INTERVIEW NO. 7

This is the beginning of a not-confidential tape. This is the seventh 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 November 4, 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: Good Morning. As a judge, there are a lot of informal contacts which you had – judicial conferences, bar meetings, socializing – how would you describe those as to their significance, if any, in the development of the law and the performance by yourself of the responsibilities of judging?

Judge Mikva: I think they are very significant. Let me start with the judicial conferences because a lot of people, including a lot of people in Congress, worked on a theory that these are some kind of boondoggle with the judges, that the lawyers go off to some nice place and play golf and tennis, and nothing gets accomplished. As I look back over the 14 or 15 judicial conferences that I attended as a judge plus some others I attended as a lawyer or a congressman, I found an incredible amount of important things happen at those conferences that affect the way the court operates. First of all, the programs are much more significant than I think the participants realize. It's the only place where the judges and the lawyers get a chance to interact on something other than a per-case basis – where it's a very uneven relationship. Lawyers are always saying, "may it please the court." At the conferences, lawyers are letting the judges know what it is that bothers them about the way the system's working; and, in turn, the judges are letting lawyers know what they see as problems that the lawyers are creating; they look at where the system isn't working properly. It's an incredibly important exchange. I'm sorry that it's on such bad paper

with some people – including some judges, I might add – who think that it is just a waste of time. As I look back over the Judicial Conferences, they are one of the important reasons why the judiciary works as well as it does. I still remember a session, for instance, with U.S. Attorney Jay Stephens. The District judges really had at him about his using the federal courts to bring all those "nickel and dime" drug possession cases. It was important, first of all, for the judges to let the Executive Branch know how strongly they felt that the federal courts were being trivialized and marginalized. Secondly, it impacted the choice of a subsequent U.S. Attorney and the way that U.S. Attorney operated to change the process altogether in terms of the kinds of cases that were brought, and also in terms of the role of the federal courts.

Mr. Pollak: Who was the successor U.S. Attorney?

Judge Mikva: Eric Holder.

Mr. Pollak: I see, the current U.S. Attorney.

Judge Mikva: He just cleaned that problem up: small cases go to the local courts where they should go, and it has reduced substantially the number of minor drug cases that were in the federal courts. That is just one example; there were lots of others, where the programs really materially affected the way the process operated. Sometimes, the programs were a great way to exchange substantive material, to bring in experts on trends of Supreme Court case law and so on that were important learning processes for the judges and the lawyers. In addition to which, for the last eight or ten years that I was on the court (maybe not that long, but close to it), we had a judges' breakfast where the judges went over their internal problems. It's interesting that there were very few situations in which the District judges and the Court of Appeals judges could meet in that kind of an atmosphere. We have Judicial Council meetings, but those are attended by

representative judges of the two courts, and there is usually a very fixed agenda to go over the business of the two courts. The breakfasts allowed the District judges to have a kind of a gripe session. I found it very useful.

Mr. Pollak: What is, as you understand it, the substantive basis of those who consider the conferences not to be valuable?

Judge Mikva: That the judges end up playing golf, that they are expensive, and that the taxpayers pick up the tab for judges' travel down to Williamsburg or Pennsylvania, wherever it is; and that the courts aren't functioning for two or three days while the conferences last; and it takes a lot of time for the Circuit Executive and other staff to put the conference together. But, again, an institution as big as the federal courts just doesn't work on automatic pilot. It takes some care and some concern, and I think that the conferences are an important place where that kind of concern is reflected.

Mr. Pollak: Is the Judicial Conference under the auspices of the Supreme Court? How does that compare?

Judge Mikva: The nomenclature is very confusing. There is a United States Judicial Conference, which is the official governing body of the federal courts. That consists of the Chief Justice, the chief judges of all of the circuits, a District Court representative from each of the circuits (usually a chief judge within that circuit), the Chief Judge of the Court of International Trade, the Chief Judge of the Federal Circuit. Those people make up the governing body of the federal judiciary. They supervise the Administrative Office. They supervise the Judicial Center, and they manage all problems of the federal judiciary on a policy level. They meet twice a year, and they function through committees the rest of the year. It is one of the reasons the federal

judges are as independent as they claim they are -- because of the way the U.S. judiciary operates. In addition to the U.S. Judicial Conference, there are Circuit Judicial Conferences, which are the ones I was talking about, which are not really a governing body of that kind. They function as places where views can be exchanged between the bench and the bar. They used to be required to meet once per year by statute. Now it's at least once every other year by statute, but they can meet every year. Every circuit has a Circuit Judicial Conference at least every other year. Then there are the conferences that judges have after cases, which isn't called a "judicial conference." It's called the conference where the judges who were sitting on that panel (not all the judges of the court) meet to decide how the cases should be resolved. There is a great deal of confusion among non-judges about the difference between these conferences. At one point, for example, a bill almost passed the Congress which would have drastically affected the way the judiciary operates. Senator DeConcini was very irritated that the U.S. Judicial Conference would not open its meetings both to the press and to other observers; so he inserted a provision in a pending bill to require all conferences of judges to be open. By its literal terms it would have required the conferences of the judges who decide cases to be open to the press. It would have been a big change in the way the institution functions.

Mr. Pollak: You may have sat at least on the U.S. Judicial Conference during your chief judgeship and probably served on committees. Is that an exchange that has a bearing upon the performance then of the judges' responsibilities as a judge in individual cases other than as the governing body?

Judge Mikva: No. They will sometimes make policy that impacts individual cases. They will decide on changes in the Rules of Civil Procedure or habeas corpus law which can obviously

impact substantive cases, but basically they're setting policy within the judiciary functions.

Mr. Pollak: Did you find service on the U.S. Judicial Conference a significant part of your judicial responsibilities?

Judge Mikva: Yes. You realize that you are 1/25th or thereabouts of the policymaking apparatus for the entire judiciary. It's a very functional body. It really works. The Judicial Conference really makes decisions, while the Chief Justice has a heavy influence in the decisional process; it is democratically run. The judges on occasion do outvote him or outflank him.

Mr. Pollak: How does the agenda get set? What comes before the body?

Judge Mikva: The committees make recommendations to the Judicial Conference on matters within their jurisdiction. The Administrative Office reviews them. Several officials at the U.S. Administrative Office of the Federal Courts function as the staff and service the committees and then bring their recommendations to the semi-annual meetings of the U.S. Judicial Conference. In addition, the Administrative Office itself will bring matters before the Judicial Conference. Then, there is the Executive Committee of the Judicial Conference, which is composed of five judges who meet regularly by telephone or in person between the Judicial Conferences. The Executive Committee has authority to make most decisions between the semi-annual meetings. Between the Administrative Office, the committees and the Executive Committee, the agenda is set for each semi-annual meeting. The Executive Committee and the Chief Justice will decide which matters will be on the list of matters to be discussed, and which matters will be approved pro forma. While 70 or 80 percent of the agenda is on the pro forma list, any judge can ask that matters be put on the "discuss" list to be brought before the

conference.

Mr. Pollak: Was that locus in your time of discussion of whether television should be in the courtroom

Judge Mikva: Yes, that was a recommendation from one of the committees. It was a recommendation that was hotly debated; the committee came up with one decision, but though the Conference reversed that decision, and agreed only to an "experiment." The subject continues to fester within the judiciary. It's a very complicated matter.

Mr. Pollak: Is there television today in some of the federal courts?

Judge Mikva: I think we ended the experiment. When I was there we had approved an experiment with a couple of federal District Courts and, I think, a Court of Appeals, but I'm not sure.

Mr. Pollak: You were saying, I think, whether there is any television going on in the Federal District or Appellate Courts.

Judge Mikva: I think that the last decision of the Judicial Conference ended the experiment, but I'm not sure.

Mr. Pollak: Where did you stand?

Judge Mikva: I was for televising the Courts of Appeals and the Supreme Court. It just makes no sense not to. In the places where there has been appellate court television, the N.Y. Court of Appeals, for instance, it has turned out to be a useful teaching device. It assures those few people who look at it that this is a good process. Unfortunately, some judges can't adjust to it. I do worry about trial court television. I think, again, the judges can adapt; but I'm not so sure the lawyers can, and I am not at all sure that witnesses or jurors can. I continue to worry about it,

which is why I was for the experiment. I thought we would look at it and see. Unfortunately the experiment to do it occurred in normal cases, and it probably didn't cause any problems. But I don't think you can put a case, a sensitive case, like the O.J. Simpson case on a television without it materially affecting the result.

Mr. Pollak: Are there other meetings that you attended periodically that mattered in terms of your judging besides the Judicial Conference – bar meetings?

Judge Mikva: The bar meetings tended to be too formal and too structured to have any serious exchanges. There were speeches and judges were there, but the contacts were too formal. The one other important place where judges did interact was informal, social gatherings: eating lunch with the judges in the judges' dining room, judges' dinner parties and so on. These were good places to exchange views.

Mr. Pollak: I take it what you're saying is that those were important to you, personally, not just to judges generally, but you found that aspect of keeping in touch important.

Judge Mikva: Yes. I think that most judges felt that way. There were sometimes down sides. The judges' dining room, for instance; I stopped going there, to some degree, because the District judges who were the largest number of regular attendees would frequently talk about cases that either were on appeal or on their way to an appeal. It would get a little awkward every once in awhile. I would come in and would overhear words like "reverse the trial judge." I still thought the luncheons were useful, and certainly it was useful for the District judges to exchange views, find out from each other what trial techniques were working. I was sorry that the Court of Appeals judges, at least in our court, didn't have that same kind of regular luncheon arrangement.

Mr. Pollak: I don't think in this oral history that you have painted, your position on the

court is one of kind of a monastic separateness from the world. On the other hand, going through it, living through the years on the bench, did you feel that there were aspects of the isolation of your position as a judge which you wanted to remedy by contacts that were available to you?

Judge Mikva: You wanted as much contact as was proper because there really is a tendency for the judges to be inner-directed for so long that they start to forget that they are dealing with real world problems. They start getting very unrealistic and have unworldly concerns. On the other hand, there are limits to what judges can and should do. I don't think judges should speak a lot on subjects that come before them on appeal. They shouldn't express their views. It is just a constant dilemma. I have been troubled by the outspokenness of some of the District judges on the Sentencing Guidelines, views that I share. On the other hand, it makes it a little hard to reassure the press and everybody else that those judges are really impartial when they review the guidelines and apply the guidelines to individual cases. When a judge expresses the view that the guidelines are a dumb idea, which they are, and yet that judge is supposed to apply those guidelines in a rational manner, it gets a little sticky. So there are limits to what judges can and should do; but, on the other hand, when judges take those limits to extremes they really do turn the court into a monastery.

Mr. Pollak: I guess one of the most common things that lawyers think about judges – of course, you were a lawyer once – is that, unless you knew a judge tremendously well while the judge was a sitting judge, a lawyer is disinclined to be abrasive with the judge. I wonder what your observations are of this world of lawyers into which, like a fish, you swim, yet all of the people that constitute the water in which you are swimming feel disinclined to say anything really negative?

Judge Mikva: Yes, it bothered me a little bit, particularly since I had come out of the political world. The lowliest voter never had any hesitation about telling me what I was doing wrong. All of a sudden, here I am in this new job, the bench, where distinguished lawyers, lawyers who know a lot more about a subject than I did, are deferential on everything. If I said it's dark outside, they agree even if the sunlight is getting in their eyes. The first time that I became aware of this etiquette was at a dinner. There were a lot of lawyers at my table. I sat next to this person who looked familiar. He was very polite. Whenever I started talking about the law – it was not a lawyers' dinner – whenever I started talking of the law, he would change the subject. Shortly after dinner, before the speeches started, he excused himself and left. I turned to the person at his side and said, "Do you know who that was? He didn't say much." He replied, "He just argued a case in the Court of Appeals and you tore his head off." I remember that if I ever voted for a bill that a constituent didn't like when I was in Congress, they let you know how they felt about it. As a lawyer, if you are arguing a side of a case that another lawyer disagrees with, he tells you about it. But here was this lawyer who apparently had lost an important case before me in an opinion in which I had not treated his legal arguments very well, and he never said a word about it.

Mr. Pollak: It doesn't surprise me.

Judge Mikva: No, and as I thought about it later on and thought of my own reaction when I was a practicing lawyer, that's right. He might be worried that someday he might appear before me again and didn't want the dinner conversation to somehow be taken into account the next time he appeared.

Mr. Pollak: I have this brooding on the omnipresence of an idea that it's kind of out of

bounds to talk to a judge about an opinion that he or she wrote in a matter that you argued. I suppose the judge could raise it, but otherwise not.

Judge Mikva: The problem, though, is that there is a concern that the lawyer shouldn't even think that they can reargue the case informally after the fact or should try to influence the judge's thinking about that general subject vis-a-vis the case. You can obviously try to influence the judge in a whole variety of subjects but not regarding that case except in formal court procedures. The problem is you don't want judges to be disconnected from the real world, from the way lawyers perform, the lawyers' problems. I think some of the bad cases, some of the bad precedents in the law are instances where the judges are just sitting so high up that they forget the problems that lawyers have. I think that one reason class action law is moving in some unfortunate directions lately is that the judges forget how important a class action can be to resolving a dispute. Instead of having 5,000 cases spread all over the country, a class action can get it resolved in one case. There may be some problems about how to put the class together and how to designate who the representatives will be and what will be the binding effect on subsequent claims, but all those are problems that arise out of a serious mechanical management problem: how do you handle court litigation questions that come in? Asbestos, black lung disease, breast implants – should they be decided on a case-by-case basis? So, I think that while lawyers understandably are reluctant to bridge that gap altogether, they shouldn't be as reluctant, and judges should encourage this interaction and should know that dialogue can be useful.

Mr. Pollak: Do you believe that the Congress monitors what the D.C. Circuit does? What is the interface that you have observed between the Congress and the court.

Judge Mikva: Almost none. I thought of myself as an appellate lawyer when I was

elected to Congress. I was on the Judiciary Committee and took an interest in what was going on and the development of the law. But I lost touch. Congress is too busy and loses touch completely with what is going on in the law. It is unrealistic to think that Congress keeps up with what the Courts of Appeals are doing. We had case after case where Congress ignored concerns that the courts had raised – not about policy and not about the direction of a particular law but about mechanical problems in the law; the fact that Congress hadn't dotted the i's and crossed the t's. It would go unaddressed. We finally set up my last year on the bench this formal procedure where the judges would send copies of opinions to the Speaker and the Senate President calling to their attention that the court had acted in some way that affected a statute Congress had passed. We were very careful to make it clear that we were not lobbying for changes; we were only letting Congress know what was going to happen. It has had a modest success.

Mr. Pollak: Would those have been statutory interpretation cases?

Judge Mikva: Yes.

Mr. Pollak: Well, that's a constructive idea. The question is whether Congress can intake it, I suppose.

Judge Mikva: And whether the court will really follow through. There was concern in our court, for instance, and in other courts, that somehow the judges who are on a particular panel would seem to be trying to influence Congress in a particular way by making it aware of those cases. I thought it was a serious problem, not to frighten either Congress or other judges. We had to constrain the way to do it. The clerk of our court sends over an opinion without any comment saying Congress might be interested. Then it's up to Congress.

Mr. Pollak: Do judges ever testify on substantive issues before the Congress?

Judge Mikva: Yes, but most of the time we prefer an invitation.

Mr. Pollak: Did you do so as Chief Judge? Was that an occasion?

Judge Mikva: Yes, or even as an individual judge. I tried to make it clear if I was going over as an individual judge. First of all, I can't recall that I ever went over and disagreed with the Chief Judge of our court or with the Chief Justice. But on other occasions, if I was asked by a Member of Congress to testify on something, and if my views were not official Judicial Conference policy (which I think occurred on one or two occasions about very detailed rules or a procedure), I made it clear that I was speaking only for myself, not for anyone else.

Mr. Pollak: I believe you spoke about contacts with the media in connection with the Supreme Court nomination process, but I don't believe that I inquired as to contacts with the media just along the line of your performance of your judicial duties.

Judge Mikva: I just thought that there was no appropriate way to do it. I kind of wish that there were frankly, because some of the cases were grossly misconstrued by the media, some of the important cases that we handled; and I wished I could clear the record in some way. But there really isn't any appropriate way for the judges to explain the decisions that are handed down by them. I wish the media had picked up more on the Chief Justice's State of the Courts Address he gives every year, and it would have been nice if major circuits could have made a similar address about the state of the law of their circuit. The press really didn't have much interest in our courts except on an individual case basis. If it was a hot button case in District Court, then the press was interested. If it was a hot button appeal, then our court was interesting. But as far as the way the court functioned, there was no regular coverage. Court T.V. has tried to fill that

gap a little bit and on one or two occasions I was asked to appear. But there were so many things that I didn't think I could talk about.

Mr. Pollak: Would you receive invitations now as a former member of the court, for example from Court T.V.? Would you feel a broader ambit for your comment?

Judge Mikva: Oh, absolutely. I feel free to talk about everything except anything that was confidential about the way a particular case was decided or what was said at the conference. But I can comment on the Court's work and how the judges function. Part of it is that I feel very positive about the judicial process and brag about the success of the federal judiciary.

Mr. Pollak: What about contact with academics? Was that something that played a role in your judging?

Judge Mikva: Yes. I would feel freer in calling an academic to pick his brain about a subject matter than I would a practicing lawyer. I justified it on the theory that if I called the academic, obviously, I was getting his biases and prejudices spooned into the process of what he was telling me; but, at least, it didn't deal with a specific case. I would always worry about calling lawyers because they might have some stake in a particular case I was asking about. Even if they weren't a party to that case, they might have a similar case; and I didn't want to provide an unfair advantage by allowing ex parte advocacy.

Mr. Pollak: But when a case was pending before you before argument, after argument, when you had an opinion writing assignment, you would feel that you could make inquiry of an academic?

Judge Mikva: Yes. Again, I used their written work extensively. I felt very comfortable calling an academic. I usually wouldn't say I'm working on such and such a case; but I would

say, "Do you still think that it is a good idea not to apply such and such a rule?" I found that it was useful and they enjoyed it and I enjoyed asking them.

Mr. Pollak: I bet they did. Did you do much writing outside your opinions while you served as a judge?

Judge Mikva: I tried to do an article or two a year. For a long time I did it because I had a feeling that the clerks could learn by helping me. You know one skill that young lawyers need to have to go into practice which really isn't taught anywhere is the skill of writing vicariously. When I was a young lawyer, the things I was writing were not usually the things that bore my name as the primary author. If you were the last name on the brief, you probably did most of the writing. Arthur Goldberg's name appeared first on the brief. Now that you are a senior partner, I'm sure Steve Pollak's name appears first on the brief. So one has to learn how to write vicariously to write in the style, conducive of the views of whoever it is one is writing for. This is particularly true of speeches. I found that when I went to practice law that some of the early work I was doing involved preparing testimony for some of our clients before a legislature, when they were lobbying for some position. There is an art to learning how to write vicariously. Clerks learn some of that when they are writing opinions for judges. It's supposed to sound like the judge's work, but I thought it would be useful to give them additional experience, particularly on speeches. So I always made sure that every clerk worked on at least one of my speeches and one of my law review articles. Unfortunately, we were given a terrible ethical ruling. The Committee on Judicial Ethics said a few years ago that clerks should not work on these things because those are "extracurricular" activities and clerks were hired to work only on opinions. I thought it was a ridiculous ruling, but I had to abide by it. It makes no sense because judges

aren't paid for their speeches, and there was no reason why the clerk shouldn't work on it. It came up, unfortunately, out of a situation where a judge was preparing a treatise on bankruptcy and was using his clerk to work for him on the treatise. Now, obviously, that wasn't the correct use of the clerk, since the judge would receive income from the treatise. It is too bad, because I found that the clerks were useful to me, and it was a useful experience for them. When I lost the advantage of being able to work with a clerk, I found my writing time became more substantial because I had to do the heavy cite checking.

Mr. Pollak: That leads me to make an inquiry for an observation by you. In your time, just as in my own, the computer-aided legal research has become a real big part of law practice and judging, I presume. Would you comment on your own observations as to speed and also facility and impact.

Judge Mikva: Speed is awesome, the accessibility and facility of finding resources and sources is awesome, and the overall impact is disastrous. We are running into some really serious problems, some of them are ridiculous problems of management. I know that once we had an appeal from this lawyer who had a sanction thrown at him because his complaint had been stricken. He filed a new complaint which was virtually identical to the stricken one. The judge imposed sanctions on him, and the lawyer took an appeal. What was his defense? There was no question that the complaints were virtually identical. He said, "It wasn't me, it was just that it was in the computer." He couldn't control it, so it was the case of a runaway computer. The fact of the matter is that you find so much stuff in the briefs that is computer-generated. There are too many citations and too many authorities that are computer driven. The research is so incredibly easy to obtain. I'm not sure but there are legal services out there besides Lexis-Nexis, which

really become several pages of a brief. If you need a section on res judicata, they'll sell you the whole section, cases and all. The briefs just don't reflect individual thought and attention that they used to reflect when lawyers would write case by case and thought by thought. That is part of the problem. The other part of the problem is that all the skills and talents that I prided myself on where one had to exercise some restraint because of page limits and the difficulty in obtaining the information are now available to everybody with no restraint at all. The example I always use is Shepherdizing. I learned early discipline, before I ever put a case in a brief, I would Shepherdize it; and I would Shepherdize it through the last issue of citations that I could get my hands on. On one occasion, the other side was a big law firm in Chicago that had cited a case that had been reversed. I won my appeal, and the appeals court reprimanded the other side. Well, today the kids in law school don't even know what it is that they are doing, but they know they can get a case shepherdized by touching the right buttons on Westlaw and Lexis-Nexis. But the result is that nobody looks at what you have. You punch it all in. It bothers me. I look over the overall technology that this country created, and I'm sure I sound like a fuddy-duddy when I say this, but it has brought us this tremendous informational research and it hasn't brought us any self-discipline.

Mr. Pollak: I think that sometime back in our interviews, you did comment on people who you regarded well who argued in front of you? I think that this should record that, but my recollection is that you did it.

Judge Mikva: I think so. I think I mentioned some people.

Mr. Pollak: A number of people. I'm unclear whether I asked you what you looked for in selecting your clerks. I rather think that I didn't.

Judge Mikva: Well, let me go through it very quickly. I would first look at their writing ability.

Mr. Pollak: And how did you ascertain that?

Judge Mikva: If they were on Law Review, I would look at their Law Review notes; but I would try to get an unedited version of it. I would ask for papers from them. I would ask for papers they had prepared over the last several years. I would talk to their professors. That was one issue. I interviewed. Some judges hire clerks without an interview. It always astounded me because, among other things, I think the most important quality of a clerk is the right chemistry. The judge and the other clerks in the chambers as well as outside the chambers have a lot of contact with each clerk. So I would always interview. I wanted a clerk who would work hard. Unfortunately, I'd lose some good people who wanted to do other things. I needed their undivided attention. I tried to get off the beaten paths as far as law schools were concerned, although it is much easier said than done.

Mr. Pollak: What do you mean by that?

Judge Mikva: Harvard, Yale, Chicago, Columbia, Stanford – the clerks on this court tend to come from those schools. The reasons are obvious and understandable. They do turn out awfully bright people. Our court has always been a feeder to the Supreme Court so many of our clerks end up going there after clerking here. Most of the judges had personal relationships with members of the faculties of those schools so it was easy for a faculty member to call on us and say they had someone. The relationships were such that it was very hard to pick clerks not from those schools.

Mr. Pollak: This is the continuation of the interview on Monday, November 4, 1996. We

are talking about clerking being the best job anyone could have or any law graduate could have.

Judge Mikva: I just enjoyed my clerkship thoroughly. It has always been an important credential. I always marvel at the fact that some 45 years later, whenever I am introduced to an audience, one of the things they talk about is my having been a clerk. So that for all of the rest of the career, the clerk will have the benefits of not just the badge but the experiences that they usually pick up. If they want to teach, an essential piece of their background that they have to have had is a good clerkship somewhere along the line. So I've always wanted to see this benefit shared among all of the other law schools in the country rather than an exclusive group of schools. It is very hard because the personal relationships are that I don't know people at New Mexico or Wyoming and, secondly, the measuring sticks aren't the same. You see somebody who has A's at Harvard or Chicago or Columbia and you know the measure of that person as a lawyer. Someone with A's at other schools may not be the same. Mostly, I just couldn't call up people or people couldn't call me up to say here's somebody you might want. That is why it was always such a treat to get a student from other places.

Mr. Pollak: What places did you obtain clerks from that were on a lower track?

Judge Mikva: Oh, I had a clerk from Florida. I had a clerk from Utah. I had a clerk from Oregon. I had a couple of clerks from Illinois and Wisconsin.

Mr. Pollak: Had you been able to ascertain their qualities sufficiently so that they turned out to be comparable to your other clerks?

Judge Mikva: Yes. In fact, that is the other thing you worry about sometimes when you bring in a clerk who is not normally considered in the top ten. How is that clerk going to feel about competing in the league in which everyone else went to Harvard, Yale, Chicago and

Stanford? And here, he or she is from a lower gear. Sometimes that is enough to overwhelm him. I had one clerk who I still look back at as a great clerk but who came from a state law school. Unfortunately, the other two clerks I had were from ivy league schools and looked down their nose at him.

Mr. Pollak: Really?

Judge Mikva: It bothered the hell out of me. It is very hard for a judge to do anything about it except set some obvious rules, but I couldn't say anything that would help. I think it adversely affected his inspiration, and it probably adversely affected his satisfaction with the job. So there is a problem; but on the other hand, it is worth it.

Mr. Pollak: As chief judge, did you have four clerks?

Judge Mikva: I was entitled to four clerks. I found – I got this advice from Judge Leon Higginbotham. I used that fourth spot to bring in an administrative type of an assistant because there was a lot of administrative work. The people that come in as substantive law clerks don't have any particular administrative ability, and they aren't particularly interested. So I found somebody who worked as a court administrator.

Mr. Pollak: Have your clerks moved into doing interesting things, doing public service? You've had a lot of them, so I'm not asking you to catalog every one.

Judge Mikva: What pleases me is that a lot of them have gone into teaching and some of them are very fine teachers at law schools at the University of Chicago, Virginia, Wisconsin, Illinois; and that pleases me. Some of them are in public service. I think one of the great plusses for judges is the whole clerk process. It's very key to judiciary work. It brings a new act every year. It is very good for the judge. As a person, you are offered this extended family every year

with three new children – all grown, with college educations all paid for. It's the best of all possible worlds.

Mr. Pollak: In your time as a lawyer, the practice of law and clerking has opened to women. It wasn't really open to women when you began, and it wasn't really open particularly when I began. I wonder what observations you would make including a bunch of clerks?

Judge Mikva: At the levels up to senior partners, the women have been integrated incredibly swiftly and well. I think that a firm no longer thinks of hiring at a discriminatory wage. On the other hand, when I started practicing law, we had no women. We did hire two permanent associates, and they were getting paid less than new lawyers. Firms wouldn't consider doing that today. Women are accepted by their employers. That goes all the way up to, I think, the senior partners. I think there may be a glass ceiling at the managing partner level.

Mr. Pollak: Did you find any difference between men and women?

Judge Mikva: The only place I found a difference – and I told my wife about it – there was a difference when you have a woman who has children. She has a higher priority that she is always going to reach for. It's even more important than getting an opinion in on time. She is the primary caregiver for a child. I accepted that; but it does make a difference because when I'm dealing with a male, he never has a higher priority. That is what is wrong with the way parents divide up their child-raising responsibilities.

Mr. Pollak: Did you find some males who had that higher priority?

Judge Mikva: No -- maybe there was one exception.

Mr. Pollak: What about minorities?

Judge Mikva: It's harder to make any blanket claim on how to resolve the problem. I

think most judges actively seek out minority clerks to the extent they can. How much affirmative action they need to do it, I don't know. Again, I can't imagine most of the judges I knew, including some of the ones whose views I didn't like or whose styles I didn't like, who would ever refuse to hire somebody because they were a minority or impose a higher standard on a minority. The difficulty is that there are very few minority students going into the law, and those that are have frequently suffered from such bad secondary education, have had less than adequate preparation for law school, that it's much harder to stay in law school. The University of Chicago Law School uses LSAT's and grade point averages as the cornerstones of its admission policy. One year, the chart I saw showed that in that top segment from which their students were drawn, there were maybe 30 or 40 African-Americans in the entire country. Some of them decided not to go to law school; others went to Harvard, Yale and Stanford. It doesn't leave much of anything for the rest of the law schools. And that is still a problem. Plus the fact that, I think, advancement in the law firm is a little more difficult. Again, not because the law firms want it that way, but because there are so many things that happen in a law firm that make it difficult for minority groups to prosper. Absence of peer support, inability to bring in clients. I've had discussions with some of my former clerks and others, and it's still not easy.

Mr. Pollak: How many minorities did you have as a judge?

Judge Mikva: Well, this excludes Asian-Americans because I had a lot of those, but I'm not sure. I know that they qualify in making up the statistics, when the fact of the matter is, it is hard to say that Asian-American law students are at any disadvantage. Many of them are third generation college grads; their parents were professionals, scientists, computer experts; they went to the very best private prep school, to Stanford Law School. I somehow feel guilty counting

them as a minority. If you talk about African-Americans and Hispanics, I had six.

Mr. Pollak: Have they stayed in the law?

Judge Mikva: Yes, they are all in the law.

Mr. Pollak: I'd like to turn to something that is an important part of your history, which is judicial administration. You've alluded to it along the way and so it isn't something that there may be that much more to come, but you served as chief judge during what period?

Judge Mikva: January of 1991 to September 24th, 1994.

Mr. Pollak: Before you became chief judge and as a circuit court judge, what comment would you make as to your role in administration of the court?

Judge Mikva: Well, I served on various committees for the U.S. Judicial Conference; I chaired the program committee at our judicial conferences; I was on the planning committee several times. I worked with the chief judge on tasks that were assigned to me. I am impressed at how well the judicial system works, and I really felt kind of an obligation to help keep it that way. I just can't get over how much better the judiciary functions than the other two branches of the government and with a much smaller piece of the overall budget. The judges keep the overall cost really small. Unfortunately, the trend is in the wrong direction because, as we have gotten more judges, as we've gotten more people involved in the judicial process, as we've gotten more responsibilities through new statutes for the administration of justice, the comfortable hands-on administration is getting harder and harder to do. I think that the time I spent as chief judge was substantially more than my predecessors spent as chief judge on administration; and I think that Judge Edwards, my successor, is spending even more time on it.

Mr. Pollak: About how much time do you think as a percentage of your working time as

a judge you spent when you were chief judge?

Judge Mikva: About 1/3, between 1/4 and 1/3.

Mr. Pollak: So, did you have to cut down how much you sat?

Judge Mikva: Well, in many circuits they do. In this circuit, it was frowned on. But, again, I had this one clerk, a person who I hired as a permanent administrator. She was there all the time. She was very good. She took a big piece of the responsibility off my shoulders.

Mr. Pollak: What was her name?

Judge Mikva: Debra DeMille Wagman. She came out of the Superior Court, and we had a good Circuit Executive who made a huge difference. Even so, I'd say it was 1/4 to 1/3 of my time. If nothing else, just reviewing and approving recommendations that they made took a lot of time. What I found is that since we didn't reduce the number of sittings, it impinged on some of the things that I otherwise would have done with cases.

Mr. Pollak: Was it a rewarding assignment?

Judge Mikva: First of all, being part of the national governing body for a whole branch of government was very exciting. It was a small collegial body where each individual chief judge had a lot of input in important decisions. But, in addition, on our own court I had a chance to exercise influence.

Mr. Pollak: Why don't you give an example of exercising influence and making the courts run better as a chief judge.

Judge Mikva: Well, I think one of the things that happened -- again, I don't want to sound like I invented this, but we formalized and computerized the calendar system. One of the great myths in developing this Circuit was that somehow the chief judge manipulated the calendar and

would decide who sat on which case. Judge Bazelon, when he was chief judge, was always suspected of such, but it never happened. By the time I became Chief Judge we had come out with this computer model to make sure that every judge sat with every other judge an equal number of times and calendared the cases strictly through the computer. There was no one that could ever manipulate the clerk or the chief judge into an assignment so that a particular case got to a certain judge or that certain judges sat together. We were quite a success at breaking the mold. The pattern that unfortunately developed was that this wonderful random computerized way of making sure that the cases were selected and the judges were selected without any biases nevertheless allowed the judges to trade with each other. If I couldn't sit on a certain day for some reason or other, I would trade that day with another judge. Well, that frequently ended up with two or three judges sitting together more often than they should have. We tried to diminish that by persuading the judges to avoid any conflicts and rearrange what they have to do – like teaching and speaking and traveling. I think we got a better handle on statistical recording of how long cases were taking on backlogs or logjams. We did a pretty good job of controlling the backlog and the logjams. Some years earlier, the chief judge had presented a rule that precluded a judge who was a certain number of cases behind from sitting until he got caught up. That became an internal spur among judges. Anyway, the fact that there isn't a logjam is in part due to a more efficient case management system.

Mr. Pollak: Does being chief judge give the chief judge any advantages in influencing other judges either in administration or anything else?

Judge Mikva: Well, the chief judge is always the assignment judge if he or she is in the majority on any case.

Mr. Pollak: Your voice in conference didn't have any greater timber to it?

Judge Mikva: I presided over the conference and assigned the majority opinion, if I was in the majority. On the administration, most of the judges, not all, but most of the judges, accepted the chief judge's recommendations on administrative matters.

Mr. Pollak: Did you identify any disadvantages to being chief judge other than the time demands?

Judge Mikva: No, again, it depends on how you feel about the court. I liked this court. I'm proud of our court. I was proud to be identified as chief judge of the court. I thought it was great.

Mr. Pollak: What role did you play, if any, and what was your role in spurring the mediation or ADR program, and what was your perception of its influence on the court's docket and case management?

Judge Mikva: Well, I was a very late reformee as far as views on alternative dispute resolution. When I first came on the court, I had previous experience in labor arbitration, which I found very unsuccessful in the settling of disputes. And, I thought particularly when they talked about mediation of important government disputes, it just seemed to me to be a bad idea. It wasn't going to work for this court. I also remember that some courts on the second circuit, for a long time under the guise of mediation, the judges would lean on parties to settle cases that shouldn't have been settled. I remember instances when I was a lawyer, sometime during pretrial, the conferences with the judge and the judge would look at us and say, "You know you really ought to settle this thing; here is where I think you ought to settle." Then the idea of trying the case before that judge, if it wasn't settled, always bothered me. So I was very opposed to the

idea; actually, I shouldn't say opposed, but I thought it wasted a lot of time the important cases would not get settled. And I was astounded and delighted at how successful it was.

Mr. Pollak: This is at the appellate level?

Judge Mikva: At the appellate level. But then as I began to ask questions about trial work, I found that it was successful there too. But let me talk about the appellate level. Part of the incredible success story arose because the program attracted a panel of mediators – mostly retired or still active lawyers in practice but clearly people who were still at the top of their game as practitioners of the law. They had the right attitude about mediation. They understood what it was not – they weren't supposed to cut the baby in half, they weren't supposed to act as substitute judges. They were supposed to keep the parties talking about trying to find a formula for settling the case. What really astounded me, I think, was that the government, which I was sure would just reject that system, became a very willing participant. I think that part of it was its greatest success. And the Civil Division of Justice became an enthusiastic supporter in the mediation process. They encouraged their attorneys to take part. We seldom had, we did have some rules which said that you had to at least appear at the mediations; but we seldom had to enforce them. The parties, as more disputes were settled, usually understood that this was a better way of getting it resolved; and they weren't hostile to the process. The court didn't have to apply any rules; the lawyers just had to show up. The impact on the calendar of the judges was that there were a substantial number of cases being taken off the calendar. We save an incredible amount of public resources for every case that's settled. Our mediators were not paid, a professional giving away professional services in a commercial context; but I am convinced that's one of the reasons it works so well.

Mr. Pollak: Are the circuit courts adequately funded, or was your court adequately funded in your tenure as judge and then chief judge?

Judge Mikva: Yes, I think that's one of the reasons the judicial system worked was because it did provide sufficient funds; we had more help. I'm not sure, for example, that an appellate judge really needs three clerks; we probably had more people and computer information than we used. But overall, there were sufficient resources. You expected to put demand on those resources and get results. The waste in the judicial system, as far as I'm concerned, is the things that we've let happen in places when judges sit. When I started practicing law, the Courts of Appeals all sat in one place, except maybe in the Ninth Circuit. I think that all the other circuits had one place to sit. All the judges lived in that place, and there weren't any travel allowances and chambers for judges in other places. Now, all the Courts of Appeals sit in many places. The Seventh Circuit, for instance, still sits mostly in Chicago. But they have chambers for judges in Madison and Milwaukee and Indiana; all those are very expensive. It is very expensive to maintain the judges, the travel expenses for the judges and for the clerks, the extra communications equipment, the extra libraries in more than one place. Even in the D.C. Circuit, several of the judges do not reside in Washington, D.C. There is an extra expense. I don't think they can charge for travel, but there is extra expense for communications and other support services. More substantial is the extra cost of all the extra District Court facilities, and that is Congress' fault. Congress decides where there should be District Courts, where they should sit. The notion that this special federal jurisdiction should be available in every nook and cranny of the United States is nonsense. If this is a special kind of jurisdiction, I see no reason why the lawyers shouldn't come to some population center where the District Court would be located. It's

not the number of District judges, it's the number of District Courts. This is Congress' problem because they want to bring courthouses home to their districts. Look at some of the places where District judges sit; they don't have any business in many of those places.

Mr. Pollak: What, if you have an answer, what do you want your chief judgeship to be remembered by?

Judge Mikva: I think I'd like it to be remembered that I was trying to make the court more efficient, without diminishing the personal needs of the judges. It's hard to describe a judge's work schedule in a way that really would be appreciated because judges do control the schedule. They can decide when they come into the office and when they go home, how long they make their opinions and how many footnotes they put in. It makes it sound like it's almost a non-working job. Well, that is not true; most judges put in an incredible number of hours. Their hours are flexible hours in the sense of when they work, but most judges work more hours than they did as lawyers. I know I put in more hours as a judge than as a congressman, and most judges I know put in more hours as a judge than as practicing lawyers. But I would like my chief judgeship remembered for finding a way of making the overall operation of the court more efficient and productive without interfering with the flexibility of a judge's schedule.

Mr. Pollak: Do you think that you would identify any particular challenges that you had to meet during your chief judgeship other than what you may have already spoken about?

Judge Mikva: I think the one that I have to meet that I am most unhappy with is that I was not able to – it took place on my watch and started before my watch – is that I was unable to restore collegiality among the judges. There was that sharp division, for the first couple of years before I came on and then when I came on, between Chief Justice Burger and Judge Bazelon.

But Chief Justice Burger left the court, and the court was quite collegial. It stayed that way until fairly recently, and I was not able to restore it when I was chief judge. I was challenged by that.

Mr. Pollak: Well, I'd like to ask some general questions. From your perspective, the total of all your experience and particularly as a judge, I guess, what are the qualities of a good judge? I suppose initially, it needs to be asked in relation to an appellate judge because that's the area of your experience.

Judge Mikva: You have to care about the law. You have to really think about the law as rewarding, there really is a fabric of the law. The appellate courts care. Certainly at the federal level, we define the legal landscape of many, many important things. Judges aren't consistent in evaluating the consequences of their individual decisions and how they play out in the legal landscape. The landscape is very murky and unfair. So I think that the first thing that I would say for an appellate judge is that he or she needs to think about the law as the primary institution of governance that they want to be involved in. I think that, I hate to say it, some judges don't like what they are doing. Some judges just aren't ready to be judges. I'm sure that I was that way before I came through my 30s and 40s. Some judges are still too involved as active practitioners. They care too passionately about individual results. I think that an appellate judge has to somehow exercise some self discipline and say that while the individual result is important, there is more to this decision. This decision I am going to hand down, this opinion I am going to write is going be read a lot later, by people and in cases besides the parties to this case. Subsumed within that requirement, the judge needs to have some smarts; some of the problems that judges have are that they have to spoon together things that don't always appear similar. I think it requires a certain age because age is what brings some judgment and some patience.

Mr. Pollak: A feeling for the law, smarts, judgment, some age, patience. Anything else? I don't mean that there is, I'm just probing to...

Judge Mikva: Patience. In many respects, it's a little more difficult for judges than for lawyers. There is this tendency, because of the black robe and the high bench, to become peremptory.

Mr. Pollak: I don't view this set of interviews as one for your service as Counsel to the President. The Archives will be asking you to speak about that, although you are not precluded from anything you want to put in. I am led to ask you, because I am sure you had some role in the judge selection process of President Clinton, I'm led to ask whether the process or even the part of it that you touched could filter out characteristics of candidates along the lines that you, from your experience, know really make a good judge.

Judge Mikva: Most of the time that selection process was incredibly successful. There were occasional aberrations because every once in awhile additional factors got poured in. A Senator wants somebody very strongly, and the depth of that Senator's desire for a District judge just trumps things that should count more. The nominee has some important "rabbis" elsewhere in the political landscape, and that trumps some more important concerns. But most of the time, for most of the candidates that came along while I was there, I am impressed at how well the entire selection, confirmation process works. Unfortunately, the confirmation process during the last year or year and one-half – really since the 1994 election – really became very political. I don't mean because it was taken over by Republicans. I found Orrin Hatch a thorough gentleman and a delight to work with. But there were people, some of his colleagues, who really felt that in the time before the election there was a mandate to block the approval of any judge, to try to

make the second half of the Administration nonexistent as far as judges were concerned; and that caused problems. But, taking that into account, the rest of the selection/confirmation process works incredibly well most of the time.

Mr. Pollak: Where do these characteristics -- what agency looks for the characteristics that you've described? Who is doing that?

Judge Mikva: Well, at every level. It starts with the Senator. Let's take a District judge. The Senator wants to appoint somebody. He or she is getting input from a whole variety of places, including local bar associations, local lawyers' groups, local political groups, local civic groups, and he or she wants to recommend somebody that will get appointed, somebody that will bring some credit to him or her. Chuck Percy, for example, was a Senator from Illinois. He continues to brag about some of the people he helped put on the bench, and he is entitled to credit for them. They were great people who turned the District Court bench around in Chicago. So, it starts there. Then the names get sent in to the Justice Department, Justice has a whole department to go out and interview these people and talk to them and do a work-up on the candidate. The name is brought to this group of Justice people, White House Counsel's people, people from other agencies, people that are active within the White House and the Vice President's office, other places where they would have some reason to have concern about who the judges are. They go over the names and think about them, argue about them, talk about them. They sit over coffee and say "Steve Pollak would make be a good judge." Then it is sent out for an FBI full field investigation. The FBI usually doesn't come back with qualitative sports about the candidate's abilities. Sometimes, in their field interviews, they will get colleagues of these lawyers who will say, "This guy would be a terrible judge. He can't keep his cool. He wouldn't

be a very good judge." Academia weighs in because these people have all gone to law schools. They have some ties to their own institution; some have taught, written and so on. The President weighs in. He would remind me on occasion in discussing a potential candidate that he used to teach constitutional law. Since I knew about the judicial process, on several occasions we would get into full blown serious discussions about the judicial potential of a candidate. All the more true about the Court of Appeals judges, except that with them, the Justice Department takes this more seriously and the President takes it more seriously because they are normally thought of as his appointments. You multiply that process by a jillion in the Supreme Court, and you understand how thorough the process is. If they had prior judicial experience, their opinions are read. I remember in several selection sessions, we sat around reading opinions of some of the judges.

Mr. Pollak: What about the ABA?

Judge Mikva: The ABA is a very important resource. This President is very, very sensitive to their recommendations. He went ahead with only one nomination that the ABA didn't recommend. Their processes are extremely meticulous, extremely fair. They make sure that there is no personal bias; their views are not preordained, and their recommendations are very meaningful. When the ABA rates a candidate "well qualified," that person's chances are improved mightily. I have to say in conclusion, the result shows. When you look over the caliber of people who have been appointed as federal judges, and, not just in this Administration, but over the last four or five administrations, they've been very high caliber.

Mr. Pollak: Would you express yourself differently in describing the qualities of a good lawyer?

Judge Mikva: Yes, a little bit differently: depending on the field of law, the lawyer can and should be more concerned about the warm zeal quality that they give their clients. You're supposed to be an advocate. I know there are limits on how much of a partisan a lawyer can be. But a good lawyer is much more active for that particular case; the lawyer has less responsibility to the fabric of the law. A lawyer needs smarts, but a lawyer doesn't need the kind of patience and judgment that a judge needs. A lawyer need not worry about the state of the law that a judge needs.

Mr. Pollak: I don't think that I have any other general questions about the bench. I think you had occasion to speak about the Gender-Bias Task Force, which was a committee of the court, I guess. It was not a committee of the Judicial Conference, was it?

Judge Mikva: Of the U.S. Judicial Conference?

Mr. Pollak: Or even of the Circuit Judicial Conference?

Judge Mikva: No, but it was of the Council of the Court. It was an official committee.

Mr. Pollak: I'm not suggesting it wasn't official.

Judge Mikva: The report was – there was a program at the Judicial Conference while I was Chief Judge that discussed the project and had people on it talking about various of the recommendations that the gender study was going to make. But, it did not come through the U.S. Judicial Conference, though they did send signals from time to time encouraging the Circuits to get involved in this kind of thing. The Ninth Circuit had an enormously successful Gender-Bias Study. I think I indicated before that I felt that women lawyers at the lower echelons of the practice, that hiring practices and treatment by law firms around here had pretty well bridged the bias gap that had existed. I think what the Ninth Circuit study showed and what I think our

studies showed is that while that was true most of the time, there were still some varied exceptions: as you got higher up the scale, there were a lot of problems that still existed, and there were some problems of judges not being aware of the consequences of some of their conduct and the way in which it either involved bias on their part or would be perceived as being bias on their part. I think maybe I even told this anecdote somewhere else in some interviews about my daughter who used to do allocutions when she was practicing law in Chicago: She appeared once with her client before a judge she had known since she was a little girl -- he was a contemporary of mine in the state legislature before he went to the bench. He patiently heard her out, and when he was sure she was through, he said, "I'm sorry honey, I can't give you any help today." She said when she was describing it to me, "The worst thing was he didn't even realize how he had totally destroyed me in the eyes of my client who was already concerned with a young slip of a female who was making this plea for his freedom before he was sentenced. And the Judge said, "I can't help you, honey." It was just as if I was still a little girl. That's what he didn't realize. He was still perceiving me as a little girl who was Senator Mikva's daughter, as I was when he was in the state legislature." That is the kind of thing that gender-bias studies were devoted to. It was very successful out in the Ninth Circuit. I think it did an incredible job here. The difference here is that there is so much "sturm and drang" about the study itself among some of the judges, who said they would reject the proposed findings and so on, that no one paid much attention to the substance. They argued about whether there should be a gender-bias study, what it should do, what it shouldn't do, what its impact should be. I think it was very shortsighted of those judges to say we really resolved all the problems so there was nothing to look at. If we really resolved all the problems, what better way of establishing that than having a

gender-bias study that makes this clear. Obviously, we had a disagreement.

Mr. Pollak: I served on the committee that aided the task force that was made up just of the judges, so I know about the report which, in fact, was extremely supportive of the job of both the circuit and the district bench having made tremendous forward movement in sensitizing themselves and so forth. You commented earlier that you were not able, as you wanted to be, to continue to maintain the levels of collegiality on the court. Was there a problem that beset the Gender-Bias Task Force's work that came out of the lack of collegiality? How did that occur?

Judge Mikva: No question about it. It started when the Gender-Bias Task Force was proposed during Chief Judge Wald's tenure. Other Circuits were considering it around the country. The Ninth Circuit had started its study when she proposed it here. The majority of the judges supported it, but there were some who did not.

Mr. Pollak: Did she propose it in the circuit judges meeting of the active judges?

Judge Mikva: Right. The majority supported it, and there were some who did not. It was then taken to the District Court level, and the majority of them supported it. I think that was when it became a Judicial Council project. It was an official project supported by a majority, but the minority were very, very much against it. I think this may have been on my watch but it may have been Judge Edwards' watch when the proposed report came out. The majority of the circuit judges disassociated themselves. It really revved up the level of dissension and disagreement among the members of the court. It really was unfortunate because, as you point out, most of the report was very commendatory about the way the judges had behaved. In the majority of the instances we had made tremendous progress. Why that should not be something that we look at and why we shouldn't look at those places where more progress needs to be made, I never

understood. I still don't understand: I won't begin to speculate on why these judges opposed the gender study. They were using it to beat up on Judge Wald and then continued on me. It denigrated the openness with which I think judges ought to look at questions of bias because, if there is anything a court has to be concerned about, it is that anyone is perceiving bias – not that it means there is a bias, but we ought to look at why they are perceiving bias. Whether or not they would perceive themselves as being biased, whether it was true or not, it was for the court an important perception.

Mr. Pollak: What standard did you apply in respect to recusal?

Judge Mikva: Well there were some formal standards. If it involved a clerk, I would recuse for two or three years. If it involved a matter on which I had publicly expressed myself in a meaningful way in Congress – if there was something about a bill that I had co-sponsored or had come out of a committee where I had strongly been involved, I would recuse myself from ruling on that law. I didn't recuse with every law I voted for because I would not have sat on many cases. I recused on matters where I knew any of the parties on a personal basis. I usually did not recuse on the basis of knowing the lawyers. I figured that they were professionals and I was a professional.

Mr. Pollak: I think that you had indicated that you wanted to quit, or we had, at 11:30 and it is a little after that so I think I will close it out at this point.

Judge Mikva: Good.

Mr. Pollak: Okay.