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Shaping of Judiciary Key Part of Specter's Legacy

Local Lawyers Hail Senator as Architect Of Prestigious Bench

ANALYSIS

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Sen. Arlen Specter's half century in public life will be remembered by many for highlights like his service on the Warren Commission and the leading roles he played in blocking Judge Robert Bork from being confirmed to the U.S. Supreme Court and preventing Justice Clarence Thomas from meeting the same fate.

But to many lawyers in the Philadelphia area and beyond, Specter will be best remembered



Photo by Diego M. Radzinski

SEN. ARLEN SPECTER

as the architect of one of the most prestigious and respected federal benches in the country.

Specter himself has said that the dozens of judges he has had a role in selecting — and their decades of service on the district and

circuit benches — are the most enduring legacies of his time as a legislator.

Together with the late Sen. John Heinz, Specter — who lost his bid Tuesday for nomination to a sixth term in the U.S. Senate — is credited with devising a system of merit selection panels made up of lawyers and non-lawyers who vetted applicants for judicial posts. A first at the time, it has now been emulated and copied in many other states.

Since his election to the Senate in 1980, Specter has been directly involved in the nomination and confirmation process for scores of judges.

On the Eastern District of Pennsylvania bench alone, Specter has helped to choose 38 judges.

A handful of those judges had direct ties to Specter, such as Marvin Katz, a classmate from Yale Law School who was later his law partner in Specter & Katz, and Jan E. DuBois, another Yale classmate.

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But the vast majority of judges who earned Specter's imprimatur were the products of the merit selection process and the political processes at the county level, culminating in the final review by Specter and his fellow senators over the years — first Heinz, then Harris Wofford, then 12 years with Rick Santorum and, most recently, Robert P. Casey Jr.

And the legacy may not yet be complete. As one lawyer put it: "Don't go writing Arlen Specter's political obituary just yet — there may be a few more judges named to the bench before he's finished."

Attorney Thomas R. Kline of Kline & Specter, who has served on the merit selection panel since 1989 and chaired it since 1998, said Specter has been "the moving and driving force" in the selection of federal judges in Pennsylvania for three decades.

Today's Eastern District bench is "centered, grounded, intellectually strong and able," Kline said, "and all with the imprimatur of Senator Specter."

Kline said the public generally noticed only Specter's role in nominations to the U.S. Supreme Court, but that the deeper impact came from Specter's work in the "quietly evolving" process of selecting judges for the district and circuit courts.

The screening committee played a critical role, Kline said, but Specter was "proactive" at every stage, meeting with every nominee and shepherding them through the nomination and confirmation process.

Kline said Specter insisted that judges not only have significant legal experience and intellectual capacity, but also demonstrate a commitment to fairness and equal justice. He also insisted that the bench constantly reflect geographic diversity, with judges drawn from all nine of the counties that make up the Eastern District.

U.S. District Judge Michael M. Baylson was selected by Specter twice — first to serve as U.S. attorney, and later to serve on the Eastern District bench.

Baylson said Specter's years as a lawyer and a prosecutor made him "intimately familiar with the judicial process — both civil and criminal — perhaps more than any other senator."

Specter was always interested in finding "bright" judges, Baylson said, but also wanted to ensure that any nominee he supported would be hard-working and efficient.

And when both of Pennsylvania's senators were Republicans and a Democrat was in the White House, Baylson said, Specter was able to strike a lasting deal that called for a bipartisan approach to selecting judges.

Behind the scenes, Baylson said, Specter was and is still involved in pressing for legislation that directly affects judges and lawyers and the judicial process, including a recent bill that ensured full voting privileges for senior judges.

Most recently, Specter introduced the "Notice Pleading Restoration Act of 2009," a bill that would change the standard for the dismissal of a federal complaint back to the approach set forth by the U.S. Supreme Court in the 1957 case of *Conley v. Gibson*, effectively overturning the Supreme Court's 2007 ruling in *Bell Atlantic v. Twombly* and the 2009 ruling in *Ashcroft v. Iqbal*.

Baylson also lauded Specter for the intense interest he always took in choosing U.S. attorneys who were committed to pursuing corruption cases, complex frauds and organized crime.

Lynn Marks, the executive director of Pennsylvanians for Modern Courts, said she rates Specter highly for creating merit selection panels to screen all federal judges in Pennsylvania.

"It's critical to have that sort of process," Marks said, "and it's important that they include non-lawyers."

Marks also said Specter "cared a lot about racial and gender diversity," and that she expects the federal bench to become even more diverse as more women and minority lawyers gain the sort of experience necessary to make them viable candidates. •