INTERVIEW NO. 2

This is the second interview of the Oral History of former Chief Judge Abner J. Mikva as part of the Oral History Project of the D.C. Circuit Historical Society. It is being held at his home, 442 New Jersey Avenue, S.E., Washington, D.C., on Tuesday, June 11, 1996. The tape and any transcripts made from the tape are confidential and governed by the wishes of the Judge which ultimately will be made in the form of a written donative instrument.

Mr. Pollak: Ab, is there anything that you would add to what we did last time, which was your forbearers, childhood, college, law school?

Judge Mikva: Well, I think the only thing I would add is that I had the good fortune of having a very good marriage. My wife and I were and have remained interested in the same things. She, as I indicated before, encouraged me to go to law school. We're both interested politically. Indeed, the first political job in the family was the one she had working for a congressional candidate on the south side of Chicago, who I don't think was successful; but she actually got me involved politically. She was working through the Steelworkers Union for a candidate. During my last year of law school, we survived on her salary of $50 a week as a paid secretary for the American Civil Liberties Union. So I had a scholarship to the University of Chicago from the ACLU that they didn't know about. Throughout our married life, she has been both supportive of and sensitive to the things I wanted to do, both politically and in the law. In the early years, she was home raising children; but then, as they got older, she went back to school and got her masters degree in teaching and became a school teacher for many years. I think that's a big part of what gave me both the stimulation and the freedom to do some of the things that I was able to do politically.

Mr. Pollak: What did you do in the summers of your law school years?

Judge Mikva: The first summer, we went out to California where my parents had moved.

We drove out in a car that we rented to deliver there, and then I drove a cab. My wife worked for an insurance company. The second summer I seem to remember we stayed in Chicago. Again, I was driving a cab, by that time in Chicago, fairly regularly. I think by that time I had gotten more of a full-time job as a cab driver. She was working on her thesis. They were, in neither instance, jobs involving the law. The idea of summer clerkships or internships just was not that widely known, besides which we needed the money.

Mr. Pollak: There weren't real paying jobs available in the law then?

Judge Mikva: Not really. If there were, I certainly didn't know about them. I don't think there were any.

Mr. Pollak: And your economics during your law school time were at the margin?

Judge Mikva: They sure were. We were living on a GI Bill that paid my tuition and my books. Tuition, I recall, was all of $600 a year; but the GI Bill paid it all and paid for all my books, and gave me a living allowance of $115 a month. Zoe's parents paid for her tuition and her books and we were able to get by with that $115 plus a little bit of supplementary.

Mr. Pollak: When did your first child arrive in relation to law school?

Judge Mikva: I was out of law school and had finished my clerkship. We had just come back to Chicago to start practicing, and Mary was born in January 1953, a little over a year out of law school.

Mr. Pollak: Am I right that upon leaving law school you undertook a clerkship with a Justice on the Supreme Court?

Judge Mikva: Yes. The University of Chicago had not had any Supreme Court clerkships for a long, long time. I might add that at that time most Supreme Court clerkships

were directly from law school. There were some who did a kind of apprenticeship through the Court of Appeals, but most Court of Appeals judges did not have more than one clerk, if that many. District judges didn't have any clerks. State court judges didn't have any clerks; or, if they did, they weren't very satisfactory. One of the part-time jobs I had while I was in my third year of law school was working for a state court appellate judge, Ulysses S. Schwartz, a very well known judge in Chicago, who paid me $5 an hour out of his own pocket because the clerk that was assigned to him was a patronage clerk who was pretty much a drunk and didn't get to work very often. U.S. paid me $5 an hour to do research for him and to help him do his opinions. It was fascinating work.

Mr. Pollak: But you were also editor-in-chief of the *Law Review*, weren't you, at the same time? How did you do it all?

Judge Mikva: It's amazing the amount of energy you develop when you need it. I was also driving a cab weekends during that period, too, because my GI Bill ran out in the third year. So it was the money that I got from driving a cab and from work that I did for Judge Schwartz plus what Zoe was making that kept us going.

Mr. Pollak: Before turning to the clerkship, I'd be interested in your evaluation, particularly as they may have influenced you as a judge, your evaluation of your training in the classes at the law school, your training and your experience on the *Law Review*, and who your mentors were among the faculty.

Judge Mikva: Well, the classes were incredibly good. I had been the product of a good public school education in Milwaukee and the University of Wisconsin, but mostly I understood the education process having to do with remembering things. My memory was very good and I

was always able to give it back to the teachers the way they wanted it, the way they'd given it to me.

I was dismayed when I came to the University of Chicago to find out that rote was not a very big thing, that they expected you to think about things and, indeed, there was a premium for challenging some of the things you read in books; sometimes the professors tolerated your disagreeing with them, but not too often. It was a superb group of teachers. Harry Kalven was on the faculty and Malcolm Sharp, who taught me more free market economics in his contracts class than I guess I'd ever learned before. Edward Levi was teaching. His course was called Elements of Law. Walter Blum taught taxation. It was a super faculty. They were all the young people that had come back to the University of Chicago to teach at about the same time after World War II. They were full of energy. They were full of enthusiasm, and they were great teachers. They remained my mentors really during most of my public life. Edward Levi had become dean of the law school, and he was determined to bring Chicago back to its earlier glory as far as being a national law school. He thought one of the ways of doing this was to get the students back into the clerk stream again. He literally camped on Justice Minton's doorstep until Minton agreed to take a clerk from Chicago, and it was me. Harry Kalven has continued to be my source of all wisdom on the First Amendment and a lot of other constitutional matters.

Mr. Pollak: He taught you constitutional law?

Judge Mikva: Constitutional law. It was mostly Bill of Rights law. William Winslow Crosskey was the constitutional law professor who was a very brilliant and erratic scholar. I loved learning constitutional law from him, but I must confess, when I got out of law school, I had to relearn it because what he had to say about the Constitution wasn't the accepted dogma of

what the Constitution means. He really felt that the Constitution was written by people who believed in the strong federal government. He came out of the New Deal, and, so far as he was concerned, the old Van Devanter court were doing a monstrous job of interpreting the Constitution. He did some incredible original research to show that the Constitution was not the kind of rigid anti-government document that the Van Devanter court said it was. Professor Crosskey was adamant that the Constitution was intended to provide broad federal powers. He did incredible research, scholarly research, that created a kind of bizarre reputation for him. For example, he had research to show that the watermark on the paper on which Madison's notes, which are always used as a basis for finding out what really went on at the Constitutional Convention, was 1820. He insisted that Madison redid his notes long after the convention to suit the needs of the time; that as what Madison was involved in, rather than having made an accurate, contemporaneous record of what went on at the convention. He was not a great fan of Thomas Jefferson, who he thought ducked out of the convention by going to Paris. As I say, it was a fascinating intellectual endeavor. This has always caused me to think a lot about sources of constitutional history and to realize how dubious they all are because it was in fact a closed convention, and there weren't any real records taken. On the other hand, in terms of being able to use constitutional law as a tool in my legal practice and later on in my judicial work, I have had to rely on other sources; and Harry Kalven was one of those.

Mr. Pollak: What significance do you attribute to your experience on the *Law Review* and as editor-in-chief?

Judge Mikva: It taught me first of all how to edit. I think it was my first real supervisory responsibility of professionals. Somewhere in my early career, I supervised people in repetitive

tasks, but this was the first time that I had a responsibility for supervising people who were basically my peers. I learned that you don't order a peer to do something. You find out ways of persuading them that that's the right way to go. I think it gave me whatever managerial style I have and taught me how to deal with people, not to try to crack whips, to let people march in lock step because they like to do it. I think it enhanced my writing ability. I still have a problem with the way law school narrows peoples' writing ability. There is such a premium on a word meaning a single thing, on using the word precisely or exactly, that it squeezes all the juice out of writing style.

Mr. Pollak: You sound like Fred Rodell.

Judge Mikva: Well, I was a great admirer of his. I wrote a follow-up article to his "Goodbye to Law Reviews," which I wrote, "Goodbye Footnotes," in which I cited him at great length. I think it's true that legal writing puts this premium on not using colorful adjectives and not using descriptive phrases, as much as it favors precise phrases. The result is that legal writing is very dull. When I got to legal opinion writing and legal opinions later on, I used to insist that no matter how many different variations and permeations a draft went through between the clerks, I would write the peroration, and I insisted that people who came out of those good law schools couldn't possibly know how to write a good opening to an opinion.

Mr. Pollak: Ab, were there classmates of yours with whom you've stayed in touch who have had an influence on you or whose careers are significant to you?

Judge Mikva: Yes, Bob Bork was a classmate. In fact, we had the same constitutional law professor. I used to tease him when we served on the court here that it was incredible that the two of us could have heard the same man interpreting the same Constitution and come out

with such different views on what the Constitution meant. He used to respond or remind me that that year he was spending a lot of time at Jimmy's, which was a local watering hole on the south side of Chicago and that he used my notes for constitutional law; and I used to insist that he read them upside down. Patsy Mink, who is now a Congresswoman, she was then Patsy Takemoto, she was one of the three women in that class, and we were friends then and we were friends over the years. When I came to Congress, she was already there and we stayed friends. Ramsey Clark was a classmate of mine. He came in at the end of his first year, but he graduated with us. We've been friends over the years. Who else? There were several Washington lawyers who were classmates. Howard Adler, an antitrust lawyer here in Washington, was a classmate; and we've remained good friends. Abe Krash was another.

Mr. Pollak: Did you think you learned in law school from your classmates from the debates that you had either in class or out of class, or did you not have time to devote to that with the other things you were doing?

Judge Mikva: No, there was a lot of that. In fact, that was what was so exciting about the University of Chicago. I had never been exposed to that before, not at the University of Wisconsin. At Washington University where I went to school, you went to hear the lecture and you memorized all the significant dates that the professor gave you in the lecture or that were in the book, and that was it. Nobody ever talked about the classes. Nobody ever talked about what they were doing. As soon as the class was over, you went out to do whatever else you were doing. The idea of this intellectual ferment in Chicago where students who cared passionately about what they were learning and disagreed with each other about what the case meant and what the professor meant and that this would be carried on not only in class but out of class and at

parties and on weekends was just a great eye opener. I loved that process. Of course, all the professors used the Socratic method and so nothing was ever given to you in black and white. It was always, "What do you think?" The really good professors had this marvelous way of teasing out all variations. It occurred to me when I took the Bar exam with the incredibly good education I had that, even though I did not learn a lot of black letter law at law school, when it came to taking the Bar exam, I knew how to think about these questions. With the smattering of black letter law that I picked up in Bar Review, I was able to analyze the questions and get back enough of an answer that I think I passed. I remember feeling, when people were coming out, saying, well, I did terrible on the Bar exam, how awful it was, I didn't feel at all uncomfortable about it. I felt I had done well on it. I would have been shocked if I hadn't passed.

Mr. Pollak: Tell about your clerkship on the Supreme Court. Did you start in the summer?

Judge Mikva: Dean Levi had told me that he was going to push my name. There were several of us who had applied, about three or four students in the class and most on the *Law Review.* He said he was going to push my name because he thought my experience as editor of the *Law Review* was something that would stand me in good stead if I got a clerkship. I gathered he wrote a private note to Justice Minton. In any event, I got a handwritten note from Justice Minton that he would like to interview me. This was in November of 1950. It was my very first trip to Washington. I hadn't been in this city before. In the service, I had been down south and out west but I had never really been in the eastern part of the country at all, not east of Chicago. I remember Zoe and I flew in. It was very exciting. I was as nervous as all get out. I felt very uncomfortable about it. Justice Minton was not very gregarious. That was not his style ever,

though when he was in the Senate, he was much more outgoing than when he got on the Court. He had never taken a University of Chicago clerk before. All his clerks had come from Indiana or Northwestern, which is where he had taken them when he had been on the Court of Appeals for the Seventh Circuit. I can't remember what the questions were, but I know I was so embarrassed. It was awesome just walking into that courthouse and sitting and marching into his chambers and sitting there and feeling like I was interviewing for my whole life career in that ten or fifteen minutes. I went out of there thinking well, it was a good ride but that's as far as it's going. I think this had to be later than November. I think it may have even been over the Christmas holidays because I think I got the original letter from him in November and went in sometime in December. Then in January I remember getting this handwritten note from him saying, I have decided to take you on as one of my clerks and you will hear from me; be prepared to start late this summer. I was on cloud nine and a half. I thought about that a lot since. I didn't apply until well into the middle of my third year. I wasn't accepted until the second half of my final year in law school, and that was plenty of time to worry about being a clerk and plenty of time for the hiring process to take place. This business of getting it moving so early into the second year, which is when the judges now choose their clerks, it's bad for the clerks, it's bad for the judges, it's bad for the law schools. I don't know why they're doing it. I tried when I was on the Court of Appeals to slow it down and move it back to at least the beginning of the third year. One of the problems with hiring clerks that early is that, when you are asking professors at the beginning of the second year about these clerks, they don't even know who you are talking about, especially in the larger schools like Harvard and Stanford. They don't know who these people are.

Mr. Pollak: It doesn't serve the judges as well as later?

Judge Mikva: Not at all. But this stampede developed. There is nothing worse than a bunch of judges charging down on a hiring hall. You can't stop them.

Mr. Pollak: Did you have one co-clerk?

Judge Mikva: I had one co-clerk. His name was Ray Gray who was from Indiana and practiced for many years with a big law firm in Indianapolis. A couple of years ago, he retired to a small town in Indiana where he practices what he calls gentlemanly law with one of his daughters who is in the firm. It was an exciting group of clerks. Among the people I clerked with were Bill Rehnquist who clerked for Justice Jackson, Newt Minow, Howard Trienens who clerked for Chief Justice Vinson, Abe Chayes who clerked for Justice Frankfurter, Vincent McCusick who clerked for Justice Frankfurter.

Mr. Pollak: Any women clerks?

Judge Mikva: None. Frankfurter had the first woman clerk, and I don't think it was until some time later; our group was completely male. It was a male society then. The clerks were male, the judges were male. The clerks were all male and white, the judges were all male and white. The bar was pretty much male and white. There was one woman lawyer who used to argue for the Labor Board, Ruth Wygand (does that name ring a bell?) who was a prominent appellate lawyer, government lawyer, here in Washington at the time. I think that was the only woman I ever saw argue.

Mr. Pollak: I see. Bea Rosenberg didn't argue from the Department of Justice in the criminal side?

Judge Mikva: I don't remember her. She may have but I don't remember her. The only

name I remember is Ruth Wygand who used to argue some Labor Board cases. Then it was true of the private bar as well. Out of my class of 150, there were three women. There were maybe three or four blacks, several orientals, Patsy Takemoto was a two-fer. She was an oriental woman. When she finished law school, she wore out several pair of shoes trying to find a job in Detroit and Chicago and New York and San Francisco and Los Angeles; and she felt she was thrice blessed. She was Japanese, she was a woman, and she had gone to what was then known as that left-wing University of Chicago Law School. She literally, because she had no alternative, went back to Hawaii to hang out a shingle, and now she's having a political career.

Mr. Pollak: So what did you do with your clerkship? What did you find that you actually did?

Judge Mikva: It was an exciting clerkship. Just being there was exciting. You felt like you were the center of the universe and, especially for somebody who led as insular a life as I had, this was incredibly exciting, to be involved with all these important cases and to be in Washington. Washington was and is an exciting place to be. The clerks were absolutely, I think, person for person, it was the most brilliant group of people I had ever been around at any given time. If there is a meritocracy in this country, it has to be the way clerks are chosen. Nobody, no matter how political their background or how unusual their management style, no judge will take anyone but the very best clerks he or she can get. The result is you just bring out these really bright people. They were all energetic and enthusiastic and full of ideas and full of enthusiasm for their task. I came in July or August in the summer of '51. I had just finished taking the bar exam and came to Washington. For the first few weeks, Zoe and I stayed in Newt Minow's apartment. He had an apartment in Park Fairfax, and he and his wife were out on vacation, and

we stayed there until we found a place in Park Fairfax. I read cert. briefs and found my way around the courthouse and did the bench memos. The Judge liked the cert memos relatively short. There was something at that time that we all used to hoot at and that I realized was something that made a lot of sense. It was called the "Eisenhower memo." President Eisenhower insisted that he didn't want to read anything that was more than one page long and, if it was something that they wanted his decision on, they had to keep it to one page. We thought, "how ridiculous." There are some things you can't boil down to one page. Well, that may be, but it is true that when you are dealing with somebody who has an awful lot of paper to digest, shortness is very, very important. Justice Minton made it clear that he wanted cert memos to be as brief as they could be and give him everything he needed to know. So we would try to boil them down to reasonable length. He always wanted a recommendation from us as to whether we thought cert. should be granted or cert. should be denied. I can't ever recall his disagreeing with us when we said cert. should be denied, but he frequently disagreed with us if we thought cert. should be granted. He had many disagreements with us on the merits. He was very personable. One of the things that he and Justice Frankfurter agreed on the most is that the Court should take as few cases as possible. I don't remember what the phrase was. It was something like, "You shouldn't mess around with the law unless you really have to." There was something called, we used to call it the "dead list." I think it has a different name now, but the Chief Justice and his clerks would read the cert. briefs early; and they would circulate a list, usually two or three weeks before conference, in which the Chief Justice would say the following cases will not be discussed in conference unless some Justice objects. And our standing instructions were that, if it was on the dead list, our Judge didn't want to see a cert. memo. I think on one or two occasions, we may

have pushed the envelope when we thought that the Chief Justice was wrong, but very, very seldom. There were other Justices who did. For instance, Justice Douglas and Justice Black both would frequently object to the "don't discuss list" and, of course, any single Justice could put it on the discuss list at the time of the weekly conference.

Mr. Pollak: Did he read the briefs for cert.?

Judge Mikva: No. Only on those in which cert. was actually granted. Let me put it this way. Only on those where we recommended that cert. be granted and where conversation in the judges dining room led him to think that there was going to be a likelihood of granting cert. Sure, he read the petition for cert. in the *Steel Seizure* case. It was obviously an important case. But other than that, he did not want to read the petitions or the cert. briefs.

Saturday mornings were always very exciting. The drill was that one of us had to be on duty Saturday. Usually it was so exciting that both of us would come in on our own, but we could take turns. As far as the judge was concerned, he wanted to have one of us there on Saturday because every once in a while a message would come out -- we use to call it a "no case;" they would be discussing something in conference or sometimes from the bench he'd send out these "no case" memos. He'd say, "Isn't there a case on so and so?" And there was no computer, there was no finding service. We would start tearing the books off the shelf looking for the case that he remembered but he couldn't remember the name of it or couldn't remember the year or whatever and, it seemed to me more of the time than not, we would have to send back a memo saying, "Judge, there is no case." So we used to call it "no case." I loved it.

Mr. Pollak: What went on Saturday morning that he was doing, that the Justice was doing?

Judge Mikva: That's when the conferences were.

Mr. Pollak: On Saturday.

Judge Mikva: On Saturday mornings, the conferences, and Monday mornings were opinion days. And that was rigid. Occasionally, they had extra opinion days, maybe, occasionally, extra conferences; but traditionally, Saturday morning was conference day. We'd be there at 9:00 and the Court would work till noon, sometimes later, in identifying cases that they were going to grant cert. on, and the cases that had been heard would be decided and assigned. There were only the nine Justices in the conference. I think that's still the way it is. Minton, as the junior Justice, which he was then, would be the one who answered the door. Our standing instructions were that we were never to knock at the door unless somebody in his family said it was an emergency or unless he had asked for us to give him something. Other than that, we should never be responsible for the knock at the door. But it was very exciting because the clerks would all hang around. We didn't have a lot to do. We were kind of waiting for what was going to come out of conference, and we'd speculate about what they were going to do on this case or that case, if they were going to grant cert or affirm or reverse. Then the conference would break up. Sometimes right after the conference, but usually on the following Monday, he would go over, not in any detail, the results of conference. In fact, I remember changing this with my clerks when I became a judge. I would try to have my meeting with my clerks right after conference, and I would insist they stay until I came back, even if they had to eat lunch at their desks, because I found it was useful for them and for me to unload everything that went on in conference while it was still fresh in my mind. All he said was what was going to be the ratio decidendi of the case. He would usually do it, as I recall, on Mondays. He would tell us what he

thought we needed to know. He would say the Chief assigned the opinion on so and so and on so and so. I think we got everybody but Hugo and Bill, but this is the way I want the opinion to look. Then he would go into some detail on what he'd want. Usually, we would do the first draft. Very occasionally, he would do the first draft. I never had any problem about whose opinion it was because you knew damn sure by the time it was through that it was his. There were occasions where he was very unhappy with our drafts; this was the height of the McCarthy era, and both clerks tried to carry out his wishes but sometimes he was just so determined to get to a particular result. I remember on one opinion – it was a teacher's oath case – Feiner v. New York, I wrote the first draft. Clearly he was going to uphold the oath and the teacher remained fired. I wrote it the way I thought he told me to write it, and he looked at it and came back in the room and said, "God damn left-wing University of Chicago, I don't know what they teach you there." And he handed it to my co-clerk who was way to the left of me. I was a moderate compared to Ray. And so Ray took a stab at it and later the Judge said, "I don't know what the hell is going on at the law schools these days. I don't know what they teach you." And he sat down with his secretary and they wrote the opinion. It was pretty rough. Frankfurter's clerks were mimicking the judge, saying unpleasant things about it and other judges were saying it just didn't hold together. And it got worked over some by other judges. He didn't want us working on it anymore. It finally came down, I think it was 5 to 4 or 6 to 3. It was not one of the clearest expositions.

Mr. Pollak: But it was, he wrote for the majority?

Judge Mikva: He wrote for the majority and kept the majority on it and it remains a major precedent as to why loyalty oaths were upheld at the time. But I still don't remember what

he was unhappy about. I obviously didn't handle the speech argument that caused the dissent. Outside of a few eruptions like that, he was always very pleasant. He was not a hard task master. He would usually come in about 9:30, 10:00 o'clock when the Court wasn't sitting. What is now the Army/Navy Country Club was then the Fairfax daily fee course, and Newt Minow, Howard Trienens and I used to get out there at the crack of dawn and rush though 18 holes and be in on time before our judges came in.

Mr. Pollak: Really, during the week?

Judge Mikva: During the week. We'd get out there at 6:00. Play 2, 2-1/2 hours and be downtown, showered and all set to go by 9:00 o'clock. It was great, great fun.

Mr. Pollak: What were the major cases of your term, and do you have observations you'd like to record about the other Justices?

Judge Mikva: Probably the major case was Youngstown Sheet and Tube, the *Steel Seizure* case. It remains incredibly important. It has incredibly important precedential value. I am amazed at how often it is still referred to in the important constitutional cases. It probably, more than any other case, plumbed that very fuzzy spot between Presidential powers and the limits on congressional powers. I saw myself using it when I was White House Counsel deciding what the President could or could not do by Executive Order. The majority opinion probably was one of Justice Jackson's most brilliant intellectual and writing expositions. He was the best writer on that Court. He was one of the best writers of all time. He got into that one. He sensed what the historical dilemma was about: when the President's role as Commander-in-Chief has to trump the powers of Congress, and when Congress prevails. He parsed it out beautifully, and he wrote about it beautifully. Justice Minton's role, and it was not particularly strong, was to join in

Chief Justice Vinson's dissent with Tom Clark, the three of them. I think they were the three dissenters. They were three Truman appointees who felt that their personal loyalty should prevail. I was kind of shocked. It never occurred to me such an important case would have any, would in any way be perceived to be a test of the Justices' loyalty to Truman. I could see if there is a loyalty to the Executive Branch or loyalty to the Congress, but Vinson and Minton and I think Clark felt that this was important to show that they were loyal to their appointer.

Mr. Pollak: Explain why loyalty to Truman would call for a dissent from the majority?

Judge Mikva: Because Truman had seized the steel mills. The steel strike was very, very crippling to the economy. It was causing a great deal of difficulty. Truman had used the fact that the Korean War wasn't technically at an end as giving him the war power to seize the mills to carry forward necessary wartime military concerns. Jackson in the majority opinion said, no, technically we're still in a state of war. But, the fact of the matter is that the President is seeking to do something that specifically Congress has said can't be done except through more complicated labor laws that called for a cooling off period, Presidential boards, and so on, and wouldn't have provided the speedy result that Truman wanted. Vinson wrote an opinion which we argued a lot about because his clerks were Howard Trienens and Newton Minow; and since we were also on the dissenting side, we had some input on that. We argued a lot about it. I must confess that history has not treated that dissenting opinion as kindly as I thought about it at the time. At the time, I thought a reasonable case could be made for Truman's point of view. Selfishly, I wanted the result that Truman caused because I was worried that the strike would resume, which it did, and harm the country, which fortunately it didn't. But at the time I thought that the dissenting opinion was good. In retrospect, I don't think so. It's only one of the many

things that does not appear to me now as it appeared to appear to me then. The case brought out a lot of the differences in the Justices and how they reacted. I think five of the Justices had served in the legislative branch of government. Vinson had served in the House of Representatives, I think; Minton had been a Senator; Black had been a Senator. Who else was there?

Mr. Pollak: Frankfurter, Jackson.

Judge Mikva: Jackson had been Attorney General. Frankfurter probably had the least public office experience of anybody on the Court but he, of course, had been involved with government since he had gotten out of law school. Harold Burton was a Senator. Burton may have been the third dissenter. It may not have been Clark. I'm not sure. It may have been the three senators who were all dissenters, even though it was a test of strength between congressional power and presidential power and they were with the President. But you had these people who had this heavy dose of legislative experience.

Mr. Pollak: Another was Reed.

Judge Mikva: Who I think had been Solicitor General and again in the legislature back in Kentucky. Maybe he'd been in Congress, I'm not sure. But they clearly were people who had been involved in government in high positions, many of them if not most of them in the legislative arena. I just think it made all the difference in the world in terms of the way they reacted to these cases that had heavy political consequences. They were never blindsided by the importance of that kind of a case. They all knew that Youngstown Sheet and Tube was an important case. It was going to have consequences not only in the immediate future, but forever. I was always dismayed when I saw how the Court was almost blindsided in Roe v. Wade, when

Justice Blackmun sat down and meticulously went through what I considered to be a very good intellectual analysis of why the case had to come out the way it did and why it was necessary under constitutional precedents, but he seemed totally unaware of the political consequences that would follow that decision. Anybody that had been on the state legislature as I had could have told him; but on the Court that handed down Roe v. Wade, I think that only Justice Stewart had had previous political office; and Sandra Day O'Connor was on the Court and she had had two terms in the Arizona state legislature; but none of the others had ever been involved in the political arena: not Blackmun, not Brennan, not Burger. They were shocked at the outcry that came from that decision. I was really shocked that they came down with that decision. I thought they had been ducking it for so long that they would continue to duck it. And that we were going to have to wait until the political process did it. I was pleasantly surprised to find that the Court took it on. When you talk to Justice Blackmun today, he's almost wondrous about how deep the feelings were against him.

Mr. Pollak: Well, an interesting strand that I hope your oral history will reflect is that you have this long legislative experience behind your judgeship and very, very rarely today do we have people on . . . go ahead, you were speaking about the absence of legislators on the Bench.

Judge Mikva: Up to the turn of this century, the quite regular source of federal judges and state judges was the legislative branch. When you go back to look over the history of the federal and the state judiciary, you find many of them, indeed, maybe most of them in earlier years, having come from their state legislatures, from the Congress. It was a traditional route to follow. You were elected to Congress, served a few years, become a judge; get elected to the legislature, serve a few years and you become a judge. That changed around the turn of the

century as part of our democratizing and getting rid of the political patronage that supposedly permeated the judiciary. It went way too far. The dates are not quite as crisp as I'm making it sound, but this is something that happened at the beginning of the 20th century. The agitation for it started after the Civil War, that we had to make our judges more democratic and so we started electing our state judges. I still remember reading an essay when I was in law school about how in New York they had gone from appointed judges who had been deemed too autocratic to judges who were more common. The judge now sat on the same level as the lawyers and without a robe. Compare the kind of justice that was distributed by those elected, common judges compared to the old common law judges who, whatever their aristocratic prejudices, at least knew the law and were sound in their legal opinions. The same thing happened, kept going on, during the 20th century, particularly when there were these efforts being made to get rid of patronage in the selection of judges to the point where the federal judges, instead of being predominantly peppered with people who had served in the legislative branch, became very, very much the opposite. When I went on the bench in 1979, in the previous ten years, only two people, including me, had gone to the federal bench who had had congressional experience: Bill Hungate who became District judge in Missouri who served with me and I, were the only two appointees in that entire ten-year period who had had any legislative experience.

Mr. Pollak: Subsequently, George MacKinnon.

Judge Mikva: George MacKinnon had gone on previously, but in that ten-year period.

Mr. Pollak: He's another who occurs to me, but I can't think of many others.

Judge Mikva: There weren't many, Judge Buckley, but he came after me. But between '69 and '79, there were two who had served in the Congress who became federal judges. There

have been more since then, though again, not a lot. It is still not considered a great jumping off place from which to become a judge.

Mr. Pollak: That significant democrat from Arkansas or one of the Oklahoma House member who went on the Bench?

Judge Mikva: Again, that was before me. That was in the '60s. I'm trying to remember his name. I know who you mean. It was from, I think it was from Oklahoma, but it was in the early '60s. Between '69 and '79, there were two people. I think that, unfortunately, the federal judiciary has paid a price for that. Now again, the arguments that the reformers make are, well, you know, if Congress becomes the place that Presidents look to pick as judges, between being members of a fraternity/sorority, they'll get confirmed too easily, and Presidents will start paying off political debts by appointing members of Congress who vote the right way on some important legislation. Some of that is true, though I am a witness to the fact that being a member of the fraternity doesn't necessarily guarantee you easy confirmation. I had one heck of a fight getting confirmed. The final vote was 58 to 31 because the National Rifle Association got on that case. I don't think that it's political patronage when judges are selected from the legislative ranks, and I think it's an important piece of experience that a judge ought to have. When I went on the Court of Appeals here, and this was in 1979, until I left in 1994, I probably read more congressional records on the bench than I did when I was a member of Congress because most of the cases we had involved interpretation of federal statutes that the Congress had passed. Knowing the process by which those statutes get on the books and knowing what goes on in the congressional chambers, is a big advantage to being able to interpret the laws as a judge. Unfortunately, that is not what the wise people who promote the selection process think, and we continue to have very

few federal judges come from the ranks of Congress. I think that's unfortunate.

Mr. Pollak: You were speaking about the major cases in your term with Justice Minton and you mentioned *Steel Seizure*. Maybe there are others that you want to mention?

Judge Mikva: There's at least one other, and that was Rochin, the stomach pump case. Justice Frankfurter had this reputation among the clerks, including his own, of talking the talk but not walking the walk. He just, that was not the phrase we used but a more contemporary phrase. He had this great reputation of being this liberal law professor who defended Sacco and Vanzetti and had done all these other important civil liberties cases, but when he got onto the Court, he just always found a reason not to come out on the side of civil liberties. In all the loyalty oath cases and in all of the other similar cases, Frankfurter was just not on the side of the civil liberty. We were surprised when Rochin came out the way it did because we counted at most three votes: Jackson, Black and Douglas, I think, were the only three that we thought were going to overturn that conviction. We were shocked that not only did Frankfurter overturn it but wrote the opinion. The wags said, well, we were shocked and he was even more shocked. You recall the measuring stick he used was one that was not very helpful: if it shocked the conscience of the society to decide when to use force beyond restraints.

Mr. Pollak: It was a Fourth Amendment case?

Judge Mikva: It was a Fourth Amendment case. They had pumped this man's stomach to find drugs or whatever it was, contraband, that they were using as evidence. Frankfurter said that went beyond the conscience of society to allow stomach pumping to get the evidence.

Mr. Pollak: I wonder how the law has evolved since then?

Judge Mikva: Well, again, not all the big cases end up making a big difference. I've

thought about that many times. There are a few cases that really make a difference. As I indicated before, Youngstown Sheet & Tube was one that continues to be an important pillar in our separation of powers jurisprudence. Miranda has made an incredible difference, both in the law and in the practice, the way criminal law is and the way the criminal process is carried out. Miranda is as big, partly because it was a simple rule to administer. The police are told, "Look, read them their rights." It doesn't say you have to read them at so many beats per meter. It doesn't say you have to read them in a loud, clear voice. It doesn't say you have to read them when the sun is shining or within 20 minutes, it just says, "read them their rights." And so the result is the policeman can carry that little idiot card in his hat and, whenever they arrest somebody, they pull it out and say, "you have the right to remain silent, you have the right to a lawyer, etc." It has performed the purpose it was intended to perform. Cases like Rochin are much too difficult. We used to tease when I was on the court about the worthy container exception to when you could search the car and when you couldn't search the car. You ask the cop on the beat who's busy trying to protect the public and his own neck besides to administer complicated rules that lawyers can disagree about, that judges can disagree about; and it just doesn't work. And Rochin is one of those cases in which the standard is just too fuzzy for anyone really to understand.

Mr. Pollak: Any other case that you think worthy of mention?

Judge Mikva: Those are the two that stand out. There were others. I think I mentioned Feiner v. New York, but those were the two criminal that I really remember.

Mr. Pollak: Another case taught you a lesson?

Judge Mikva: Another case that taught me a lesson that I have never forgotten is that

Congress is first among equals. The case is Wunderlich v. United States; and you probably haven't heard of it and I will tell you why. The case involved a contract that had been let by the Army during the Korean War; under the statute (it actually came out of the old Truman Commission/Committee in World War II) the Army was free to renegotiate these contracts if they thought that the profits were excessive. The case came up challenging the constitutionality of that statute and that provision. Minton was assigned to write the majority opinion. As I indicated before, he allowed us to do the first draft. This was one where either I was listening better than I otherwise did or he was more articulate, but the draft I sent in to him came back word-for-word the way I wrote it; and in 341 U.S., there is an opinion, Wunderlich v. United States, upholding the right of the Army to renegotiate this contract for excessive profits, written by me. But that's not the story. The story is that within three months, Congress passed a statute overruling the case. That's when I learned who really is first among equals.

Mr. Pollak: Do you have any other comments you wanted to make about the Justices? You remarked briefly on Jackson and on Frankfurter, and you've spoken some about Minton. You haven't really spoken about the others.

Judge Mikva: Well, the two heroes for most of us liberal clerks at the time were Black and Douglas. And they could not have been more unlike each other. Black was gregarious and outspoken and very charming; and when he'd hire his clerks, one of them had to play tennis because Black was a tennis player. He kind of got a commitment out of his clerks that they would go back to the South and practice law because he felt that it was important that the South understand what the Supreme Court was doing. By that time he had become very unpopular in the South – a native Alabamian, liberal on civil rights. Black and Douglas did concur most of the

time – they saw things pretty much the same way – but they could not have been more unlike each other. Douglas was this very shy professor who literally just could not relate to people the way Black did. Douglas' chambers were right next to Minton's chambers; and every morning on the way in, I would pass Justice Douglas going to his chambers – we were on the same time sync. So I would say, "good morning Mr. Justice," and he would look straight ahead and never even say hello. I thought about that many years later when I was trying to fight back Gerald Ford's efforts to impeach Justice Douglas, and my effort sure wasn't based on any personal relationship because there wasn't one. He was just a very cold cookie. There is a story that happened a year before I was there, maybe the year I was there, but it's a story that is often told. There was a practice of inviting one of the Justices down to the clerks' dining room to talk to them about matters. The clerks had their own dining room, so they were free to talk about the cases without somebody overhearing them. The practice is that the clerks go through the regular cafeteria, get their trays and take them to the clerks' dining room. The Justices normally eat in an upstairs dining room where they're served by their messengers. Well, one time, whoever was inviting the Justices invited both Black and Douglas to come down the same week. Black frequently ate in the cafeteria with his clerks, and so, when it came time for this lunch where he was supposed to talk to the clerks, he went through the cafeteria with his clerks and came into the clerks' dining room with all these clerks around chattering like magpies. And there was Justice Douglas sitting there, being served by his messenger who had brought his tray, his lunch, down from the upstairs dining room. Black looked at him and called out, "Well Bill, how's the man of the people today?" Justice Reed was probably the least known of the Justices. Everyone respected him but he was getting on in years. Justice Clark was very pleasant, very nice, but no one could really

quite figure out where he came from. He had not been known as a great legal scholar; he clearly had some loyalty to President Truman, but that was not always visible in the way he voted; and his reign as Attorney General had not been that outstanding. Justice Jackson was admired by a lot of people but, again, people didn't quite know how to figure out where he would land on the ideological landscape. His writing was always brilliant. I thought Jackson was the best writer on the bench of all the Justices when I was there. I think that covers it all.

Mr. Pollak: Burton?

Judge Mikva: Burton was a very pleasant, quiet kind of a person. His greatest claim to fame was that he had sat on the other side of Harry Truman when they were in the Senate. Minton had sat on one side, and Burton sat on the other side, and Truman took care of his lawyers. Burton was not well perceived by the clerks. I think that was all: Reed, Burton, Frankfurter. Frankfurter was as advertised. He was this bouncy law professor, always poking hard questions at the lawyers and at clerks and whomever else he could get his hands on; but he very much disappointed those of us who expected him to be a Holmes or Cardozo, with that kind of zeal for civil liberties.

Mr. Pollak: Did any of the Justices in performing their roles as Justices, as you observed them, have an influence on you as you sort of scoped out the way you would perform your role as a judge when you came some 28 years later to go on the bench?

Judge Mikva: Well, I think I learned some things not to do from Justice Frankfurter. For instance, he was always writing memos to judges about what they should do in their opinions and then not joining them. I remember my boss complained several times and other Justices' clerks complained at how Frankfurter would encourage judges to make changes in their opinions and

then wouldn't join in the opinion anyway. I realized that, if you're not going to play the game, don't try and make the rules. I took that very seriously when I got on the court. If I wasn't prepared to join in an opinion, I would not make comments on what I thought about the opinion and what changes I thought it needed. If I was going to join in, then I would suggest changes. In fact, we developed a phrase on my court called, "Take it or leave it," which meant I would go with the opinion anyway, but I would like you to think about such and such a change which you could leave alone if you want to.

Mr. Pollak: This was on the Court of Appeals?

Judge Mikva: Yes. I think part of that came about because I saw the resentment that Frankfurter's practices used to generate among his colleagues. Of course, I missed a great opportunity not being a clerk while Chief Justice Warren and Justice Brennan were there, but I saw how important personal collegiality was through the way Justice Black behaved. Unfortunately, it was after Nuremberg. Black and Jackson had had this big feud about Nuremberg, and Jackson came back insisting that Black was conducting a vendetta against him. So a little bit of the collegiality that there apparently used to be with Black was gone. Even so, Black would spend time coming into other Justices' chambers and shmooze with them. Tom Clark did some of that, too; and I found it, I guess I wasn't really surprised, but it was reassuring to know that even at an exalted level like the Supreme Court of the United States, it's inhabited by human beings and that human contact is the important thing.

Mr. Pollak: Everyone's always interested in the hours you kept, the law clerks keep. You've said that you found time to play golf. Were the hours inordinate mostly?

Judge Mikva: Not by law school standards and not by law practice standards. We would

normally, except on those few days we were playing golf, normally we'd be in by 8:30 or so and, you never left till the Judge left. That was just sort of understood. He came in later, so he usually wouldn't leave till around 6:00. Occasionally, he would stay later. Occasionally, he would go earlier. That's what you had to do. Because there weren't computers, I frequently was able to do work at home and if the Judge left, I would get home in time for dinner and do some work at home at night. Saturday was considered a work day. Sunday, pretty much, not. I'd say that I worked harder in law school and harder as a young lawyer than I did at the court. I worked harder as a law clerk than most law clerks do these days. Part of it is the difference in the work habits, and Saturday is no longer considered a work day. I guess that's true in the law practice as well.

Mr. Pollak: Right, it was a work day when I began practice.

Judge Mikva: It was just a regular day. And now it isn't. I wonder how these lawyers pull in 2200, 2300 chargeable hours if Saturday isn't a work day.

Mr. Pollak: I have no explanation for that or for some lawyers who could even charge more hours than that.

Judge Mikva: I learned something about myself. While I can pull all-nighters when I have to, and I used to sometimes when I had an opinion that was due that was coming hard. I learned that my efficiency dropped after midnight horrendously. If there was ever an option, I'd be much better off quitting and getting up early and starting over again than trying to keep myself awake with coffee and churn away all night. From midnight on, for every minute of production, there were 5, 10 minutes of daydreaming and wishing I were elsewhere.

Mr. Pollak: Do you have anything else to say about either collegiality on the Supreme

Court or acrimony on the Supreme Court, the Court that you observed then as a clerk or on the Court as it's come along since? I don't mean to make the question too global.

Judge Mikva: The Court was pretty collegial. There was this tiff between Black and Jackson that had gone on for some time. Notwithstanding Douglas' shyness and his loner ways, everybody reached out to befriend him; Minton, for instance, went out of his way to chat with Douglas and walk arm in arm with him. The Chief Justice, Fred Vinson, was very gregarious and would tell war stories, and he was always running around from chamber to chamber. There was a lot of collegiality and there was a lot of collegiality among the clerks. Perhaps the only kind of loner was Bill Rehnquist because he perceived himself to be much more conservative than all the rest of us, but he would have lunch with us in our dining room. He would come in sometimes a few minutes late, would listen to all of us who had staked out our positions, and then stake one out as far to the right of the last one that he could. He played poker with us. We had a floating poker game that Howard Trienens and Hans Linde were in, and I was in, the Chief was in. They used to love to see the Chief come to the game. He was single at the time. He used to love to draw to inside straights. They always knew they could do well if Rehnquist would show up at the game. I'd say the collegiality level was high. There were several other things that impressed me. One is that we clerks took ourselves very seriously and thought we were absolutely at the center of the universe. But it never occurred to us that our job was to try to really influence our judges. We were trying to present things that would catch their eye, but never to the point of saying this is the way you must come down. There was the story of one of Reed's clerk's who felt so passionately about something, he said to Justice Reed, please Justice Reed. I feel very strongly about this. I hope you'll vote to grant cert. And Justice Reed

supposedly said, well, if you feel that strongly, I will. Now, Rehnquist picked up that story in an exposé that he wrote for *Look* magazine some years later; but I never heard the story until I read about it. There certainly was not a lot of that going around. We thought of ourselves there as minions of very important personages. We weren't there for our judgment. We were there for all the help we could provide with whatever expertise that we had from law school. We weren't censors for our judges. It has bothered me over the years, especially when at the end of my tenure on the Court of Appeals, that I would see these law clerks come in with an agenda; and I find it a most disturbing change. I hope that it is temporary. I hope it disappears. Because I can't think of anything worse than having law students, no matter how bright they are, no matter how enthusiastic, committed and dedicated they are, making the judgments that are supposed to be made by judges who have been around the horn.

Mr. Pollak: Do you want to explain your reference? Are there young people who take clerkships in your observation and then seek to bring upon the judge their scale of justice?

Judge Mikva: There is a nasty story that I sadly think is true about a clerk for one of the Supreme Court Justices who helped him on an opinion which was kind of surprising. Everyone assumed that the Court was going to cut back on Miranda and carve out a larger good faith exception to the Miranda right. This Justice wrote the opinion which rejected that approach and kept Miranda pretty much the way it is. The clerk who worked on that opinion was a part of the Federalist Society network, which has a large group of clerks up at the Supreme Court now. Whether they get hired from the Federalist Society or simply all happen to be Federalist Society members when they get up there is not completely relevant, but supposedly they do maintain a close social network when they end up as clerks. Supposedly, this clerk, after working on this

opinion for the Justice, went to a party, and he was "shunned" by the other Federalist clerks at this party. I mean, literally shunned. They turned their backs on him when he walked into the room. Thereafter, one of them explained to him that it was well known that his Justice was kind of weak on that issue and it was his job to shore him up and to see to it that he didn't write this wishy-washy opinion. I found that horrendous, just horrendous. I have talked to other Justices up there and judges who have refrained from using some of the Federalist Society apparatuses and certain feeders in the way of law professors because they feel that their clerks are coming with too much of an agenda and that's not their role. I don't think anything is more debilitating of the relationship and nothing could damage the institution of clerkships more than clerks with agendas. As far as I'm concerned, one of the reasons the federal judiciary works as well as it does is because of the unique institution of clerks. This idea of bringing, of each judge having, three or four new law school graduates every year whose enthusiasm for the law is unabashed but who have a proper reverence for the status quo and the status quo ante is what keeps the judicial process working as well as it does. But I think that if judges start to feel that they have to protect themselves from clerks with their own agendas, we will start losing the institutions we have.

Mr. Pollak: Your clerkship's drawing to an end and what now? What did you consider and how did you make your judgments and where did you go and what did you hope?

Judge Mikva: I heard Arthur Goldberg argue the Steel Seizure case, which I considered the best argument I heard that year and maybe the best argument ever. John W. Davis was arguing for the steel companies. John W. Davis was very long in the tooth and his voice was soft, and he just couldn't rise to the occasion. I forget who was arguing for the government; it must have been the Solicitor General but it wasn't particularly inspiring. Goldberg was great. He

handled the questions so well. He was so confident of what he was saying. He was 35 or 40 years old, at ease up there at the lectern. I said to myself, I'd love to go work for this man. So, after the case was decided, I asked for an interview and he said yes. The only other thing I was thinking about was that Adlai Stevenson was then Governor of Illinois and there was some talk about maybe his running for President. More important, he was just a great governor. It had been the Democratic Machine that put him up and Paul Douglas for Senate back in 1948 and he'd been a superb governor, and the idea of going to work for him was very appealing to me. Newt Minow had already gotten a job with him. Howard Trienens and Dan Walker who had been a clerk about the same time had also gotten jobs with him. Howard Trienens was either going to go to work for him or was given an offer, and I just thought that would be a great place to go to work. Unfortunately for me, or fortunately for me, the *Chicago Tribune* at the time was owned by Col. McCormick; he decided to take out after Governor Stevenson for putting in this elite palace guard, hiring all these bright young Supreme Court law clerks to really make government in his image. Also, though I don't think he had to do that with the law clerks, but Governor Stevenson had been charged with and was guilty of supplementing some of his employees' public salaries. He had brought people in from higher-paying teaching positions and lawyer positions and in order to allow them to work for the government, he had supplemented their government pay with a private salary. An argument can be made that that's a bad practice, but clearly his motives were good and his intentions were good; but the *Tribune* got on his case on that. They didn't have to supplement our salaries so far as the clerks were concerned. But that was part of this general drumbeat that Stevenson was surrounding himself with elitists, intellectual elitists. I interviewed with Carl McGowan, who was then his aide-de-camp, and Carl said, well, you know,

we have a great deal of respect for Supreme Court law clerks, but we can't take you on to the governor's office. There's just too much heat on him. What we can do is put you on with somebody named Joe Pois who is the Director of Finance who is very close to the governor and you'll get a chance to work with the governor some but you'll be on Joy Pois' payroll. And that was my other offer when I went to interview Arthur Goldberg. Goldberg and I hit it off right away. We found that we had similar backgrounds, and I always had been interested in labor law, which is what he was doing. I thought, well, if he offers me a job to work in Washington at his Washington firm, I'll take that over Stevenson's job because it's not really Stevenson. But he didn't make it that easy. He offered me a job but only in the Chicago firm because they didn't need anybody in the Washington firm, and I'd get to do some labor law but not all labor law. He said, "I hope you'll come with us." I said, "well, Mr. Goldberg, I am considering this offer to go to work for the state," and he asked me to describe it. He said, "Oh, you don't want to do that," with a broad wave of his hand. "In the first place, if you're not going to work in the Governor's office, you'll never see Stevenson. You'll see more of Stevenson if you come to work with me. At least I'll take you with me when we go to the steelworkers' conferences where the Governor will be. You'll get to meet him now. You'll be just some lowly nothing if you go to work over there in the Finance office." And he said, "Besides which, they're not going to be able to supplement your salary at all. They probably aren't even going to pay you what you made as a clerk." He said, "We can certainly do better than that." He said, "How much are you getting paid now as a clerk?" In those days, clerks were more than competitive with the private practice. I said, "I'm getting $5,200, sir." All the blood drained from his face. He said, "That's more than one of our partners is making." But, at that point, he was stuck with his offer. I got $5,200 and

the partner, Milt Shadur, got a raise. Anyway, I was persuaded, charmed, cajoled by Arthur to come to work in the Chicago office; and I never had any regrets. Oh, I shouldn't say I never had any regrets. The early years of practice, and I guess it's not too different today than it was then, there were ups and downs. There were some days that were very exciting. There were other days that were as boring as all get out. Here I had been involved in all these important cases all these exciting constitutional issues and the drama between the Executive Branch fighting the Legislative Branch and the drama of those loyalty oath cases and those criminal cases. My first chore at the firm was to find out where the Municipal Court of Chicago was located and to file some silly pleadings to make some rich client richer. It was very troublesome to digest.

Mr. Pollak: Maybe it would be helpful to have you structure these years. You came off the clerkship in the summer of '52, and that means that you spent then 27 years before you went on the bench, 26 years, and why don't, if you would, why don't you lay in to this record the blocks of what you did in that period and then we can go through each block to the extent that it

Judge Mikva: It was 27 years, from '52 to '79. Well, the first block was the practice of law. From fall of '52 until late '55, I primarily practiced law. I had a short leave of absence to work on the jury project at the University of Chicago, which was in Wichita, Kansas. They had a study team there. But other than that, I was mainly practicing law, considerable labor law, some constitutional law on which we prided ourselves, one of the few law firms in the country that practiced constitutional law for a living. We had these censorship cases and other First Amendment cases. Also, I did a lot of what is now called street law. Local 65 of the Steelworkers had 15,000 members. Every Thursday night I had to go to the Steelworkers' Hall on Commercial Avenue and sit and listen to their legal problems. This was before the days of

Legal Aid. I would listen to their problems, to their wives and their sons and their daughters and their school teachers and all the other neighborhood people that had problems.

Mr. Pollak: Well, I think at least I'd like to offer you the chance to go back and speak more about those three years.

Judge Mikva: Then in '55, I started running for the state legislature. The important election was the primary, which was in the spring of '56. So, from the fall of '55 until 1966, that ten-year period, I was involved with the legislature. It began with running for it; meanwhile I was still practicing, the practice was a good one, becoming more demanding. The fall of '65, I started my first campaign for Congress, which I lost in '66. And I continued to practice that time full time but really spending a lot of time getting ready for the next race, which was in '68. So that from '65 until the fall of '68, I theoretically was practicing law; and in '68 I was elected to Congress. I served there for four years, two terms. I was gerrymandered out of my district, was defeated in my new district.

Mr. Pollak: In '72?

Judge Mikva: '72. I spent two years practicing law and teaching with another law firm.

Mr. Pollak: D'Ancona?

Judge Mikva: Right. I began gearing up for my next race, which I determined I was going to do. In fact, at that point, an inquiry was discretely made, would I be interested in a judgeship? Chuck Percy was looking for a Democrat to nominate to the District Court, but I turned it off very early because I really wanted to have another time in Congress. So in '74, I was reelected to the Congress and I stayed there till '79, when I was appointed to the Bench. I was on the Bench until '91, when I became Chief Judge. In '94 I was asked to become White House

Counsel.

Mr. Pollak: Well, let's then go back to those first three years, '52 to '55, practicing with, what was the name of the Chicago firm?

Judge Mikva: It started out it was Goldberg, Devoe and Brussel. Abraham Brussel became a Cook County judge later on. Milt Shadur was the other partner when I came there. It was a five-person firm. I was the second associate. Shortly thereafter Milt became a partner -- in '56. I became a partner when Judge Brussel went to the Bench. Most of the time that I practiced, it was Goldberg, Devoe, Shadur and Mikva.

Mr. Pollak: I guess that was the period in which some or all of your children were born? What would you remark on in connection with that part of your career?

Jude Mikva: Well, they were exciting years. Let me say that the practice of law then, and I'm afraid that it's even more so today, every day, isn't a day at the beach. Well, there are good days and there are bad days. There are days when you say, boy, what a smart move it was for me to become a lawyer. And there were other days when you say, why did I do so this to myself. And there are great victories and great defeats and great stimulations and great absences of stimulation.

Mr. Pollak: Were you briefing complex cases? Were you arguing cases?

Judge Mikva: In a five-person firm, the lowliest person on the totem pole does everything. I actually argued a Court of Appeals case in the Seventh Circuit within six months of the time I got there. I was also defending garnishment claims against some of our steelworkers and standing up in municipal court arguing with the judge who may or may not have passed the Bar exam against some skin-flint lawyer who's trying to squeeze the last drop of blood out of

him, the steelworker. And it was just a potpourri of experiences. Some of them were incredibly important to me later on when I became a judge, and it gave me a feel about how some of these cases come down to people.

Mr. Pollak: Why don't you just explain that in a little more detail. Maybe, then you have to go to lunch.

Judge Mikva: One of them I remember was the terrible block that the law frequently puts in front of people that makes it impossible for them to vindicate their rights, to vindicate their position, that makes the parties unequal. We had a law in Illinois at that time called confession of judgment law. It's still extant in some parts of the country, though I think there are some federal cases that have pretty much pulled the teeth on it. Under the confession of judgment law, coupled with the garnishment law, if somebody bought furniture on time and didn't pay for it, the furniture company could go in, confess judgment against the buyer without his ever knowing about it, and then on the basis of that confessed judgment, garnishee his wages. The garnishment, of course, totally blocked the payment of wages by the employer, so that the first thing that employee knew about the claim was that when he went to get his paycheck, the employer would say, "I can't pay you because there is a 'brick' on your check, somebody put a brick on your check." If they couldn't find a lawyer, they were dead, because they'd have to go to the furniture company and make whatever possible settlement they could. Frequently, not only paying everything they owed in full, but attorney's fees and late fees and you name it. Just huge amounts of money -- or else they would never get their paycheck.