

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

NEW BRUNSWICK

AN INTERVIEW WITH FRANK ASKIN

FOR THE

RUTGERS ORAL HISTORY ARCHIVES

INTERVIEW CONDUCTED BY

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Shaun Illingworth: This begins an interview with Frank Askin, Professor of Law, at Rutgers Newark School of Law on July 17, 2014 in Newark, New Jersey with Shaun Illingworth.

Molly Graham: Molly Graham.

Nicholas Molnar: Nicholas Molnar.

SI: Thank you very much for having us here.

Frank Askin: Sure.

SI: To begin, could you tell us a little bit about where you were born and raised and where you come from?

FA: I grew up in Baltimore. I came to New York--I was born in 1932. When I came to the New York area, I was about twenty-three years old. It was 1955. Now my background is a little complicated. It's all in my book, but starting about sixteen, when I was still in high school, I was basically a community organizer involved in the anti-war and anti-segregation civil rights movements in Baltimore. Baltimore was a Jim Crow city. [Editor's Note: Jim Crow laws were the segregation laws against African Americans that existed from the late 1800s to the 1960s.] Starting around 1968, under the influence of an older brother who was a major hero in World War II and came back to Baltimore after the war, I got involved in these various activities. As a result, I came under FBI surveillance, starting when I was about seventeen years old and remained on the FBI security index for the next twenty year, until after I graduated from law school. Anyway, I came to New York in 1955 to edit a left wing youth magazine called *New Challenge*. In fact, my associate editor was Lorraine Hansberry who now has her revival of *A Raisin in the Sun* on Broadway. [Editor's Note: Lorraine Hansberry was an African American playwright and activist. She wrote the play, *A Raisin in the Sun*. She died in 1965.] In any event, that's how I got to New York. The magazine collapsed around 1956. The entire left wing youth movement was collapsing, I decided I was now a journalist since I'd been editing a magazine. I started working for newspapers in New Jersey. I worked for a weekly newspaper in Cliffside Park starting in 1957 and then went to work at the *Bergen Record* in 1958. [Editor's Note: *The Record* is a Bergen County newspaper that was founded in 1895 and is still in print today.] When I was young, I always thought I would go to law school and be a lawyer. However, during the McCarthy era, because of my left wing politics, it appeared to me I would never be allowed to practice law and so I dropped out of a pre-law program at the University of Baltimore. I stopped going to school after that. [Editor's Note: The 1950s are also known as the McCarthy Era as parts of the American government attempted to identify American communists. Senator Joseph McCarthy led the movement.] After I married Marilyn whom I had met at the *Record* newspaper, she encouraged me to go back to pick up college credits and go to law school. We were both reporters when we met. So I started going summers and evenings, at City College to pick up some credits. Then, in 1961, the *Bergen Record* actually fired me because I was organizing the editorial staff at the paper into the newspaper guild. They said I was moonlighting, which I was, but everybody moonlighted. It wasn't unusual. At that point I went to work as the Executive Director of the Democratic Party in Bergen County in 1961. The politicians whom I had covered as a reporter asked me if I wanted the job. They knew me and they knew my work. So I joined the first Dick Hughes campaign for governor in 1961. [Editor's Note: Richard Hughes was the governor of New Jersey from 1962 to 1970. He then served as

Chief Justice of New Jersey's Supreme Court from 1973 to 1979. He died in 1992.] I worked as Executive Director of the Democratic Party in Bergen County. Then for the next two years I was back and forth between the Democratic Party and operating a string of weekly newspapers in Bergen County. By 1963, I had compiled enough credits at City College--so together with what I had at the University of Baltimore, I now had ninety-six college credits. I took the LSAT [Law School Admission Test]. A friend of mine who knew Dean Willard Heckel at the law school wanted to introduce me to Dean Heckel and try to get Dean Heckel to let me come to law school, even though I didn't have a college degree. [Editor's Note: C. Willard Heckel was the Dean of Rutgers Law School from 1963 to 1970, and then again in 1973 to 1974. He died in 1988.] Since I had a very good score on the LSAT, Dean Heckel agreed the law school would admit me. Actually, I thought I would go to a night law school, but there were no night schools that would admit me without an undergraduate degree. Rutgers did not have a night law school at the time. So I started law school, going full-time as a day student in 1963. Meanwhile, I worked at the *Star-Ledger* six nights a week while going through the first year of law school. So that's sort of my background. The faculty asked me to join the faculty when I graduated in 1966 and City College actually gave me a B.A. degree when I graduated law school. So I have a B.A. degree and an LL.B--a J.D. both in 1966. I sort of found a home at the law school and I've been here ever since. I'm now the senior member of the faculty. I got involved with the ACLU in Newark in 1967. It was the summer of urban riots around the country, including in Newark. [Editor's Note: In the summer of 1967, race riots occurred in Newark, New Jersey.] The ACLU took a very active role in trying to protect the beleaguered minority community in Newark. They started asking faculty members, if they would help them out with riot-related cases. Now I must tell you at the time, I was very skeptical of the ACLU. My experience in Baltimore during the McCarthy era was that the ACLU had not been a supporter of civil liberties of the left-wing movement. They cooperated with the FBI and the House Un-American Activities Committee, and so I had a very negative view of the ACLU at the time. [Editor's Note: The House Un-American Activities Committee, or HUAC, was created in Congress in 1938 to investigate communist activities in the United States. It contributed to the Red Scare, and McCarthyism, of the 1950s. One of its members was Richard Nixon.] But Hank di Suvero, who was then the Executive Director of the ACLU in New Jersey, convinced me that times were different. The ACLU was different and I agreed to help them out and do some riot related litigation. In fact, in 1968, the funny story is that there was a riot in Plainfield in 1968 and Dick Hughes, the Governor, had sent in the National Guard because there had been a robbery, a break in at a local rifle factory and a number of rifles were stolen. [Editor's Note: The Plainfield riots, also called the Plainfield Rebellion, occurred from July 14 to July 17, 1967, and resulted in over one hundred arrests, ten gun violence injuries and the death of white police officer John Gleason. Gleason was killed by a mob after shooting a young African-American man on the third day of the crisis. That same day, civilians seized arms from a local munitions factory. The National Guard was then deployed to the city and a truce was negotiated on July 18th.] The National Guard thought the rifles were being stored in some apartment in this garden apartment community in Plainfield. The governor and attorney general, four days into the riot, ordered the National Guard to search the sixty-seven garden apartments looking for the rifles. The ACLU asked me to bring a suit against the governor for illegal search and seizure, which I did. I got feedback one day from a governor's counsel. He says, "Who represents the plaintiffs in that Plainfield case?" Counsel says, "Oh, that's Frank Askin." He says, "Frank Askin, he's a friend of mine. He won't hurt me." In fact, we settled that case on Dick Hughes' last day in office. He

didn't want to go out of office with a threat of personal liability hanging over his head and he convinced the state legislature to put up a settlement offer for the plaintiffs in the case. And very frankly, we couldn't go to the US Supreme Court because the state of New Jersey was a third party defendant in the case. Hughes had filed a complaint against the state, to indemnify him and the state was represented by William Brennan III, the son of Justice William Brennan [Editor's Note: William J. Brennan, Jr. was appointed to the Supreme Court in 1957 by President Dwight Eisenhower. He served on the court until 1990. He died in 1997.] The issue of a governor's liability for violation of civil rights had not yet been settled. We knew if we went to the Supreme Court we would need Justice Brennan's vote in order to prevail and he would have to recuse himself with his son representing the state of New Jersey. So, we agreed to settle the case. So that was really my initial involvement with the ACLU. In 1968, I was invited to speak to the New Jersey state ACLU board on whether there was a constitutional right to reproductive freedom, The right of abortion had not yet been decided by the Supreme Court. I said yes there was; there was a constitutional right and spoke there. ... Then they invited me to join the state board in 1968. In 1969, there was an internal battle within the National ACLU. It had to do with this trial of Dr. Spock and his co-defendants for their anti-war activities. [Editor's Note: Dr. Benjamin Spock was made famous by his 1946 book, *Baby and Child Care*. In 1968, he was convicted for assisting others to avoid the draft. However, the guilty conviction was overturned in a federal court of appeals in 1969 due to lack of evidence against him.] They were charged with conspiracy, there was a big trial going on. The ACLU National Board was divided as to whether or not they should get involved in the Spock trial. A New Jersey affiliate thought ACLU should be involved on the side of Dr. Spock, but their delegate to the national board voted against it. So they decided to remove him and sent me [to] the national board. I became the New Jersey National Board representative in 1969 and I've been part of the National Board ever since. Until '75, I was a New Jersey affiliate representative. In 1975, I got elected as an at-large representative. There are both affiliate representatives and at-large representatives on the national board. So starting in 1975, I became an at-large member of the national board. In 1976, I actually ran in a contested election to be one of the ACLU's General Counsel, and I won. I have now been in ACLU General Counsel ever since. I'm the longest serving General Counsel in ACLU history. But now I'm ready to step down. Enough is enough. I actually no longer have a vote on the National Board. About five years ago I decided not to run for reelection as an at-large member of the board, if they would allow me to remain as a General Counsel, which meant I was part of the National Board, but I did not have a vote. It was actually a seat which had been created for Ruth Bader Ginsburg back in the 1970s when Ruth was not on the National Board, but was running the ACLU's Women's Rights Project. [Editor's Note: Ruth Bader Ginsburg is a Supreme Court Justice. She was appointed by President Bill Clinton in 1993 and is still on the court. She taught at Rutgers Law School from 1963 to 1972. In the 1970s, she led the Women's Rights Project of the ACLU and brought several cases of gender equality before the Supreme Court.] They wanted to make her a general counsel, so they changed the by-laws to say that a General Counsel did not have to be a member of the National Board. So I sort of became the Ruth Ginsburg General Counsel after I decided not to run for reelection to the National Board. So that's my organizational history with the ACLU. Talking about ACLU, I've been involved in two major policy debates--many other policies, but two very significant policy debates in the ACLU over these forty some years. The first had to do with when I first joined the National Board in 1970, and I talk about this in my book. It was the era of what we were then calling compensatory treatment in college admissions. I had already chaired the law school

committee in 1967 which established the law school's minority student program. It was the first such program at a law school in the country. We created this program to admit--eventually would become some forty students each year to the (MSP?) program and we're very proud of this accomplishment. The ACLU policy at the time was opposed to such programs. They called it preferential and compensatory treatment and they said the Constitution was colorblind. There should be no such programs of what we now call affirmative action. I finally found myself debating two members who were then on the National Board over this issue, Kenneth Clark and Bayard Rustin. They were the leaders of this colorblind policy argument and I found myself in this awkward position of fighting two of the leading African American spokespeople in the country, over this issue. Although I must say that Robert Carter, the federal judge who just died recently, from New York, was also on the National Board but he was on my side. I forget his name. So it was a very bitter dispute. It went on in the National Board for three years and finally in 1972--I guess it was the '72 biennial conference--my side finally prevailed and we adopted a policy supporting what's now called affirmative action. I think it's one of my most significant contributions to the ACLU, because since then ACLU has been the leading, essentially majority white organization in this country that has really been taking a leading role in fighting for affirmative action over the last half century. I think that was a very important accomplishment. Indeed, even our National Board now has become totally diversified. When I got on the National Board, it was basically a white male bastion. There were three women. There were a couple black members. Now, the ACLU national board is a very diverse body. So that I think was one of my major contributions to ACLU policy over the years. The second one I've not been so successful. I have been leading a fight for the last forty years challenging ACLU policy on political campaign finance. ACLU initially had what was an anti-regulatory policy. That was the ACLU policy for years, money is speech and you can't restrict spending money on political activity. I have been vehemently opposed to this policy over the years. I brought it back to the National Board five or six different times with other allies. We have slowly cut into that policy. For example, a couple years ago, ACLU finally voted that it was appropriate to limit direct contributions to candidates. They were even opposed to that. We finally got ACLU to come around and say, yes, it's corrupt to let individuals give excessive amounts to political candidates. So that was one major change. We're now battling over issue of how much disclosure there should be of political contributions. ACLU for a long time was opposed to basically any disclosure. It would inhibit speech if you had to disclose you were contributing. We are now moving forward and beginning to make some serious in-roads into allowing serious disclosure of contributions in political expenditures. So that's where that fight now stands. These were the two major policy disputes I've been involved in in the ACLU over the years.

SI: That brings up a point you brought up in your memoir. [Editor's Note: Mr. Askin published his memoir, *Defending Rights: A Life in Law and Politics*, in 1997.] When you first joined the National Board you said that it was divided between older members who saw the purpose of the ACLU as strictly focused on free speech issues, traditional civil liberties and younger folks like yourself, who were more activists in these social causes.

FA: Yes, and that's true. Particularly, the Southern California affiliate was always very, very active in expanding ACLU activities into new areas. When Ira Glasser became Executive Director, he took a leading role in trying to expand the organization--the scope of its activities, although Ira always disagreed with me on campaign finance. [Editor's Note: Ira Glasser was the

Executive Director of the ACLU from 1978 to 2001.] It's something we never agreed on. Anthony Romero and I disagree on campaign finance to this day. [Editor's Note: Anthony Romero is the current Executive Director of the ACLU. He assumed the position in September 2001.]

SI: Well, can you kind of expand on that? What were the battles between the older group and the young group in those early years?

FA: Well, there were the traditionalists and the so-called activists. The traditionalists always had a fairly narrow view of the scope of the ACLU. This is basically a free speech organization. Others had more nuanced, more pragmatic approach to issues, including issues of wealth and poverty. Southern California affiliate was a leading exponent of moving into the area of combatting inequality and economic inequality. So there were always these sort of splits over the years. It's probably not nearly as significant today as it was once upon a time. As I say, the biggest split today remains over campaign finance policy. The board is almost split down the middle. One of our major debates ended thirty-four to thirty-four, two years ago. In the early days, it was mainly New York academics who dominated the Board. They were the traditionalists. I thought they had very conservative views of what civil liberties was about, but the ACLU certainly evolved greatly over the years.

SI: In your memoir, you point to the change in policy where there was an effort to involve the affiliates more in national meetings. Can you talk about how that came about and what effect it had on the organization?

FA: Yes, and that's how I actually got on the Board. I was part of the fight over the Spock trial. Until 1969, the National Board was composed of a local New York based at-large contingent and then each affiliate--and I don't know how many affiliates there were; now we have fifty affiliates. Maybe there were thirty then, including New Jersey. Each affiliate had a delegate to the National Board, however they had to pay their own expenses. So the affiliate representatives never showed up, except the guy from New Jersey went across the river; he could go. But most of the affiliate reps never went to National Board meetings, so the whole board was totally dominated by this New York-based contingent of at-large members who were mostly New York academics. Well, the Spock trial created a big debate and at the 1970 biennial conference--every two years there was a big conference with all the affiliates--they changed the bylaws to provide that transportation to National Board meetings would be paid by National. That transformed the National Board because now suddenly we had all the affiliate representatives coming [including] the guy from Hawaii. So that was the big transformation at the 1970 biennial conference and that helped really change the whole dynamic of the ACLU.

SI: Once you got involved in the National Board and you started taking on more cases that was either coming through the ACLU or you were working with your colleagues there. Can we go into some of those?

FA: Yes. Okay. Here's what happened. Actually, the cases I took over were mostly for the New Jersey ACLU. The big difference was if national came in as a sponsor, they would pay the expenses rather than the affiliate. Starting with the riots in 1967, I started taking on these volunteer cases for the ACLU and I would get students to volunteer to help me with them. I was just being a traditional faculty member. Meanwhile, Arthur Kinoy, and that's Arthur's picture

with me up there, he was the Constitutional guru on the faculty, a leading civil rights attorney of the era. [Editor's Note: Arthur Kinoy was a Rutgers Law School professor from 1964 to 1992. He died in 2003.] He used to run something called the Constitutional Litigation Seminar. In the year 1970, Arthur was sick and took leave, and he asked me to take over the seminar. I said, "Well, I just don't want a seminar. I want to do it as a clinic." It was the beginning of clinical education in this country. More and more law schools were starting clinics--mostly they were poverty law clinics. I said, "I wanted to do a Constitutional Law clinic." Arthur thought it was a good idea. Dean Heckel thought it was a good idea. We went to a group sponsored by the Ford Foundation called CLEPR, Council in Legal Education for Professional Responsibility. They gave us a grant to start a constitutional litigation clinic and I started that in the fall of 1970, and that became my main teaching duties. We hired an administrative director, Bill Bender from the Center for Constitutional Rights. He came to be my clinic partner. When Arthur came back to the faculty a year later, he did not want the responsibility of a full-time law office. He was already working out of the Center of Constitutional Rights in New York. He just wanted to do his seminar. So I kept the clinic and the rest is history. That's what I've been doing ever since. Our major pieces of litigation came from New Jersey ACLU. They would get interesting cases and asked if we would handle it or if something came to us we would ask if the ACLU would sponsor it. We needed somebody to sponsor it to pay the bills. The first two cases, on my docket in 1970, had to do with government surveillance of political activists and police profiling on the state highways, what we called the Long-Haired Travelers' Case. Which just goes to prove that everything old is new again. Highway profiling and government surveillance are still big issues, but anyway, these were the first--these are the cases one and two on the clinic docket back in 1970. First, we had the *Anderson v. Sills*. Sills was the New Jersey Attorney General. [Editor's Note: Arthur J. Sills was the New Jersey Attorney General from 1962 to 1970. He died in 1982.] We sued to enjoin his memorandum asking local police departments to keep tabs on activist political groups. This was after the riots in '67. They were afraid there would be more urban riots. They wanted to keep tabs on political activist groups, mostly civil rights and anti-war groups, even included pacifist groups. Why they thought pacifist groups were responsible for urban riots, I'm not sure, but that was included in his memo. So we sued to enjoin this program to destroy the files they were keeping in Trenton. Well, we picked our judge pretty carefully, a very strong free speech judge, Bob Matthews in Hudson County, and he ruled in our favor. [Editor's Note: Robert Matthews was a Superior Court Judge in New Jersey. He died in 1993. He was a graduate of Rutgers Law School.] He ordered the state police to destroy their files. As a result, National ACLU came to me and said, "Well, how about taking on this case of *Tatum v. Laird*." This was the army's domestic intelligence program. We discovered that they had been spying on these local activist groups around the country, and keeping dossiers on them at Fort Holabird. [Editor's Note: Fort Holabird was an army base in Baltimore, Maryland from 1917 to 1973.] It was basically the same case as *Anderson v. Sills*. So I did that, took on *Tatum v. Laird*. Of course that's where I ran into William Rehnquist. [Editor's Note: President Richard Nixon appointed William Rehnquist to the Supreme Court in 1971. In 1989, President Ronald Reagan then promoted him to Chief Justice. He remained in the post until he died in 2005. He was known for his conservative, or right wing, rulings.] He was basically our adversary in the lower courts. We didn't even know at the time, but he had set up that the army's domestic intelligence program when he was chief legal counsel in the Attorney General's office. He wrote the memorandum that established the domestic intelligence program. Unfortunately, he got to the Supreme Court before we did. We lost in district court, but won in the court of

appeals from a very conservative panel. They said, “No, if you can prove these allegations, you’re entitled to an injunction against the army.” Well, Rehnquist got on the court and he casted the deciding vote that we didn’t have standing to bring this case. Never said the program was constitutional. The Court said (only?) plaintiffs didn’t have standing to sue the army. So that was my first run in with William Rehnquist. Then came the Long-haired Travelers’ Case, which lasted seven years. That was finally blown out of the water, also by Rehnquist. The district judge had thrown us out of court the first time around. We went to Philadelphia and the Third Circuit reinstated our case. Again they said, “Well, if you can prove these allegations that state police are stopping and randomly searching long-haired travelers on the highway without probable cause, you have a right to an injunction against the state police and requiring them to go train their troopers and to monitor their activities, et cetera.” Then after that, we came back to Newark for the trial. Meanwhile a judge in Philadelphia, based on our case out of the Third Circuit, issued an injunction against Frank Rizzo’s police department for stopping and searching black pedestrians on the streets of Philadelphia without probable cause. [Editor’s Note: Frank Rizzo was Philadelphia’s police commissioner from 1967 to 1972. He then resigned and was elected twice as Philadelphia’s mayor from 1972 to 1980.] The Third Circuit affirmed. That case ... went to the Supreme Court and William Rehnquist reversed it. He said, “No, no. The federal courts have no business interfering with local police departments.” By now we were six years into our case in New Jersey, but that was going to be the end of it. Finally the district judge--by now we were on the fourth district judge, two of them had died and one of them had gotten sick and retired. He says, “Nothing I can do. The Supreme Court says you don’t have any rights.” Then we went back to the Third Circuit. Said, “Well, you ... proved everything we told you to prove five years ago,” but meanwhile, the Supreme Court has changed the law and nothing we could do. So again, Rehnquist had blown me out of the water with our second big--case number two. Not long after that, I basically stopped going to federal court and for the last twenty years, I really spent most of the time in the New Jersey courts, which I find much more welcoming to public interest, constitutional litigation. The state constitution is much more protective of individual rights than the federal constitution. Such as, for example, our shopping mall case. When advocacy groups sued under the First Amendment for the right to engage in petitioning and leafleting at suburban shopping malls, the US Supreme Court said, “Oh, no. That’s private property, private property. The federal constitution has nothing to do with that. They don’t come under the First Amendment.” Well, New Jersey Supreme Court said, “Well, the state constitution is different, that certain entities who invite people to use their property have an obligation to permit them to exercise First Amendment rights or free speech rights under the state constitution. The Supreme Court said, “When the town square moves to the shopping malls, the rights people had in the town squares go with them.” So that was one of the big cases we established in New Jersey for constitutional rights under the state constitution, much broader than under the federal constitution. Now in more recent years, I spend a lot of time with my students litigating issues of free speech and free elections in common interest communities--condominiums, homeowners associations, property owners associations. This is an extension of our shopping mall case. That while these are private properties, and these individual owners have no rights under the federal constitution, they do have constitutional rights in New Jersey. So, a lot of my litigation is now around those issues. I also do a lot of election law litigation, again, mostly under the state constitution. Our big case now is for Election Day registration. We’re now in the New Jersey Appellate Division challenging the requirement of twenty-one day advance registration in order to vote in New Jersey. Okay. Am I talking too much?

SI: No. No, absolutely not.

MG: That was interesting.

SI: Now, early on you also challenged segregation in housing and employment.

FA: Right.

SI: Now, I could not quite tell from the memoir, did that dovetail with your work at the ACLU or did they bring you a case that led you into that?

FA: We did a lot of employment discrimination litigation against the city of Newark. In fact, one of the funniest incidents of my litigation career is the first time we sued the city of Newark for discrimination in hiring and promotion in the police and fire departments. The head of the Bronze Shields, which was the black police association, he was our prime plaintiff, Claude Coleman. [Editor's Note: The Bronze Shields was founded in 1959 within the Newark Police Department. African American officers are members and they sponsor community outreach programs.] Claude later became the police director after Ken Gibson became mayor and he essentially became the defendant in the case since he had to defend the city, the Newark Police Department. Then he later went on the bench. That was sort of a funny situation where my plaintiff became the defendant because that case just went on for years. In fact, at one point, I went on leave and my colleague Jon Hyman took it over and I never took it back. He kept it after I came back in '76 and he kept the case for another fifteen years. I'm trying to remember the housing cases we did. I can't even think of it anymore.

SI: I know there was the Parsippany Troy-Hills.

FA: Oh, right. Now actually, let me say, that was before we started the clinic. This was back in '68 and '69, and Professor Alfred Blumrosen, one of the senior faculty members, who had a long history of dealing with race discrimination with the EOC--he worked as a consultant for the EEOC. [Editor's Note: Alfred Blumrosen was a Professor at Rutgers Law School from 1955 to 2002.] He worked out a deal with the New Jersey Division on Human Rights. We took on two projects. We called it the administrative process project in '68 and '69. I was assisting Professor Blumrosen there. What we were doing, we were developing models for the state Civil Rights Division in New Jersey, to enforce anti-discrimination laws, the housing laws, and employment laws. We were looking for a pattern of housing discrimination and we discovered in Parsippany-Troy Hills. We published two books about our work. There's a red book and a yellow book on my shelf. Those were the two reports we did for the New Jersey Division on Civil Rights. One was on housing discrimination; one was on employment discrimination, where we developed new models for how they should enforce these laws. In Parsippany-Troy Hills we discovered there were eighteen low-income garden apartments. We did a survey and we found almost no minority tenants in these eighteen communities. So we filed a lawsuit or basically an administrative complaint against the eighteen apartment communities and we won. I don't know, but I hope the Division on Civil Rights is still enforcing the models that we created for them. I can't swear they are. Then we did the same thing with employment discrimination in the following year. That was actually part of the old Administrative Process Project, not part of the Constitutional Litigation Clinic.

SI: Were you working with the New Jersey affiliate of the ACLU on that?

FA: No, those we were not. No.

SI: Those were separate?

FA: Yes, that was separate.

SI: Well, when you joined the ACLU National Board, can you give us a sense of what that entailed in terms of what you were called upon to do?

FA: At that time, I think we met five times a year. We're now down to four meetings. We met for weekends. Started on Friday night, went through Saturday and Sunday. I was still young. I was one of the younger members. That was a little intimidating at first. I soon found out who my allies were on some of these issues in the board, particularly the southern California people--very helpful--and who my adversaries, the more traditionalist members of the National Board. We had a variety of issues. We had a split over impeachment of Richard Nixon, which the traditionalists were adamant against, but Ira Glasser was for it. [Editor's Note: Richard Nixon resigned from the presidency on August 8, 1974 after the House of Representatives passed the first step of the impeachment process due to his involvement in the Watergate Scandal.] Ira was the new Executive Director and we finally came out on the side of impeachment. It was a major step for the ACLU. One of the more interesting victories I find I had in the ACLU was the Robert Bork nomination to the Supreme Court. [Editor's Note: In 1987, federal judge Robert Bork was nominated for the Supreme Court by President Ronald Reagan. He was not approved by the Senate in a 58 to 42 vote due to his conservative views.] I don't like to blow my own horn. I mean, nobody would ever believe me if I told them this. I think I stopped Bork from getting on the Supreme Court. It's complicated as to why--because I played at two pivotal points in the anti-Bork campaign. This was the summer of 1987. I had just run for Congress a second time. I'd gotten the Democratic nomination [in] '86, and lost. [Editor's Note: Mr. Askin lost the 1986 election for the 11th District seat to Republican Dean Gallo.] The following summer I said I wanted to work on Capitol Hill for the summer. I'd actually worked there back in the '70s for House Labor Management Committee. In '87, I was hired by John Conyers as a special counsel. [Editor's Note: John Conyers is currently a Representative for Michigan's 13th District. He has held the seat since 1965.] Conyers was then chair of the Congressional Black Caucus. In August of '87, Reagan nominated Bork for the Supreme Court. As far as I'm concerned, Bork was a troglodyte. He was an incredibly conservative, right wing law professor. He was smart, but incredibly conservative. He was basically a heckler at the civil rights marches; total opponent of any kind of civil rights activity. In the middle of August of '87, Conyers called a meeting in his office of leading civil rights advocates, including Ralph Nader, [Eleanor] Smeal, who was the Chair of NOW, Marc Raskin, director of the Institute of Policy Studies--a lot of the leading, progressive leaders in Washington--to talk about stopping Bork. It was a very lengthy meeting. [Editor's Note: Ralph Nader is an author and lawyer. He unsuccessfully ran for President several times as an independent candidate. Eleanor Smeal was a civil rights activist who served as national chair and national president of the National Organization of Women. Marcus Raskin is a civil rights activist from Milwaukee, Wisconsin. He cofounded the Liberal Project. Raskin served on National Security Council under President John F. Kennedy. He also founded the Institute of Policy Studies in Washington, DC in 1963. It promotes progressive solutions in the United States and the world.] I'll never forget, Ralph Nader was [pushing] to start a filibuster. "We got to make sure we get a filibuster." I remember [Eleanor] Smeal took the opposite position. She said, "We got time for a filibuster. Let's see if we can round up the votes to beat

him. We got time. We can organize a filibuster later.” Basically, Ralph lost the debate and we decided we were going to really promote an active campaign to stop Bork. How we were going to do it was as follows. We had the whole strategy laid out. There were then still a lot of Southern Democratic Senators, but none of them ever got more than thirty eight percent of the white vote in their states. They were all dependent on black votes for their elections. And there were no black Senators at the time. We decided to make John Conyers the 101st Senator, and he was going to lead the campaign in the Senate to stop the Bork nomination. We worked out a campaign over the next three months. He ran back and forth to the south to speak and we set up phone interviews with black media all the time. We had all kinds of taped messages for all black media, black radio in the south. Conyers was pushing the idea that Bork was an enemy, both of civil rights and a lot of other progressive ideas. It played a major, major role. At the same time, I was now a General Counsel of the ACLU. I asked for a special meeting of the National Board. This was the middle of the summer. I wanted a special meeting of the National Board to oppose the Bork nomination. Now, this was a no-no in the ACLU. The tradition was don’t get involved in--we have to deal with Supreme Court. We’re always in the Supreme Court. We can’t take positions on the judges. I thought this was a very special situation and I actually achieved getting a special meeting of the National Board towards the end of August. It was a bitter, bitter battle. I remember Norman Dorsen threatening to resign as president if we took this position. [Editor’s Note: Norman Dorsen was President of the ACLU from 1976 to 1991. He is a Professor of Law at New York University.] This was anathema, particularly to the traditionalists. I prevailed. We voted to oppose Bork. I can’t remember now if we needed a majority vote or sixty percent vote, of the National Board in special, but my side prevailed. Of course, Norman didn’t resign; he ran the press conference announcing our opposition. Between Conyers working the Senate in the southern communities and the ACLU doing this unusual step of stepping in against Bork, I think those two things together probably had as much to do with defeating Bork as anything else. Bork finally lost 57 to 43. We eventually got every southern Democrat except Fritz Hollings to vote against him. [Editor’s Note: Ernest Fredrick “Fritz” Hollings was a Senator representing South Carolina from 1966 to 2005.] I think the joinder of those two things, the Conyers campaign, which I was running, and the ACLU opposition were crucial. Oh, by the way, I had to go back to teaching law school in September. I was just there for the summer. I told John I got to leave. He says, “You can’t leave. We’re in the middle of this fight.” I called the Dean, I said, “Look, I think I need a leave of absence.” He approved it. So, I stayed on for the next semester with Conyers. So I consider that probably my proudest accomplishment as a public citizen in my career.

MG: What do you think would have happened if he were nominated?

FA: What would’ve happened? A lot worse because we got Kennedy instead. [Editor’s Note: Anthony Kennedy became a Supreme Court Justice in 1988 after he was appointed by Ronald Reagan.] Justice Kennedy came in his place. Kennedy is now the swingman on the court. He sometimes votes with the liberals. So it would have been a big difference, if it were Bork and not Kennedy. This court would’ve gone a lot further to the right.

SI: Can you give us a sense of what your job as a General Counsel on the board is?

FA: Yes, it’s actually very limited now. Once upon a time, the ACLU had a very small professional staff and General Counsel, actually handled cases. I mean Arthur Garfield Hays handled cases. [Editor’s Note: Arthur Garfield Hays was a civil liberties lawyer from Rochester,

New York. He served as defense lawyer in the 1927 Sacco-Vanzetti Case and co-founded the American Civil Liberties Union.] Now ACLU has a vast professional legal staff. There are hundreds of ACLU lawyers between the national office and the affiliates. So we have a very limited role. We are basically a sounding board for the Legal Director. We decide whether certain cases should be taken to the Supreme Court or not. If there's a dispute within the organization over what policy means, we try to decide what our policy is and define policy, but it's very limited. The most important thing I have ever done as General Counsel was to have created our annual Supreme Court press breakfast. I first proposed this when I came on as General Counsel in 1976. At that time, there were four General Counsel; one of whom was Ruth Ginsburg. There were two others. Of course Ruth and I go back a long way, to Rutgers Law School. She taught the first class I was ever in, civil procedure. Then, when I graduated, she and I were the two civil procedure teachers on the faculty until she left in 1970. So, Ruth and I have a long history and when I proposed that we set up this annual Supreme Court press breakfast at the beginning of each term, Ruth and I voted for it and the other two General Counsel voted against it. It was again like opposing Bork--"It'd be inappropriate. We'd wind up denouncing the Supreme Court. We can't do that. The ACLU can't be in that position." So I lost. In 1986, I brought it up again and this time General Counsel approved it. Ever since then, every October or late September, we have our annual Supreme Court press breakfast. It's a big thing for the Supreme Court press and it's a major event at the beginning of each Supreme Court term. But that was my doing.

SI: When did this change occur in the status of the General Counsel, your role in the organization?

FA: I would say over time because the General Counsel role became more and more limited as the professional staff grew.

SI: What do you think of that change?

FA: Oh, I think it's obvious it's needed. We're almost a fifth wheel. You got all these lawyers out there; they're all very competent. We play a very minor role now as I say, in any kind of policy decisions. If there's a disagreement in General Counsel, that gets kicked up to the Executive Committee.

SI: Now, I want to go back to some of the most important movements that you outlined before, starting with affirmative action. You mentioned that it took three years to convince the board to get behind it. What was that fight like? What did that entail for you?

FA: We're talking ancient history now and it's hard to put myself back in that mindset, but it was a tough fight. It was a bitter fight. I felt very caught up in it because I was running this program at Rutgers Law School, which the ACLU was telling me it's unconstitutional. So this was very personal to me. In fact, we had to go change the agenda at the Biennial Conference. At the beginning of each conference, you have to vote on the agenda and we amended the agenda to put affirmative action on the agenda. It was either the '70 or '72 biennial.

SI: So was it just a matter of wearing down the opponents?

FA: It was building our case. Once we passed the resolution in the Biennial Conference to change the bylaws or change the policy, we then had to have a referendum among the whole

national organization. All the members of the affiliate boards had to vote on it. So it was a long struggle to change policy.

SI: Once the policy was adopted, do you remember how the ACLU went about pursuing the policy?

FA: Yes. Oh, it was implemented very quickly. First of all, most of the traditionalists began to leave the board. They felt beaten. Between that and the impeachment of Richard Nixon, the really conservative traditionalists started to move off the board, and the board began changing. Then women came on in vast numbers. I mean the women suddenly changed from three to twenty overnight. Then we adopted another amendment, which actually required expanding the board. I can't remember exactly--by like six members, and setting aside seats that only women could run for to guarantee that we had more women on the board. Quickly, the women's caucus was formed; Ginsburg was part of that. Plus, she was now a member of the National Board. So quickly, the ranks of the women greatly expanded, and they were much more supportive of non-traditional issues. We also greatly expanded our efforts to bring racial minorities on the Board.

SI: Are there other issues from that 1970s period that spring to mind that you fought for in the ACLU?

FA: Not off hand. It was expanding diversity on the board as well as changing policy.

SI: So the new policy on affirmative action preceded the diversification of the board?

FA: Yes, it did. But once we supported affirmative action, it became very easy to now adopt policies [that] would guarantee that more minorities would be elected to the board. We had a policy that when somebody resigned from the board and there was a vacancy between elections, there was a nominating committee which could only appoint an affirmative action candidate. They're the only ones allowed to be nominated and put on the board. That would give them a leg up in the next election.

SI: How contentious were the elections at that point?

FA: I think they were pretty contentious. Again, I'm thinking back--it's hard to quite remember, but I'm pretty sure they were. I remember I would give the New Jersey affiliate board a list of the people to vote for. We were electing ten people to the National Board, and there were fifteen or so candidates. Each affiliate member, board member had to vote, and I would give them a list of the candidates I thought should be supported. Other affiliate reps did the same thing with their affiliates. So it could be pretty contentious.

SI: Now, can you kind of expand upon how the influx of affiliate voices into the board after that policy change, where the national organization paid for the travel, went into effect, like other ways that they changed the board or brought other things to light?

MG: You mentioned the dynamic had changed.

FA: Yes, yes. That all changed because we had now all these members. The old Board could meet in a restaurant. They had fifteen people come to the National Board meetings. Now suddenly they had sixty. It was a whole different phenomenon. Now all the new women coming

on the board and then a lot of new minority members on the board, everything changed, and then the traditionalists started backing off the board. The ACLU became a much different organization, the national board, much more progressive in my view.

SI: Do you remember, in particular, any issues or things that they brought to the floor?

FA: At this point, I have to go back and look at the minutes. [laughter]

SI: Okay. Once you were elected General Counsel, how often did you have to run for reelection?

FA: Every year.

SI: Every year.

FA: Yes. They're usually uncontested. Occasionally, we had a contested election. In fact, what happened for me--it's interesting. Actually I was off one year. I have not been continuous for forty some years. When I ran for Congress in 1986, the nominating committee refused to nominate me because I was running for Congress, even though I said, "Look, I'm not going to win, so it's no big deal." They thought it'd be a conflict. So the following year, they didn't nominate me again and I had to get myself nominated from the floor. I had to compete with the existing General Counsel but I got elected and one of them lost. I had almost forgotten about that.

SI: One of the main focuses of this project is going to be how the September 11th attacks and the reaction of the government in that period and the ACLU's reaction shaped and recast the organization in some ways. What are your thoughts on how that--largely the government's reaction to the terrorist attacks--shaped the organization?

FA: Well, ACLU I think has played a very significant and important role in opposing government restrictions on liberty, and I give Anthony Romero a lot of credit for that. I had my differences with Anthony, but I think he's played a very positive role in the whole response to 9-11. He's also been a very positive role in really expanding the national organization and building the affiliates. He took a very limp structure with many very poorly staffed affiliates and really transformed our affiliates into functioning organizations. I give Anthony a lot of credit for that. As I say, I've had my fight with Anthony over some things but I give him credit where credit is due, and both in strengthening the national organization and leading the fight against the anti-terrorism laws, which were threatening civil liberties, I think he's played a very positive role, a leading role, and he's really led the organization in that way. So, the organization has, I think, been very strong in this and has backed Anthony all along the way. Almost surprisingly, I thought there'd be more opposition to it than it was. The organization was pretty unanimous behind our policies, challenging all the new security regulations.

SI: Can you maybe use the New Jersey affiliate as an example? Before this reorganization or revamping, whatever you want to call it, would you characterize the New Jersey affiliate as one of the stronger affiliates or was it one of these weaker ones?

FA: No, I think New Jersey has always been a pretty strong affiliate. I haven't been on the New Jersey board for ten years now, I guess. I went off because it conflicted with my poker game on

Wednesday nights, but the New Jersey affiliate has always been a strong affiliate. I think it's getting stronger. Got very strong under Deborah Jacobs' leadership and I think it's probably getting stronger under Udi Ofer. [Editor's Note: Deborah Jacobs served as the ACLU-NJ Executive Director from 1999 to 2012. Before that, she was a civil rights attorney for the ACLU in Seattle and Missouri. Udi Ofer became the Executive Director of the New Jersey ACLU in February 2013.] I think they've both done terrific jobs. Deborah did a magnificent job in building the [organization]. Before Deborah came on, I think we had maybe four staff members. We must have fifteen or sixteen now. I can't even keep up with them. So, it's a very strong organization now.

SI: So even in one of the more built up affiliates, you saw a lot of change.

FA: Oh, yes. Yes, yes. Over the years, it's waned and waxed, but now it's clearly waxing. Ever since Deborah came on it's been waxing. Her predecessor was a wonderful guy, but he was not a fundraiser. He didn't like raising money. Deborah came in and just did a fantastic job.

SI: How have you seen the role of fundraising change in terms of the organization?

FA: Well, that's hard for me to say. I'm on the outside there. I don't have that much to do with it. But certainly, Anthony's an extraordinary fundraiser. Anthony Romero, he's amazing. No question about that. ... Deborah did an extraordinary job in New Jersey. I assume it's still going to go on under Udi, but I don't know. I'd have to take--I don't know what the books say. Deborah was a great fundraiser and ... Anthony's done a fabulous job for national.

SI: Going back to when you first got involved with the ACLU in New Jersey in the '67, '68, period, how would you characterize the organization then?

FA: I didn't know it all that well. I was new to it. I was sort of an outsider. I liked the people. They were good people. It was interesting. I loved Hank di Suvero. I thought he was a great director and his wife. You know who Ramona Ripston is? Okay. Ramona Ripston was Hank's wife and his deputy director. Ramona then became the director of the [Southern] California in the early 1970s. She and Hank finally split, but she became the Executive Director of the ACLU of Southern California in the early '70s and she stepped down two years ago. She finally retired, but Ramona did an extraordinary job in southern California. Also interestingly, she's now married to Judge Stephen Reinhardt on the US Ninth Circuit, probably the most liberal appellate judge in the country. Ramona was a terrific person. So Hank and Ramona were great. I loved them when they were in New Jersey and that's what really brought me into the ACLU.

SI: So how active were you with the local affiliate chapter? You said you were on the board.

FA: I was active on the board, and the clinic became the major law firm for the New Jersey ACLU. We took the major cases. They have a lot of volunteer lawyers, but we took the big cases because most of the lawyers couldn't take a case that's going to run for five or six years. We did them. So, we did all these big cases for the ACLU. They were the sponsor of our cases. We had some cases with a different sponsor, but more often than not the ACLU was our sponsor. Either they got a case and asked would we handle it or we got a call for a case, we thought, "This is interesting." And we go to the ACLU. "Will you sponsor it?" So that's what we'd do. Right now, my big case is now Election Day registration, which I got the ACLU to sponsor. I worked

with my students for three years putting this case together, before we finally brought suit. It's a very tough case, but that's what we do. We take tough cases. We lose as many as we win.

MG: Can you talk about some of the blows or losses? You have talked a lot about your achievements and big wins, but what have been some frustrations?

FA: Well, the frustrations would've been, you know, *Tatum v. Laird*, and the case of longhaired travelers. And felon disenfranchisement. That's an interesting story. In New Jersey, anyone convicted of a felony is prevented from voting, not only while in jail, but while on parole and/or probation. So, I took this on about ten years ago. This is another William Rehnquist project, because Rehnquist created the federal law that says you can't challenge felon disenfranchisement under either the federal Constitution or the federal Voting Rights Act. He wrote an outrageous decision, *Richardson v. Ramirez*, some twenty years ago. So, I sued under the state constitution. We brought suit about--must be ten years ago, around 2004 maybe, 2005--under the state constitution. Now, the state constitution has a very strong provision for the right to vote, but it leaves it to the Legislature to decide what to do about felons, and the Legislature passed a statute saying that they can't vote until their off parole, probation. Our position is that the statute violates the Equal Protection clause of the state constitution because there's no real compelling interest in keeping such people from voting. In fact, most authorities say people in the community should be allowed to vote. It helps prevent recidivism. The ABA [American Bar Association] is opposed to it. Probation authorities are opposed to it. However, we lost in the New Jersey Appellate Division with a terrible decision, based on the case of *Washington v. Davis*. Now, *Washington v. Davis* is a US Supreme Court Rehnquist decision, which says if you're suing under the federal constitution for a denial of equal protection, you have to prove intentional discrimination. Disparate impact is not enough; the impact on a racial minority. You have to prove intentional discrimination. Go prove that the legislature intentionally wanted to keep black people or Hispanics from voting. Right? That's impossible. You can't prove what's in the legislature's mind. It's ridiculous. But this appellate division relied on *Washington v. Davis*. We filed a petition in the New Jersey Supreme Court for certification and they denied certification. I was shocked. I was sure the court would take it. In fact, about two years ago, I confronted Deborah Poritz, who was chief justice at the time. [Editor's Note: From 1996 to 2006, Deborah Poritz served as the Chief Justice of the New Jersey Supreme Court.] I said, "You know, there's a case you people really disappointed me on." [She] said, "What's that?" I said, "The felon disenfranchisement, *NAACP v. Harvey*." She says, "I don't remember that. What was so bad about it?" I said, "Your appellate divisions relied on *Washington v. Davis*." She replied: "That's ridiculous. Everybody knows we don't follow *Washington v. Davis* in New Jersey." I said, "Well, your Appellate Division didn't know it and you didn't say anything about it on the court." She couldn't remember the case. Great disappointment. I don't know what was going on there. But what I then did--all right, this was in 2008 I guess, we filed a petition with the Inter-American Commission on Human Rights, sort of appealing this New Jersey decision, saying it violates the American Declaration on the Rights and Duties of Man. [Editor's Note: Created in 1959, the Inter-American Commission on Human Rights is a branch of the Organization of American States. It oversees human rights violations in much of the Western Hemisphere.] That case has been pending in the Inter-American Commission for now eight years. For five years, nothing at all happened. Then all of a sudden, they issued an order to the US State Department, which has to defend these cases, to respond to our petition. For the next fifteen months, we went back and forth with briefs about whether we had exhausted our

domestic remedies, which was nonsense. We exhausted every possible domestic remedy. This was only under the state constitution. We did not make any claims under the federal constitution. Finally after back and forth, five briefs on each side, that ended about two years ago and more dead silence. So I hope one of these days they're going to issue an order that we have a hearing. I don't know, but that's still pending before the Inter-American Commission. So that was a big disappointment, our felon disenfranchisement case along with *Tatum*, and Long-haired Travelers, which is *Lewis v. Kugler*. I'm sure there have been a lot of other disappointments along the way. Can't keep up--I have to go back and look at our record, but we've had a lot of wins, good wins. I've done pretty well in the New Jersey Supreme Court. I think Harvey is the only negative decision I received from the Supreme Court, when they denied certification. I think I've won everything else I've taken to the New Jersey Supreme Court. We just won a big case last year dealing with Open Public Records Act on behalf of the Rutgers clinics. [Editor's Note: The Open Public Records Act was passed in 2001.] That has to do with--somebody sued our environmental law clinic. It no longer exists, but it did at the time. They wanted all their files under the Open Public Records Act. We opposed it and we became amicus--actually Rutgers University was the main defendant. [Editor's Note: Amicus Curiae is a Latin term which means "friend of the court." It represents a party that files a brief with the court.] We filed amicus on behalf of all the Rutgers clinics from Newark and Camden. The issue was whether the Law School clinics are state agencies under the Open Public Records Act? Well, we're state agencies for some purposes. We get funded by the state, but we made a big argument that we were no different than the Seton Hall Law School clinics. We can't be second-class citizens. Nobody could go to Seton Hall [and] say they want their records under the state Open Public Records Act. We have the same rights, and we won that unanimously in the state Supreme Court two years ago. So that was a big win. Actually, we based that on a case we won also twenty years ago, dealing with the Commission on Affordable Housing (COAH). At that time, the environmental law clinic was involved in the litigation under the Open Housing Act. They were representing clients in the state--under COAH, which is a state administrative agency. The opposition challenged them because there's a state statute that says public employees cannot represent clients before state administrative agencies. We took the position that we are not public employees when we litigate on behalf of clinical clients. We won that in the state. We won that four to three in the state Supreme Court. That was close, but based on that, we all won our open public records case, unanimously. Well actually, it was really sort of four, one. The major opinion by Chief Justice Rabner was the important one. [Editor's Note: Chief Justice Stuart Rabner has led the New Jersey Supreme Court since 2007.] It said we had a categorical exemption, which was what we really wanted, to be categorically exempt. Not have to plead every single piece of paper in our files as being exempt. My colleague Penny Venetis won a really major case that lasted ten years before the federal court here dealing with protecting asylum seekers who were mistreated at the privately run immigration detention facility in Elizabeth. [Editor's Note: Penny Venetis is a Professor of law at the Rutgers School of Law-Newark. She is also the Director of the International Human Rights Clinic.] That was a major victory for her. She's now litigating electronic voting machines from hackers. They could easily be manipulated and she has a lot of computer experts working with her. She's been litigating that for six or seven years now. We're back in the trial court for the third time.

SI: Can you talk a little bit about the cases like the Paton case--

FA: Lori Paton.

SI: --that dealt with government keeping records illegally.

FA: Right, yes. Now Lori Paton, that was an exciting case. I love that case. This is right after *Tatum v. Laird*. So it became something of a problem. *Tatum* was the maxi case and Lori was the mini case. That was a case--the ACLU came to us. They'd heard from Lori's parents. As part of her homework assignment, she wrote a letter to the Socialist Workers Party asking for their brochures, what do they do, what do they believe in. Of course, unknown to her, the FBI had them under mail cover. Taking all the information off the outside of the envelope and the New York FBI writes a memo to the Newark FBI office. "There's some subversive writing to the Socialist Workers Party named Paton in Mendham, New Jersey. Go find out who she is and what she's up to." They didn't know if it was a man or a woman. Just said, Paton, I think. So the FBI agent goes out to Morris County, hunts around, finds out the family named Paton has a child at Morris West Mendham High School and goes to the principal's office and wants to know, "Is there a Paton here?" They say, "Oh, yes. Lori's here." "Why is she writing to the Socialist Workers Party?" The principal knew she was a member of Mr. Gabrielson's political science class. They were a class called "Left to Right," studying the American political spectrum. So he calls Gabrielson down to the office and they explain what this is about. The agent says, "Okay. Fine," and goes. Meanwhile, they were upset, and they call Lori's parents to let them know what was happening. Lori's parents called the ACLU in Newark because Lori was thinking about becoming a Foreign Service agent. We took the case. We first wrote a letter to the FBI in Newark. Said, "Why are you investigating--why is our client subject to investigation by you?" We wanted any files they had maintained and wanted to see copies and want them destroyed. A month later, I get a letter back from the Director [J. Wallace] La Prade. "Be assured your client is not the subject of investigation by the FBI." Well, we knew that somebody impersonating an FBI agent had gone to the high school and so we sued. Two years later, when I finally got to take his deposition. I said, "Why did you lie to me?" He says, "She's not the subject of investigation." "She was the object of the investigation. The Socialist Workers Party was the subject of the investigation." So, that was the case that ran on for seven years with a very hostile judge. Although the first time he threw us out, it got reversed by the Third Circuit. Finally, we got the case transferred from him. Went to Judge Whipple who I loved. [Editor's Note: Lawrence Whipple was a federal judge in New Jersey from 1967 to 1983.] He was a wonderful federal judge and it was all downhill from there. After seven years, we got an order that the FBI National Security Mail Cover Regulation was unconstitutional. The smoking gun was when we finally took the deposition of L. Patrick Gray, the acting director of the FBI who had signed the mail cover request and we got his application. [Editor's Note: L. Patrick Gray was the acting director of the FBI from May 3, 1972 to April 27, 1973.] He signs it and sticks it in the drawer. Don't need judicial approval. Why did he want a mail cover? Because the Socialist Workers Party was running protests against the war in Vietnam. Now even the most conservative judge in the country wouldn't have given him a warrant based on that. So, that it became an easy win once we had that smoking gun. So we got this injunction and she'd also sued for damages, but by now it was seven years later. She'd had enough. She wanted to go on with her life. So we settled the damages for a dollar. We got a money order from the US attorney for a dollar. I hope she still keeps it as a souvenir. Now, on the other hand, the downside of that case was Todd Patterson. I called Todd the son of Lori Paton. We lost that case; the same case basically, but it was five years later. Very frustrating case, I talk about it in the book. He was this prodigy. At eleven years old, started keeping this world encyclopedia and getting mail from behind the Iron Curtain. [Editor's Note: The Iron Curtain is a phrase coined by

Winston Churchill to describe the division of Post-World War II Europe between democracy and communism.] The FBI agent comes and wants to know why they're communicating with Iron Curtain countries. So they showed him Todd's room and his files. He's got files for Hungary, Romania, and Czechoslovakia and all the countries out there. ... "Okay." Anyway, then, we sued. In fact, now we're suing as a violation of the Privacy Act. [Editor's Note: The Privacy Act was passed in 1974. It protects citizens against the invasion of personal privacy by federal agencies.] Lori Paton actually was one of the reasons the Privacy Act was passed. I took her to testify in Washington twice before congressional committees about her situation and why we needed a Privacy Act. Section E-7 of the Privacy Act says, "No government agency shall gather or maintain files about how people exercise their rights under the First Amendment, except pursuant to statute or a lawful government investigation." Now, that's what the E-7 says. The FBI has honored it in the breach, because they say anything they authorize--anything they approve, is an authorized investigation. That's basically their story and the courts let them get away with it, unfortunately. We went to the Third Circuit with that case and it's like a game of blind man's bluff; everything was under seal. We could never see anything. The FBI filed affidavits with the courts. We could never see them. I never knew what they were claiming. But that was now a new era and so you win some, you lose some. Another frustration for me was Frank Thompson's case. [Editor's Note: Frank Thompson was a Democrat from New Jersey. He was one of six members of the US House of Representatives targeted in the Abscam sting operation. Abscam was an FBI operation in the late 1970s, which unveiled illegal bribes that were being taken by government officials, including some congressman. The 2014 movie, *American Hustle* is based on the scandal.] Now, that was not an ACLU case though. That was because I had worked for Thompson in the '70s, as special counsel to his labor management subcommittee. It's in my book--the J.P. Stevens bill. You've seen the film *American Hustle*? I wrote an op-ed about *American Hustle*. It starts out, "Abscam was no laughing matter." I handled Thompson's appeals after his trial lawyers walked away, because he had no more money in his defense fund. The clinic handled his two appeals to the Second Circuit and US Supreme Court. That was frustrating to lose that. They did him in. Did him wrong. His problem was he was an alcoholic.

SI: I think I definitely want to ask you more about that in another interview. Are you still okay on time?

FA: Well, it's getting close.

SI: Okay. Do you guys have other questions?

MG: I do, but I do not mind saving them for next time. Maybe I'll ask one. Can you say why you came under FBI surveillance at seventeen and how you became aware of that?

FA: Yes. Okay. Well, again, it's in my book. My older brother was my guru. He came out of World War II as a major war hero. He was a captain in the Fifth Rangers, wounded twice and actually became the first president of what is now the Special Forces Veterans Association. It was then the Rangers Association. They're now ... all Special Forces. So in 1947, he became the first President of the Veterans Association, but he'd also become an anti-war activist after the war. He'd seen enough of war. He always thought he was living on borrowed time. Ninety percent of his men never came back. In 1968, he came back to Baltimore to work for the Henry Wallace campaign as an organizer. I was then--what? Sixteen. He's eleven years older than me.

He's more like a guru, more a father than a brother. He got me involved in a local young progressives organization. He went off to New York after the election. I stayed on as local community organizer. Those days it was not politically correct being for civil rights ... sit-ins in the city of Baltimore, and the anti-war movement. Truth be told, the only people who really were working for civil rights in those days, a lot of them were communists. That was true. So I was working with a lot of people who were either were or would be communists. So I came under FBI surveillance as a leader of the young communist movement. In Baltimore, I was always under surveillance and it continued when I went to New York to edit a left wing youth magazine. So for twenty years, I was on the FBI's security index. It's funny. I just wrote an op-ed, which is so good [and] I can't find the proper place to put it. I call it, "Thank You, J. Edgar." [Editor's Note: J. Edgar Hoover was the Director of the FBI from 1924 to 1972.] It's why actually my surveillance turned out to be a blessing for a number of reasons. A lot of people suffered; I benefitted from it as my book shows you. I started my book about how useful it is to have your FBI files when you're writing your memoir, but more important than that, it got me out of the Korean War. They discharged me after five months because of my politics. Otherwise, I'd have been in Korea. So again, I found my FBI files as a bit of a savior for me. I'm trying to figure out where to place this, though. It's too good for the local newspapers. Don't know where it goes.

MG: If you hadn't experienced this form of discrimination, what kind of career do you think you would have had instead? Would you have been as sensitive to affirmative action?

FA: Well, I became a public citizen at the age of sixteen under the influence of my brother. I became a political activist. So I don't know what would've happened otherwise. If my wife hadn't convinced me to go back to school and go to law school, I'd probably still be a newspaper reporter somewhere, somewhere in the journalism business, in the media. Even when I graduated from law school, I didn't plan to practice law. I wanted to be Anthony Lewis and cover the Supreme Court for the *New York Times*. [Editor's Note: Anthony Lewis was a Pulitzer Prize winning legal journalist who covered the Supreme Court and was a columnist for the *New York Times*.] That was my ambition.

SI: I am curious. You said you were much younger than your brother, but did you get a sense of did he have these sorts of beliefs before he went off to war or do you think he was shaped by the war?

FA: He was shaped by the war.

SI: Yes.

FA: Well, I mean I guess he had some public spirit. I mean, as soon as--even before Pearl Harbor, he volunteered for the army. First he tried for the paratroopers, was turned down and then went into the Rangers. So he had some kind of patriotic zeal. That was clear, but I think he was mostly shaped by the war.

SI: Well, I think we might conclude for today's session, but we would love to come back and follow up with you.

FA: Good. I love to talk about myself.

SI: Good. We love to hear it. Thank you very much for all your help today.

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Reviewed by Molly Graham 5/21/2015

Reviewed by Frank Askin 7/2/2015