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IN MEMORIAM: ABNER J. MIKVA (1926–2016)

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I first met Abner Mikva in May 1970, when he was a forty-four-year-old freshman congressman representing Hyde Park, Woodlawn, and South Shore. President Richard Nixon had just announced the invasion of Cambodia, and campuses all over the country were in an uproar, including Kent State University, where the National Guard shot and killed four students during a protest.

Along with Geof Stone, I was part of a four-student delegation from the Law School that drove to Washington to participate in the law student lobby against the war in Vietnam. We spent several days visiting offices of Illinois congressmen and senators, urging them to oppose the war. Our base of operations was in Congressman Mikva's office. He and Congressman Sid Yates were the only members of the congressional delegation who had spoken out against the war, and he was generous in giving advice to four law students whose passion far exceeded our judgment when it came to knowing how to get through to the mostly conventional old white men who populated the Illinois delegation.

Over the next forty-five years I watched Ab Mikva give generously of his time to literally thousands of passionate, naïve young people like Geof and I were in 1970. It took me a long time to fully understand why he felt it was so important to do that. But more on that subject later.

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I had the good fortune to serve as Congressman Mikva's legislative assistant during his second term in 1971–1972. During those two years I was privileged to observe at close range, and to learn from, the qualities that made Ab Mikva such a respected and effective legislator (and later, judge).

First, he never confused the importance of his office with personal importance. Congress and the executive branch were full of powerful men whose belief in their own self-importance too often seemed to blind them to the interests they were supposed to be serving. Ab Mikva certainly understood that he had an important job—to do what he could to make sure that life, liberty, and the pursuit of happiness were guaranteed equally to all Americans, especially those whose race and gender had precluded them from enjoying full equality when the Constitution was first written and adopted by the white males who governed the country at that time. But he never thought that having an important job with important responsibilities made him any better or more important than his constituents or his staff or anyone else. He was open and accessible, and utterly without pretense.

During my first month working on Capitol Hill, I was awed by the place and the people around me. I felt every bit the neophyte, and lived in fear of blundering in some way that would make my cluelessness evident. That day wasn't long coming. Late one afternoon the congressman's chief of staff handed me a sheaf of papers and ordered me to deliver them to the congressman in the lobby of the House chamber at the Capitol immediately—"And don't get them wet, take the underground tunnel."

For weeks I had avoided the Byzantine maze of underground tunnels that connected the House office buildings to the Capitol, convinced I would get hopelessly lost. But I didn't dare go outside. It was pouring cats and dogs, with a driving wind. The only way to keep the papers dry was to brave the tunnels. Of course I got lost and felt like a complete idiot when I had to ask someone for directions to the Capitol.

After I delivered the papers I turned to leave, but the congressman told me to wait. He reviewed the material and ducked out of the corridor into the House chamber for a few minutes. When he returned, he said, "I figured that would do the job. Come on, let's go back to the office. Is it still pouring out there?" When I told him it was, he said we should take the underground tunnel.

I didn't pay close attention, but it seemed like we were taking a different route than the one I had taken coming over to the Capitol. At some point he stopped, looked around, laughed aloud, and said, "This doesn't look right. I've been in this job for more than two years and I still get lost down here."

I breathed a huge sigh of relief. If Congressman Mikva hadn't mastered this maze after two years, how was I supposed to figure it out in my first month on the job? He had given me permission to learn by doing, to be unafraid of making the kinds of mistakes that are inevitable when you lack experience, and, most important of all, to be straightforward about acknowledging my mistakes (as he had been).

The second quality Abner Mikva exemplified was an abiding respect for the rule of law, and for the US Constitution. In his eyes no objective, however worthy, justified violating the constitutional constraints that bind the power of government.

One of my tasks was to sift through the pile of "Dear Colleague" letters that arrived every day from other members of Congress soliciting cosponsors for a bill. My job was to put each one in the YES, NO, or MAYBE pile. After nine months of doing this every day, I became confident in my ability to accurately sort the Dear Colleague letters. Very few went into the MAYBE pile anymore.

Late one afternoon I was summoned to the congressman's inner office. As I took a seat in the chair across the desk, I saw he was holding a Dear Colleague letter in his hand. He had a look of disappointment on his face that set my mind racing. What had I done? What had I missed?

It was a Dear Colleague letter from his friend, close ally, and University of Chicago Law School classmate, Patsy Mink, the progressive Democratic congresswoman from Hawaii. She had asked him to join her and other liberal Democratic members of Congress in filing an amicus brief with the Supreme Court in support of environmental organizations suing the Atomic Energy Commission to halt proposed underground testing of nuclear weapons on Amchitka Island in Alaska. I knew the congressman had cosponsored Congresswoman Mink's bill to prohibit such testing. It had seemed like an easy YES.

For the next ten minutes I was treated to a lecture on the importance of the separation of powers. What it amounted to was, "If Congress doesn't have the votes to prohibit the AEC from conducting nuclear tests on Amchitka Island, we have no business

asking another branch of government to do our job for us.” Never again did I lose sight of the fact that no matter how strongly Abner Mikva felt about the merits of a given issue, he felt more strongly about respecting the integrity of the boundaries imposed by the Constitution.

The third enduring lesson I learned during my two-year apprenticeship was the importance of civility, a trait sorely absent from today’s public discourse. One day I was frantically searching for the congressman. I needed to impart some facts to him, correcting information I had given him that morning which had turned out to be incomplete. His chief of staff kept trying to brush me off, but I ignored her signals and kept pestering her. Exasperated, she finally told me, “Well if you must know he’s in the gym playing racquetball with Dick Ichord, so you will just have to wait until he gets back.”

I was stunned. How could he be consorting with the enemy like that? Hadn’t I drafted passionate speeches for him, denouncing the House Un-American Activities Committee, which Congressman Ichord chaired, and calling for its abolition? Hadn’t he sponsored legislation to abolish the committee, and called upon his colleagues to cosponsor it? I was irate. I felt betrayed. And I guess I let it show.

When he returned to the office he met for a while with his chief of staff. Then he called me in and said he heard I needed to see him. I gave him the information I wanted him to have. Then he said he’d heard I was upset that he’d been playing racquetball with Dick Ichord. I expressed my confusion, saying that I thought Ichord was the enemy. He patiently explained that just because you disagree with someone, even strongly, it doesn’t mean you can’t maintain a respectful, even amicable, personal relationship. In fact, he went on, it’s difficult to accomplish anything in a legislature full of different people representing all the different points of view in a country as diverse as the United States, if you can’t find a way to build personal relationships with people you disagree with.

It’s a lesson a lot of lawyers never learn, often to the detriment of their clients.

Finally, I come back to the place where I began. For most of the forty years I knew and loved and admired Abner Mikva, it baffled me how he maintained his optimism about democratic self-government in general, and Congress in particular. My experience of both left me increasingly cynical and disillusioned.

It wasn't until the Mikva Challenge program expanded from Chicago to Washington, DC, two years ago, and I got involved in it personally, that I finally understood the secret to Ab's boundless optimism. He always surrounded himself with young people who were passionate and naïve enough to believe that they could change the world for the better. That was why he encouraged his staff not to stay on the Hill too long, but to go back where they came from and get involved in the life of the community, including political life. That was why he insisted on hosting legions of summer interns in his congressional office, even though it took the staff far more time to figure out what to do with them than it saved in terms of productive additional work being done. And that was why he said that the Mikva Challenge program gave him more pleasure than anything else he and his wife Zoe ever did (other than raising their children and grandchildren). He thrived on the energy and passion of the high school students who got turned on to the excitement and personal empowerment that comes from participating in the democratic process. He loved showing them how to channel their anger and frustration over injustice and governmental wrongheadedness into civic action that can lead to positive change. And it gave him hope for the future. Just as it gives me renewed hope when I volunteer to help out in classrooms in Washington, DC, where Mikva Challenge teachers are helping students develop skills in public speaking and issue analysis, so they can live the credo of the Mikva Challenge program, that "Democracy Is a Verb." It is something you *do*, not something you just read about in a book.

Abner Mikva exemplified that credo throughout his career in public service. The responsibility now falls to the rest of us to engage as many young people as we can in becoming active citizens, just as Ab engaged so many of us.

The only time I ever saw Ab's optimism waver was in the months before his death when he contemplated the current presidential primary election cycle and worried about the continuing polarization of the electorate. He was convinced that the best antidote is increased participation—that if 90 percent of America's eligible voters cast ballots in every election instead of fewer than 40 percent as in the 2014 midterm elections, government would look very different in terms of the kinds of people who run for office and the kinds of people who get elected. The impact of special interests, single-issue voting blocs, and super PACs would all diminish. He even suggested we ought to consider compulsory

voting laws, as in Australia, Belgium, and more than twenty other countries. (I'm not sure it was coincidental that President Barack Obama floated the same notion a month later in a speech in Cleveland.)

But that challenge will have to be left to the next generation. For ninety years Ab Mikva did more than his part to preserve, protect, and defend the Constitution and the best of American democratic self-government. May he rest in peace.