LEAD COUNSEL

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The case next called for argument before the high tribunal held little promise of posing any issues of general legal interest. The extent of Florida's power to tax the rolling stock of a traveling circus whose home base was in the citrus commonwealth did not appear to be at the cutting edge of contemporary constitutional law. The puzzle, indeed, was why so pedestrian a case was entitled to a claim on that scarcest of public resources—plenary consideration by the Justices. Nonetheless, as the argument got under way, it soon became apparent that this controversy of modest scope was taking on more substantial moment—not an earth-shaking case, to be sure, but no longer a wholly mundane one. In part, this was a function of the careful presentations of counsel. But in greater part it was a function of the contributions emanating from the bench—questions that directly illuminated the immediate area in controversy and also cast a reflected and reflective light on more remote parts of the legal terrain.

The high tribunal lived up to its highest traditions. And no less would have been expected of the formidable three-judge panel that constituted the University of Pennsylvania Law School's Keedy Cup Court at the 1980 Term: In the center chair was the Chief Justice of the United States. Flanking him were two friends and long-time comrades in the cause of judicial reform: On the Chief Justice's right was Samuel J. Roberts, Associate Justice of the Pennsylvania Supreme Court, for nearly two decades one of the leading state court judges in the United States. On the Chief Justice's left was Bernard G. Segal, for a generation the lead counsel in almost every significant campaign to raise the standards and horizons of the bar and bench of the nation.[1]

ii.

A few years before, the Chief Justice, from the vantage point of his own accustomed center chair in his own Court, had judged

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[1] The Chief Justice's willingness to add the duties of Chief Justice of the Keedy Cup Court to his regular Article III duties stemmed from his generous interest in doing honor to Justice Roberts and Mr. Segal in the fiftieth year of their graduation from the University of Pennsylvania Law School.

Mr. Segal, standing at *his* accustomed place at the bar of the Court, to be unique. But, when the Chief Justice announced that judgment, Mr. Segal was, for the first time in his entire career, at a loss for words.

It turned out that Mr. Segal's perceived uniqueness that day inhered in what was understood to be the unprecedented role being played, in the United States Supreme Court, by Mr. Segal's venerable client. Mr. Segal's client was the Pennsylvania Supreme Court. And the Highest Court of the Commonwealth was appearing, through Mr. Segal, as amicus to its chronologically very junior, if hierarchically somewhat senior, judicial sibling, the Highest Court of the Land.[2]

But uniqueness is not much of a novelty for Mr. Segal. He has spent most of his lawyerly life doing well things that other lawyers have done inadequately or not at all. He has been equally at home devising and carrying out new strategies, building new institutions, and adapting old institutions to new purposes.

iii.

Standard appraisals of Mr. Segal's seemingly endless curriculum vitae tend to give greatest weight to two entries—Mr. Segal's Presidency of the American Bar Association and his founding of the ABA Standing Committee on the Federal Judiciary. Mr.

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[2] The case in which Mr. Segal found himself speaking on one august court's behalf to an even more august court was Kremens v. Bartley, 431 U.S. 119 (1977), reviewing the determination of a three-judge district court that certain aspects of Pennsylvania's nonjudicial procedures for the commitment of minors to state mental institutions did not comport with due process standards. This determination, to the extent that its interim implementation appeared to contemplate, and indeed to direct, a substantial enlargement of the adjudicatory burdens of the Court of Common Pleas, was a matter of serious administrative concern to the Pennsylvania Supreme Court. The delicacy of the role of an advocate who represents a court acting in its administrative capacity is reflected in the following excerpt from Law Week's summary of the oral argument:

> Mr. Justice White asked Segal if the lower federal court was correct on the due process issue. Segal answered that while he personally believed the due process point was wrongly decided, he could not speak to this issue for the party he represented, the Pennsylvania Supreme Court.

45 U.S.L.W. 3406 (Sup. Ct. 1976).

It would appear from the action of the United States Supreme Court in remanding the case to the district court to review the impact of supervening state legislation that Mr. Segal's advocacy was effective, once he reached the lectern. But getting to the lectern was no easy matter. The Pennsylvania Supreme Court's first application to be an amicus in *Kremens v. Bartley* was rebuffed. 426 U.S. 945 (1976). On reconsideration, leave to file a brief was granted. 429 U.S. 882 (1976). On further consideration, the Pennsylvania Supreme Court was permitted to participate, through Mr. Segal, in the oral argument (but by reallocating the existing time for argument, not by enlarging the time). *Id.* 957. Tenacity—as Mr. Segal has so often demonstrated—is a major ingredient of lawyerly success.

Segal's term as ABA President was significant—perhaps more so than any other ABA presidential term in half a century—because Mr. Segal used it to rally American lawyers to a renewed sense of the public responsibilities of their profession. The work of the Committee on the Federal Judiciary has been of substantial consequence in impressing on presidents, attorneys general, and senators that the demanding responsibilities of the federal judiciary cannot be carried out by men and women of indifferent professional qualifications. In large measure, the generally high quality of the hundreds of federal judges appointed by Presidents Eisenhower, Kennedy, Johnson, Nixon, Ford, and Carter is traceable to the systematic monitoring of candidates for federal judicial office conducted by Mr. Segal and the other lawyers who have borne the thankless burden of the Committee's work for nearly thirty years.

Mr. Segal has been widely praised for these twin achievements, and properly so. But I think equal time is owed—and equal tribute should be paid—to two other Segalian endeavors that, perhaps for the very reason that they were outside the framework of the ABA, have been somewhat less celebrated, but that, nonetheless, have served the law's vital purposes in the same way and with equal success.

At the urging of President Kennedy, Mr. Segal, in collaboration with the late Harrison Tweed, founded the Lawyers' Committee for Civil Rights Under Law.[3] Created at a time when the ABA itself did not yet fully understand the constitutional imperative of equal protection of the laws, the Lawyers' Committee gave to the civil rights movement the favoring imprimatur of the establishment bar. Not only in the rural South, but in the urban North as well, the Lawyers' Committee gave practical impetus to the ideal of able legal representation for people too poor and causes too powerless to command the services of good lawyers at market prices. The Public Interest Law Center of Philadelphia and offices like it across the country are part of the indelible heritage of professional responsibility that Mr. Segal and his colleagues of the Lawyers' Committee bequeathed to the American bar.

A decade before he founded the Lawyers' Committee, Mr. Segal played a critical role in winning one of the most important battles fought in this century for the integrity of the federal judi-

[3] In his contribution to this dedication, Judge Adams also discusses Mr. Segal's role in the founding of the Lawyers' Committee. From Judge Adams's account, it is apparent that Mr. Segal was not only the architect and master builder of the Lawyers' Committee, but was also the first person to conceive its necessity, proposing the idea to then Attorney General Robert Kennedy and thereby to the President. *See* Adams, *Bernard G. Segal*, 129 U. PA. L. REV. 1023, 1027 (1981).

ciary. In 1950, at the behest of Chief Judge Biggs, Mr. Segal went to Washington to pry out of the Senate Judiciary Committee President Truman's stalled nomination to the Third Circuit of William Hastie—the eminent lawyer-scholar-public servant who was the first black ever named to an Article III judgeship. But for Mr. Segal's efforts, it is possible that one of the finest judges of our time would never have won Senate confirmation.

iv.

Meetings of the faculty of the University of Pennsylvania Law School take place in the Bernard G. Segal Moot Court Room, under Mr. Segal's portrait's watchful eye. Mr. Segal, L-'31, has been in and of his Law School—first as brilliant student, and thereafter as adjunct faculty member, as Overseer, as Life Trustee, and as fiercely protective and benevolent alumnus—for half a century.

There was a time long ago—back before recorded history was decently under way—when Bernard Segal had not yet invented law. As a college undergraduate, he had not yet been beguiled by the acronymic mysteries of ABA, ALI, USCA and USLW. He and his college classmates—for example, Samuel J. Roberts, *q.v.*, and William J. Brennan, Jr. (who was to go on to Another Law School)—were as yet uncorrupted by Restatements and Restitution.

But even in that state of innocence, the green that undergraduate Segal and his friends gamboled on was the campus of the University of Pennsylvania. The University was Bernard Segal's primordial turf. And he has continued to exercise suzerainty over the entire domain—not just the Law School—throughout his long and devoted tenure as Trustee.

Heretical though it sounds, there is a real possibility that Bernard Segal's Law School, deeply as he cherishes it, means no more to him than his Faculty of Arts and Sciences, that most recently established academic structure which is, properly, the heart of the University. Lawyer Segal recognizes the intellectual primacy of the Faculty of Arts and Sciences because he knows that *leges sine moribus vanae.* But his recognition has other and even stronger roots: Just a few years ago, that Faculty's Department of Sociology conferred its doctorate on Geraldine Segal. And, more recently still, Bernard Segal celebrated the two ruling passions of his life—Dr. Segal and his University—by establishing the Geraldine R. Segal Professorship of American Social Thought.

And this is why Lawyer Segal is, and deserves to be, a prophet in his own country.