

NOMINATIONS OF JOAN ZELDES BERNSTEIN AND N. JEROLD COHEN

HEARING BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE NINETY-SIXTH CONGRESS

FIRST SESSION

ON

THE NOMINATIONS OF

JOAN ZELDES BERNSTEIN TO BE GENERAL COUNSEL OF THE
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE AND
N. JEROLD COHEN TO BE ASSISTANT GENERAL COUNSEL IN
THE DEPARTMENT OF THE TREASURY (CHIEF COUNSEL FOR
THE INTERNAL REVENUE SERVICE)

NOVEMBER 6, 1979

Printed for the use of the Committee on Finance



U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1979

54-908

HG 96-50

BEST AVAILABLE COPY

5361-14

COMMITTEE ON FINANCE

RUSSELL B. LONG, Louisiana, Chairman

HERMAN E. TALMADGE, Georgia

ABRAHAM RIBICOFF, Connecticut

HARRY F. BYRD, Jr., Virginia

GAYLORD NELSON, Wisconsin

MIKE GRAVEL, Alaska

LLOYD BENTSEN, Texas

SPARK M. MATSUNAGA, Hawaii

DANIEL PATRICK MOYNIHAN, New York

MAX BAUCUS, Montana

DAVID L. BOREN, Oklahoma

BILL BRADLEY, New Jersey

ROBERT DOLE, Kansas

BOB PACKWOOD, Oregon

WILLIAM V. ROTH, Jr., Delaware

JOHN C. DANFORTH, Missouri

JOHN H. CHAFEE, Rhode Island

JOHN HEINZ, Pennsylvania

MALCOLM WALLOP, Wyoming

DAVID DURENBERGER, Minnesota

MICHAEL STEEN, Staff Director

ROBERT E. LIGHTNER, Chief Minority Counsel

(II)

BEST COPY AVAILABLE

705-83

CONTENTS

NOMINEES

	Page
Joan Zeldes Bernstein.....	2
N. Jerold Cohen.....	4

ADDITIONAL INFORMATION

Biographical Data of Joan Zeldes Bernstein.....	1
Résumé of N. Jerold Cohen.....	3

(III)

**NOMINATIONS OF JOAN ZELDES BERNSTEIN TO BE
GENERAL COUNSEL OF THE DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE AND N. JER-
OLD COHEN TO BE ASSISTANT GENERAL COUNSEL
IN THE DEPARTMENT OF THE TREASURY (CHIEF
COUNSEL FOR THE INTERNAL REVENUE SERVICE)**

TUESDAY, NOVEMBER 6, 1979

**U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.**

The committee met, pursuant to notice, at 10:25 a.m. in room 2221, Dirksen Senate Office Building, Hon. Russell B. Long (chairman of the committee) presiding.

Present: Senators Long, Talmadge, Baucus, and Danforth.

The CHAIRMAN. Let me call first for Ms. Joan Zeldes Bernstein.

Is Ms. Bernstein here?

Ms. BERNSTEIN. Yes, sir.

The CHAIRMAN. Ms. Bernstein, you have been nominated for General Counsel, Department of Health, Education, and Welfare. Could you tell us a little bit about your background?

[The biographical data of Joan Zeldes Bernstein follows:]

JOAN ZELDES BERNSTEIN

October 1979—General Counsel, designate, Department of Health, Education, and Welfare.

Upon confirmation, would serve as principal legal adviser to the Secretary, Under Secretary, and principal operating components of the Department.

July 1977 to October 1979—General Counsel, U.S. Environmental Protection Agency.

Served as principal legal adviser to the Administrator, Deputy Administrator, and Assistant Administrators. Counseled the Administrator in formulation of policy and policy choices involved in administration of major statutes. Because of personal interest and experience in regulatory reform, was assigned unusual program responsibility for procedural reform; developing and implementing several major changes; i.e., a comprehensive revision of procedures governing issuance of water permits.

Appointed public council member of the Administrative Conference of the United States in September 1978, by President Carter.

Appointed to the Council of the Administrative Law Section, American Bar Association in 1978, and member of the Standing Committee on Environmental Law, ABA, in 1979.

June 1976 to July 1977—Baker, Hostetler, Frost, & Towers, Washington, D.C. Through June 1977, was partner in national law firm engaged in representing corporate clients in antitrust and trade regulation matters.

October 1970 to June 1976—Federal Trade Commission, Bureau of Consumer Protection:

October 1970 to November 1971—trial attorney;

November 1971 to February 1973—assistant to the Director;

February 1973 to September 1973—Acting Director;

September 1973 to October 1975—Deputy Director; and

October 1975 to June 1976—Acting Director.

Reform efforts at FTC:

Established a formal mechanism to produce simple, easily understood regulations; developed systematic review of past actions, which, on one occasion, resulted in eliminating 700 pages in the Code of Federal Regulations.

Served as Chairman, Consumer Protection Committee, Antitrust Section, American Bar Association, from 1973 to 1977.

November 1968 to October 1970—William B. Wolf, Jr., law firm, Washington, D.C. Associate attorney in general civil practice of law, including real estate, domestic, etc.

November 1953 to November 1968—Housewife and mother. During this period, was active in local civic volunteer organizations, such as PTA, League of Women Voters, Democratic Party.

November 1952 to November 1953—Dallstream, Schiff, Waite & Hardin (now: Schiff, Hardin & Waite), Chicago, Ill. Associate attorney.

August 1951 to August 1952—Shearman & Sterling, New York. Associate attorney.

1948-51—Yale Law School. Received LL.B. in 1951. Member, Board of Editors of Yale Law School; Phi Kappa Phi.

1944-48—University of Wisconsin. Received B.A. in economics, in 1948. Received Outstanding Senior Woman Annual Alumni Award.

Personal background—Married to Dr. Lionel M. Bernstein. Three children: Alec, Susan and Molly. Born and lived in Galesburg, Ill., and attended public schools there.

STATEMENT OF JOAN ZELDES BERNSTEIN

Ms. BERNSTEIN. Yes, Senator.

I have most recently been the General Counsel of the Environmental Protection Agency. Before that, I was in private practice recently in Washington, preceded immediately by about 7 years of service at the Federal Trade Commission.

I am working backward.

I had taken about 10 years out of my professional life to raise three children. I practiced law privately before that.

I was a graduate of Yale Law School in 1951.

The CHAIRMAN. I take it you have cleared with staff any potential conflict of interest in this job?

Ms. BERNSTEIN. Yes, sir.

The CHAIRMAN. Are there any questions?

Senator TALMADGE. Thank you, Mr. Chairman.

Ms. Bernstein did me the honor to come by and visit. I appreciate it very much.

She seems to be eminently qualified professionally for this job.

Ms. Bernstein, Federal regulations are driving everybody in the country crazy and adding to the cost of business in this country which, ultimately, falls on the consumers, of \$100 billion or more annually.

What do you intend to do about eliminating every Federal regulation you can and writing them in simple English so everybody can understand them?

Ms. BERNSTEIN. Senator, I have an existing unit in my office, which is the Office of General Counsel, charged with that responsibility alone. It was set up by the Secretary.

I was asked to continue to head that unit. I take that charge very seriously. We are in the process of reviewing all existing regulations in the Department toward sunseting, eliminating those that either are anachronisms or could be simplified.

We will continue to do that.

I am now recruiting for another person to head that unit. I take it very seriously and intend to do a good deal about it.

Senator TALMADGE. I compliment you and I hope your zeal will spread throughout Government.

Ms. BERNSTEIN. Thank you.

The CHAIRMAN. Have you found any of those regulations that you can recommend dispensing with, as of now?

Ms. BERNSTEIN. I do not know that I could identify any today because I have really not had an opportunity to look at them closely myself. The process is there and ongoing.

As soon as I get down there, I intend to do that.

The CHAIRMAN. I think that if you or whoever is reviewing those regulations would just proceed under the assumption that whoever is running these programs necessarily have a little commonsense or, in the absence of it, they should be moved out and replaced by somebody who does, you would find that about two-thirds of those regulations are not necessary.

If you proceed on that assumption, I would think that a good deal of headway could be made.

Ms. BERNSTEIN. I agree with you, Senator.

The CHAIRMAN. Are there any further questions?

Thank you very much, Ms. Bernstein.

Ms. BERNSTEIN. Thank you.

The CHAIRMAN. Next we will call Mr. N. Jerold Cohen. We will place in the record a résumé of Mr. Cohen's activities.

[The biographical data of N. Jerold Cohen follows:]

RÉSUMÉ OF N. JEROLD COHEN

PRIVATE PRACTICE OF TAX LAW

1968 to present—Partner in the firm of Sutherland, Asbill & Brennan, Atlanta, Ga. and Washington, D.C. Began practicing law with the firm 1965.

1961 to 1965—Practiced with the firm of Cleary, Gottlieb, Steen & Hamilton of New York City.

BAR AND PROFESSIONAL ACTIVITIES

Member of the Georgia, New York, and District of Columbia bars and the Georgia, Atlanta, and American Bar Associations.

Chairman, Corporate Stockholder Relationships Committee, Section of Taxation, American Bar Association.

Member of Tax Section's Liaison Committee for the American Law Institute's subchapter C project.

Vice chairman, Committee on Taxation, Section of Individual Rights and Human Responsibilities, American Bar Association.

Adjunct professor, Emory University School of Law, from 1967-76.

CIVIC ACTIVITIES

Chairman of Atlanta Community Relations Commission (appointed by Mayor to chair commission which deals with racial and other community problems).

Member of Board of Directors of the American Civil Liberties Union of Georgia (former president) and former member of National Board of Directors of ACLU.

Member of the Executive Committee of the Atlanta Lawyer's Committee for Civil Rights Under the Law.

Member of the Board of Directors of the Georgia Indigent Legal Services Program (State-wide legal aid program).

EDUCATION

Harvard Law School (LL.B., magna cum laude, 1961), book review editor of the Harvard Law Review.

Tulane University (BB.A., 1957). Editor of the Yearbook; member of a number of honorary societies, including Beta Gamma Sigma, Phi Eta Sigma, Kappa Delta Phi, ODK, and Who's Who in American Colleges and Universities.

PERSONAL

Born in 1935 in Pine Bluff Ark. Divorced. Three children, ages 14, 11, and 9.

LECTURES AND ARTICLES

New York University 31st and 36th Institutes on Federal Taxation ("The E and F Reorganizations") ("The New F Reorganization").

University of Miami 1978 Tax Conference ("The E Reorganization", "Problems of Related Corporations").

Thirtieth Annual Virginia Conference on Federal Taxation ("The E and F Reorganization").

University of Alabama Annual Federal Tax Clinic ("Section 351 Transfers").

University of Tennessee Tax Conference ("Administration and Procedural Problems in Representing Taxpayers").

Southern Federal Tax Institute 1978 and 1979 ("Commonly Controlled Corporations"; "Corporate Liquidation").

Georgia State Bar ("Depreciation Recapture").

Arkansas State Bar ("Tax Aspects of Acquisitions and Dispositions of Businesses").

New Hampshire State Bar Institute ("Tax Reform Act of 1976").

American Law Institute—American Bar Association Institutes at University Wisconsin, Villanova University, Notre Dame University, Stanford University ("Advanced Corporate Tax Planning").

Practicing Law Institute Programs ("Corporate Acquisitions") ("Tax, SEC and Accounting Aspects of Corporate Acquisitions").

Georgia continuing legal education programs ("Corporate Tax Portion of Bridge-the-Gap").

Atlanta Estate Planning Council ("Limit on Tax Preferences Allocation of Deductions, Limitation on Deduction of Interest").

Associated regional accounting firms ("Tax Problems Involving Related Corporations") ("Tax Reform Act of 1976").

Emory University and Georgia Society of Certified Public Accounts ("Tax Reform Act of 1976").

Georgia Fiduciary Law Seminar ("The Use of Recapitalizations in Estate Planning").

Atlanta Tax Forum ("The F Reorganization").

Contributor to Journal of Taxation; articles in N.Y.U. 31st and 36th Federal Institutes; chapter in Practicing Law Institute Book "Tax, SEC and Accounting Aspects of Corporate Reorganizations" (1977).

The CHAIRMAN. You are nominated, Mr. Cohen, to be General Counsel of the Internal Revenue Service?

STATEMENT OF N. JEROLD COHEN

Mr. COHEN. Yes, sir.

The CHAIRMAN. Have you cleared with our staff, and with the administration, any potential conflicts of interest?

Mr. COHEN. I have.

The CHAIRMAN. Insofar as you know, you have none, I take it?

Mr. COHEN. I have none.

The CHAIRMAN. I see.

I see from your résumé here that you have practiced tax law from 1968 to present with the firm of Sutherland, Asbill, & Brennan, of Georgia and the District of Columbia. From 1961 to 1965, you practiced with the firm of Cleary, Gottlieb, Steen & Hamilton, in New York City.

The Sutherland firm is a well-known and respected firm. I assume that they feel that you are qualified for the job?

Mr. COHEN. They felt me qualified to have me as a partner. I suppose that they feel that I am qualified to advise on tax matters.

The CHAIRMAN. Senator Talmadge?

Senator TALMADGE. Thank you, Mr. Chairman.

Mr. Cohen is a citizen in my State. He is qualified by both training and experience to hold this job. As you pointed out, he would not be in Bill Sutherland's firm unless he were qualified.

I wholeheartedly recommend his confirmation.

The CHAIRMAN. Thank you very much. We will excuse you, Mr. Cohen.

Mr. COHEN. Thank you, sir.

The CHAIRMAN. If the Republican Party is going to be a part of the Senate, they ought to find a way to get somebody to appear at committee meetings.

What is the latest return?

Mr. STERN. Senator Danforth is in the back room, Mr. Chairman. Senator Roth is on his way. [Pause.]

Senator Danforth is here now, Mr. Chairman.

The CHAIRMAN. We are trying to find some representation of the Republican Party, Senator Danforth.

Senator DANFORTH. I am here.

The CHAIRMAN. We hope the Republican Party has not expired, and that it is still represented here in the Senate. We are pleased to have you here.

Is there any discussion of these nominees?

Senator TALMADGE. I move they be confirmed.

The CHAIRMAN. All in favor, say aye?

[A chorus of ayes.]

The CHAIRMAN. Opposed, no?

[No response.]

The CHAIRMAN. We recommend that these nominees be confirmed. [Thereupon, at 10:30 a.m. the committee proceeded to other business.]