

*Elena Kagan*†

I owe Ab Mikva a lot. He gave me my first real job, which was clerking for him. He recommended me for my second job, clerking for Justice Thurgood Marshall. Then he helped me get my fourth job (as far as I know, he had nothing to do with my third); that was as a professor at The University of Chicago Law School, where Ab had gone and where he was always held in exceptionally high esteem. And finally, Ab gave me my fifth job, as an associate counsel to President Bill Clinton (although by the time I arrived at the White House, Ab was on the verge of leaving it). Ab Mikva, it's something of an understatement to say, had a ton to do with my career. I wouldn't be where I am now if not for him.

And I'm sure I'm not the only one in debt to Ab in that way. The Judge was a great boss (more on this soon); but he was an equally great ex-boss, generous far beyond the common measure. He was a counselor and a champion to his former clerks. When one of us called, he listened carefully and gave supremely wise advice; then he might call back the next day because he had thought of something to add—or, still more likely, he had thought of a way he could assist. Once, a few years after our clerkship, one of my coclerks asked to discuss a matter with him, and Ab took him to breakfast at the congressional dining room, which apparently the Judge still presided over as a kind of mayor. One poached egg (Ab's standard breakfast) later, my coclerk's problem was solved—and he had met what seemed like half of the House of Representatives.

Ab's tenure as a congressman had not a little to do with the kind of judge he was. I don't mean at all that he viewed the one job as the same as the other. Quite the opposite. I remember the first case I worked on for him concerned an administrative action that Ab pretty clearly would have voted to authorize in the role of congressman. But the law as it was didn't support what the agency had done, and I wrote an elaborate bench memo saying so—elaborate because I thought, at that early stage of the clerkship, that the Judge might need some convincing. Of course, the only thing the Judge thought was wrong with my memo was that

---

† Associate Justice, Supreme Court of the United States.

it went on for far too long; the Judge saw the case as easy, and made clear to me that the next time out, I didn't have to strain so hard. He well knew—and deeply respected—the difference between politics and law.

But he also understood the intersection between the two spheres—which is to say that his knowledge of government and policymaking made his legal work more grounded and, because more grounded, better. When I began to clerk for him, the use of legislative history as an aid to statutory interpretation was a hot topic, as to some extent it remains. More than any other judge I can think of, Ab could and did distinguish among different kinds of legislative history, and show why some were reliable and some weren't. In case after case, he demonstrated an intuitive feel for how Congress operated, and for how to read and understand its work product. And similarly, he had a pitch-perfect sense, derived from Congress's oversight duties, for what really happened in administrative agencies and what one could—and couldn't—reasonably expect from them. In short, his experience in Congress made him a model DC Circuit judge; he understood at a granular level, which most judges simply don't, all the diverse governmental actions it was his job to review.

For me, the other notable aspect of his work on the bench had much to do with his personality: he was a happy warrior, who loved the vim and vigor of debate among judges. At the time I clerked, the balance of the DC Circuit had tipped against Ab on many of the cases he cared most about. But the Judge wasn't one to mope or, still less, to give up. He played the part of the loyal opposition with gusto. He worked hard to engage his more conservative colleagues, principally with reasons and arguments but also with good fellowship and humor. And because of his never-say-die attitude and energy, he sometimes managed to achieve at least partial victories. When that wasn't the case, he could let it rip; what he called his perorations—which no clerk, in my year anyway, ever learned to imitate—could be pretty fierce. But once a dissent was done, the opinions in the books, he reengaged with his colleagues, showing the sincere respect he had for them—and for the judicial process itself—by trying, in yet another case, to persuade them.

So Judge Mikva taught me about law and judging; but he also taught me and all his clerks about how to live a good and honorable life, and about what it means to have a great and generous soul. He cared about the right things: his country, his city, his

colleagues and friends, and of course his family—Zoe and his daughters and grandchildren, of whom he was terrifically proud. He was idealistic always—not starry-eyed, but optimistic, with a deep faith in the governmental institutions he was part of and in the people they served. He had boundless personal warmth, a wonderful laugh, and a sense of sheer fun (I remember how he relished driving around in his convertible, which he referred to as his “toy”). He had a kind of radiant decency, which brought joy to everyone lucky enough to know him. How many judges are really lovable? How many are truly beloved? Abner Mikva, for one.