

*Geoffrey R. Stone*†

In a radio address to America in 1931, George Bernard Shaw startled his audience with the following proposition: “Every person who owes his life to civilized society, and who has enjoyed . . . its very costly protections and advantages, should appear at reasonable intervals before a properly qualified jury to justify his existence,” which, Shaw added, should be “summarily and painlessly terminated if he fails to justify it.”

Now, I do not advocate such a program. But I do believe that every one of us who enjoys the hardbought protections and advantages of our system of self-governance has a responsibility to justify his or her existence under it.

Abner J. Mikva passed this test with flying colors.

Ab Mikva grew up in Milwaukee during the Depression. After serving as a navigator in World War II, he attended college and then entered The University of Chicago as a law student in 1948. In his application for admission to the Law School, Ab declared: “I am fired up with an ambition and a desire to do well in a field of endeavor in which I can apply my reasoning powers as well as the formal education I have acquired. The logical answer is law.” Ab emphasized, however, that although “my plans for applying the training of law are not yet crystallized, I have a desire to enter public service.”

Inspired by the idealism of Democratic reform candidates Adlai Stevenson and Paul Douglas, who were running for governor and senator, respectively, in Illinois in 1948, Ab, a first-year law student, decided to volunteer to do some election work in Chicago’s Eighth Ward. This led to an exchange with a ward committeeman that demonstrated the conflicting worlds of an entrenched political organization and an idealistic young liberal.

“Who sent you?” asked the committeeman.

“Nobody.”

“We don’t want nobody nobody sent. We ain’t got no jobs.”

“I don’t want a job,” said Ab.

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“We don’t want *nobody* that don’t want a job. Where are you from anyway?”

“University of Chicago.”

“We don’t want *nobody* from The University of Chicago in *this* organization.”

Returning to the rather more secure confines of his legal education, Ab excelled and, indeed, served as editor-in-chief of *The University of Chicago Law Review*. In this capacity, Ab wrote a truly memorable letter.

In 1950, the editor-in-chief of the *Harvard Law Review* wrote a letter to the deans of all law schools that did not then have a law review of their own, offering to sell subscriptions to the *Harvard Law Review* to the deprived students of such schools at a discount. Although The University of Chicago Law School had, in fact, published its own law review for some eighteen years, its existence apparently had escaped the attention of the students at Harvard Law School. When Dean Edward Levi received the invitation from the editors of the *Harvard Law Review*, he passed it on to the then-editor-in-chief, Ab Mikva.

In his letter responding to the invitation, Ab expressed his appreciation for the *Harvard Law Review*’s generosity, but pointed out that The University of Chicago did, indeed, have a law review of its own. He suggested, however, that the editors of the *Harvard Law Review* might be interested in a merger of their two institutions. Noting that there might be some disagreement over the name of the new journal, Ab, demonstrating his emerging political skills, suggested a compromise. “I suggest,” he wrote, that “we adopt the first half of our name and the second half of yours. The new journal would then sensibly be known as the *University of Chicago Law Review*.”

After graduating from law school in 1951, Ab served as a law clerk to Justice Sherman Minton of the United States Supreme Court. He then returned to Chicago to practice law, but as indicated in his law school application, his ultimate goal was public service.

Thus, over the next twenty-five years, Ab battled the Chicago Democratic organization as a state representative, a congressman, and a private citizen, always fighting with boldness and tenacity. Early in his law practice, for example, Ab represented Times Film in a suit against the Chicago Police Movie Review Board. Chicago was then one of the few cities where every movie that opened had to be screened by a movie review board, which,

in Chicago's case, was made up of the widows of policemen. As one might expect, there were *many* movies the widows did not like. Ab took the case all the way to the United States Supreme Court. Although the Court declined to hold the ordinance invalid on its face, four justices concluded that it violated the First Amendment,<sup>1</sup> and in time the widows' review board simply dribbled out of existence.

In 1956, Ab became the first liberal independent to wrest a seat in the Illinois House from the Chicago Democratic machine. In that role, Ab, along with then-Representative Paul Simon, fought vigorously for fair housing and against government corruption, earning him the enmity of Mayor Richard J. Daley. After ten years in the Illinois legislature, Ab was elected to the United States Congress from Illinois's Second District, in Chicago. Two years later, Daley, who, by the way, insisted on always referring to Ab as "*that* Mr. Mifka," redrew the district lines so as to eliminate Ab's district. This, I assure you, was no accident. Undeterred, Ab promptly moved to the North Shore, where he won several more terms in the United States House of Representatives.

In 1979, President Jimmy Carter appointed Ab to the United States Court of Appeals for the District of Columbia Circuit, where he distinguished himself as one of the most prominent jurists in the nation and, in so doing, remained true to the vision he had first brought to his legal education thirty years earlier.

I recently read through all of Judge Mikva's opinions dealing with the freedom of speech and press, my own area of special affection. Not surprisingly, these opinions lay bare a keen analytical mind, a ferocious commitment to individual freedom, a deep respect for precedent, and a passion for clear, straightforward, and honest exposition. In many of these decisions, Judge Mikva boldly protected core First Amendment rights in complex and often controversial settings.

In *Action for Children's Television v FCC*,<sup>2</sup> for example, he invalidated an order of the FCC that barred all radio and television broadcasts of "indecent" material; in *Community for Creative Non-violence v Turner*,<sup>3</sup> a case reminiscent of *Times Film Corp v City of Chicago*,<sup>4</sup> Judge Mikva held unconstitutional a regulation of the Washington Metropolitan Area Transit Authority requiring all persons seeking to engage in free speech activity on Transit

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<sup>1</sup> See generally *Times Film Corp v City of Chicago*, 365 US 43 (1961).

<sup>2</sup> 932 F2d 1504 (DC Cir 1991).

<sup>3</sup> 893 F2d 1387 (DC Cir 1990).

<sup>4</sup> 365 US 43 (1961).

Authority property to first obtain a permit; and in *Big Mama Rag, Inc v United States*,<sup>5</sup> Judge Mikva invalidated as unconstitutionally vague a Treasury Department regulation that resulted in the denial of tax-exempt status to a feminist-oriented educational organization. In each of these, and many other decisions, Judge Mikva added significantly to our unique constitutional commitment to a robust and wide-open public debate and discourse. I might add that I was also pleased to note that in several of these opinions he was kind enough to cite my own work—and not *once* as a “but see.”

After fifteen years on the bench, Ab Mikva was appointed White House counsel by President Bill Clinton. Thus, in a career spanning more than half a century, Judge Mikva served at both the state and federal levels, and in all three branches of the federal government. He also found time to be a distinguished private lawyer with a particular bent for public issue litigation, a lecturer, an educator, and even a scholar.

After leaving the White House, Professor Mikva returned to his alma mater and, as a member of the faculty of The University of Chicago Law School, taught courses and seminars on “The Legislative Process,” learning experiences that were consistently described by his students as, and I quote from student course evaluations, “brilliant,” “insightful,” “enriching,” and “inspiring.”

In more recent years, Ab served as senior director of The University of Chicago’s Mandel Legal Aid Clinic; in 2004, he served as an international election monitor of Ukraine’s contested presidential election; in 2006, he was named chair of the Illinois Human Rights Commission; and in 2009, Ab was asked by Governor Pat Quinn to help straighten out the University of Illinois’s admissions scandal. Like the Energizer Bunny, Ab just kept on ticking.

As icing on the cake, in 1997 Ab and his incredible wife Zoe established the Mikva Challenge, a civil leadership program for Chicago youth that serves more than five thousand Chicago youths each year by getting them involved in the democratic process and by creating civic activism projects that enable them to work to improve their schools and local communities.

Through it all, Ab has brought a rare intelligence, wisdom, integrity, decency, and generosity of spirit to all he has done and to all the many lives he has touched. He is, indeed, the exemplar

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<sup>5</sup> 631 F2d 1030 (DC Cir 1980).

of the *public* citizen. Ab Mikva would have made even George Bernard Shaw smile.