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### Human Rights Hero: Abner J. Mikva

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Section of  
**Civil Rights and  
Social Justice**

AMERICAN BAR ASSOCIATION

# Human Rights Hero: Abner J. Mikva

By Stephen J. Wermiel

**W**hen Abner J. Mikva died last year, the nation's judicial system lost one of its great champions. Throughout a legendary career of public service, he held a profound belief in the role of courts and the concomitant need to preserve the independence of judges.

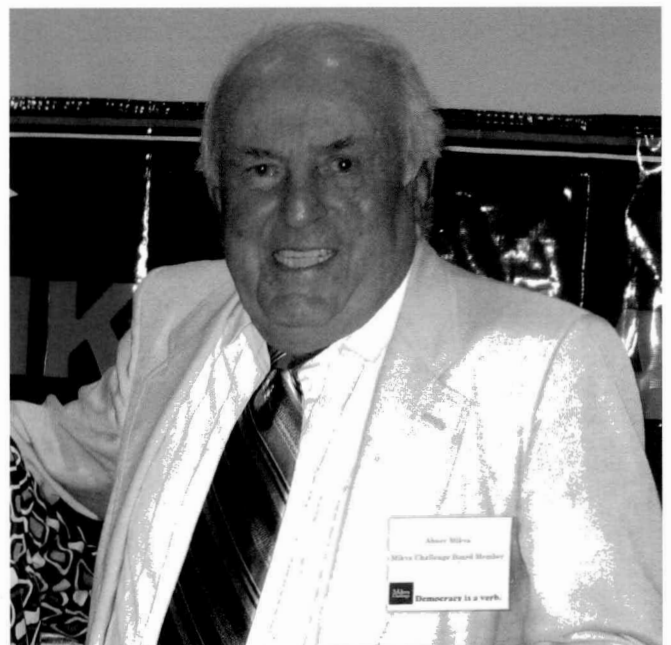
Mikva began his public service in the Illinois legislature, representing Chicago. From that platform, he was elected to the U.S. House of Representatives, where he represented one Chicago district for four years, lost after a redistricting fight, and then was elected to represent another part of the city for five more years. To those who knew him, there was no doubt that Mikva loved his time as a legislator, enjoying the creativity, problem-solving, and collegiality in the House of Representatives.

In 1979, Mikva left the House when President Jimmy Carter nominated him to the U.S. Court of Appeals for the District of Columbia Circuit. After 12 years, Mikva became chief judge in 1991 and held that post until he left to become White House Counsel in 1994 under President Bill Clinton, leaving government service in 1995.

Mikva cherished the protection of rights and liberties and the check on government power that the courts provided. But he understood that this extraordinary role for the courts sometimes ran counter to majority rule and made the courts targets of public frustration and criticism. These views and


concerns led him to several important ideas that flow from one another. He believed deeply in the independence of the judiciary and that judges must be willing to exercise that autonomy.

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[dis]Respecting, continued from page 22

class of offenders that should be fairly noncontroversial, as it is limited to parties that reside, work, or enter into domestic relations inside Indian country.

Tribal jurisdictions have moved cautiously and with great deliberation in the implementation of this restored tribal court authority. A few tribal prosecutions of a small class of non-Indians are moving forward like any other prosecution in any other court system would. In this context, tribal governments have federal legislative assurances that their judicial functions will be respected. These assurances are small, but incredibly hard-fought victories of critical importance to basic human rights notions of community self-determination. 

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*Stacy L. Leeds is dean and professor of law at the University of Arkansas School of Law. She has served on the Cherokee Nation Supreme Court and as a tribal judge of seven indigenous nations governments. She is a citizen of the Cherokee Nation and the only native woman to have served as a law school dean in the United States.*



## 2017 Thurgood Marshall Award

*Honoring Judge  
Katzmann*

The ABA Section of Civil Rights and Social Justice is proud to announce that the **Honorable Robert Katzmann** will receive the 2017 Thurgood Marshall Award on August 12, 2017, during the ABA Annual Meeting in New York, New York.

Judge Katzmann is a champion of the rights of immigrants in the legal system, forming the Katzmann Study Group on Immigrant Representation, a group of volunteers dedicated to increasing the quality of competent legal representation of the immigrant poor.


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*Human Rights Hero, continued from back cover*

"[W]hat I have learned most from my excursions in all three branches and, before that, as a practicing lawyer, is the quality most needed in federal judges. That quality is courage," he said in the Cardozo Lecture in New York in 1997 (published as *The Judges v. The People: Judicial Independence and Democratic Ideals*, 19 Cardozo L. Rev. 1,771, at 1,775 {1998}).

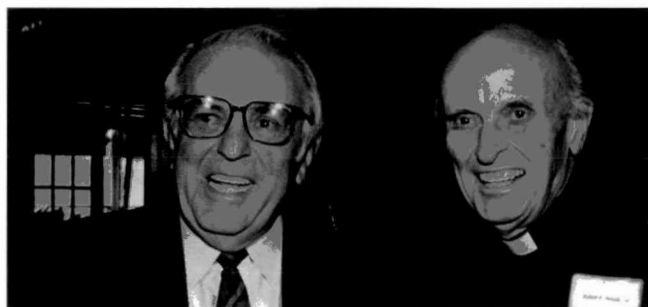
Part of that courage involves the power of judges to counter the will of the majority, an important bulwark against abuses of authority. In the same speech, he described himself as among those "who think that the most important function of a judge is the capacity to swim upstream..." (p. 1,772).

Precisely because that power runs counter to majoritarian principles, Mikva said, "(J)udges need to know when they must exercise that awesome power and when they must withhold it," he said. "They need to know enough about the political process to know that the high bench and the black robe will only carry so far against a popular majority, and that the power must be used with restraint." (p. 1,775-6.) In other words, "When to hold 'em and when to fold 'em is even more tricky in judging than in poker," Mikva said (p. 1,776).

It is fitting that when this remarkable public servant and passionate defender of our courts died last year, he "folded 'em" on July 4. For his dedication to the power, responsibility, and independence of the courts, he is a Human Rights Hero. 

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Former Section Chairs Abner J. Mikva (left) and Robert Drinan