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Bar Exam Suit Tops Career Aiding Disabled

By John Woods

WHEN BROOKLYN attorney Jo Anne Simon followed a career counselor's advice to work with the deaf while she was a speech pathology student at Iona College in the 1970s, she never imagined the job would lead her on a lifetime mission of fighting for the rights of the disabled.

More than 25 years later, though, the vocation Ms. Simon came upon by chance has become her passion -- and may have changed forever the way the New York State bar exam is administered to the learning disabled.

Earlier this month, Ms. Simon, 48, won an eight-year battle for a severely dyslexic client who was denied special accommodations for taking the bar exam by the New York State Board of Law Examiners.

Marilyn Bartlett, who was afforded extra time to complete exams because of her dyslexia while a student at Vermont Law School, had failed the New York bar without special accommodation five times. Following a federal decision by Judge Sonia Sotomayor, however, Ms. Bartlett will be given twice the normal two days to take the exam for her sixth attempt.

"This case was about educating the court as to what learning disabilities were and how they are appropriately assessed," said Ms. Simon, who felt that the board's reliance on experts without clinical experience weakened its case. "It was always fairly clear to me that the board had retained experts [without] expertise in working with people who were disabled or

making accommodations for people with disabilities."

Regardless of which experts the board chose for its case, it would have been hard for its attorneys to match Ms. Simon's own hands-on experience with the disabled.

After she graduated from Iona in 1974, Ms. Simon taught at the Perkins School for the Blind in Watertown, Mass. In 1977, she became the director of special services at Gallaudet University in Washington, D.C., the world's only liberal arts college for the deaf.

Ms. Simon is also a certified interpreter for the deaf, and has served as an interpreter for Broadway and off-Broadway productions, among other freelance interpreting jobs.

After a stint on Wall Street in the early 1980s, Ms. Simon enrolled at Fordham University School of Law's night program, graduating in 1990.

She took a clerkship for Hudson County, N.J., Assignment Judge Arthur N. D'Italia, then opened her own firm in 1991, focussing on disability rights in higher education, licensing and employment discrimination.

From 1992 to 1996, Ms. Simon also worked as a staff attorney in the disabilities law clinic at Hofstra University School of Law.



LESLIE BARBOUR PHOTOS

JO ANNE SIMON

Taking the Case

It was because of her work at Hofstra that Ms. Simon met Ms. Bartlett. J. Gardiner Pieper, owner of Pieper Bar Review, was approached by Ms. Bartlett about her predicament while she was taking his course in 1993. Having heard of Ms. Simon's work at Hofstra, Mr. Pieper referred Ms. Bartlett to her.

"I learned about this through my students who had had disabilities and had gone to the Hofstra clinic," Mr. Pieper

said. "When Ms. Bartlett came to me, she expressed concern about her ability to finish the exam, and I suggested she go and see Joanne," he said.

After the board rejected Ms. Bartlett's application for accommodation that year, a trial was held in 1997 in the Southern District of New York with Judge Sotomayor, who was then a U.S. district judge, hearing the case.

Judge Sotomayor, who now sits on the U.S. Court of Appeals for the Second Circuit, ruled for Ms. Bartlett, awarding her injunctive relief and damages. On appeal, the Second Circuit affirmed in part and vacated in part.

A further appeal to the U.S. Supreme Court by the board, however, led to a remand to the Second Circuit, with instructions to consider the case in light of recent decisions on the Americans with Disabilities Act holding that the ability of corrective measures, such as eyeglasses and medication, may affect whether a person is considered disabled under the act.

The Second Circuit then remanded the case for a second trial on the issues before Judge Sotomayor, who ruled in

favor of Ms. Bartlett.

Level Playing Field

"Plaintiff's experts have convinced me that the extra time provided to learning disabled applicants merely levels the playing field and allows these individuals to be tested on their knowledge; it does not provide them with an unfair advantage," the Judge wrote in an 99-page opinion issued earlier this month.

Roberta Mueller, a senior staff attorney at the New York Lawyers for the Public Interest, who assisted Ms. Simon in the case, agreed that the choice of experts made the difference.

"It's critically important to show the functional limitations that a person has and have the expert to back them up," Ms. Mueller said. "It's very important that we have experts that can say that someone with this diagnosis, testing profile and disability would certainly experience these kinds of limitations on a day-to-day basis."

Vindication

For her part, Ms. Simon sees Judge Sotomayor's decision as a vindication of

her belief that evaluations of learning disabilities must not be arbitrary, but must be made on an individual basis.

"People can't be reduced simply to numbers and that includes disability determinations," said Ms. Simon, who was paid a reduced fee for the case. "You have to look at the whole person. That's the way the ADA is written."

As for her future, Mr. Pieper, for one, thinks it looks bright.

"When the decision came I remember calling her, and she and her husband were just so happy for Ms. Bartlett," Mr. Pieper said. "I asked what are you going to do now, and she said, 'I think I'll start taking cases that make money.'"

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