist with appeals. John was unfailingly willing to review briefs and proposed arguments and to offer his perspective. However, he was

circumspect about allowing his name to be added to appellate briefs or making appearances before state appellate courts. In his view, it would have been unseemly to trade on his recent status as an associate justice. This observation is reported simply to provide a sense of the man, not as any comment on best practices.

During his tenure on the Minnesota Supreme Court, John's opinions, whether for the majority, concurrence, or dissent, covered a broad range of topics. Our civil litigation practice frequently implicated issues on which he had written for the court. When our clients needed advocacy affected by John's prior opinions, we sometimes found ourselves in a quandary. We were sometimes challenged to find a means of reconciling our positions with something that he had written. On occasion, some of us wished or believed that the law should have gone another way. We sometimes asked John what he was thinking with respect to a prior decision. John was guarded about the confidences of the court. John's responses were always respectful of the collective nature of appellate decisions and the fact that majority opinions represent a group's deliberation, not one individual's idiosyncratic view. So, while John would sometimes allow that a particular fact set posed issues that had not been before the court, he demurred when asked to go behind a written opinion to speculate on what the court was thinking on a particular issue. Since the clarity and depth of his written analyses rarely enabled us to argue that they should be disregarded, we sometimes resigned ourselves to abandoning arguments that we had considered advancing if they could not be reconciled with "Simonett opinions."

When it came to how a lawyer should conduct himself or herself in the practice of law, civility and transparency were dominant features of his approach. John was a great sounding board when we encountered troublesome questions about conflicts of interest, vexing factual questions that threatened client positions, and any of the most challenging legal or policy debates pertinent to our cases. John could help us understand how the issues might appear to a neutral judge and how the issues might be framed either for a jury or for eventual appeal. We turned to him often.

During his years at our firm, John was asked many times by lawyers and parties outside our firm to serve as a special master, mediator, or arbitrator. The numerous such cases spanned a wide variety of case types, including commercial matters, personal injury

matters, employment matters, and some securities matters. He brought to these various roles his distinctive personality, including patience, respect for all involved, plain speaking, and a conscientious sense of accountability. John worked diligently to see the facts from both sides' perspectives and then to call the balls and strikes as he saw them from a more neutral vantage point. For the legal analysis, John invested considerable attention in his examination of the points and authorities cited by the various sides and then proceeded to analyze the fit of the competing arguments with applicable law. To this process, he brought the same perspective on the law that he made manifest during his tenure on the supreme court. For those occasional matters that implicated legal or policy issues that were somewhat new or unfamiliar to him, he would consult with colleagues to validate his assumptions. John loved any opportunity to reflect on the application of key legal principles to particular facts. Yet, when it came to the times when John served as mediator, he kept his personal opinions in check and gently encouraged parties to consider uncertainties, to consider concerns or risks that they may have undervalued, and to compromise. He valued pragmatic resolutions that the parties could mutually accept more than abstract points of principle. So, he modeled effective mediation, but could, as the occasion necessitated, play the role of decision maker.

John brought us good cheer every day. His door was open for those who wanted to brainstorm or explore ideas. He made a point of greeting his colleagues. Despite his stature, he interacted with all staff in the same way as with his most senior colleagues or even other retired judges. His fondness for his dog, Wendell, was a source of conversation shared with the other dog-lovers in our firm. Whether he was sharing stories about family, pets, current events, political science, great books, or pending cases, he always expressed an interest in the knowledge and experiences of those with whom he was talking, and he always had an enriching perspective based upon his own reading or knowledge. John made it clear that his law practice was linked to the common experiences and the stories of everyone with whom he came in contact.

John had trained himself as an orator and storyteller long before he came to our firm. At the drop of a hat, he could break into a rendition of *Casey at the Bat* or *The Cremation of Sam McGee*. He had a superb sense of timing in his delivery, and he could modulate his voice from a booming bass to a gentle whisper. He

had the ability to make almost any story compelling theater. We were relieved that we did not have to act as his adversaries in current trials.

During John's decade-plus with our firm, we met his lovely wife, Doris, and his children (who had grown to adulthood). John shared his pride in his family, including his numerous grandchildren, with circumspection. His love and appreciation for his family were always the greatest source of delight throughout his life, though he rarely boasted or engaged in one-upmanship. He did share with us his pleasure in spending time with his family at the summer cabin, at gatherings, and at family events. We mourned with John when his family lost his daughter, Anne, due to an untimely illness. John's grief was evident, though he maintained a stoic demeanor and found consolation in his private, yet deeply held, spiritual core. John modeled for us at the firm the manner in which one can integrate professional success with dedication to family. We had little doubt that, as accomplished as he was in his professional life, his family life enriched him as well. He maintained balance between work and home.

In many respects, John was an ideal mentor for those of us in our firm who had accumulated some years in the practice of law. He modeled how one can adapt one's pace to match the effects of years of "maturity" while remaining interested, and interesting, in the practice of law. John's choice to remain active with his practice past the age of eighty may not represent the choice of every lawyer, but John showed that an agile mind combined with a love of the law can contribute materially to the practice of law, and the building of a law firm, at any age.