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IN MEMORIAM

ARLEN SPECTER: 1930–2012

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He was Pennsylvania's longest serving United States Senator. He had an illustrious career both as a senator and as an attorney. He died much too soon, at age 82, on October 14, 2012.

Arlen Specter was born on February 12, 1930, in Wichita, Kansas, the youngest of four children born to Lily Shanin and Harry Specter, both immigrants. His father grew up in a small village in the Ukraine and emigrated to the United States in 1911. After a short time in Wichita, the family moved to Russell, Kansas, where Specter graduated from Russell High School in 1947. Russell was also the hometown of fellow former senator and good friend, Bob Dole, who graduated from Russell High School in 1941.

Specter learned his work ethic the hard way from his parents. When he was five years old, his father, who was a peddler and junk dealer, took him to small Kansas towns selling cantaloupes door-to-door. Later, at age sixteen, working in his father's junkyard, he cut down oil derricks with an acetylene torch and loaded the scrap iron onto railroad freight cars.

After high school, Specter enrolled at the University of Oklahoma for one year. He then transferred to the University of Pennsylvania, majoring in International Relations. At Penn, with his friend and future law partner, Marvin Katz, Specter won an intercollegiate debating championship. Specter graduated from Penn, Phi Beta Kappa, in 1951. It was at Penn that I met the future senator.

I experienced his debating skills early in my legal career. We had a case together—a personal injury case involving a trailer hitch on a trailer rented

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to Specter's client. I represented the trailer company. The new kids at their firms—Specter at Barnes, Dechert, Prices, Myers & Rhoades, now known as Dechert, and me at White & Williams—were in court fighting over whether the trailer hitch was defective and caused the accident (Specter wins), or whether the hitch broke as a result of the accident (I win). I do not recall all of the details of the case, but I do remember this—Specter won!

Specter served in the United States Air Force from 1951 to 1953, during the Korean War. When he left the service, Specter married Joan Levy and enrolled at Yale Law School. There, they lived in a quonset hut—actually half a quonset hut—stoking their coal furnace to keep the hut heated. (For those readers too young to know about quonset huts, they were rather flimsy, prefabricated metal buildings built during World War II and used by universities in those days as temporary housing for married students. And they were far from luxurious!) Specter's outstanding record at Yale earned him a position as editor of the *Yale Law Journal*. It was at law school that Specter first told me it was his goal in life to become a United States Senator.

Following graduation from law school, Specter opened a law firm in Philadelphia with Marvin Katz, who later served as a United States District Judge until his death in October of 2010. After a short time, Specter left private practice with Katz and joined the Dechert firm. He remained there until 1959, when he accepted a position as an Assistant District Attorney.

As an Assistant District Attorney, Specter earned a national reputation for his successful prosecution of Local 107 of the Teamsters Union. That prosecution brought him to the attention of Attorney General Robert Kennedy, who was instrumental in Specter's appointment to the staff of the Warren Commission, which investigated the assassination of President John F. Kennedy. As an Assistant Counsel for the Commission, Specter is largely credited with authoring what has been described as the "single-bullet theory"—the theory that the nonfatal wounds sustained by President Kennedy and Texas Governor John Connelly were caused by the same bullet. This was a critical determination since, if the two men had been wounded by separate bullets within the short period of time established by the events of that fatal day, it would have been likely that a second person was involved in the killing of the President, leaving inescapable the conclusion that there was a conspiracy to kill the President.

Upon completion of the work of the Warren Commission, Specter returned to Philadelphia to lead an investigation of Philadelphia Magistrates. Specter's work in this investigation resulted in numerous convictions and the eventual abolition of Magistrate Courts in Philadelphia.

In 1965, Specter, a registered Democrat, ran for District Attorney of Philadelphia on the Republican ticket. He beat incumbent James Crumlish,

and then changed his registration to Republican. As District Attorney, he relentlessly prosecuted corrupt public officials and many others for two terms. He also professionalized the Office—he took politics out of the appointment process for Assistant District Attorneys and senior staff. Specter's commitment to keeping politics out of the District Attorney's Office is demonstrated by a story from his final days as District Attorney. Former Governor Ed Rendell, then an Assistant District Attorney, told Specter he was leaving the office and wanted to get more involved in politics. Specter offered to introduce him to the Republican party boss in the city, Billy Meehan, but Rendell declined, explaining that he was a Democrat. Remarkably, after working together for almost eight years, Specter did not know Rendell was a Democrat. That was of no consequence in the Specter-run District Attorney's Office, and it certainly did not interfere with their warm relationship and collaboration in Pennsylvania politics in the years that followed.

Specter's years as District Attorney gave him a unique understanding of drugs and addiction. While in that office, he was instrumental in establishing Gaudenzia House, one of the first residential drug treatment programs in Philadelphia. He was also one of the first prosecutors to focus on prevention of drug and alcohol abuse and the need for early intervention.

In 1967, Specter was asked to run for Mayor of Philadelphia against long-time politician, James Tate. Specter ran a superb campaign, structured in large part on his "Blueprints for a Better Philadelphia." The Blueprints covered all aspects of city government; many are still relevant today. Based largely on Specter's refusal to support a State House Bill providing aid to parochial schools or to state that, if elected, he would retain Frank Rizzo as Police Commissioner, he lost the election by a mere 11,000 votes and returned to his position as District Attorney.

After serving as District Attorney for two terms, Specter went back to Dechert in 1974. In 1976, he ran unsuccessfully in the Republican primary for the United States Senate against John Heinz. Then, in 1978, he lost a Republican primary battle for Governor to Richard Thornburgh. Undeterred, Specter ran for the Senate in 1980 and won.

Specter assumed his Senate seat in January of 1981 and served in that office for thirty years. He quickly distinguished himself and was named Chairman of the Select Committee on Intelligence (1995–1996), Chairman of the Veterans' Affairs Committee (1997–2001, and 2003–2005), Chairman of the Appropriations Subcommittee on Labor, Health and Human Services, and Education (1995–2001, and 2003–2007), and Chairman of the Judiciary Committee (2005–2007). In the Senate, he was long recognized as

its sharpest legal mind. He was also known as a Republican moderate, which he bemoaned was a vanishing breed.

Senator Specter was a member of the Senate Judiciary Committee from the time of his arrival in the Senate. In that capacity, he is probably best known for the major role he played in the confirmation hearings of Chief Justices Rehnquist and Roberts and Associate Justices O'Connor, Scalia, Kennedy, Souter, Thomas, Ginsburg, Breyer, Alito, Sotomayor, and Kagan, as well as the rejection of Judge Bork's nomination to the Court. But he accomplished much more. He worked across the aisle to reauthorize key provisions of the USA PATRIOT Act, an important tool in the war on terror. He also authored legislation to help consumers protect themselves in the face of recurrent data-security breaches across the country.

Specter's philosophy in addressing issues presented to the Judiciary Committee was shaped by his experience as a prosecutor. He believed in significant penalties for serious crimes in order to balance two of the more important goals of the criminal justice system—punishment and deterrence. He was the author of the 1984 Armed Career Criminal Act, which has been praised for requiring long prison terms for repeat offenders found carrying a firearm. He was also the author of the Terrorist Prosecution Act, which authorized criminal actions in United States Courts for assaulting or murdering United States citizens anywhere in the world.

We did not always agree when it came to his legal philosophy. One example of our disagreement involves the Supreme Court's decision in *City of Boerne v. Flores*, 521 U.S. 507 (1997). In that case, the Supreme Court ruled unconstitutional the Religious Freedom Restoration Act. In doing so the Court held that where Congress exercises its enforcement powers under § 5 of the Fourteenth Amendment, "[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.* at 520. Senator Specter read that opinion as soon as it was issued, and was in sharp disagreement with both the result and the Supreme Court's fact-finding based on the "congruent and proportional" test. He called me as soon as he got to that point in the opinion. I was in my car and I can recall spending the next fifteen minutes (until I got to the Court-house) trying to defend the adoption of that test and what he referred to as improper judicial fact-finding (after explaining that the *City of Boerne* opinion was so new—only a few hours old—that I had not yet read it).

This was not the first time (or the last time) Specter disagreed with the Supreme Court. Although Specter was used to questioning Supreme Court Justices—having participated in the confirmation hearings of every member of the current Court—once, the tables were turned. On that occasion, instead of sitting above the soon-to-be justices asking questions, Specter

fielded questions from the justices as they looked down from their bench. While a senator, Specter argued before the Court in *Dalton v. Specter*. It is no coincidence that the case bears the senator's name. Representing himself, Specter sued Secretary of the Navy John Dalton over the closing of the Philadelphia Naval Shipyard.

Specter passionately argued his case, trying to convince the Court that the judiciary could review Congress' decision to close the base, a decision he believed stemmed from improper and unfair procedures. At one point in the argument, Chief Justice Rehnquist pushed Specter on an analogy he made to a prior Supreme Court case. Specter pushed back: "Chief Justice Rehnquist, I respectfully disagree with you categorically." The Chief ended up having the last word, literally. The instant Specter's time ended, Rehnquist interrupted Specter mid-sentence with a wry, "Thank you Senator Specter. Your time has expired." Specter always thought that Rehnquist had been looking for an opportunity to cut off a lawyer in the middle of the word "if." If true, Rehnquist missed his mark; he got Specter on "congressional." When asked at a press conference about how it felt to be before the Court, Specter said, "It felt good, thirty fastest minutes in town." His wife Joan's thoughts: He shouldn't have raised his voice to the Chief Justice.

In 2009, Specter introduced a bill to require the televising of Supreme Court proceedings. At that time he explained, "The Supreme Court makes pronouncements on constitutional and federal law that have direct impact on the rights of Americans. Those rights would be substantially enhanced by televising the oral arguments of the Court so that the public can see and hear the issues presented." The Supreme Court strongly opposed televising its proceedings, and was successful in blocking a vote on the bill. Specter left the Senate frustrated that he was unable to get a vote on his longtime effort to televise Supreme Court proceedings.

As a member of the Judiciary Committee, Senator Specter gave high priority to judicial appointments. He convened bipartisan nominating commissions to interview, and then to recommend, individuals who were qualified to serve as District Court judges, a model widely replicated by senators from other states. He was also remarkably successful in securing prompt presidential nominations, and Senate confirmation of the men and women he recommended for appointment to the federal judiciary. His success in obtaining confirmations of so many Article III Judges was unique in the nation. That leadership is strikingly missing in today's Senate, resulting in many judicial vacancies throughout the country.

Specter's distinguished legislative record went far beyond his interest in the Judiciary Committee. His service on the Appropriations Committee and its Subcommittee on Labor, Health and Human Services, and

Education was particularly noteworthy for his successful efforts to increase funding for the National Institutes of Health (NIH), the Centers for Disease Control, educational programs like Head Start, PELL Grants, and GEAR-UP, and worker safety programs. Under his leadership, funding for education increased by 130%, and NIH funding increased from \$3.6 billion in 1980 to \$41 billion in 2010. Such funding enabled NIH to make major advances in research into cures for cancer, Parkinson's disease, heart disease, and treatment to delay the onset of Alzheimer's disease. Specter also strongly supported stem cell research into possible cures for those diseases. He considered these issues to be his lasting legacy.

Strengthening our nation's security was long one of Specter's priorities. Shortly after the terrorist attacks of September 11, 2001, he drafted legislation creating the Department of Homeland Security. While serving as Chair of the Select Committee on Intelligence, he authored the Bill creating the Office of Inspector General of the Central Intelligence Agency, which led to reforms in that agency.

As a member of the Senate Veterans' Affairs Committee, and its chair from 1997 to 2001, and again from 2003 to 2005, Specter continued his strong advocacy for veterans, a passion stemming from his father's experience as a wounded veteran of World War I. He pushed for just treatment and increased benefits for veterans. To that end, working with the Secretary of Veterans' Affairs, he oversaw the opening of four new veteran outpatient clinics in Pennsylvania and the creation of a new veterans' cemetery in southeastern Pennsylvania. Specter also led an investigation of the so-called "Gulf War Illness," which many American servicemen suffered from after being exposed to chemical weapons during the Gulf War.

As a member of the Senate Special Committee on Aging, Specter demonstrated his concern for the day-to-day needs of elderly people. He also addressed the needs of children and youth. In 1984, he and former Senator Christopher Dodd formed a bipartisan United States Senate Children's Caucus that held hearings on a variety of issues in a number of cities, resulting in the introduction of legislation and the adoption of standards affecting children nationwide. One such hearing at a youth detention center in Pittsburgh, Pennsylvania, led to the creation of national standards for youth detention facilities. A hearing in the Capitol focused on the need for "school based health clinics." Such clinics have since been implemented in schools across the country.

On January 10, 2010, Specter cast his 10,000th vote. That was a remarkable achievement, duly recognized and celebrated by his Democratic and Republican colleagues. When asked about the most significant of his 10,000 votes, Specter pointed to his vote in favor of the American Recovery and

Reinvestment Act of 2009—the stimulus package. Joined by only two other Republicans, he crossed party lines to cast his vote in favor of that recovery act. Nearly all economists agree that the stimulus package saved the economy from sliding into what could have been a major depression. That vote, and the ensuing backlash from local and national Republicans, were among the major factors that led Specter to rejoin the Democratic party in 2009, and ultimately resulted in the loss of his Senate seat.

While doing all this, Specter authored three books: his autobiography, *Passion for Truth: From Finding JFKs Single Bullet to Questioning Anita Hill to Impeaching Clinton*; *Never Give In: Battling Cancer in the Senate*, detailing his courageous fight against cancer and how he continued to work and play squash while undergoing chemotherapy; and, most recently, *Life Among the Cannibals: A Political Career, A Tea Party Uprising, and the End of Governing as We Know It*, a significant work on the demise of bipartisanship during Specter's thirty years in the Senate, a must-read for students of political science.

Specter will be remembered for his bipartisanship. In his final speech in the Senate, Specter said: "Collegiality can obviously not be maintained when negotiating with someone out to defeat you, especially in your own party. In some quarters compromising has become a dirty word . . . Politics is no longer the art of the possible when senators are intransigent in their positions."

Specter loved the Philadelphia Phillies and the Philadelphia Eagles. Indeed, he was planning to watch the Eagles take on the Detroit Lions on the day of his passing. He was an avid sports fan and loved to call WIP Sports Talk Radio during the football season. In a profile released by his office in 2010, he was reported as initiating those calls with "Yo, it's Arlen from East Falls."

But he was much more than an observer of sports; he was an active participant. He played squash almost every day for more than forty years, and when he was not playing squash, he was working out at his fitness center. He credits squash with prolonging his life. He was reported as saying "each time I go to the squash court, I consider it a trip to the health bank. I've made extensive deposits, and I've also made some very big withdrawals." In speaking about withdrawals he was, of course, referring to his successful battles with Hodgkin's disease in 2005 and 2008, a brain tumor, and coronary artery bypass surgery.

There is a little known fact about Specter that practically dominated his life after he left the Senate. He began a new career as a stand-up comic, and he was truly funny. He was so funny that he was offered and accepted gigs at comedy clubs in Philadelphia, New York, and other venues. He was telling jokes when I last saw him shortly before he died.

In 2008, Specter was asked what he thought he had done that amounted to something. His response: “I have given Pennsylvanians, I think, a sense of connection to Washington. I visit [all sixty-seven counties every year]. When I go to a county, I send out a notice; come to the firehouse—you don’t have to buy a ticket. It’s not a fundraiser!” In that year he had 19 town meetings in which, after a short statement, he asked for questions and stayed until he had answered all of them.

Specter went on to say that “another thing I have done is contribute to real dialogue on Constitutional law. What the Constitution means.” In making that statement Specter was referring to Judiciary Committee confirmation hearings for appointments to the Supreme Court, in particular, the confirmation hearings for Chief Justice John Roberts, Justice Clarence Thomas, Justice Samuel Alito, and the failed nomination of Judge Robert Bork. Specter’s role in the confirmation of Supreme Court Justices was often not without controversy—remember his questioning of Anita Hill! He said and wrote a good deal on the Senate’s role in the confirmation process and on the separation of powers. He was particularly concerned with what he described as a shift in power from the legislative branch to the judicial and executive branches.

In 2011, he began teaching a course at the University of Pennsylvania Law School on the relationship between Congress and the Supreme Court. That course focused on separation of powers and the confirmation process.

He continued to teach that class in 2012, and that is where I will end this Memoriam. As sick as he was in early October, he told his wife Joan that he wanted to teach that class at Penn Law on the confirmation process one more time. And he did! Sadly for his students, and for the rest of us, it was for the last time.

That is just a final example of the way Specter approached everything in life—with intensity, determination and grit. His son, Shanin, described his father’s approach to life in one word: “will.” That is what drove Specter—that will drove him to all that he accomplished in his distinguished career, and it was that will that kept him going strong until October 14, 2012.

On that day, America lost one of its greatest and most dedicated public servants—and I lost my dear friend of over 60 years.

Arlen Specter will be missed by his dear wife Joan, his sons, Shanin and Steven, his four lovely granddaughters, and all of the others who loved and admired him. But he left quite a legacy. That legacy will most certainly help fill the void created by his passing.

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