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AN INTERVIEW WITH MORTON HALPERIN

FOR THE

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INTERVIEW CONDUCTED BY

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Nicholas Molnar: This begins an interview with Morton Halperin on August 3, 2015 in Washington D.C. Thank you Mort, for having me here today.

Morton Halperin: Happy to do it.

NM: Just to begin, can you tell us when and where you were born?

MH: I was born in Brooklyn, New York on June 13, 1938.

NM: Before we get into your career, we'd just like to learn a little bit about your background. So could you tell us a little bit about your family, particularly your father and your mother?

MH: Sure. I lived with my parents, both of whom were born in the United States, but had parents who had just arrived from Europe; my mother's parents from Hungary and my father's parents from what's now Ukraine. My parents were both born in Brooklyn and lived their whole lives in Brooklyn. We lived in Bensonhurst, which is a neighborhood in the heart of what's now called South Brooklyn. I lived with my parents and my brother--my smarter older brother, who's eighteen months older than me and as my teachers always told me, the well behaved one of the two brothers.

NM: What were your parents' occupations?

MH: My father was a lawyer, but earned his living as a title examiner doing searches on property that people were buying for title companies and for lawyers. My mother stayed home, took care of us and my father.

NM: Can you tell us a little bit about what it was like to grow up in Brooklyn during this time?

MH: It seemed perfectly natural and normal. It was the only thing I knew. It was a sheltered neighborhood. There were Jews and Italians and I grew up thinking most of the people in the world were Jews and Italians. Only when I got to college did I discover that there were things called Protestants, let alone other religions that I had no conception of. We were probably what we would call lower middle-class. We didn't starve. We never worried about having enough money for food. My father took care of us, took care of other members of his family and my mother's family. A lot of my relatives--particularly, my mother's relatives--lived nearby and we spent a lot of time with them.

NM: Now you would have been very young at the time, but do you have any recollections of what it was like to live in Brooklyn during World War II?

MH: I remember World War II vaguely. I remember blackouts and having to turn all the lights out in our apartment. I remember it being a little scary to be so in the dark. My father would leave when there were blackouts because he was exempt from the draft because both my brother and I were born before Pearl Harbor and nobody was drafted who had children who were born before Pearl Harbor. He was assigned instead to being a part of what now would be called civil defense, so that when there were blackouts he would go down to a command center and would have had a significant role. There was a fear that the Germans would actually send airplanes and try to bomb American cities. So we worried about that. Certain things were scarce. We collected tin cans and the big scarce item for some reason was bubble gum and my father had

two friends in the candy business, so we got a lot of bubble gum, which we didn't like and didn't use, so we kept the playing cards and gave away the bubble gum.

NM: Can you talk about your high school years? Because I understand you went to Columbia, but I want to get a little bit before?

MH: Yes. My high school years were quite short. I went to public schools in Brooklyn. First to P.S. 226, which was near my house and then to Seth Low Junior High School. So I didn't enter high school until the ninth grade, rather than the eighth grade, as was the custom then. Because if you came from junior high school you did three years or two years of junior high school and then three years of high school. I went to Lafayette High School, which recently closed. It was in Brooklyn, a public high school. After two years at Lafayette I moved--I went to Columbia. Columbia was part of a program that the Ford Foundation sponsored whereby they sent a small number of students to college a year in advance and the reason was that everybody at that time was drafted and had to serve in the Army and the draft was occurring at an age where they drafted most people the end of their junior year of college. It was very disruptive. So Ford had this experiment to see whether the American educational system should be shortened by a year so people could get out of--and of course the draft ended long before that reform could've taken place. But I got a scholarship, which enabled me to go to Columbia; otherwise I would have gone to Brooklyn College. The people in my high school, with very few exceptions, if they went to college as most of the ones that did well in high school did, they went to Brooklyn College. Or if like my brother, you wanted to be an accountant, you went to the business school at City College and all the way in Manhattan, which was considered very far away. But going any place else was really out of the question for most of us, but this was a special program, which I applied to and got in. So I went to Columbia and I actually lived in the dormitory.

NM: Can you tell us about your experience at Columbia and some interests you had? I understand later on you earned your doctorate. in international relations.

MH: Right.

NM: Did that interest develop at Columbia?

MH: It developed even before that. Since I can remember, my father brought home the *New York Times*. I read it every day. I discovered there was such a thing called the Foreign Service officer, that you could work for the American government and travel around the world and represent the United States. From the time that I can remember, that's what I wanted to do. So when I went to Columbia, I was a government department major specializing in international relations and intending to take the Foreign Service exam when I graduated from college. It turned out because I had gone a year ahead and had skipped the year earlier, I was too young to take the Foreign Service exam. So I sent the State Department a letter asking how I could request a waiver of the age limitation on taking the Foreign Service exam. After many months I got back a letter that said, "You can't." So I went onto graduate school still intending to go into the Foreign Service. After I graduated from college--I decided then I would finish graduate school before I joined. I took the Foreign Service exam at the end of my second year of graduate school and failed it. I passed the written exam. I passed the language exam to my amazement. I failed the oral exam. They suggested I go live somewhere in America and come back in a year, and that was the end of my Foreign Service career.

NM: After Columbia, where did you go?

MH: I went to Yale. Yale was the only graduate school that offered me a fellowship and it was a good graduate school, so I went to graduate school at Yale.

NM: You mention that you were interested in Foreign Service but failed the exam. So what were your prospects after that?

MH: Well, I decided I would go on and finish my Ph.D. and then probably start teaching. I hadn't really thought it through, but I was getting married and my wife to be was going to be a senior at Barnard College in New York. I was planning to go to live in New York and write my dissertation for Yale. Then I met a man named Tom Schelling, who was then a professor at Harvard. He said, "As long as you're leaving Yale, why don't you come to Cambridge?" My wife, then to be, agreed that she would do her senior year at Wellesley where they had a special program where if you were married you could do your senior year at one of the other Seven Sisters Schools. So we moved up to Cambridge in 1960 and that transformed my opportunities because I arrived in Cambridge just in the middle of the Kennedy-Nixon presidential campaign. I was working on international security affairs issues including arms control. Everybody I met was working for the Kennedy campaign and intending to go into the Kennedy Administration. Indeed many did and so I then expected to make my career teaching at Harvard and going in and out of the government. So I became a consultant right after Kennedy was elected and was in Washington a lot. I became a consultant to the RAND Corporation, to the Defense Department, to the State Department, to the Budget Bureau as it was then called, and spent summers either at RAND in Santa Monica, California or in Washington. Then eventually, in 1966, went into the Defense Department. While I was in the Defense Department, my Harvard colleagues did what turned out to be the great favor of turning me down for tenure at Harvard. So I was free to remain in the government as long as I wanted to since I didn't have any appointment that I had to go back to. I stayed in the government through the end of the Johnson Administration and then Henry Kissinger, who I had worked with at Harvard, became Nixon's National Security Advisor. He asked me to work with him. I worked for him for nine months, which was about as long as I could take it. Then went to the Brookings Institution. If you had asked me then I would have said that I was going to spend my career alternating between being at Brookings and working in the government for democratic administrations.

NM: I am going to ask a few follow up questions.

MH: Sure.

NM: Because you talked about a lot. In fact, you talked about the entire decade of the 1960s. So my understanding is that you would work as a consultant in the summer, but you were still a faculty member at Harvard?

MH: I was a research associate, '60 to '61, because I didn't have my Ph.D. At the end of--when I got my Ph.D. in '61 I became a member of the faculty at Harvard. I was in the government department. I was first an instructor and then an assistant professor. I was also a research associate at something called the Harvard Center for International Affairs, which was where Henry Kissinger was and Tom Schelling and Bob Bowie and other people. I was based there. That's where my office was and I did my research on arms control and nuclear strategy issues at

Harvard. I went off for a year in the middle of that. I got a grant to do a book on Chinese nuclear strategy and I spent three months with my wife travelling around the world. At that time, Americans couldn't go to China, so we went all around China, ended up in London. I spent a semester in London and then a semester in Geneva, in the other five years I was teaching at Harvard. Then in July of 1966, I went into the Defense Department, stayed there until January '69 and then went--I have a chronological resume that I can give you. It has all this.

NM: I am getting a sense of it. I want to just follow up because you mentioned that at various times you were working as a consultant for different institutions.

MH: Right.

NM: So what does a consultant do?

MH: Well, I did different things. I spent some time in the Defense Department. I remember for example, I was there the day that [Charles] De Gaulle kicked the United States military out of France and worked on a memo on how the United States should react to that. I was there the day that the Chinese exploded their first nuclear device and did a memo called, "Making the Chinese Nervous." At that point, the United States and the Soviet Union were engaged in these crazy negotiations about general and complete disarmament. I was assigned to do a paper. The Russians had proposed some number of troops that each of us would have under the first stage of general and complete disarmament. We had proposed another number which was 400,000 higher and I was asked to do a paper about whether we could compromise in the middle, at the number that was 200,000 higher than the Russian number, 200,000 lower than our number. I remember writing that paper. Then the RAND Corporation hired me as a consultant. They wanted me to do a serious research study, so I did a study for them on the 1958 Taiwan Straits Crisis in which the United States and China almost went to war over American defense of Quemoy, a small island off the coast of China. I ended up doing--that was a six hundred page--top-secret study, which I spent a fair amount of time on. [Editor's Note: Twice in the 1950s, in 1954 and 1958, the People's Republic of China and the Republic of China (Taiwan) were close to war when the PRC fired artillery at small islands in the Taiwan Straits. The United States intervened on behalf of Taiwan.]

NM: You mentioned that you eventually were denied tenure at Harvard and then you went full-time at the Department of Defense.

MH: No. I was already in the Department of Defense. I went in '66 and in the spring of '67, I asked Harvard actually to consider me for tenure a year early because I didn't want to come back and then immediately be up for tenure, get turned down and then be sitting there. So in terms of my getting tenure, that was a mistake. I probably would have gotten it if I had waited another year. I was in Washington working in the Defense Department, but I was there on the assumption that I would spend one or maybe two years and then go back to Harvard. When they turned me down for tenure, instead of going on the academic market, I decided I would stay in the government as long as I could. The hope was that Humphrey would get elected and that the bunch of us from the Defense Department would move to the State Department. [Editor's Note: Hubert Humphrey was a Senator and then Vice President under President Lyndon Johnson. He ran in the Election of 1968 as the Democratic candidate but lost to Richard Nixon. He died in

1978.] I had my office picked out in the State Department, but Humphrey managed to lose. Then, to my surprise, Kissinger got appointed and then asked me to stay. I went to work for him.

NM: What were your duties in the Defense Department? Was it to have studies on national security?

MH: No, I worked on policy stuff. I was the ultimately in the Defense Department, the deputy assistant Secretary of Defense for policy planning and arms control. I worked on a lot of things, but three very big things. I worked on Vietnam War, particularly in the aftermath--well, before that, but in the aftermath of the Tet Offensive when the US government did a major review of what it should do, leading to Johnson's speech in which he announced that he was not running for reelection. He was going to devote himself to trying to bring peace to Indochina. I was deeply involved in that whole process. I worked on the efforts to begin strategic arms limitation talks with the Russians, which was supposed to start in the Johnson administration, but then the Russians invaded Czechoslovakia, so it got put off until the beginning of the Nixon Administration, but I was deeply involved in the preparations within the US government for those talks. [Editor's Note: On August 20, 1968 the Soviet Union invaded Czechoslovakia to end the growing reform movement there.] Then the third very big thing that I worked on was the return of Okinawa to Japan, which I was deeply involved in. [Editor's Note: Okinawa was returned to Japan by the United States in 1972. It is known as the Okinawan Reversion. The United States had taken Okinawa in World War II.] I worked on, for example, many other things including the Non-Proliferation Treaty. I was the Defense Department person responsible for the development of the Non-Proliferation Treaty. [Editor's Note: The Non-Proliferation Treaty, or NPT, was signed in 1968 and took effect in 1970, and 190 countries have since signed. It was agreed to continue indefinitely in 1995.]

NM: You say you were deeply involved in these three areas, but in particular, what is it like to be in your position during the Vietnam War?

MH: Well, I went into the government a supporter of the war. In my last act at Harvard was to debate Norman Thomas, who was a famous socialist about the Vietnam War. He was against it; I was for it. I didn't do any work on Vietnam for my first eight months in the government, but I read the newspapers and quickly became convinced that we were on the wrong side and we couldn't win the war and we needed to find a way to get out. Then when I got denied tenure at Harvard, my boss who was a Harvard professor on leave, and who didn't trust anybody at Harvard, said, "Okay. Now that you're not going back, I will trust you to work on Vietnam," and said, "Okay. You're going to write the next memo for [Robert] McNamara on Vietnam." [Editor's Note: Robert McNamara was the Secretary of Defense under Presidents Kennedy and Johnson, from 1961 to 1968.] So I said to him, "But I haven't read anything classified on Vietnam." He said, "Nothing classified on Vietnam is worth reading. Just write the memo of what you think McNamara should tell the President." I said, "How about you give me two things. One is McNamara's last memo to the President and [William] Westmoreland's secret report to the President on the Vietnam War." [Editor's Note: General William Westmoreland was the commander of MACV, or American forces in Vietnam, from 1964 to 1968.] So he agreed. He gave me those two things. I wrote McNamara's memo to the President, which has since been made public and it was a memo arguing we should get out and arguing we should stop chasing them around, but protect populations. I continued to work on trying to get us out of Vietnam from June of '67 until the end of the end of the Johnson administration. Then from my

nine months in the Nixon administration, then I actually remained a consultant for another five months. For the time that I worked on Vietnam, I was working on trying to get us out of Vietnam and it would have been a lot easier if Nixon would have said to leave as I did later and then complain from the outside, but I felt that there were enough people doing that and my responsibility was to stay in the government as long as I thought I could influence getting us out of Vietnam.

NM: When the Johnson Administration transitioned to the Nixon administration, were you still with the Department of Defense at that time?

MH: Yes, but what happened was, as soon as Kissinger was appointed--as it happened, I had agreed to go up and give a guest lecture in a course that Kissinger and I had taught together at Harvard for five years called, "The Defense Policy Seminar." It turned out to be Kissinger's last class at Harvard because he never went back after he was in the government. I actually leaked the fact to the *New York Times* that Kissinger was teaching his last class and they came and took a picture, so there's a picture of me sitting next to Kissinger when the reporter comes in. He says, "Ah, this will feed my megalomania," and the class burst into laughter and a picture was taken, but then Kissinger, when we met then, we saw each other, asked me if I would come to work for him and I agreed to do that. I actually then got permission from the Defense Department to go and spend the transition in New York. Kissinger and Nixon did the transition in New York out of the Pierre Hotel, not out of Washington. I spent like six weeks or more in New York working on the transition for Kissinger, and then came and worked for him beginning on the first day of the administration.

NM: When you say working on the transition, could you elaborate on that? What were some of the types of things you had to do?

MH: Well, the first thing, Nixon asked Kissinger to devise a national security system, which he said was more formal than the Kennedy system--and that was easy because there was no system under Kennedy--but less rigid than the Eisenhower system. Kissinger had no idea what he was talking about. I knew exactly what he was talking about. So Kissinger asked me to draft and I drafted a memo, which he then sent to the President creating the new National Security Council system, which in one form or another has existed since then to the present. I worked on a memo on Vietnam options, which Kissinger also brought in Daniel Ellsberg to work on. [Editor's Note: Daniel Ellsberg was an employee of the RAND Corporation who says he released the Pentagon Papers to the *New York Times* in 1971. It revealed the dysfunction within the government over the Vietnam War.] So I worked with Ellsberg then. I worked on, again with Ellsberg, what was called NSSM [National Security Study Memorandums] 1, which was a set of questions to the bureaucracy asking them what they thought was going on in Vietnam and which exposed the deep divisions within the government about what was happening, whether we were winning, what we should do. I worked on Okinawa, which I had carried over from the Defense Department. I also worked on the strategic arms talks which, I had carried over from Defense. So those three big issues, Vietnam, Okinawa Reversion, and the strategic arms talks were a major part of my work. I worked again on the NPT, persuading Nixon and Kissinger not to scuttle the treaty, which is what they wanted to do.

NM: You made a comment a few questions ago that you worked with Kissinger for nine months and then that's about all you could take. Can you elaborate on that a little bit?

MH: He was secretive and conspiratorial. For example, I was working on Vietnam and I wake up one morning and there's a headline in the paper, "Nixon and Ho Chi Minh Exchange Letters." I go to Kissinger and I say, "I don't want to work on a subject and not know what's going on. If you can't share everything on Vietnam with me, I'll work on other subjects. But I don't want to work on Vietnam and then pick up the newspaper and read." He said, "Oh, Nixon told me not to tell anybody." I said, "Henry, he didn't tell you not to tell anybody. Obviously you have to tell somebody. Obviously somebody on the staff helped you draft it." He said, "Well, you know everything else that's going on about Vietnam." I said, "Okay." I walk out and I did what we all did to try to keep up with what's going on. I read memos upside down on [Alexander] Haig's desk because now Haig was his military assistant. [Editor's Note: General Alexander Haig was the White House Chief of Staff under President Nixon and Ford. He later served as Secretary of State for one year under Ronald Reagan.] There's a carbon copy of a memo that had just gone to the President on Vietnam. I pick up the memo, walk back into Kissinger's office, and say, "Henry, what is this?" He says, "This is the other exception." It was like that on every issue and you never knew what--even the things you thought you were working on most intensely, you never knew. Well you do--eventually, you figured out there's two or three other parallel projects going on, on exactly the same subjects and maybe you'll find out about them and maybe you won't find out about them. After a while I just couldn't take it anymore.

NM: Did you resign your position?

HM: I resigned my position after--because later found out that he had wiretapped me. I sued him actually. That's how I came to know the ACLU. I assume we'll get to that. One of the most interesting documents in the wiretap files is Kissinger one day said to me, "I need to talk to you. You can't leave." He said, "Wait. We'll meet later this evening." I said, "Henry, I'm not sitting around here for four hours waiting for you. I'll be home. You want to talk to me, call me up." So, even though he knew my phone was being tapped, he called me up. We have a forty-five minute conversation, which J. Edgar Hoover's people recorded every word of and then kept out of the system--but I'm sure shared with Henry privately--in which he is trying to persuade me to stay, knowing that the White House and the FBI think I'm a leaker and are wiretapping me. It's very strange, but it goes on and on. It's the whole verbatim text of it and I have it. So he was trying to get me to stay. I said I have to leave. He finally said, "What would it take you to stay?" I said, "The only thing that will keep me to stay is if you make me your deputy and give me full access to everything that you see." He said, "I'm willing to do that." I said, "Henry, at least two people on your staff will quit if you do that and you should know that if you want to do it, and you ready to have them quit, then I'll do it." He said, "Oh, let me talk to them." He met with them and I saw them coming out of his office. Then when I went into his office--and I could tell by their faces he actually had raised it with them. He said, "You're right. They'll both quit tomorrow and I can't do it." I said, "That's fine. I'm going," and I left. Then he asked me to be a consultant and I remained a consultant for another six months. Then when they invaded Cambodia I resigned as a consultant and did it publicly. [Editor's Note: The United States expanded the Vietnam War in Cambodia in 1970 under President Nixon in search of the Vietcong's headquarters. It is known as the Cambodian Incursion.]

NM: When you became a consultant, were you working on the same things you had worked on previously.

MH: I did just one memo for him on Vietnam, on what I thought we should do next in Vietnam. It was basically unclassified, there was nothing classified about it, but as soon as I handed it to him they classified it because the fact that there was a document in the White House proposing that we set a date and get out, it became a classified document. But that was the only thing I did.

NM: So you resigned your position after the invasion of Cambodia?

MH: Right.

NM: You said you did it very publicly.

MH: Well actually, I did. I consider it to be my great public relations coup. I resigned. The story appeared on the front page above the fold in both the *New York Times* and the *Washington Post* on the same day and both stories said that I had quietly resigned. I didn't announce my resignation, but somehow the *Times* and the *Post* both learned about it. They both thought it was a big story. They both called me up and when they said, "We hear that you have resigned," I confirmed that I had resigned.

NM: After your resignation, what were your options afterwards?

MH: Well, I already had a job because the consultantship was just part time. What happened was, as the Johnson Administration was coming to an end, I decided that I needed to have a job. I had three little kids, but I didn't want to commit myself to an academic job, first of all, because I didn't want to leave Washington and second, because I had hoped Humphrey would be elected and that I would become the Director of the Policy Planning staff, which I ended up doing at the end of the Clinton Administration. I think I would have if Humphrey had been elected. A friend of mine, a guy named Carl Kaysen, who taught at MIT and then at Harvard, had said his best friend was the President of the Brookings Institution and he would call him and tell him to hire me. The advantage I had was that Carl thought everybody was incompetent and somehow thought I was fairly competent. He called his friend Kermit Gordon. [Editor's Note: Kermit Gordon was the Director of the Bureau of the Budget from 1962 to 1965. He then became the Vice President and then President of the Brookings Institution. He died in 1976.] Kermit Gordon called me up, just blown away. He said, "Carl Kaysen has never said anything nice about anybody else before. So you have a job here whenever you want it." When Humphrey lost I was starting to talk to--I actually started talking to them about a job and then Kissinger offered me a job. So I called him back and Kermit who was very cynical about Washington said, "You're not going to last long in the Nixon Administration. Call me again when you decide you want the job." So when I decided I wanted to leave I called him up and he said, "You have a job." The day I left the White House I went to work at Brookings and wanted to write a book, which I wrote called, *Bureaucratic Politics and Foreign Policy*, which I just, a few years ago, finally did a second edition of, but it remains in print and is read, I would say without exception, by any graduate student working on the making of American foreign policy and has been since 1973. So I went to Brookings eager to write that book and wrote it. So I was there. I had a full-time job.

NM: For most of the 1970s you stayed with the Brookings Institute?

MH: No, no. I only lasted there two or three years. I very quickly discovered that I really was not cut out to be at a think tank and sit and write books. I got restless very quickly and then

things started happening. *The New York Times* published the Pentagon Papers. [Editor's Note: The Pentagon Papers, officially titled *United States-Vietnam Relations, 1945-1967: A Study Prepared by the Department of Defense*, first received public attention on the front page of the *New York Times* in 1971. The document, leaked by Daniel Ellsberg, a RAND Corporation analyst at the time, provides a historical account of the United States' involvement with Vietnam and influenced the shift toward public disapproval of the Vietnam War.] One of the things that I didn't mention that I had done when I was in the Pentagon; I was responsible for the production of the Pentagon Papers. The work was done on the staff that worked for me, was headed by Leslie Gelb, who was later the President of The Council on Foreign Relations. I was responsible for classifying the Pentagon Papers. That gradually came out and when Ellsberg was indicted, his lawyers asked me to help them prepare his defense, and eventually, asked me to go out to Los Angeles. I spent five months in Los Angeles at the Pentagon Papers trial. That was where I got my legal education. I knew nothing about the law until then, but I learned a great deal about the law. I spent five months there, got drawn into the whole gamut of his defense. I turned out to have natural instincts for legal issues. So I learned about everything about criminal law during the five months that I spent in Los Angeles at the Pentagon Papers trial. I came back and then on the last days of the Pentagon Papers trial, what happened was John Dean reported to the Justice Department everything he knew that was illegal in the government when he jumped. [Editor's Note: John Dean was White House Counsel from 1970 to 1973 under President Nixon. He served time in jail for his actions in the Watergate Scandal and cover-up.] One of the things he reported is that there had been a wiretap program of seventeen government officials and journalists and that I had been overheard on the--that I had been tapped and that Ellsberg had been overheard on my wiretap. The government had sworn in the case that they had not wiretapped Ellsberg and not wiretapped me because I was a consultant to the defense and I had to swear that about everybody. So they told the judge in the case that Halperin had been wiretapped, Ellsberg had been overheard on his wiretap and the files were missing. Then the judge dismissed the case and I called two of the lawyers that I had been working with on that case, Charlie Nesson, who is a Harvard professor and Walt Slocombe, who's a lawyer here in town with a law firm--if they would represent me in a lawsuit on my wiretap. They agreed to do that. We filed the lawsuit. Then Aryeh Neier called me. That's my first contact with the ACLU. I was a member, but that's all. [He] said that the ACLU would be willing to represent me in my lawsuit. I said, "I have these two lawyers, but I'm sure they could use help." So the ACLU represented me in that lawsuit to the end of the lawsuit when we finally settled. Then, as I said, I realized I could not spend my life in a think tank and so I got a grant from what was then called the Twentieth Century Foundation to write a book about secrecy, which I wrote, called *Top Secret*. I needed a place to sit and so I asked Aryeh if the ACLU would give me space, which they did, in their D.C. office. I wrote my book out of--sitting in the D.C. office. Then he called me up and said that they had been approached by the Field Foundation to start a project on the relationship between national security and civil liberties, and that he had said no because he couldn't imagine who could run the project, but it was clear that I could run the project. He said if he was interested he would go back to the Field Foundation. I said, "Yes, I was very interested." ... We got back to the Field Foundation, got a grant, and I spent the next eighteen years working for the ACLU, and the first twelve of them entirely on national security and civil liberties.

NM: I want to ask a few follow up questions and go back before your time at the ACLU. You mentioned you were wiretapped. You mentioned you got your real legal education at the

Pentagon Papers trial. You said that you compiled the Pentagon Papers. So can you talk about what that entailed?

MH: It's a long story, but I'll give you the short version of it. I was sitting in my office in the Pentagon and got a buzz to come in and see my boss, John McNaughton, who was a Harvard law school professor who was on leave. In the office was a colonel name Robert Guard, who's an old friend of mine, who was McNamara's military assistant. He said McNamara had sent him down to say that he wanted us to compile an encyclopedic history of the Vietnam War. I said, "Well, what else did he say?" Bob said, "He didn't say anything else. He wants a memo from you about how you would do it." So I drafted a memo. The memo laid out a plan to set up a small staff right in the secretary's office. We thought it would take six months. It took three years to do this. And said that since this was so important to him that I would move in there and spend full-time running the project. We sent the memo. It went to McNamara. He approved the memo, but said, "But I don't want Halperin on this full-time. I need him for other things. Get somebody else." I recruited Gelb, who was the Deputy Director of my Policy Planning Staff, who's got a Harvard PhD, to run the study. Gelb basically ran it. I helped him recruit people. I helped him get access to material. I helped approve the structure of the study as he presented it. Then he basically ran the study and I had very little to do with it. I didn't actually read it until I left the government.

NM: You mention that you eventually get called into this legal trial.

MH: Right.

NM: How did that occur?

MH: Well, Daniel's been my--we're good friends, and in fact the copy of the Pentagon Papers that he photocopied and eventually got to the *New York Times*, was my copy. Les Gelb and I, and Paul Warnke, who became our boss when McNaughton was killed, had one copy of the Pentagon Papers and we put it at the RAND Corporation and Dan Ellsberg was given access to it. So I knew Dan and his lawyers--I think he suggested they--they were looking for somebody to help them do the research on what was already public because one defense in the trial was that information the government said Ellsberg had released causing harm was actually all public already. So Ellsberg's lawyer, Leonard Boudin, came to see me. I was home recuperating from a gall bladder operation and not terribly anxious to go back to Brookings and said would I help with the trial. So I agreed to organize the research and I recruited four young researchers to work on research on different aspects, different papers, different volumes of the Pentagon Papers. Then as the trial got closer, they came back to me and said, "Will you come out to Los Angeles and help us put on our defense?" I said, "Under two conditions. One, you get me leave from Brookings because the head of Brookings doesn't like to do this kind of stuff. Two, you pay me because they're not going to pay me and I have three little kids and a family, and I can't afford to do it." So a guy named Stanley Sheinbaum, who was raising the money for the defense, agreed to raise money and to pay me essentially what Brookings was paying me. McGeorge Bundy, who was the President of the Ford Foundation and whom I had worked with in the Kennedy and Johnson Administration, who I knew fairly well and who was outraged at the indictment of Ellsberg, and who was a big donor of course to the Brookings Institution, called up Kermit Gordon and asked him to agree to give me a leave of absence. He was not about to say no to the President of his largest donor. So I got a leave of absence and spent six months. Then

we thought six months was more than enough. Actually, most of the time I spent was in pre-trial motions and then there was a delay, and actually came back and then went out again for another month, but then the six months was up and I did not think I could ask for more time. So I came back.

NM: You mention that you really learned about the law during your experience there. Can you elaborate on that?

MH: Well, I got involved in the legal defense in a variety of ways. Most of the time I spent in pre-trial. The government used the espionage law for the first time to indict somebody for giving information to the public, not for giving it to a foreign government. Now the Obama Administration has done it eight times, but before the Obama Administration, it was done only three times and the first was in the Pentagon Papers case. So a lot of the time was spent with the judge parsing the meaning of 793 D and E and F, which I came to know very well. Then the government engaged in various kinds of misconduct, so we filed motions to declare mistrial because of government misconduct. So we had to research cases about governmental misconduct. So, we ended up dealing with lots of different legal issues. There were the wiretap issues. In each case I got drawn in with the lawyers in doing the research and helping to write briefs, and coming to see what legal briefs looked like. It was a real legal education crammed into those months.

NM: You mention that you had contact with the ACLU. Was that after you found out you were wiretapped or was that before?

MH: The defense team for Ellsberg had a little contact with the ACLU, but I was never really part of that. The first contact I had with the ACLU was Aryeh Neier calling me up and saying the ACLU was very interested in my lawsuit and was eager to be helpful. As I say, I said I already had two lawyers and so we structured it in an unusual way for the ACLU. My two lawyers were not volunteer lawyers for the ACLU. They represented me. So I had, in effect, three entities representing me--the ACLU Legal Department, and then these two other lawyers, Walt Slocombe and Charlie Nesson. They continued to represent me, the triumvirate during that entire case. Neier agreed to represent me and so I talked to him occasionally about my lawsuit about which lawyers at the ACLU would work on it and so on. Then my next call with him was when he asked me if I would start the project. So those two calls were quite fateful.

NM: So I just want to go a little bit into the experience with the lawsuit but prior to that, how did you feel when you heard you had been wiretapped? Because you found out at the trial, correct?

MH: I actually found out a few days before. I was back from the trial. It was made public at the trial. But two days before, I got a call from a reporter at the *New York Times* that said, "I want to talk to you off the record, get your comments on something that's going to break in two days," because he had been told by people in the Justice Department that they were going to notify the judge in the trial and they were sure the judge was going to make it public and that they would probably make it public even if he didn't make it public. So he was writing a story that was embargoed until it became public and wanted to interview me for the story. He actually told me that this was going to happen, so I had a couple of days warning. When Judge Byrne came into the courtroom on a morning--I forget when it was--and said he had just been notified by the

government that there had been a wiretap on Morton Halperin and that Daniel Ellsberg had been overheard on my wiretap and that he would decide what to do about it. That afternoon, my phone started ringing off the hook, but I already knew and sort of prepared for it. I had immediately decided that I was going to sue them for wiretapping my phone. They wiretapped my home phone for twenty-one months and it turned out, when we got the transcripts that by far the most calls were between me and my wife and there were calls of my three little boys with their friends, and then calls between me and my friends. Then if house guests were there, they would pick up their calls. One of the house guests was Daniel Ellsberg. So they picked up Ellsberg not only calling me when he was not in Washington, but making calls from my house to other people. So there were calls that I wasn't on that was Ellsberg calling other people.

NM: Did you get an idea of why you were chosen to be wiretapped?

MH: Well, I found out later. What happened was there'd been a story in--I was still working for Kissinger. There was a story in the *New York Times* that the United States had bombed Cambodia and very few people knew about it. I knew a little bit about it. Although, as I pointed out to Kissinger, most of the detail in the *New York Times* story I did not know and could not have been the source of, but very few people knew. Nixon exploded, told Kissinger to talk to Hoover and see what Hoover recommended be done. Hoover's recommendation about everything was to wiretap people. So Kissinger asked him who he should wiretap and we found out later, Hoover then talked to right wing reporters, who were his main source of information and they all said, "It must be Halperin. He's against the war. He's been trying to get us out of Vietnam for years and he must be the source of this leak." So Hoover recommended to Kissinger that I be wiretapped. Kissinger came up with some other names based on who on the staff knew about the bombing and four names were delivered by Haig to Hoover. Hoover, it turned out, had already put a tap on my phone and then switched it to this different system when he got the request from the White House.

NM: Can you talk a little bit about the experience at this trial, working with your two lawyers and the ACLU coming on board?

MH: The ACLU didn't come on board in the Ellsberg trial.

NM: No, the wiretapping.

MH: Oh, that case went on for years and years, and years, and years. It was not a full-time activity. It was very much part-time for me and for the lawyers. We ended up taking depositions from Nixon and [H.R.] Haldeman, and [John] Ehrlichman, and eventually from Kissinger, and those were very interesting. [Editor's Note: Harry Robbins Haldeman was White House Chief of Staff under President Nixon. He was imprisoned for his involvement in the Watergate Scandal. He died in 1993. John Ehrlichman was Assistant to the President for Domestic Affairs under President Nixon. He also was imprisoned for his involvement in the Watergate Scandal. He died in 1999.]

NM: You mention that you got called a second time for the ACLU.

MH: Right.

NM: When did that happen and when did you come on?

MH: I'm very bad about dates. I think we should look up the date. I want to say '74.

NM: Okay.

MH: Let me go look.

NM: That's something; we can always add that later.

MH: It's around '74.

NM: Okay.

MH: So I was finishing up my project for the Twentieth Century Foundation writing this book on national security secrecy. Then I went to work on this project, which had several different names and slightly different incarnations, but basically was working for the ACLU. I was in charge of lobbying, litigation, and public education on national security and civil liberties, and did that for eighteen years, the last six of which I was also the Director of the Washington office. So I was in charge of the lobbying on everything--federal government lobbying on everything.

NM: Could you tell us a little bit about what you knew about the ACLU before you started working for them?

MH: Well, I was a member. I had been a member, I think, from by the time I graduated from college. I was a big believer in civil liberties and vaguely knew what the ACLU was.

NM: You mentioned that the first twelve years you were head of this national security project. Let's focus on those.

MH: Okay.

NM: You mention duties and responsibilities, but could you just talk about what were the most pressing issues for you as director of this project?

MH: Well, this was the period of Watergate. So, the first thing that I worked on was the creation of the Church Committee, and working with Senator Mansfield's staff to get the Church Committee set up. I then spent a lot of time providing information to the Church Committee about its various investigations and ended up testifying before the Church Committee on the issue of covert operations and what should be done about covert operations. I think they may actually have been just before I started working for the ACLU. Then we worked on all the issues that were the aftermath of the Church Committee, so the creation of the Senate Permanent Committee on Intelligence. I was deeply engaged in that. Indeed, wrote the resolution, what's called S. Res. [Senate Resolution] 400, which was and still is the charter for the permanent Select Committee on Intelligence. I was asked by people working for Mansfield to do a draft of the charter. I did the first draft of that and much of what's now in there was something I drafted. Then we worked deeply on wiretapping--what eventually became the Foreign Intelligence Surveillance Act, creating the Foreign Intelligence Surveillance Court. I testified on that, I don't know, six times. I have all my testimony if you want to look at them. I negotiated privately with the Justice Department and the FBI, hours after hours and eventually we reached agreement on a text that both the ACLU and the Justice Department, and the FBI supported. There were a whole series of bills--there was then the Intelligence Oversight Bill. There was the Classified

Information Procedures Act. There was the bill that exempted certain operational files of the CIA from search and disclosure under the Freedom of Information Act. I forget one or two others and in every one of those cases we were engaged in intense negotiations with the administration and in each one of those cases we arrived at something that we could live with and government officials could live with and passed the Congress with people not having to choose between civil liberties and national security.

NM: It's obvious from what you say, you are working very closely with governmental organizations.

MH: Right. We're also working with other NGOs which didn't always agree with us. Some of them thought we went too far in compromising with the government.

NM: This sounds like a strategy that you have. You are the director of the project. Is this something that you wanted to pursue? What other types of directions could you have gone?

MH: Well, we went in other directions. There were three components to the project. We had a litigation component and we did lawsuits all the time. We did Freedom of Information Act lawsuits. We did lawsuits for disclosure of classified information. There was one other indictment during the time of the project of a man named Samuel Eliot Morison, and we joined his defense. A lawyer worked for me, named Mark Lynch, who's one of his lawyers. We did immigration related lawsuits, so we did lawsuits on a number of different subjects and we did public education. We published a newsletter called *First Principles*, which came out every month. We published a handbook on how to use the Freedom of Information Act. We published a handbook on how to litigate under the Freedom of Information Act. We ran a training program once a year for lawyers using the handbook, but with guest lecturers on how to litigate under the Freedom of Information Act. We published a document called, "From Official Files," which were the documents that became public under the Freedom of Information Act. Here's a compilation of the reports that we did.

NM: Just for the record, Morton Halperin handed me a compilation of reports and could you just state for the record what these reports are?

MH: Well, the organization that I've discussed was called The Center for National Security Studies. So here's a list of things that are in there using the Freedom of Information Act, the step by step guide, comparison of proposals for reforming the intelligence agencies from official files--which were these abstracts of documents under the Freedom of information Act--FBI Charter Legislation comparison of different proposals to reform the FBI, Operation Chaos about documents about CIA surveillance, a report on the CIA and the Freedom of Information Act and a report on nuclear power and political surveillance. So those were just some samples of studies that we put out as part of this project. So we had these three components lobbying public relations, public information, which was these reports and speeches that I gave and others, and we did a monthly publication called *First Principles*, which was a monthly document on--here's *First Principles*. [It] was a monthly newsletter, which dealt with issues of civil liberties and national security called *First Principles* and it was published every month.

NM: I just want a point of clarification. The Center of National Security Studies is with the national ACLU?

MH: It's very complicated. It's the national ACLU. The project that I ran started out as--it was called The Project on National Security and Civil Liberties, and it was a joint project of the American Civil Liberties Union Foundation and something called the Center for National Security Studies, which was a project of the Fund for Peace. In a year or two I became the Director of the Center for National Security Studies, got rid of the other activities of the center and The Center for National Security Studies became a joint project of the ACLU Foundation and the Fund for Peace dealing with the relationship between national security and civil liberties. The Fund for Peace's role was we raised some of the money through the Fund for Peace, from people who didn't want to give money to the ACLU or had already given as much money as they wanted to. So it was basically a funding conduit. It didn't have any real impact, so it was really an ACLU project, but it was called The Center for National Security Studies. It continued under that joint umbrella until I left the ACLU. Then Kate Martin, who's my litigation director became the director of it. She took it first out of the ACLU and into just the Fund for Peace, then out of the Fund for Peace to being an independent organization, which it now is. In fact, she's based here in this office.

NM: You mentioned that you are working on the various issues related to national security. You mentioned the FBI, the CIA, other different organizations. I am just trying to get a sense of the type of relationship that developed because you are working together.

MH: No, we were antagonistic and together. My theory was that the way you influence public policy is by being willing to negotiate. We started out with the premise that we stated all the time that we took seriously both national security claims and civil liberties, that we didn't think when the government was trying to get the authority to wiretap or to use classified information in criminal trials, that this was all a conspiracy to deprive everybody of their civil liberties. We accepted that these were good faith efforts to protect the national security and that there were legitimate threats to the national security, but that civil liberties were also important. A fundamental belief was that if you took both sides seriously, you took both sets of concerns seriously, and you listen carefully to both sides about what they were really concerned about and what their red lines were, that you could find a solution that satisfied both the concerns of national security and the concerns of civil liberties. If you didn't believe that and you weren't interested in doing that, you should operate out of New York or Los Angeles, and complain about what the government was doing. That was a very important function, which helped us because we could say, "Look, there's all these people to the left of us who are complaining about this," which included the ACLU chapter in Los Angeles, which was always unhappy about what my office was doing and some of our people in New York who were also unhappy about what we were doing. My view was, if there wasn't a point that you're willing to say, "We can live with this. We can't officially endorse it, but we will tell people this is a reasonable compromise." If you weren't willing to do that, the people in the government had no reason to talk to you. If whatever they did, no matter how much better it got, you were always going to say, "This is not good enough. We oppose it. It's a violation of civil liberties." Then that position is fine. You know what you think. We have no reason to talk to you. So, my position always was that we would search for those solutions and if we couldn't find them we would stay in our position. We always had red lines and we said, "There must be a provision that says X in the bill and if there's not such a provision then we can't tell people it's okay to vote for it." We always make clear what our red lines were, but we also listened to what the government said it had to do and tried to work with them to find solutions to the problem. Because we started doing

that, we had a track record that people took seriously. So when I said, "This is a red line, but we're ready to work with you to try and find a solution, then people were interested in doing that because they knew that there were a lot of people inside the Congress who cared about what we said. What gave us our influence was that there were many members of the Congress, the House and the Senate--particularly the House Judiciary Committee--that basically would do what we asked them to do. If we said the compromise was okay, they would live with it. If we said this was unacceptable, they would block it. So the administration knew the way to deal with the Democrats, with the left on the Hill, was to deal with us and that we would persuade the members of Congress if we could work something out with them. We did that in a whole series of bills. One I think I haven't mentioned yet was the Agents Identities Protection Act, which made it a crime under some circumstances to reveal the identities of covert agents and that was a very hard issue, as was the wiretap bill, which went on through the Ford Administration and didn't get settled. We blocked it through the whole Ford Administration and then reached an agreement with the Justice Department in the Carter Administration. Then the agents' bill we did in the Reagan Administration.

NM: Before we get to that I just want to ask a question because you had worked in the government previously.

MH: Right.

NM: Those relationships or contacts you developed, were they helpful in the work with the ACLU?

MH: I had not been involved at all when I was in the government the first time--I was when I went back later--on issues relating to civil liberties. I considered myself a civil libertarian in my private life, but I had no involvement in freedom of information issues, or surveillance issues. I didn't really know about them. So, there was nothing in my government experience in the Johnson or the Nixon Administration that really related to this work and I didn't deal with anybody that I knew at that time.

NM: If you need to take a break, let me know.

MH: No.

NM: I just want to talk specifically about two bills you mentioned.

MH: Okay.

NM: You mention working on a wiretap bill and the intelligence identities. You already talked about the way you approached these issues. Could you talk about how that worked out in the wiretap bill?

MH: So the first thing that happened in the wiretap bill was a democratic senator--I think it was Bill Nelson--introduced a bill which provided for a procedure for getting wiretaps under a different standard than the criminal standard for domestic terrorists which the Supreme Court, in an opinion, had invited the government to do, but I went crazy and said, "This is nuts. If we're going to do anything, we should do it for agents of a foreign power, but not for domestic surveillance. If it's just domestic, it's a crime and it's American citizens, and they ought to deal

with it under the criminal statute.” I persuaded Nelson to withdraw his bill. Then President Gerald Ford appointed a man named Edward Levi, who was a professor from the University of Chicago, to be the Attorney General. It was part of his effort to try to clean up the Justice Department. Levi was a well-known professor, constitutional lawyer, man of great integrity, and he engaged in a great fight within the Ford Administration and got agreement that they would propose a bill that was just about wiretapping of agents of foreign powers. He introduced this bill and the bill provided for procedures to get warrants to conduct surveillance under a different standard. It was basic structure of the bill, except that it had in it a provision that said, “This is only one means to conduct electronic surveillance and nothing in this bill should be understood to affect the president’s existing unilateral authority to conduct electronic surveillance,” which made the bill useless. So I actually testified. The first time I testified on the bill I said, “This bill is a total waste of time. Congress should refuse to pass it because all it does is create an additional way that the government can conduct this surveillance, but explicitly leaves the President free to conduct the warrantless wiretaps that he’s doing. In effect, suggests that the Congress approves that, which up to now they’ve been doing it on their own. The only bill worth considering is one that says, ‘This is the sole means for conducting this electronic surveillance.’” Then we can argue about--I got problems with how it’s laid out and what the standards are and how much the review is, but it’s not even worth talking about any of that if that provision is in the bill. I remember Kennedy was chairing the hearing and he swirled around to his staff and said, “Did we know this was in the bill?” They said, “Yes, sir, we did.” He said, “Oh, we got to do something about this.” Then, a couple days later, I got a phone call from Congressman Robert Kastenmeier. I remember this because he just died and I went to a memorial service for him where I told this story. Kastenmeier calls me up one morning and says, “The Attorney General is very angry at you.” He said, “He called me up last night, late at night, and he was very tired, very angry, and very drunk, and said, ‘You got to shut up Halperin because when I got agreement to send this bill up to the Hill, I committed myself to not making a single change in the bill. So the Congress has to adopt the bill exactly the way I sent it up. If there’s any change made we will be off the bill and will not support it.’” He said, “So tell Halperin he’s got to shut up.” Kastenmeier said, “Of course I’m not telling you to shut up. I just wanted you to understand the problem we have.” I drew that line and until they withdrew that provision this bill is not worth talking about. Finally, they came around to saying, “Okay, we will agree that this is the sole means for doing this, but we got to have the authority that we need.” Then there were endless hearings. I testified in the House and the Senate before the Judiciary Committee and the Intelligence Committee. There were lots of different issues. One issue was whether there would be additional protection for American citizens and we insisted, to the very end, and got it in the bill--it was one of the last issues settled--that American citizens could not--we invented this category called US persons, which was US citizens and people with green cards who were entitled to become citizens, and insisted they had to have the same protections. So that was called US persons and FISA--this is called the Foreign Intelligence Surveillance Act--created this new category called "US Persons", which was defined as US citizens, corporations owned by Americans, and persons with green cards. We said the surveillance of them cannot be based solely on First Amendment activity. So it can’t just be that somebody’s speaking out in favor of Islam or Russia, or whatever it was. You had to have activities that were not protected by the First Amendment. That’s in the bill and that was the first time the government ever conceded that those activities had a role to play and whether somebody could be considered subject to criminal conduct. So we insisted on that. We insisted

upon a clear role for the court in granting the warrants and making their own determination about whether the government had met the standard in the warrant. There had to be minimization procedures for accidentally acquired information about US persons. We never reached agreement with the Ford Administration. So we picked it up again with the Carter Administration and finally were able to reach agreement on something that I then had to go up to New York, talk to the Executive Director. I forget whether we took this to the Executive Committee or not, but we agreed that--the ACLU had this position, which I think it still has, that all wiretaps violate the Fourth Amendment. So we couldn't endorse this, but what we said was, "We can't endorse it because of our view of the Fourth Amendment, but we think this is a reasonable accommodation of the interests of civil liberties and of national security." So if you look at the debates in the House and the Senate, people get up on the floor and say, "This is okay with the ACLU. This is okay with the FBI. It must be okay. We can live with this." Then you had people like *The Nation* magazine and the Los Angeles chapter of the ACLU denouncing what we were doing and saying that the bill was a disaster and should never have been passed. To this day, people denounce the FISA bill and to this day, I believe it was the right thing to do and it gave us more judicial control and more controls within the executive branch of national security surveillance than any other country has to this day.

NM: You also said that another major initiative was working with the government for intelligence identities protection. Could you speak to that?

MH: Yes, that was a very, very hard and very complicated issue because there were two different circumstances. One was people who were in the government, who learned of the identities of covert agents, either because they had formal access to it or they learned about it as a result of their government appointment--for example, they're at the water cooler every morning at the CIA with somebody who's a covert agent, and he used his real name with them. We had a big fight within the ACLU--and I finally got agreement that I could testify that the ACLU did not believe that somebody had a First Amendment right to become a government employee, to get a security clearance, to learn the identity of a covert agent and then to make that identity public. We thought that if a person felt an obligation to become a whistleblower, to reveal illegal or improper activity, that he could do that without identifying, without revealing the identity of a specific covert agent. He could say, "We're doing this and that and we have spies. We're spying on the Prime Minister of Germany, but he didn't have to say who the secret US agent was." That was a big fight, but we said that provision of the bill had to have safeguards in it. For example, we said, "You cannot do it to the person revealing themselves. People have a right after they leave the government to say, 'I was a covert agent.'" So there's an exception for self-identification. You have to know that the person that you identify as a covert agent was a covert agent, and that the government was still trying to keep his identity secret. That's the precise definition of a covert agent, which involves serving overseas and there is a precise definition in the bill. But we said, "With all of those protections, we do not see any First Amendment objection to making it a crime for somebody to come in the government, choose to get a clearance, learn the identity of a covert agent, and release it." But we said, "That's an entirely different problem for somebody who is not in the government." Problem was that the government's immediate concern here was something called the *Covert Action Information Bulletin*, which was ferreting out the identities of covert agents, which was not very hard to do. Indeed there was an article in the *Washington* monthly called "How to Spot a Spook," which told you exactly how to do it. It wasn't very hard because these people had to be under official cover

when they're overseas, but were not listed in the State Department when they were not overseas. So basically what you had to do was track through this volume that the State Department published, listing its people who were serving both in Washington and overseas and track the people who were only listed when they were overseas and not in Washington, and those people were CIA agents who, when they were back in Washington worked at the CIA and weren't listed in the book. So it wasn't very deep cover and it wasn't very hard to figure out. Nevertheless, these names were being published and the CIA thought that was adding to their jeopardy, that their names were published and wanted to try to find a way to stop them from publishing the names. Then there was an episode where somebody whose name was listed, his house in, I think, Jamaica was shot at. So at that point it became very hard to stop the legislation. So we began working with the CIA to try to find language that we could live with. Eventually, we came up with language that said that it was a crime to reveal the identities of covert agents, plural. If it was a course of conduct intended to reveal the identities of covert agents for the purpose of undermining the intelligence activities of the US government--and the legislative history said that if you have some other purpose--for example, if a newspaper story is revealing illegal or unconstitutional activity and reveals identities--even plural of covert agents--as part of a story dealing with illegal or unconstitutional or inappropriate activity, that would not violate this provision because it was not a course of conduct whose purpose it was to undermine intelligence activities, but rather the purpose was to educate the American public about something that the newspaper thought they were entitled to know. I testified that that provision properly interpreted did not violate the First Amendment, and again, the bill was introduced and passed with people saying the CIA and the ACLU both say this provision satisfies their needs and there was a lot of condemnation at that, if you look at it. That's another example of what we did.

NM: In this circumstance, you are working with the CIA. Who approaches who to work together on working on that bill?

MH: Well, by the time we got to that bill, it was known. If you had asked anybody in Washington and on the judiciary committees or the intelligence committees, or the CIA, or the FBI, or the Justice Department, how do these things get worked out? They would have said, "You go see Mort Halperin at the ACLU and if you can make a deal with him, it'll happen. If you can't make a deal with him, then it's not going to happen." I forget how it started, but it was basically, the judiciary people--Don Edwards and Bob Kastenmeier were two committee chairmen of the two key subcommittees in the House Judiciary Committee. [Editor's Note: Don Edwards represented California in the House from 1963 to 1995. Robert Kastenmeier represented Wisconsin in the House from 1959 to 1991.] We had very good relations with them. They and their staff would say, "The congressman cares very much about the views of the ACLU. You should go and talk to them." Once it became clear that we were willing not just to read them a lecture about the First Amendment, but actually get into the nitty-gritty and discuss it, it became sort of the standard process. Sometimes in another bill that we did, the Classified Information Procedures Act, which provides procedures for using classified information in criminal trials--there we were actually affirmative. We were for that bill because we saw it as mostly being used to indict government officials who violated other people's constitutional rights, as would Scooter Libby, where actually they used the Classified Information Procedures Act against him. So it's mostly used against former government officials, or sometimes was used to regulate how Daniel Ellsberg could use classified information but it's much less

important in those cases. So there the Justice Department was trying to get a bill. This was in the Carter Administration. Finally, Edwards' people said, "Talk to Mort Halperin. If you can work it out with him, then you'll get a bill." There again, we drew an absolute red line. We said, "You cannot use this bill to change the standard for when a defendant is entitled to classified information." The government, one of the government's primary purposes here was to try to get the Congress to say that if it's classified information, if it would otherwise be discoverable by a criminal defendant, that you had to have a higher standard because it was classified. We said, "That's unconstitutional. We will never agree to that. What we will agree to is the process by which you can find out in advance of a trial, what classified information you're going to have to make public during the trial so you can make a considered judgment about whether you want to bring the case." In the past, before that bill was passed, government had to guess what judges would order them to give to the defendants and so they were reluctant to bring cases because they would reveal the information that was classified that they needed to prove the case and then the defense would ask for additional classified information and the judge would say, "You have to give it to them." Then they had to drop the case, but they had already paid the price. So it was very useful and important to them to get a procedure which gets all that done in advance of the trial, so the government knows for both its own case and the defense, what it's going to have to make public and then can decide whether it wants to and sets up a procedure where they can substitute language as long as it provides substantially identical information to the defense. So we said, "We'll do those two things, but we will not change the standard. And if you want to change the standard you go try. We will stop you. If you want just those two things, you will get your bill and it will pass." They went and talked to people and came back to the Justice Department and had a fight inside the Justice Department. But the guys going up to the Hill said, "We can have this. We can't have that. Do we want it?" They decided they did and so the bill went up in that form.

NM: It sounds like within some of the government organizations you are working with, there are people who are willing to work with you.

MH: Yes. I would say only when they discovered they can't do it without us. So they always try. They'd always send up a bill and say, "We're going to scare everybody and it's going to happen." Then it doesn't happen and then they start to ask people and say, "What kind of changes do we make? How do we get this done?" The answer for eighteen years that I was doing it was, "Go talk to Mort Halperin and his people." I had a team that I worked with and we would almost always, eventually reach some accommodation.

NM: We talked about the first twelve years with the ACLU, but let's shift to the last eight.

MH: I think it's six.

NM: Last six. Those last years at the ACLU I understand you take a different position.

MH: Well, I kept the old one so I continued to run the Center for National Security Studies, but I became the Director of the Washington office as well. So I had responsibility not only for the national security lobbying, which by the way we very broadly defined. So for example, we did the whole Freedom of Information Act, even though only one part was national security by agreement with the directors of the Washington office who came before me. But at that point, I

became the Director of the Washington office, kept the other title, but the national security litigation, the lobbying then got integrated into the lobbying of the organization as a whole.

NM: What brought about those additional responsibilities?

MH: John Shattuck, who was the Director left to run the Kennedy Library and so the job was vacant. I had actually been a candidate for it when he was a candidate for it, when Chuck-- what's his name? I forget--the guy who had the job before that left. But my colleagues in the ACLU thought given how much work there was on the national security stuff that they would rather have me just do the national security work and focus on that than bring in somebody else to do the non-national security lobbying. That's when we made this split, so that it was clear that I had full responsibility for that work and John had the rest, which was lots to do. But when he left the second time, I said, "This time I really want the job." Then there was a big search because we're in the era of affirmative action so there was a major attempt to find an African American candidate and eventually that proved not possible.

NM: You mentioned there are a lot of responsibilities.

MH: Yes.

NM: I just want to get a sense of now you are running the D.C. office. What are those additional responsibilities?

MH: Right. Well, it was every other issue. So I can tick off for you some of the big things we worked on. We worked on the Immigration Reform Act, played a major role in the passage of the Immigration Reform Act. We worked on the Americans with Disabilities Act. We worked on the Motor Voter Bill, which improved the ability of people to get registered to vote. We worked on the thing that I think was the most important that we did, which was the flag burning constitutional amendment. I consider that to be my most important contribution to civil liberties is stopping that bill, stopping that constitutional amendment. I forget. Those are, I think, the major--immigration, ADA. Well, we worked on a bunch of civil rights restoration acts that we were part of a larger coalition, but nevertheless played an important role in those bills. Then we worked on Bork's nomination. [Editor's Note: Robert Bork was a conservative federal judge who was nominated to the Supreme Court by Ronald Reagan in 1987. The Senate did not approve his nomination in a 58 to 42 vote. Joe Biden led the opposition within the Senate.] That's the other.

NM: I have a few follow-up questions in terms of the times when you are Director of the Washington office. What is the relationship like as an affiliate office with the national office?

MH: Well we weren't the affiliate office. The thing to understand is there is a DC affiliate that's a separate office. That is not this office. We were the legislative office of the national ACLU. So we dealt with the D.C. affiliate the way we dealt with every other affiliate--in fact, less because they didn't have Senators. I reported to the Executive Director of the ACLU who, by the time I took over the D.C. office, was Ira Glasser, and had been even for a lot of the--when I first came in it was Aryeh Neier, when I first became head of the Center for National Security Studies, but then he left and Ira Glasser became--and he was the Executive Director for most of the eighteen years that I was--and for all of the six years that I ran the D.C. office.

NM: You mentioned immigration reform, the Americans with Disabilities Act, the flag burning constitutional amendment, and the Bork nomination. I'm just trying to get a sense of how does the office choose to take on and pursue these major issues and invest resources?

MH: In most cases it's obvious. There's a major issue that affects civil liberties that is moving through the Congress, and often we would get asked. For example, in the motor voter bill, there were groups working on that for a long time and they came to us and said, "We need your help for this." The Bork nomination is an interesting case because the ACLU had, and I think still may have, a rule that it did not involve itself in nominations. So when the Bork thing started, my office felt very strongly and I felt very strongly that there had to be an exception to every rule and that the threat posed to civil liberties in America by Bork going on the Supreme Court was such that we need to make an exception to our rule. We drafted a memo describing Bork's views of civil liberties and saying, "This is a crisis for the Constitution. This is a crisis for civil liberties." Bork for example, does not believe in unenumerated rights. He thinks the Constitution only protects enumerated rights and doesn't believe in the incorporation of the Fourteenth Amendment, doesn't believe women have any protection under the Constitution. We sort of laid out--Bork believed that the worst decision of the Supreme Court's history was the decision that said if somebody is reading pornography in their private home, they can't be arrested for that. We made the argument, we persuaded Ira Glasser when he got back from vacation that this was an exception. There was then a debate at the board meeting and the board, in that case, had to approve our involvement in the issue and they did do so. There was a big coalition led by the Leadership Conference for Civil Rights, which ... We made, I think, two important contributions to that fight. One is building on this memo that we had drafted for our board, when we approached senators, we said, "We have a book for you and the book is the writings of Bork. That's all it is. There's a summary on top, which just tells you what's in the book but it's not an analysis. It's not an attack. It's just the writings of Bork and if you read this book, you will see that he does not believe in unenumerated rights, he thinks the Constitution doesn't protect women, that he thinks the greatest crime, error of the Supreme Court was to say it can't be a crime for you to read this pornography in your own home by yourself." We just laid out ten or twelve views of Bork that we thought nobody agreed with. We said, "We just want you to read this and then reach your own conclusion about whether you think he should be on the court." We didn't predict--groups were predicting that women would lose all their rights. We're not predicting anything, just you read this and see whether you think that person who has those views should be on the court. If you're on the committee ask the witnesses, even ask the witnesses who testify for him. One of the witnesses was former Chief Justice Burger. We got one of the Senators to say to him, "Do you think there are unenumerated rights in the Constitution?" Burger looked at them like he's crazy, he said, "Of course there are. I've said that in many opinions." "Well do you think somebody should serve on the court who doesn't believe that?" "Of course not." So we played an important role in saying that Bork has laid out his constitutional theory. He's laid out his agenda for what he thinks the Constitution should say. Nobody who has that view should serve on the Supreme Court. We're not saying he's evil. We're not trying to get you to guess what he would do based on our analysis. Just read it. We gave every senator a thick notebook, which was just a cover memo explaining it and just his writings. Then the other thing we did, for which many of my colleagues still will not forgive me, is--the first round of hearings was not any of the interest groups that were opposed to Bork's nomination. It was government officials; it was prominent individuals like the Attorney General of New York and so on, but not any interest groups. Then the next round of hearings was going

to be interest groups and Mark Gitenstein, who was Joe Biden's--Joe Biden was running these hearings ... and Mark came to me and said, "You know we can't figure out--we have forty interest groups that want to testify and we can't figure out how to choose among them without getting a lot of people getting very angry." I said, "There's a very simple solution to this and it'll get all of them equally angry. Don't have any of them testify because we've won this fight and if you have them testify we will lose because Senator Simpson is waiting for them, and what he's going to show is their view of the Constitution. So he's going to say Planned Parenthood or the ACLU. You believe a woman is entitled--what we call a right to a dead fetus. That is, a woman could walk into a hospital eight and a half months pregnant and say, 'I want an abortion,' and a man walks right behind her and says, 'I'm her husband. I'm the father of the child. I want the child born.'" ... The ACLU's position is she's entitled to a dead fetus. It actually is their position and it's their position because if you're saying no to that, it's very hard to say when does a woman's right to a dead fetus stop. The ACLU has tried several times to define that but, it never has. So its position is she's entitled; the woman's entitled to a dead fetus anytime. I said, "Every one of the interest groups that you would invite to testify has an extreme view on one or more portions of the Constitution. Senator Simpson's got all that research done and he's going to say--now you say Senator Bork has a view of the Constitution outside of the mainstream and should not be allowed to sit on the court. That's based on your organization's view of the Constitution, is that correct?" "Yes, sir." "Now isn't it true that your organization's view of the Constitution is that he, for each one of them, would show these extreme." I think the fight--I said the argument will turn about the interest groups, not about Bork. So Mark went back to Biden and said, "Mort has this crazy idea," and they did it. No interest groups testified. When that was announced, I got a call from the chair of the board of the ACLU who was supposed to testify and said, "But Mort, I wanted to testify." I said, "Norman, here's the three questions you would have been asked. Did you really want to defend a dead fetus? Did you really want to defend an absolute?" The ACLU believes that you have a right to watch child pornography even though it's clear that the child pornography was made by filming a child. It's not like reading a book, which describes it. It's a film and we say, "No, it's still the First Amendment." I gave him three of the craziest views the ACLU has. I said, "That's all you're going to be asked about when you testify. Do you really--?" He said, "No, I don't think so." He said, "Okay. I understand." So nobody testified. I was talking to Mark the other day and he said he still thinks that that was one of the critical turning points in the Bork hearing. Needless to say, my colleagues were not happy about that. We did the same kinds of thing with the flag burning. The Supreme Court came out with this decision saying you couldn't make it a crime to burn the flag. My view was if we adopt a constitutional amendment saying that it's okay, that you can make it a crime; the states and the federal government can make it a crime to burn the flag. Once you do it for one issue, then what about cross burning, what about various other things. The First Amendment has never been amended and it can't be amended. So we just stopped everything else in the office and we all worked on just stopping the flag burning constitutional amendment. The first thing we had to do was to say, "Look, this Supreme Court decision was about a Texas law that's very oriented towards belief." You can't burn the flag to denigrate the United States. We think a neutral, federal statute that Congress makes it a crime to burn any flag except if you're destroying it pursuant to procedures that Congress can lay out, that that could pass muster and Congress has an obligation to see if that's the case before it passes the constitutional amendment. So we had to get something like that drafted and we had to persuade Don Edwards and others to introduce it. I still remember I was eating lunch in a restaurant and this was of

course long before cell phones, and my secretary knew I had an appointment there so the maître d' comes and drags me to the restaurant phone and it's Don Edwards on the phone saying, "I'm told by my staff that you want me to introduce this statute. Is that true?" I said, "Yes, we're not going to publicly endorse it, but we will privately make it clear that anybody who attacks you, we will say you've done this because we asked you to do it. It's the only way to stop the constitutional amendment." So he introduced the bill. Then we had to get over the notion that this was just a ploy made up. So we had to get a bunch of constitutional scholars, and we did, including Larry Tribe, to say that there was a reasonable chance that the Supreme Court, notwithstanding its previous decision would find this statute constitutional, that it differed in these following ways that were critical to the court's decision, and so it was worth doing. Then we had some people actually endorse the statute and said they thought Congress should pass the statute because they didn't think people should willy-nilly burn flags. But many others, a bunch of constitutional scholars, law professors signed the thing saying there was a reasonable chance that the Supreme Court would uphold it. Then we persuaded the leadership in the House and the Senate, that they should go with this bill and pass it. People always said to me, when we did any one of these fights--another one we did that I didn't mention was preventing a federal death penalty for the eight years of the Reagan Administration when there was a majority in both houses for the death penalty. Reagan was for it and we didn't get the death penalty until Bill Clinton became President. People said, "What's the good of this? The Supreme Court is clearly going to throw it out, and then we'll be right back in the same place." My view always was, this is about buying time and you buy time until it's over. It gets over, people get tired of it and they move onto something else. Anyway it's possible. It's a five to four vote. I actually thought and hoped frankly that one of the justices who had been on the winning side would see the handwriting on the wall and say, "This statute is different enough. It's only a federal statute. It's not every state. It's not based on--it says any burning that doesn't follow the procedures, not just one that's protesting something and the alternative is going to be a constitutional amendment. That's clear. Read the debates in the Congress." I thought we might get one vote. So I actually was legitimate in saying, there is a reasonable chance that the Congress would do this. In fact, there wasn't. We had to put in the thing a procedure for a fast review. So as soon as somebody burned the flag, they were indicted and it went up on appeal to a three-judge panel. It went to the Supreme Court right away. We couldn't get agreement to delay without putting that in because otherwise it could take ten years before a case got to the court. The Supreme Court summarily said, "This is no different." We said, "Flag burning is protected. Flag burning is protected. Go away." So then we had to figure out something else to do. So, we then started arguing the merits. We created an emergency committee to protect the First Amendment. We got a bunch of legal scholars who were conservative, right wing business lawyers from New York who had never spoken on an issue in their lives. Norman Dorsen, who was our chair, put this together. They came out and said we got very conservative law professors to do it. Then we got a second bill, which was even narrower than the first bill. We got some guys who said, "We got to vote for something and we got them to put that in and we got Congressman Jim Cooper who's back in the Congress now, who's a conservative from, I forget, North Carolina I think but he was very smart and a very good guy. He said, "I will do this bill if you promise me that if I ever get attacked for it, you will defend me." I said, "Absolutely." He was the sponsor of the bill. About twenty guys voted for that as their excuse not to vote for the constitutional amendment. It didn't pass. The constitutional amendment didn't pass. Cooper resigned from the Congress. Years later he ran again for his old seat, was attacked in the primary by his opponent who said he

violated civil liberties by sponsoring that flag burning bill. Cooper called me up, I called a reporter up, and the next day there was a story in the paper saying he had done this to protect civil liberties. So one of the lessons is you got to get to the point where people trust you and they trust you because you will deliver on what you promised them you would do. Do you have to stop?

NM: You mention a few things and I do want to follow up with them, in addition to what we already spoke about when you were the head of the D.C. office.

MH: Yes. I have a couple more things to say about flag burning by the way.

NM: Please. Go ahead. Please continue.

MH: Then we were concerned that in fact the constitutional amendment might pass and so we also worked at the question of how to narrow the constitutional amendment. It had been drafted saying nothing in the Constitution should prevent any state or the federal government from making it a crime to burn the flag. So I came up with this argument, which people found persuasive, which was to say, the way that amendment is written, the Ann Arbor, Michigan City Council could make it a crime to burn a flag except in protest of the Vietnam War. The Orange County Commission could make it a crime to burn the flag only if you were doing it to protest the Vietnam War, because the implication of the amendment was notwithstanding the First Amendment, which the Supreme Court already said prevented this, the Congress and the States could pass these statutes. Therefore, the normal argument that you couldn't say it's only done for protesting the Vietnam War because it would violate people's First Amendment rights, didn't apply because this was saying, notwithstanding the First Amendment. I persuaded people that was true, so the amendment in the final version got cut down. It only gave the federal government the authority to pass the statute. We continued to work against it and tried to persuade people to oppose it. In the end we succeeded. I mean it passed the house once. It came close to passing the Senate, and then for the next several sessions and after I left, it continued to come up. But as you got further and further away from the flag burning it finally died away. So I think it's clear now, Congress is not going to pass such a Constitutional amendment. So just by delaying, and giving people cover of one kind or another, we were able to prevent the passage of the amendment.

NM: Now, you did mention this earlier, but if you can elaborate on this a little bit more, obviously for civil liberties and what is at stake from the ACLU's point of view in the flag burning issue, in terms of the amendment.

MH: The fundamental principle is that Americans, people in the United States, have a right to express their view on any subject. No matter how much a majority of society may hate that view, they have a right to express it and the Supreme Court has been pretty good about saying that the First Amendment protects everybody's rights. If you start down the path of saying, "But there are certain things you can't do to express that right," then there's no end to it. Indeed, Congressman [John] Conyers tried to block the flag burning constitutional amendment by adding to it, cross burning and saying that nothing in the Constitution should prevent the state from making it a crime to burn a cross. His question was, "Why should it be okay to do it to a flag but not for a cross? For many people a cross is much more important." For example, we got the Orthodox Jewish community on our side, on the flag burning amendment because for them it

was clear that the argument was that the flag was a consecrated object and they object to the state deciding what's a consecrated object and what's not a consecrated object. So, it can't be a crime to burn a Torah that you own because the state can't prevent anybody from burning anything, but if they could prevent you from burning a flag that you own, then they should also be able to prevent you from burning a Torah. Since we knew there wasn't going to be a constitutional amendment preventing burning the Torah or even throwing them on the floor, they were against it on the grounds that you had to be pure and you could live with it but if you start pointing out consecrated objects that violated their religious freedom--so for everybody the danger was that this would not be the end and that even if it was the end it was still symbolically--the Congress had said, "The Congress shall make no law." Had a limit to it that said, "If we really care enough about not liking what you're expressing we have a right to stop it."

NM: Because you had mentioned that the ACLU put all of its resources into this issue. Now, other issues you brought up, are, for example, immigration and disability. Could you just talk about the ACLU's involvement in these immigration acts as well as what's at stake for the ACLU? Why get involved?

MH: The immigration bill, we initially got into to oppose it and the reason we opposed it is, that it was going to make it a crime to hire illegal immigrants. There was a widely held fear and belief in the Hispanic community, but also more broadly in the civil liberties community that if you made it a crime to hire illegal immigrants, employers would react to that by not hiring Hispanics because they couldn't be sure whether Hispanics were illegal or not. Now in the end, it didn't happen at all. I mean it's obviously, they continued to hire illegals and not worry about it and it didn't have any impact. But the Hispanic community was against the bill for a long time because their view was that the impact on legal Hispanics would outweigh the value of the--they eventually came around when they realized you were not going to get legal immigration from people without making it a crime to hire people. We fixed it in a way that I'll describe in a second. But we were also concerned on the other side that there were all these people living in the United States essentially without the ability to exercise their rights. They couldn't vote, but also they were afraid to speak. They were afraid to join organizations. They were afraid to engage in public debate because they were here illegally as is just the case now. Well now you see people coming out, but you see the problem, the danger of it to them. We gradually came to the view that we were for the legalization. We had an affirmative civil liberties interest in not having millions of people in the United States who couldn't exercise their rights, couldn't get the protection of the courts, couldn't educate their children properly because they were here illegally. At the same time, we were against making it a crime and yet, it became clear that you couldn't get the legal immigration without making it a crime. So we started saying to the Hispanic community, we've got to find a way that we can live with making this a crime. We finally decided that the way to do that was to create another crime, which was discriminating against somebody in employment because you feared that they were illegal--to set up an entity in the Justice Department that was devoted solely to enforcing that provision and to preventing discrimination against Hispanics by people who didn't want to take a chance of hiring illegals and just did it by saying, "Okay, we're not going to hire Hispanics." We went to the Congress and said this has got to be part of immigration reform. I remember having a conversation with Simpson's guy because Simpson was the Senate sponsor of this bill. He said, "Senator Simpson is not creating any new institutions. He's a conservative Republican, he's against it." I said, "Then Senator Simpson is not going to be the co-sponsor of a successful immigration bill

because unless you put that provision in, the ACLU will fight this bill all out on the grounds that it discriminates against Hispanics.” He said, “Well, it’s not going to happen.” I said, “Well, then the bill’s not going to happen.” He came back months later and said, “Okay. We’re willing to consider this. Show us what you would want.” So I drafted a provision that created a new division within the Justice Department dealing with employment related discrimination based on ethnicity. That entity still exists in the Justice Department. Then I had to go--this time we had to go to our board because I said if we are opposed to the bill it will not pass and you will never get legal immigration and you’ll never get legal immigration without making it a crime. We can get this provision, but we can only get this provision if I then say, we will tell people we think this bill is as good as it’s going to get. It’s time for you to vote for it. We can’t publicly endorse it because we don’t think it should be made a crime, but you’re not going to get it without making it a crime and we now have this safety provision in it. I said, “But I can’t go back to Simpson and say, ‘Here’s this provision,’ unless, as a result of that, we’re going to stop going all out to stop the bill and in fact going to tell people it’s as good as it can get.” So we brought it to the Executive Committee, which we almost never did, but I thought this one is too important not to. The Executive Committee’s position was, “Well, why can’t we just say we’re staying out of it?” I said, “Because we’re too important. If we don’t tell people this is okay, they will vote against it. If we tell people it’s okay, and this is as good--it’s our judgment. They take our judgment both that this is okay that this will protect against it, but also that this is as good as it’s going to get and they will vote for it and it will pass. So you can’t walk away from this. You got to authorize me to go tell people that or accept the fact that the ACLU is responsible for the fact that these people are not going to get legalization.” They authorized me to do that. So I did. So that was a major role. There was another smaller piece. The Republicans were determined to get something that increased the ability to turn people away at the border, what’s called summary exclusion, as part of the package. If there was going to be an immigration bill, there was going to be summary exclusion. Simpson had a terrible summary exclusion provisions and he had the votes in the Senate to pass it. I was afraid, even though we knew the House would do better, that the compromise between the House and the Senate would not be good enough. So, I urged people to vote against this compromise. He came out. We met in the anteroom of the Senate and he said, “What do you need to be changed here?” I told him what I needed. He said, “I will do that if you agree that in the conference, you will support the Senate version.” He knew that I could be trusted to do that. If he didn’t think I could be trusted, he never even would have been in a meeting with me. I thought, “This compromise is better than what we can get from the conference. I’d rather take this off the table so we can deal with other issues and if it comes to conference we will support this provision.” Bill comes to conference, they get to this provision, the House--Howard Berman who was the congressman pushing this, says “We want the House provision.” Simpson says, “The ACLU is with me.” Berman calls me and says, “Is that true?” I explained to him. I said, “Yes, we are with him.” He said, “Well, then we’re not going to fight this and we agreed to it.” There were many other people out front on the bill. We also had a problem that the leadership conference was opposing the bill because the Hispanic community, it for a long time felt strongly that it had to be stopped. But the AF of L [American Federation of Labor] was in favor of the bill because they thought undocumented workers are taking jobs away from union workers. The leadership conference ... worked consensus and the AFL said they were going to object to consensus to oppose the bill and therefore we can take no position because then we didn’t have the votes to support it. But they were going to block it on the grounds that this violated their position. I went to see them and said, “You know the ACLU does

not take positions on judges, but we have allowed leadership conference to oppose many judges and many Supreme Court judges because we did not think that one organization, even this very important organization should block consensus.” We got a footnote saying the ACLU did not participate in this decision but now the AF of L is blocking our opposition to this bill and it’s the only group blocking it. That means the rule is that even if one group is opposed, it blocks consensus and if you do that for this bill, you will prevent the leadership conference from ever taking a position on a judge or a justice. They came back a few days later and said, “We’ll live with the footnote.” So those are just some examples.

NM: Another initiative you said that the ACLU involved itself in was the Americans with Disabilities Act.

MH: Right.

NM: Just like we talked about the immigration, can you talk about what was at issue and why did the ACLU get involved with that act?

MH: The ACLU for some time had become both a civil rights and civil liberties organization. It believed that equal treatment and not discriminating against people on the basis of whatever status they had, whether it was disability or ethnicity, or sexual orientation. We were natural supporters of the disability act. The ... was a disability rights organization called DREDF [Disability Rights Education and Defense Fund] and they continued--this was not an issue unlike some of the others we’ve talked about where we weren’t clearly seen as in the ... in the most important organization. The death penalty is another one we should talk about. So we played a supporting role, but we played an important role in making this a priority for the leadership conference because we were a major player in the leadership conference and we helped to persuade the executive board of the leadership conference that we had an obligation to the disability community to support them, to back up them. The basic judgments about what to compromise on that bill was made by DREDF, not by the leadership conference, and certainly not by the ACLU. There was a lawyer on my staff who did disability rights and she was actually the key lawyer for the coalition on the issue. She would do the legal analysis. So in this case, our major contribution was to make her time available to do so. When there was a proposed amendment, she would be the one who analyzed whether we could, from a legal point of view, accept it or not. I went to many, many meetings with members of Congress on the bill, made it clear to them that this was a priority for the Civil Liberties Union, but we basically played a supportive role in the process.

NM: You had mentioned the ACLU’s involvement in blocking a federal death penalty.

MH: Right.

NM: Can you talk about that?

MH: That was a very major priority for us. We believed that the death penalty is cruel and unusual, and it violates the Constitution. The Supreme Court sort of ended the death penalty, then it brought it back, but in order to bring it back a state had to enact a new law that met the standards that the Supreme Court laid out, and the federal government had not done that so there was no federal death penalty. This was the era in which the Republican Party was beating the Democratic Party to death on crime. The response of the Democratic Party was to work with the

Republicans in every Congress to pass a crime bill. The intention every time, for the eight years of the Reagan Administration, was to make the death penalty a central element of the crime bill, and they had a majority in the House and a majority in the Senate for the death penalty. We had somewhere around forty-one or forty-two Senators who were opposed to the death penalty. It's hard to believe now. I think that there are probably three who are opposed, although it's coming back again. So we could mount a filibuster and those were the days when filibusters were unusual and needing sixty votes was unusual and taking the time to undo a filibuster was an even longer process than it is now because it wasn't simply--you didn't get to vote right away. If Senators were filibustering you couldn't get the sixty votes until you gave them several weeks of debate on an issue. So, a threat to filibuster, even if you ultimately didn't have forty-one votes, was a serious threat and we were able to use that. So we began each Congress knowing that there was going to be a crime bill, that the crime bill was going to have a death penalty in it--probably in the House, not in the Senate--and that there was going to be enormous pressure to put the death penalty in and to create a federal death penalty. Our first strategy was to delay the crime bill as much as we could, to demand more hearings on it. It had fifty issues in it, so do you need more hearings on this? Do you need more hearings on that? We'd get a subcommittee chair in the House or the Senate, who was on our side to delay, to ask for more time to study one. My colleagues always said to me, "What's the good of this? Eventually, they're going to pass a crime bill. They're not going to go home without passing a crime bill and they're going to want to put the federal death penalty in it." My position was, "Who knows. We're going to buy as much time as we can. We're going to get this as close to the end of the term as we can because then maybe we can find a squeeze play that gets the death penalty out of the bill." We did it in different ways each year. One year we actually had forty-one votes in the Senate, at least for a while, and we persuaded Senator Dole, who was the majority leader of the Senate, and who I think secretly didn't want a death penalty. He was always saying, "Well, I can't do this because there's going to be a filibuster." So he kept it out of the Senate bill. The problem was the House wouldn't pass a bill without the death penalty and the Senate wouldn't pass a bill with the death penalty. We got very close to the end of the Senate term. The bill was bouncing back and forth between the Houses. The House would put the death penalty in, the Senate would take it out, send it back. There were always other issues and finally they got to the point where every other issue was done in the bill and every other bill was done and they were ready to go home. There were not the votes in the House to pass the bill without the death penalty, and there were not the votes in the Senate to pass it with the death penalty. We managed to keep alive this myth because in the end I think they could have gotten sixty votes. So ... but they would have had to take a lot of time to do it and there would have been a lot of speeches and Senator Dole's position was, "I don't have time to do a filibuster and I can't pass it with the death penalty without the filibuster." Biden, who was the ranking member was then again the death penalty and strongly supporting this notion that we were going to filibuster. Finally, the House came--I mean the House Rules Committee is the most wonderful institution in the world. It can do anything. So they came up with a rule from the House Rules Committee, which said, "When the rule is adopted, the House is deemed to have passed two bills." One was the crime bill with the death penalty and one was the crime bill without the death penalty, and both bills would be sent to the Senate. So the only thing up to vote on was the rule and people were able to say, "I'm voting for this rule because one of the two bills that passes has the death penalty and other people were able to say, "I'm voting for it because it doesn't." When it got to the Senate, Dole brought up the one without the death penalty and we passed it. That was the way we did it that year.

Then at another Congress, we were promoting something called the Racial Justice Act. The Racial Justice Act overturned a Supreme Court decision that said, you could put people to death even if there was a suggestion that it was racial--it had a racially disparate impact. That is, more people were put to death who were black or more people put to death because they killed white people and that the only way you could bring racial discrimination into the death penalty was to prove that in your actual case the prosecutor was motivated by racial animus in bringing the death penalty, which was impossible to prove. We developed a statute, which I got Larry Tribe, who was the leading constitutional scholar and Tony Amsterdam who is the leading death penalty scholar, to work on together. We got it introduced in both houses, the Racial Justice Act, which said, that you can't put somebody to death if statistically you can show that there's a racial disparity, either in the defendant or in the victim. It applied both to state prosecutions and federal prosecutions. In the House, we persuaded a bunch of Midwestern conservative Democrats who were pro-death penalty, but pro-civil rights--considered themselves civil rights champions--that they had to vote for this. So we passed it in the House. Senate, we were nowhere near passing it. So we went to conference again on the crime bill and the House Judiciary Committee people announced that the House passed the death penalty, only in the context of passing the Racial Justice Act and that they were happy to include the death penalty, but it had to be the Racial Justice Act as well. Since the Racial Justice Act applied to the states as well as the federal government, Thurman was not at all interested in this because he knew the states couldn't put anybody to death and he'd rather have the states be able to do it then to have a federal death penalty. So he started screaming and yelling, and they said something, which wasn't true--the house people, they said, "Well, the House only accepted the death penalty in the context of the Racial Justice Act. So you can have both or neither." [Strom] Thurmond finally said, "Okay. Neither." So we had the death penalty out of the bill the last minute, that way that time. I forget how we did it the other two times, but we started working on it. I remember one of these times it was one of the House members when Thurmond gave up on it because of the Racial Justice Act. She said, "That's amazing. How did that happen?" I said, "We started working on that two years ago," and she was absolutely flabbergasted. But that's the way we did it. We started every Congress saying, "There's going to be a crime bill. It's going to be a death penalty added and we're going to keep it out. I know we're going to lose hope along the way, but the first step is we're going to make the crime bill as late as we can make it." In every Congress it was the last bill. It still hadn't passed. In every Congress we were able to get them to go home and not do a federal death penalty.

NM: It sounds like every time you have an issue that is in the Congress, you have a pretty good sense of who is going to support your bill and who is not going to support your bill. How is that determination made from the ACLU standpoint?

MH: Well, what position we'll take or who we'll work with?

NM: No, not what position or who to work with. You mentioned the crime bill and how you had forty-two Senators. How do you make that determination of who is on board and who is not on board.

MH: It varies from issue to issue. On the death penalty, we talked to every United States Senator. I mean, as many as we could, the Senators themselves, but if not the Senators, their staffs. We had good relations with the person who did judicial issues on every Senate staff. When an issue was important enough, like the death penalty, the whole office worked on it.

Normally, people worked on their own issue. So somebody did abortion, somebody did women's rights, somebody did voting rights, somebody did criminal justice, somebody did national security. Most of the time, people worked on their own issue and I would figure out what issue I thought was either an opportunity or a danger and I would work with that person. Then, when there was a crisis, like the crime bill, or the death penalty, or the Bork thing, the whole office, everything would stop and the whole office would work on it and we'd divide things up. We worked very hard to have good relations, to have relations with Senators as much as we could. We did that through our members. There was a thing called the President's Committee, which were the big donors to the ACLU. We worked that list. We said, "If there's a Senator that you're a big donor to, we want them to associate you with that Senator." So, I told people my goal was to meet every new incoming Senator who was at all approachable at the swimming pool of one of their big donors before they were sworn in and I actually pulled that off a few times. For example, one of our board members, the ACLU, was the guy who was the finance chairman of every Democratic campaign in Maine. Maine used to be solidly Republican and it gradually became Democratic again and about twelve people did it including [Edmund] Muskie, and [George] Mitchell, and this guy Shep Lee, who was a big car dealer in Maine and was the Finance Chairman of every Senate campaign. I was just trying to get Senator Mitchell's help a few days ago on a different issue. He came to the meeting and he said, "You know, I have to tell you why I'm here. I'm here because of Shep Lee." Shep Lee's been dead for fifteen years. He said, "Shep Lee called me up and said, 'I want you to do whatever Mort Halperin asks you to do.'" He said, "So I've always at least come and listened ever since to anything you ask me to do." That was what I wanted people's minds--when I walked in the door, they saw not me, but their big donor. They thought to themselves, "I don't want Mort to leave this room and call Shep Lee, or their equivalent, and say, 'Shep, I just saw Senator Mitchell and he's not going to be with us on this issue.'" Because the next thing will happen is they'll get a call from their Shep Lee saying, "How can you abandon the ACLU?" We didn't have that with every Senator we should, but we had that a lot. I spent a lot of time explaining to rich donors why I needed that and getting them to do it. I literally would go up and be at their swimming pool with George Mitchell and Shep Lee, in Shep Lee's swimming pool and that's where we saw each other, and that really worked because the truth was, if we didn't have that kind of connection, we didn't see Senators. Senators do not have time to see people where it's not connected with money. They have to devote themselves to raising money. So with the other Senators, we almost always saw them--did not see them, but saw their staff people. Every once in a while, I would say to the staff guy, "I really need twenty minutes with this Senator." They knew it was serious and that whatever reason I didn't think I can work it through them, and they would do it. But most of the time we worked through the staff. But we believed in counting. Senator Cranston who was a leading liberal Democratic Senator from California, believed in counting as Senator Durbin does now. So we would work with a Senator who would count and we would count. So we knew where every Senator was. I mean, we talked to their staffs. We got people in their district to talk to them. So part of it is trying to persuade them, but the other part as I always emphasized to people, is you have to know how to count because if you don't know how to count, you're going to force a vote and you're going to lose it, and then you're going to be in trouble. You don't ever do a vote unless you know what the count is and you know you can win. If you can't win, then you got to try and do something else, but you don't want to lose votes. So we counted. We knew exactly how many votes we had and we knew who was not prepared to say how they would vote and we would go after those people.

NM: I suspect you had some involvement with the ACLU after you left.

MH: I did.

NM: Before you officially leave the ACLU, is there anything that you would like to add about those eighteen years that you had in the National Security Project and then as the head of the D.C. office?

MH: Yes. I'm trying to remember if there are any other big pieces of legislation. We did spend a lot of time on the motor voter bill and that was just a good example of slogging through and finding the necessary compromises. Another piece of this--I was a strong believer in the importance of the rules and knowing how the rules of the Senate and the House operated, particularly the Senate where they're more important because the House can always waive them. Most people on our side I found had no patience for it, didn't know anything about it. So one source of our influence is that people would come to me, including Senators, to talk about the rules and how they worked and how to get around them. We often got things that we never would've gotten because I knew the rules and knew how to use the rules creatively to get what we wanted. But I think we've covered the main issues.

NM: What led to the transition from the ACLU full-time to other things?

MH: I have never actually talked about that and I am not sure I am ready to talk about that.

NM: That's okay.

MH: Okay.

NM: After leaving the ACLU full-time, were you still involved with the ACLU in any way?

MH: Not at all.

NM: Is it okay if I ask you a few questions as an observer from the outside?

MH: Sure.

NM: You worked with the organization for almost two decades, but more recently it seems like the organization has grown larger.

MH: Right.

NM: Is that something that someone from the outside can observe?

MH: It's grown larger, but in my view on federal legislation, less influential.

NM: Okay.

MH: Because before I ran the office and after I ran the office, the ACLU saw itself much more as being basically in New York and expressing principled positions and not being willing to make compromises, and therefore, having the pleasure of stating that the Constitution is in trouble, that the Congress is about to do something terrible, which is a good way to raise money and a good way to excite your members, but it's not a good way to have influence over the

decisions. I think many members of Congress came to feel, after I left, that the ACLU was not the place where you would work out the compromise that balanced both sides. ... In fact, when 9/11 happened and the administration sent up the PATRIOT Act, a leading member of the House Judiciary Committee and reflecting the views of several other leading members of the committee, told his staff to find me. The woman he told had no idea who I was. She tracked me down and I came in, and they said, "We're not going to be able to stand there and say we're not passing anything. We're going to have to pass a bill and we need your help." So I jumped back in and worked on the PATRIOT Act as if I was still at the ACLU. It was clear to me that the ACLU had abandoned this role. By choice, they had decided that they didn't want to play that role and it wasn't good for fundraising. It wasn't good for morale. It got lots of people mad at you, and that their role--and it's a perfectly reasonable position--their role is to state the principles of civil liberties position and people can then make their own decisions about what they want to do.

NM: You mention that you worked with the PATRIOT Act but you're outside the scope of the ACLU.

MH: I was not doing that on behalf of the ACLU. The ACLU people were very gracious. In fact, they offered me--I worked part of the time from their office, which was still on Capitol Hill. They have since moved off Capitol Hill, which I think was a profound mistake. The relations were perfectly cordial, but I was doing the deal making. They were not doing the deal making.

NM: What I am trying to understand is, are you working on the act and just trying to get the best that you possibly can and not really working with the ACLU at all, just working from your principles, that sort of thing?

MH: Right.

NM: Is that a good assessment?

MH: Yes. That was the case with the PATRIOT Act. I mean, it was very short and very intense, and a failure. The administration pulled the rug out after we had an agreement, and just said, "You pass this bill tomorrow or there will be a terrorist attack in three days and the Congress will be blamed." So they passed a far worse bill than we hadn't negotiated.

NM: As an observer, what are the major types of issues that the ACLU is working with now?

MH: I don't follow the ACLU. I don't know what they're working on.

NM: Okay. That's fine. Can you talk about some of the things that you did after your time with the ACLU and whatever you can speak to? My understanding is that you left the ACLU in the early '90s.

MH: I left the ACLU. Well what happened--I had had a previous career as we talked a little bit about doing foreign policy and national security stuff. I had sort of dropped that. I mean, I'd occasionally do something on the side when something happened that I thought was really terrible. I was involved in something called the Emergency Committee to save the ABM Treaty when Ronald Reagan was trying to get the United States out of the ABM Treaty. [Editor's Note: The Anti-Ballistic Missile Treaty was made between the United States and the Soviet Union to

limit Anti-Ballistic Missile systems. It was signed in 1972 and continued until 2002.] That's something I had worked a lot on both before I was in the government, when I was in the government, and I felt deeply about it. So, I got involved in that. Every once in a while I would do some foreign policy thing, but not very much. When I left the ACLU, an old friend of mine, a guy named Morton Abramowitz, had just become the President of the Carnegie Endowment for International Peace. He asked me if I would be interested in doing some work for him and he assumed it would be on the side. I said, yes I would, in fact. If he was interested, I'd be interested in coming to the Carnegie Endowment. So, I left the ACLU to go back into a foreign policy career in the Carnegie Endowment. I was there for only a few months, when Bill Clinton was elected, and my old friend Les Aspin asked me if I would consider going to work for him in the Pentagon. I agreed to do that, but by then I was not at the point where I could work in the government and leave behind everything I had done before. So we had actually agreed that I would have, in addition to substantive national security stuff, that I would have a civil liberties and human rights portfolio and that I would deal with those issues in the Pentagon. I was nominated by Clinton to be an Assistant Secretary of Defense, but never confirmed. After a year, Aspin left and I withdrew. But during that year I worked on drug testing in the Pentagon, for example, and persuaded Aspin not to require civilians in the Pentagon to be drug tested. I worked on gays in the military and did the first round of the work on that issue for him. I worked on an issue--there was a Salvadorian peace commission--a truth commission and they wanted to interview American military people who might have information about human rights violations in Salvador. I persuaded Aspin that we should give the truth commission the names of the American officers who we thought might have information. Then I turned around and insisted that we had to give them lawyers to tell them that they didn't have to cooperate with the truth commission, which made my colleagues in the Pentagon very confused. So when I went back into government I brought my civil liberties commitment back in. I did that, and I was then in the NSC staff and then in the State Department as the Director of Policy Planning. In all those positions I was deeply involved in Freedom of Information issues and surveillance issues, and other civil liberties issues. I basically was mostly doing national security substantive stuff at the Carnegie Endowment. Then for three years in the Clinton Administration. Then I was at the Council on Foreign Relations for three years, and then back into the Clinton Administration as the Director of Policy Planning in the State Department. Then when I left there, I went back to the Council on Foreign Relations. Then, when 9/11 happened, George Soros called me up and said, "I want you to open a Washington office for me," which I did and that's this office. I'm no longer the head of it, but I'm still in it. I went back to doing many of the same issues. There is an enormous overlap between the agenda of the ACLU and the agenda of OSF. So I was back doing a lot of the same issues that I had worked on and back trying to find compromises that solved both civil liberties and national security and getting attacked for it, including the updated version of the Foreign Intelligence Surveillance Act, which I supported the version that finally passed the Congress and it was extremely controversial.

NM: In your position at the D.C. office of--

MH: It's the Open Society Foundation; it's now called. It's the organization that George Soros supports and we basically do the lobbying and the other work in Washington on behalf of the foundation.

NM: You mentioned you are doing some of the same work that you did when you were with the ACLU.

MH: Right.

NM: Are there any particular issues that you can share some of the things that you have been working on that deal with civil liberties and civil rights, and that sort of thing?

MH: Well, as I say, I dealt with the amendments to the Foreign Intelligence Surveillance Act and worked very closely, mostly with congressional people rather than administration people, but to come up with a bill that again I thought was a reasonable compromise between national security and civil liberties. I published an article in the *New York Times* op-ed page supporting the compromise position, which most of the Democrats ended up voting for, including Barack Obama. So that was one issue that I worked on. We've worked on a lot of issues relating to torture and trying to get the administration to definitively end torture. We tried very hard to get Obama to appoint a truth commission to look at what the Bush Administration had done in terms of secret prisons and torture, and then help setup a citizens' panel to work on the issue. That was done at the Constitution Project. The office has very involved in voting right's issues. I've been less involved in those issues, but we also had been involved in a lot of the crime issues that also involved in the ACLU. So we work a lot--the office does--with the ACLU on a number of issues. The Open Society Foundation is also a major funder of the American Civil Liberties Union.

NM: I think I am out of questions.

MH: Okay.

NM: I want to give you the opportunity to add to the record, anything that we haven't talked about, either your early life, your time in graduate school, in government service, in the ACLU, and now with the Open Society Foundation.

MH: I'm trying to think if whether there were other pieces of legislation that I worked on that are worth mentioning. Maybe there's one more in the national security field. The CIA was trying to get itself exempt from the Freedom of Information Act. It argued that it was the only intelligence agency in the world that was subject to a Freedom of Information Act, and I used to debate--this guy was retired from the CIA, and he would say that. Then I would say, "Yes, but the Agriculture Department is the only Agriculture Department subject to a Freedom of Information Act because the United States is the only country subject to a Freedom of Information Act." Eventually, that became less true. Other countries adopted Freedom of Information Acts and they always applied it to their intelligence services, so that argument sort of went away. They claimed that everything they had was classified and therefore it wouldn't be released anyway. I pointed out that they had released many things, not under court order, but because there were requests made, and if they were exempt, none of this stuff should come out. This went on for several years and it finally became clear to them that we had the votes to stop them from becoming exempt from the Freedom of Information Act. But I lived in fear that there would be a spectacular intelligence failure like 9/11 and that the Director of Central Intelligence would say, "We told you we can't operate as an effective intelligence agency being under the Freedom of Information Act," and in an hour, Congress would not only exempt the CIA, but the

whole intelligence community from the Freedom of Information Act. So even though we had won and stopped them, my sense was we were living on borrowed time and that there was going to be a spectacular intelligence failure, and the whole intelligence community was going to be exempt from the Freedom of Information Act. So I finally said to them, "Look, there isn't going to be a total exemption, but what you really care about are your so-called operational files," which are the files about how you do things, how you recruit spies, how you pay them, and stuff like that. Those are the files that you really, A, worried about will come out and, B, it's a waste of time to review, because you never release anything from them anyway. If we can draw a narrow version of that, of operational files, I'm prepared to consider supporting it. But first of all, it has to be testimony by the Director of Central Intelligence, that with this exemption, the CIA can function effectively under the Freedom of Information Act, that it can deal with the rest of the act. It can deal with the act as it applies to all its other files and it has to say that this is a reasonable accommodation and it can now function effectively. So you can't come up when there's a crisis and say, 'We told you this.' Second of all, there has to be exceptions to the exemption. For example, if operational files are stored in other files, they have to be subject to disclosure. If they reveal evidence of criminal activity they have to be subject to disclosure. If they relate to controversial activities, they have to be subject to disclosure." We had a whole set of different things. They thought about it for a long time and finally called and said, "Okay. We're willing to do this." So, we negotiated and negotiated and finally reached a text that they said, "Okay. We're willing to have the director testify that if Congress does this, that we can live with the Freedom of Information Act." I said, "I'm willing to testify that I think nothing covered by this act, where you don't have to search for it, is anything that you would ever be required to release under the Freedom of Information Act, and the exemptions cover what we need." They said, "Okay. Now we have a problem. We can't get this through the administration because the rest of the intelligence community is not willing to give us this exemption unless they also get it as well, and we assume you're not willing to give it to anybody else." I said, "That's right." We went to Congressman Mazzoli, who's a conservative Democrat and who chaired the appropriate House subcommittee. We said, "We want to leave you a draft text. We want you to introduce it, but without saying where you got it from and even if pressed, saying, well you've been thinking about this issue and you think this is a reasonable compromise. You take the credit for it, and take the responsibility for it. Then, if you call the CIA up to testify, and ask them the question--not whether the administration supports the bill, because the administration won't support the bill--but ask the CIA whether if they had such an exemption whether it would deal with their concerns about their being able to operate under the Freedom of Information Act. They will say yes. If you call me up and ask me to testify, I will say, 'I think this only covers files which would never be subject to release anyway and which will enable the CIA, A, to accept the act, and B, to focus on what can be released.' You will get credit for having solved this problem." So he introduced this immaculate bill and it passed. It's still a legend. I was talking to some guys from the CIA a couple of years ago. It's still a legend in the intelligence community, how this happened, the immaculate bill that arrived on Congressman Mazzoli's desk. But it is, in my view, the way things ought to work because--and of course I got condemned for it and people said, "But you stopped the bill. Why would you, after you stopped the bill, make this compromise?" I said, "Because this compromise will blow apart in one day when there's a spectacular intelligence failure." Of course 9/11 might have done it. If we had gone up to 9/11, with the CIA going up every year and saying, "We need to be exempt from the Freedom of

Information Act. We can't recruit agents if we're subject to the Freedom of Information Act," they would have been there the next day and said, "We told you."

NM: What administration did this happen under? I just want to get a sense of chronology, when these negotiations took place.

MH: They happened under Reagan. Some of them under Regan and some of them under Carter. That's the period in which I was--and some earlier under Ford. I'm sorry. Some under Ford, some under Carter, and some under Reagan. I started this with the Ford Administration, then we had Carter, and then Reagan. The CIA exemption from the ... was Reagan. By then, there was a Deputy General Counsel of the CIA, who was the guy we dealt with in the CIA. We had good relations with him. We knew we could trust him, he could trust us. When they were ready to negotiate, he would call. I'm trying to think of any non-national security bills that we haven't touched. I think we've covered the key ones.

NM: Okay. If there is anything you would like to add specifically, not about your time with the ACLU, just anything you would like to add for the record, feel free to do so now.

MH: Well, I have always thought, and continue to believe, that the ACLU is the single most important organization in the United States. I remain a member of the ACLU. As I've suggested, I think their strategy for dealing with federal legislation is a mistake. That they are in a unique position to do what I did when I was the head of the office, which is to try to find successful compromises, that there are many people out there complaining and registering their objections, and that the ACLU really has an important inside role to play and has the credibility to play it. I think it's a mistake that it decided not to do that. But it's still all around the country, in defending people's rights in court, state legislatures and in federal court is still, I think, the most important organization in the country.

NM: I want to thank you for your time today.

MH: Not at all. Thank you.

NM: I am looking forward to transcribing the interview and getting it back to you.

MH: Okay.

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Reviewed by Molly Graham 10/7/2015

Reviewed by Morton Halperin 12/9/2015