

## BERNARD G. SEGAL—BAR LEADER

LEWIS F. POWELL, JR.†

The *University of Pennsylvania Law Review* is to be congratulated for devoting this issue to Bernard G. Segal—"Bernie" as he is known to thousands of lawyers across the country. Bernie's contributions to the cause of justice have been equalled by few practicing lawyers.

There have been great leaders of the Bar, such as John W. Davis, Charles Evans Hughes, and George Wharton Pepper, who also were public figures. Bernie Segal's contributions are unique because they were achieved in private practice and primarily through the legal profession's own organizations. The sole public office he held was that of Deputy Attorney General of Pennsylvania, and this only for a brief period early in his career. He believed that "in addition to the professional and public responsibilities of the individual lawyer, there are corresponding group responsibilities of the legal profession, and only through the organized Bar can the profession fulfill these responsibilities."<sup>1</sup> This belief prompted him to devote a substantial amount of his energies to the activities of the Bar. I doubt that any lawyer has ever held as many high offices in organizations of the legal profession as Bernie Segal.<sup>2</sup> His concern for the public good is demonstrated by his emphasis on the responsibilities of lawyers as officers of the courts and members of a learned profession. He largely left to others activities designed to further the economic interest of lawyers.

Although his concerns are as broad as justice itself, Bernie may be remembered best for his contributions to the selection of judges. Our system of justice is perhaps the most complex in the world: a written constitution, the dual system of federal and state courts, our doctrine of supremacy of law, the multiplicity of legislation and regulation at both federal and state levels, the licensing and dis-

---

† Associate Justice, United States Supreme Court. B.S. 1929, LL.B. 1931, Washington and Lee University; LL.M. 1932, Harvard University.

<sup>1</sup> *President's Page*, 56 A.B.A.J. 3 (1970).

<sup>2</sup> He has served as President of the American Bar Association, American Bar Foundation, and American College of Trial Lawyers; First Vice-President of the American Law Institute (presently); Chancellor of the Philadelphia Bar Association; Chairman of the American Judicature Society, and, over the years, as officer or board member of a number of other public service organizations such as the Council for the Advancement of Legal Education (present Board Chairman) and the Council on Legal Education for Professional Responsibility.

ciplining of lawyers by the fifty states, and the varying methods of selecting state and local judges. In the end, the fairness and quality of justice depend primarily on the judges. It therefore is not surprising that throughout his career Bernie has sought to assure that only well-qualified lawyers were elected or appointed to the bench.<sup>3</sup>

The Bar did not participate systematically in the selection of federal judges until 1953.<sup>4</sup> In that year, Attorney General Brownell asked the ABA's Standing Committee on the Federal Judiciary to investigate and report on the qualifications of persons under consideration for nomination to the lower federal courts.<sup>5</sup> Bernie Segal was a leader in the negotiations that led to Attorney General Brownell's request. From 1956 to 1962, he was Chairman of the Committee on the Federal Judiciary and, whether as chairman, committee member, adviser, or officer of the ABA, Bernie has provided the inspiration and much of the leadership for the Committee's continuing role.

Under the system developed in 1953 for the lower federal courts, the Attorney General has referred to the Committee the names of individuals whom he was considering for recommendation to the President. Often several names were submitted for a single vacancy. This wise procedure permitted an investigation and confidential report before the President acted. Over the years, hundreds of recommendations have been made by the Committee under this wholly nonpartisan plan to maintain high competence on the federal bench.<sup>6</sup>

---

<sup>3</sup> In a perceptive article, United States District Judge Patrick E. Higginbotham addressed some of the threats to the quality of the American judiciary. Higginbotham, *Bureaucracy—The Carcinoma of the Federal Judiciary*, 31 ALA. L. REV. 261 (1980). The federal judge, he said, is "unique" in our system, as "the ultimate guardian of the individual spirit." *Id.* 263. Judge Higginbotham recognized that the office must "remain . . . attractive to persons of competence and integrity." *Id.* 264. Bernie Segal also has identified the relationship between the quality of judges and the quality of justice. His efforts have helped maintain the quality of both.

<sup>4</sup> Earlier, Ross L. Malone, who served as Deputy Attorney General during the concluding months of the Truman Administration, had sought informal advice. Mr. Malone later became an outstanding president of the American Bar Association.

<sup>5</sup> As Bernie Segal's concentration has been on the federal bench, I will leave it to others to elaborate on his constructive role in his native state of Pennsylvania, where he served as Chairman of the Judicial Nominating Commission for Philadelphia (1963), Chairman of the Appellate Court Nominating Commission for Pennsylvania (1973-76), and leading advocate for the adoption of the new Judiciary Article of the Pennsylvania Constitution.

<sup>6</sup> For example, during the ABA's fiscal year 1969-70, when Mr. Segal was ABA President, the Committee was called on for 93 informal reports to the Attorney General. In that year, 25% of the Committee's recommendations were negative and in every such instance the Attorney General recommended against nomination—recommendations the President heeded. See Segal, *The President's Report: 1969-1970*, 56 A.B.A.J. 861, 865 (1970).

Until 1970, the procedure with respect to the Supreme Court was different. No names were submitted to the Committee for preliminary investigation. The Committee was called on only after the President had selected one person for the vacancy. Confidentiality rarely could be preserved under these circumstances and the Committee, not wishing to embarrass a President in the exercise of his constitutional appointment power, usually (if not always) acquiesced in the President's choice without careful investigation. Following the difficulties with respect to one of President Nixon's nominees in 1969, ABA President Segal proposed, and Attorney General Mitchell agreed, that the Committee make full preliminary reports on potential nominees before the President had made even a tentative choice.<sup>7</sup> With respect to persons subsequently considered for appointment to the Supreme Court, the Committee has made extensive investigations that included interviews with lawyers, law school deans, and other knowledgeable sources throughout the country.

Bernie Segal has recognized, more clearly than most, that a relationship exists between the compensation of judges and the professional quality of lawyers who will accept and remain in judicial office. He therefore has been the leader of those in the Bar who have sought to improve judicial compensation at both federal and state levels.<sup>8</sup> Bernie was chairman of the ABA Committee on Judicial Selection, Tenure and Compensation for a number of years and has led in marshaling support for fair and bipartisan consideration of judicial compensation by the executive and legislative branches. In this connection, he served as Chairman of the first Commission on Judicial and Congressional Salaries created by the 83d Congress and thereafter as a member of the first Commission on Executive, Legislative and Judicial Salaries created by the 90th Congress. He has served as a member of each subsequent Commission.<sup>9</sup>

---

<sup>7</sup> Two of President Nixon's nominees were rejected by the Senate. I refer to "difficulties" with respect to only one of these because I am satisfied that history will confirm that Clement F. Haynsworth, Jr., Chief Judge of the Court of Appeals for the Fourth Circuit, was exceptionally well qualified.

<sup>8</sup> The argument against setting judges' salaries even close to the level of what can be earned in the practice of law is that there is an abundant "supply" of lawyers who are eager to go on the bench and that tenure—in the federal and in many state systems—in effect is for life during good behavior. These considerations are, of course, relevant to compensation. Bernie has argued, however, that the administration of justice should not be left primarily in the hands of judges who are marginally qualified. Rather, the process of selection, tenure, and compensation should assure that a high percentage of judges—if not all—are well- or exceptionally well-qualified.

<sup>9</sup> More recently, Bernie headed a three-member task force that inspired the creation of a Special ABA Committee on Federal Judicial Compensation.

Some lawyers have attained high office in state and national law organizations but left little trace of their stewardship. This characterization does not remotely apply to Bernie Segal. He has left a formidable record of genuine achievement wherever he has served. I cite only one additional example. As President of the ABA, Bernie Segal launched more important new programs than any other President in the history of our national association.<sup>10</sup>

One reading the record of Bernie Segal's professional leadership and public service might assume that little time remained for the practice of law.<sup>11</sup> To be sure, there are lawyers who allow such "outside" activities to become a consuming hobby, if not a career. But Bernard G. Segal is a practicing lawyer of extraordinary professional talent and achievement. He is the senior partner in a nationally known law firm; he has represented with devotion and skill clients from the most humble<sup>12</sup> to great national corporations, and I can testify personally that he is one of the ablest appellate advocates to appear before the Supreme Court during my tenure.

One asks, incredulously, how any individual possibly could achieve so much. Even though I have known Bernie for a quarter of a century, I cannot give an entirely satisfactory answer because I continue to marvel at what he is able to accomplish—always diligently and well. But some of the reasons can be identified. Apart from the professional skills that every lawyer would like to possess, Bernie is one of the best organized and most disciplined persons whom I have ever known. Moreover, his capacity for sustained work has enabled him for many years to maintain working hours and schedules that few lawyers of any age can equal. Before I went on the Court, and when Bernie and I had common responsibilities to some clients and in some professional activities, I could expect telephone calls from him at almost any hour of the night, holidays and weekends not excepted. On occasion he has called to present an idea—sounding fresh and enthusiastic—long after I had gone to bed.

I conclude with a word about Bernie Segal's personal qualities. Although his time necessarily has been severely budgeted, he is

---

<sup>10</sup> These included 14 new programs, several of them of major proportions, such as the Institute for Court Management, Commission on Correctional Facilities and Services, Task Force on Standards of Judicial Administration, and Special Committee on the Standards of Judicial Conduct. See Segal, *supra* note 6, at 861-62.

<sup>11</sup> As will be evident from other tributes detailing Bernard G. Segal's remarkable career published in this issue of the *Law Review*, I have addressed only a fraction of his decades of dedicated service.

<sup>12</sup> Bernie's devotion to equal justice is evidenced by his service as Co-Chairman of the Lawyers' Committee for Civil Rights Under Law, having been chosen for this crucial role by both President Kennedy and President Johnson.

devoted to his family. He is proud of his wife, Jerry, and of her own scholarly career. In turn, she always has been supportive in all that Bernie has undertaken, a support that I know has sustained him. I also am told by others, who have observed him where I could not, that Bernie has never been too busy to help people in all stations of life—people with personal rather than legal problems who needed sympathetic advice and assistance. In sum, Bernie Segal not only is a gifted lawyer of great distinction; he also is a warm, generous, and compassionate human being. He is an ornament to our profession.