

**Voices from the Grassroots Oral History Project**

Detroit Equity Action Lab

Damon J. Keith Center for Civil Rights

Wayne State University Law School

Detroit, MI

**Mark Fancher**

Interviewed by

PETER BLACKMER AND ORIANA YILMA

May 17, 2019

Detroit, Michigan

## Narrator

Mark P. Fancher is a human rights attorney, writer and advocate for African liberation and unity. He grew up in Tennessee during the civil rights era. He went to the University of Tennessee and then went to law school at Rutgers University in Camden, New Jersey. He has worked at Camden Regional Legal Services as the Director of Litigation, private firms, the Sugar Law Center for Economic and Social Justice as a Senior Staff Attorney, the State Bar of Michigan, and the University of Michigan Law School as a visiting professor. Today, he is the staff attorney for the Racial Justice Project of the ACLU (American Civil Liberties Union) of Michigan. He is also a member of the National Conference of Black Lawyers. His work is driven and sustained by his Christian faith.

Outside Source: ACLU website:

<https://www.aclumich.org/en/biographies/mark-fancher>

## Interviewer

Peter Blackmer is a Research Fellow at the Detroit Equity Action Lab, an initiative of the Damon J. Keith Center for Civil Rights at Wayne State University Law School.

Oriana Yilma is an undergraduate student at Wayne State University majoring in Psychology and minoring in African American Studies.

## Abstract

In this interview, Mark Fancher describes his genesis as an activist, growing up during the civil rights era, and attending law school in Camden, New Jersey, where the inequalities he saw motivated him to pursue a lifetime of public service. After moving to Detroit and seeing these inequalities played out once again through the foreclosure crisis and period of emergency management, Fancher began work as a racial justice attorney for the ACLU. He discusses his views on how the role of the law can affect social change as well as its limitations in activist work.

### Keywords

Affirmative action; Anti-apartheid movement; Black Power movement; Camden, New Jersey; Civil rights movement; Coleman Young; Detroit bankruptcy; Detroit, Michigan; Education; Emergency management; Foreclosure crisis; Gentrification; Law; Lyda v. City of Detroit; National Conference of Black Lawyers; Policing; School-to-prison pipeline; Tax foreclosures; Water affordability; Water shutoffs

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Damon J. Keith Center for Civil Rights  
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Transcript of interview conducted May 15, 2019 with:

Mark Fancher [MF]

Detroit, Michigan

By: Peter Blackmer [PB] and Oriana Yilma [OY]

**MF:** My name is Mark Fancher. I live in Ypsilanti, Michigan. I am the staff attorney for the Racial Justice Project of the ACLU [American Civil Liberties Union], and I'm also a member of the National Conference of Black Lawyers.

[0:00:26]

**OY:** So, could you describe what Detroit [Michigan] was like when you first began working here?

**MF:** It was quite a different place. I never lived here, but I've been working here. There were large numbers of blocks especially in the downtown area that were abandoned. There was, you know, fairly substantial homeless population that was very visible, and it did appear in many respects to be a city that had gone past the point of no return.

[0:01:09]

**OY:** How would you say it's changed since then?

**MF:** It's been a radical transformation, you know, certainly in the downtown area. There has been a huge infusion of funding that has resulted in major commercial development in every respect. Entire blocks have been transformed, and, most significantly from my point of view, many of the people who have been a part of Detroit's story historically have been pushed out in favor of a new population. So, in short, we've seen gentrification on steroids.

[0:01:55]

**OY:** How did you first become active in struggles for racial equity and social justice?

**MF:** I can't remember a time when I wasn't, really. I actually grew up in Tennessee, and I'm old enough that when I was about nine, Dr. [Martin Luther] King was assassinated, and that made quite an impression on me, especially being in Tennessee where it happened. And, it also was a time of major social upheaval, 1968, 1969, 1970, in that period. Assassinations, major organizations, emergence of movements. The Black Power movement came full force, the Black Panther Party was very visible, the Nation of Islam was in the streets, and there was a major cultural renaissance in the Black community. So, this all made a very powerful impression on me as a child and really shaped my perspective on life and society and caused me to, on occasions when I observed what I regarded as injustice, to understand that there was a need to resist that. So, it's been pretty much been a part of my existence since childhood I think.

[0:03:22]

**OY:** What or who have been some of the greatest influences on your activism and legal practice aside from this?

**MF:** You know, I do think that period had a major impact. There was a period during my high school years when, at least from my perspective, the society had

grown weary of social upheaval and turmoil so that by the time you hit the late 1970s, early to mid to late 1970s, there was a retreat in many respects from social conflict. To all appearances, things were calming down racially. That was misleading because there were still undercurrents of racial conflict and problems, but there was not the high-profile activism that you saw.

When I went to college, you know, it was sort of a rude awakening for me in that you had a very large--I went to the University of Tennessee in Knoxville [Tennessee], and you had a pretty significant population of Black students who were from Memphis [Tennessee], and they had memories of tanks rolling across their lawns in the aftermath of the King assassination. And then, you combine that with white kids who were from the east Tennessee hills who had a very different way of looking at life, and you put those groups together, and it's kind of an explosive situation. So, it became fairly commonplace for me to be called the n-word by white guys in cars passing down the street. Because of my activism, I found myself on a hit list in the bathroom on a wall, you know. There were friends of mine who were physically chased and attacked. So, you know, this was new.

The other thing that happened is that we were very conscious and aware of things beyond the campus. And to my knowledge, during the period of 1978, thereabouts, University of Tennessee in Knoxville was the only place where there was an anti-apartheid movement that was Black-led. You know, during the 1970s, it was regarded as sort of a white issue, but this was a Black-led movement that was very militant and which on one occasion shut down a board of trustees meeting in a demand for the divestment of university funds, and arrests were made, and a number of things happened. It was interesting to me that the response of the trustees and major supporters of the university was to conclude that all of this could not have come from Black students, that they must have been receiving their information from outside sources, and they called for an investigation of the Black Cultural Center and the Black Student Union--which we called the Afro-American Student Liberation Force--to find out who it was who was putting these dangerous ideas into our heads. We were amused by it, but it helped broaden my understanding and perceptions of how we were viewed and how power worked and the arrogance of it.

**OY:** Can you tell us about some of the firms or organizations that you worked with prior to joining the ACLU?

**MF:** Yes. Well, when I was in law school, I was thoroughly disgusted by it and decided that, you know, maybe doing something else would be a good idea. I wasn't doing particularly well at it, and it wasn't really until I had a chance to work at an externship with the local legal services program that I got a different perspective. I went to law school at the Rutgers Law School that was located in Camden, New Jersey. For those who don't know, Camden, New Jersey during the early 1980s was far worse than anything that people think about when they think about the worst aspects of Detroit. It really looked like it had been the focus of a bombing. You know, there were piles of rubble with lightbulbs inside where people were trying to live. The population had been devastated by the crack epidemic, so there were people wandering the streets looking like zombies, you know. It was a disaster.

And, I remember when my father first dropped me off in Camden when I was going to go to school there, he said, "Are you sure you want to be here?" And, I looked around and said, "Yes!" because I thought it was a challenge, you know, something I could do. So when I had a chance in law school to work for the legal services program, I was able to see some possibilities, and I liked them, they liked me, and the plan was for me to become a staff attorney there when I graduated. It coincided with the time that Ronald Reagan was coming into office as president, and he had a vendetta against legal services programs arising from the many lawsuits that he faced when he was governor of California that were filed by them. So, he basically decimated the legal services program nationally, defunded most of them, and obviously it wasn't going to be possible for me to be employed there.

So, I worked for a small--very small--law firm, a private firm, and the--it turned out to be a blessing in that, because it was so small, I had the opportunity to get engaged in all aspects of litigation far earlier than many of my contemporaries, and I also had a frank conversation with the owner of the firm about my interest in doing work for grassroots organizations and movements, and he said that as

long as they were paying the fees, it was fine with him. And so, they did finance cases I did for them with car washes and bake sales and whatever, but I was able to do quite a lot of significant work in and about Camden for community organizations there. And, you know, that work attracted enough attention so that by the time legal services stabilized itself a few years after that, they invited me back in as a supervisor there.

I worked there for a while until legal services politics got the best of me, and I was a solo practitioner for a couple of years and as part of that worked as the house counsel for an organization called the Concerned Citizens of North Camden which was engaged in rehabilitating blocks of abandoned and devastated housing in the North Camden region. I also finished--well, began and finished--a case involving police in Camden, a discrimination case on behalf of Black police officers, and some housing cases there that I did as well. Yeah, at a certain point--I'm old so this is taking a while [laughs]--I was brought out to Michigan. My wife was offered a job here, and we came out, and I filled a vacancy temporarily at the University of Michigan Law School's Clinical Law Program. After that, I spent some time at the State Bar of Michigan promoting pro-bono involvement by members of the bar. From there, I went to the Sugar Law Center for Economic and Social Justice where I did workers rights litigation, plant closing litigation, things of that kind, and it was from there that I came to the ACLU where I do racial justice work.

[0:12:19]

**PB:** Could you talk a little bit about that decision to go to law school, like coming out of your student activism at University of Tennessee? What did you see in law school that made you want to enroll in that kind of avenue?

**MF:** I was under the impression that law would offer me...basically offer me weapons. I didn't...I wasn't really enamored of the idea of becoming a lawyer so much as I was of wanting to be in a position to use this society's legal mechanisms to make the kind of change that I wanted to make, and that was really the attraction. I became a little bit disappointed and frustrated at the outset about the limitations on that, you know. I'm a revolutionary. I wanted to transform things fundamentally, and, you know, there were all these rules and constraints and



limitations, and that frustrated me, but I came over time to understand how it could be used strategically in conjunction with movements and organizations that are not bound by all of those rules.

[0:13:48]

**PB:** Could you talk a little bit more about that in terms of that dynamic between grassroots organizers and lawyers and what some of those strategies are in movements?

**MF:** Well, I think that there has to be an understanding by movements and organizations and lawyers themselves about really what the best role is for the lawyer in the situation, and I think there's some confusion on that point. I've seen situations where movements have emerged, and they have been very dynamic and have made great progress, and they're doing all kinds of things, and they run into a situation where a lawyer is needed for whatever reason that may be. The lawyer appears, and the movement says, "Well, the lawyer is here. The messiah has come. Let's sit down." That's a huge mistake because lawyers are not able to accomplish what the movement can potentially accomplish. On the other side, I have known lawyers who believe themselves to be messiahs and who come into these situations and discourage ongoing organizing and movement building, and the movement comes to a grinding halt.

So, I think that the role, really, of the lawyer is to serve as a technician, someone who can help the movement to continue to function, in much the same way as if you...your toilet backs up, you need to call a plumber in to unclog it or fix it, and then the plumber leaves. You continue to operate your household. You don't turn over the running of your household to the plumber just because he was able to fix your toilet, in the same way that you call in a lawyer to get someone out of jail or to negotiate a parade permit or to perform some other function. You don't turn your movement over to the lawyer. So, I think as long as those roles are understood, then I think the organizing is much more effective.

[0:16:14]

**PB:** So, did your knowledge and this expertise of being a movement lawyer come from practice and doing the work, and was there also...were you also reading in law school or elsewhere and interacting with other lawyers who have been doing this work for some time?

**MF:** I think it's been more practical experience, and, again, I never really was focused so much on being a lawyer as I was on just trying to make things happen. So, I don't... I have been in close association with movement lawyers. You know, the National Conference of Black Lawyers has a very rich history of doing that kind of thing, and there have been certainly nuggets of information that I have picked up from a number of, you know, very impressive people, some in Detroit, some not, Jeff Edison, Chokwe Lumumba, Gerald Evalyn, people like that who are local, you know, as well as people who are more nationally focused, John Britton (??). So, people like that, I've picked up things from them. But really, it's been more a question of looking at how these things unfold and reading. There's a long history that movements and organizing have that has been chronicled very carefully and looking at what those experiences have been have all informed my perspective, I think.

[0:17:58]

**PB:** Could you talk a little bit about how race and class in Detroit impacts access to legal defense?

**MF:** Well, Detroit is very unique in many ways. I have lived in a number of different parts of the country, starting in Tennessee, spent a little time in Washington [D.C.], you know, certainly in New Jersey and Philadelphia [Pennsylvania], and I have encountered people in Detroit who sort of moan about Black people in Detroit and how they aren't as informed or active as they could or should be, and I tell them, "You just don't know. The Black community in Detroit is in many ways light years ahead of many Black communities across the country," and that has a lot to do with its history which is very unique and very rich. This is...you've got Malcolm X's heavy involvement here. You've got Nation of Islam

generally. You've got the Black involvement in the union movements. You've got--this is the birthplace of the Republic of the New Africa, you know. You can just go on and on about all the things that have happened in this city, not the least of which is Martin Luther King coming here to give the "I Have A Dream Speech" for the first time, Shrine of the Black Madonna. I could go on and on. So, that has really informed the perspective and the understanding of the community here. You add to that the heavy impact of Coleman Young as a towering figure, you know. He substantively did amazing things in the city, but he also became an icon and one that has never left the consciousness of the Black community here.

And so, Detroit really became a center of Black Power, at least to the extent that that can be accomplished within the United States, and I think there are great limitations on that. But to the extent that it can happen, it happened here. Because, you know, there was a point when if you were Black and you were accused of a crime in this city, you could be fairly confident that when you went to trial, your defense attorney was going to be Black, the prosecutor was going to be Black, the judge was going to be Black, and the jury was going to be Black in the Recorder's Court, and that was not an experience that many people had in other parts of the country.

So, that's just in respect to criminal justice, but then you deal with the fact that the Young administration is entering into contracts with a number of different Black and other minority contractors, there are appointees within city government who are Black, you've got a public education system which is Black. There's some incongruities in terms of a police department which was out of control, but this is a very interesting place and one that in many respects did not sit well with powerful white interest and powerful economic interest. Coleman Young was not going to be bossed around. They did not like that. In their minds, he was uppity and was acting far outside the bounds of the way a Black mayor should act. And, you know, from my perspective--I wasn't here, but just looking back at the history--it seems to me that they just bided their time, that they figured that they could not dislodge this individual and the community that was rock solid behind him in support until he was safely out of the way, and when he was, it appeared to me that they began a systematic effort to get control of the infrastructure of the city of Detroit. So, the Recorder's Court, demolished. The school board, fired.

Then in more subtle ways, it appeared that they were attempting to make inroads into the infrastructure. So, a good decade before the local land bank went into effect, there was--from what I saw--an effort to create a land bank that was going to be in a position to gobble up all of the city-owned properties and then transfer them to private hands. So, you know, trying to get control of that, trying to get control of the riverfront, trying to get control of just about pretty much everything in the city. Then, make it possible for those who had fled the city, the white flight, for there to be a reverse migration and to take control. And, I think we're witnessing that in a major kind of a way right now. All of the things that seem to be happening are actually happening now.

[0:23:49]

**PB:** Can you talk a little bit--this is kind of taking a different course--but could you talk a little bit about your work with the ACLU on the school-to-prison pipeline and really how that relates more generally to the education crisis in the city?

**MF:** Sure. Soon after I came on to the ACLU, the Michigan staff, there had been a determination at the national level that this phenomenon of the exclusion of children of color from schools corresponded in some ways with the involvement with people of color in the criminal justice system, and most affiliates, ACLU affiliates, were asked to begin looking into that. We did, too, and the method that we used was to use Freedom of Information Act requests to a large number of school districts across the state asking for documents that would give us some indication of the suspension and expulsion rates of students of all races. We got pretty good responses statewide to that, and what it demonstrated was something that surprised me. I expected that we would get back results that showed that students of color generally were being suspended and expelled at higher rates than white students, maybe two or three times more. We actually didn't find that. We found that in some school districts, Latino students were being disproportionately suspended and expelled, but in some they were not. We found that in some districts, Asian students were being disproportionately suspended and expelled, in some districts not. The same with Native American students, the same with other students of color. But, the only demographic, the only group that was consistently, in every single district except one, being

disproportionately suspended and expelled were Black students. The only one. Consistently.

That caused us to begin asking questions about why this group and what was happening to connect their exclusion from school to what appeared to be involvement in the criminal justice system, and all of that was documented in a report that was released in 2009 called "Reclaiming Michigan's Throwaway Kids." And when that was published, that really had a major impact, I think, on the school districts across the state, and it got a lot of attention in the legislature too and began a more serious inquiry and examination of what was happening with respect to kids of color.

With respect to Detroit specifically, what I would--Detroit became something that suburban school districts would point to when I would go and speak about this in a lot of suburban communities. They would first of all accuse me of accusing them of being racist, which I was not. I said, you know, there's systemic and institutional factors that account for a lot of this, but they said, well, as evidence of the fact that they were not racist, I could look at my own results from Detroit Public Schools and see while they were suspending and expelling Black students in large numbers, the number of people that were being expelled from Detroit Public Schools was astronomical. I can't recall specifically, but I believe that it worked out numerically that roughly a third or more of every student in the Detroit Public School system would have been suspended or expelled at least once during every year. I mean, so there's just huge numbers of people being shoved out of the schools, and they said that the administration of the Detroit Public Schools was Black, many of the teachers were Black, so how could this be a racial thing?

And, my response was, well, it was entirely racial, and for these reasons: one, you're dealing with a school system that was severely underfunded, and it was underfunded because of race, when you get right down to it, and it made the reality for those schools very different from the reality of suburban school districts which were really well-funded. So, if you had a kid who was in class throwing spit wads, then the teacher had the luxury of saying, "Stop doing that." If the kid did it again, the child was sent to the office. If the child did it again, their mom and dad were called. If the kid did it again, then they were beginning to wonder if there was something psychologically wrong with this child and counseling was

recommended. You have all these layers of intervention before a decision is made to throw the kid out of school. But in a school district like Detroit where those resources aren't available, the teacher is struggling with forty or fifty students in a classroom, and someone is causing a disruption even as minor as throwing a spit wad, that child is immediately sent to the office. The principal's office is filled with a bunch of kids who have been sent to the office. And so, the only way he can manage is just to suspend everybody. You're in the halls without authorization, you're suspended. You were late for class, you're suspended. Throwing spit wads, you're suspended. It becomes a method of management.

It's racial also for this reason: that while the administrators and the teachers might have just have been trying to cope, somewhere in their consciousness was an understanding that they could cope in this way and get away with it because the students were Black. You can suspend as many Black students as you want from Detroit Public Schools, and nobody's going to care. You suspend that many people from Farmington Hills [Michigan] or from Grosse Pointe [Michigan] or from some other place, and the state starts to shake with outrage because of what they're doing to these kids. And so, they're throwaway kids. They're expendable. Nobody cares, and that makes it entirely racial.

[0:31:24]

**PB:** So, how has the history of state intervention and state takeovers in the public school system in Detroit affected those kinds of policies?

**MF:** I've not really looked at that very closely, and I can't say in particular, but I can say in general that what I have observed is a fairly substantial community of people--you know, people like Helen Moore--who have been concerned about the schools and remain concerned about the schools. I mean, very involved and engaged and active and who, if given the opportunity and the authority, would do much to improve the educational experience of kids in the city because they love the kids so much. When those kinds of people are removed from effective involvement in the administration of the school district, then you get something that's very different which is not so healthy for the kids, and it seems to me that that's basically what's happened. That is, you know, to the extent that there are

people present and involved in the administration of schools who have a very healthy and productive attitude, that they have been limited, constrained, and pushed back, and they have not been allowed to be as effective as they could be, and that's the beginning and the end of it I think.

[0:33:07]

**PB:** You mentioned some impacts of the report that the ACLU did on the School to Prison Pipeline. Do you recall how that report impacted or supported the work that organizations were doing on the ground around these issues?

**MF:** You know, I don't really know that there was a whole lot going on in respect to this issue. There were many people who came forward after it was released and said, intuitively, instinctively, we knew something was up, but this was something that has really sort of made this more concrete and recognizable, and I think it triggered a lot of work that happened after that, but I don't know that there was a lot.

I mean, one of the big problems with schools--and it continues to be a problem that I can see, particularly with families of color in public schools in suburban areas, and to some extent in Detroit too--is a feeling of isolation. So that if their child is suspended, they believe that they are the only family that's facing this, and they try to fight it by themselves. They will go, and they'll complain, and school administrators are experts at giving parents the runaround. They'll not be available. They'll put them off. They'll give them a bunch of doubletalk. They'll do all kinds of things until the parents just get exhausted, and they'll give up, and maybe they'll move, maybe they'll put the kids... I don't know. They just give up.

And, I have addressed groups of families of color and suggested to them that they organize. And for any number of reasons, that is a very intimidating thought for many of them. They are afraid of a number of things. When I point as examples to suburban school districts where if there's even a suggestion by the school board that they're going to, for budgetary reasons, reduce the funding for the girl's volleyball team, that within minutes these moms have been to Kinkos, and they've

got t-shirts and signs printed, and they're disrupting the school board meeting, and they will not stand for it. And eventually, the school board restores funding because they organized. And, the suggestion of doing that is intimidating to many families of color, and I understand why. For them, they understand that while white suburban parents can go and disrupt meetings, if they were to do such a thing, they could certainly count on being placed in jail, and I've had to explain that you don't have to get disruptive. There are other things that you can do, other things you can do that will allow you to put your position forward in an organized kind of a way, but it has not been something that resonates.

[0:36:44]

**PB:** I guess on the issue of the repercussions of organized action and criminalization of parental involvement, could you talk a little bit about the roles that various levels of law enforcement, whether that's police or state troopers or--I mean, we're in the Cass Corridor right now, which is incredibly policed. But, what roles do these various levels of law enforcement agencies play in maintaining and enforcing structural racism in the city of Detroit?

**MF:** Well, just generally, that's their function. I mean, that's why they were created. The original police were paddy rollers and slave patrols during the slave era. There was no such thing as police departments in early America, you know. There was a local sheriff or constable, and if this individual needed assistance, you'd deputize some people or raise a posse, but the idea of a standing department, a standing group of people whose sole function is law enforcement is something that was born of the need to contain slave insurrection and to track down runaways and to monitor the movements of enslaved people from one plantation to the other when they were running errands for their masters.

So, we see that was really the purpose from the onset. And historically, if you look at the role that police have played even in the North during the slave era, police very often engaged in an early form of racial profiling where they would stop free Africans, free Black people in the North and ask them for credentials to make sure they were not runaways. Or, to build a case for repatriation of free Blacks to Africa who were competing with white workers for economic opportunities, they would



just arrest people on spurious charges so that they could use it for propaganda and say, “This is a criminal group. They’re inherently criminal, so they should really be sent back to Africa.”

After you leave the slave era during Reconstruction, it was police who very often facilitated or participated in lynchings by frustrated and angry white workers who saw rapid advancement by formerly enslaved people in economics and politics, and you also have the convict lease system where local sheriffs in the South were arresting Black people on spurious charges so they could have lots of prisoners in their jails that they could rent out to plantation owners to do the work that slaves used to do. You move beyond that to the Jim Crow era, segregation. Segregation laws were on the books and who enforced those laws but the police, so those who broke the segregation laws were arrested by the police. As people began to challenge Jim Crow and segregation laws in the Civil Rights movement, we all have memories of the grainy black image, black and white image of Bull Connor in Birmingham [Alabama] as the one who’s siccing police dogs on small children who were demonstrating and working with fire departments to fire fire hoses at them and otherwise disrupt and contain civil rights activity.

Beyond that in the Black Power era and the Black Panther Party’s emergence, you see the lead law enforcement agency in the country, the Federal Bureau of Investigation, launching the counter intelligence program, or co-intel program, to destroy these movements through illegal means, illegal break-ins and wire taps and infiltration and, in the case of Fred Hampton and Mark Clark, assassination. So, you know, beyond that even, the emergence of racial profiling, the heavy hand of the police in the war on drugs. And in more recent times, the almost weekly killings of Black people by police. So, in terms of what their role is in Detroit, it’s the same as it is in America, which is to control Black people.

[0:41:28]

**PB:** Thanks for providing all of that context, too, because I know there’s a critical linkage that needs to be made constantly. So, in terms of addressing some of the impacts of policing in the city of Detroit, can you talk about some of the roles that lawyers can and should be playing in resisting oppressive policing policies?

**MF:** Well, there are... Legal resistance to policing is kind of a mixed bag and a tricky thing because very often what happens is police commit crimes against people, and private lawyers are not prosecutors. They can't bring charges, criminal charges, against police. That becomes something that a prosecutor has to do. That's what they're charged with doing. So, to the extent that lawyers are in a position to help persuade prosecutors to do that or to raise the profile of a case to the point where a prosecutor feels pressure to bring charges against a police officer, then that is a useful thing that they can do.

But, there are huge institutional barriers and obstacles to bringing criminal charges against police. It is a very difficult thing because of things like the need for prosecutors to have good relationships with police officers in order for them to prosecute cases against private citizens. You have very strong police unions which offer resistance on a number of levels to these kinds of things. You have a societal bias in favor of police. So when they're accused of doing something wrong, you know, generally juries are going to believe police officers when it's a police officer's word against a private citizen. So, there are all kinds of things that make that a very difficult thing to do. You know, even in the most egregious situations--I mean, in Saginaw [Michigan] there's a 49-year-old homeless Black man named Milton Hall who was gunned down by Saginaw Police firing-style in full view of the dashboard camera, one of the cruisers, and that wasn't enough for either the county prosecutor to bring criminal charges against these officers and the U.S. Justice Department also declined to do it. So, that's a hard thing to do is criminal charges.

Civil claims against police officers are certainly something that's possible, and many lawyers, civil rights lawyers, do that on a fairly regular basis, but the impact of that, you know, in the long term, is regarded by many as minimal because, on a practical level, the individual officer who was involved in whatever it was and whatever misconduct it was has no real personal connection with whatever's going on in the case. They may not even be called in for a deposition. The case is handed off to the city attorney's office, and they deal with it. They process it to a point where maybe the case is settled. And if the case is settled even if for a large sum of money, the individual officer never feels it, and none of that money comes out of his pocket. It comes out of the city's treasury, which means the people of

the city are paying for the misconduct of police officers, and the people of the city are the ones who are the victims. There's sort of a contradiction and an irony there. So, it leaves very little impression on the officers themselves.

So, it doesn't leave a whole lot for lawyers to do. I know that an advocacy organization like ours tries to engage police departments in discussions that may in some ways help to promote some type of reform, but, again, it's sort of a mixed bag in terms of results.

[0:46:23]

**PB:** So, I guess that I'm coming back to a question that my advisor in grad school always raised to me about a similar topic: can a system condemn itself? If the police are the enforcement arm of the state and there are certain interests of the state and the state is charged with prosecuting crimes committed by the police, I guess, with that kind of question in mind, how can organizers and lawyers--and where is the room for meaningful criminal justice reform or actualizing alternative forms of public safety?

**MF:** I think you're exactly right. I don't think that the system will allow for that, and I think that we have to disregard the system. It requires revolution, in a sense that's different from the notion of, you know, guerillas charging city hall waving rifles and more to building a different type of worker consciousness, and what I mean by that is that--and I've seen this work in my conversations with police officers--is that helping police officers to understand exactly what role they're playing, and that they've been played, that they in every respect are workers. They're being paid very little to go out there and to face incredible danger, and for what purpose? To protect people who have a whole lot of money and to protect corporations and then to take a whole lot of flack, a whole lot of heat, for things that have really been directed or ordered by people that exploit them.

And if they can begin as individuals to see that they have more in common with the oppressed communities that they patrol than they do with the people who actually call the shots, then you begin within the ranks of police officers

themselves a different type of a movement, a different type of thinking, a different type of a culture which is oriented less toward containing and controlling these people and more toward maybe even facilitating the movements by communities for true justice. And if what a police officer is really all about, if being a police officer is really all about protecting, serving, and enforcing law and ensuring justice, then sometimes that takes...it should take a very different form from what it takes now. Justice does not necessarily mean mass incarceration. Justice does not necessarily mean police brutality of people who are demonstrating to just exercise their basic human rights. Justice does not mean a whole lot of things that people say it means right now. And if police officers are conscious and aware, then that can change the dynamic pretty dramatically.

[0:49:52]

**PB:** In previous conversations with other folks, one of the moments that they point to as glimmers of that kind of class consciousness of police was during emergency management when their pensions were being impacted. So, could you--I want to use that as sort of a bridge to take us to emergency management--could you talk a little bit about some of the legal challenges against the emergency management laws--I mean, they go back some time, but--and any involvement that you might have had in those challenges?

**MF:** You know, I was sort of on the periphery of the legal work that was done there. Sugar Law Center really took the lead in that. One of the aspects that I did...one of the claims that I did try and help to establish in the litigation that was filed challenging the constitutionality of it was to look at the Thirteenth Amendment and the extent to which emergency management really was a violation of it. The Thirteenth Amendment not only abolished slavery but the vages [vestiges??] and incidents of it, anything that smacks of slavery, chattel slavery as we have come to know it.

And, the point was made that during the early formation of the United States entity, there were certain compromises that were made with respect to congressional representation so that you see in the early part of the Constitution the fact that enslaved people were counted as three-fifths as a human being. You know, that was all about using human beings who were owned by people in the

South as political placeholders, that in order to ensure that with respect to apportionment and representation in Congress that they were not overshadowed by more densely populated areas in the North. And, you had these people who were being counted as three-fifths of a human being for purposes of apportionment, but they didn't really have any opportunity to participate in the political process, to vote, or have any meaningful impact whatsoever.

The point that we made in the litigation is that in many ways emergency management copies that model, that you've got a governor who has an interest in pursuing his or her agenda at the local level, and, in order to do that, we'll transfer all power, you know, political power, from elected officials into the hands of a single individual that's designated by the governor and then essentially render meaningless the roles played by elected officials, which means that even though people in the city will go and cast their ballots for people they want to represent them and people they want to administer their city, they're really not participating in the political process. That has been usurped. That has been taken away from them and from the officials they've elected and placed in the hands of one person so that they also are really political placeholders. It creates a charade, a sham, something that looks like democracy but really is not, and these people are being abused and exploited just by virtue of their existence for the benefit of someone else. I mean, that's really a form of slavery, and it is in practice what we think actually was happening. As far as the legal theory, we thought it was sound. The Sixth Circuit Court of Appeals thought it was interesting but was not prepared to rule favorably with respect to that argument.

[0:54:31]

**PB:** So, what was their justification then? Because the argument is compelling, there's a complete denial of voting rights and representation under this structure of emergency management, so what's the argument that the Sixth Circuit Court of Appeals is making in their ruling on the case?

**MF:** I can't specifically recall how they phrased it. But essentially, in their view, those Thirteenth Amendment violations have to more explicitly and more clearly

be something in the nature of slavery as we've known it historically, and that this did not have the same trappings as, you know, chattel slavery in the South.

[0:55:21]

**PB:** So, in your challenge--I mean, we could even think about outside of this legal case. There's an undeniable disparate impact of emergency management laws impacting majority Black cities or districts, what have you. Can you talk about how emergency management has been imposed specifically on Black communities and what the purposes specifically are for that?

**MF:** It's in many respects, I think, a path of least resistance. At minimum, that there at any given time could have been, may have been, white communities, white school districts that were also facing great challenges--and in fact, the economic challenges that were faced by schools, by municipal governments often were a reflection of what was happening in the economy nationally and at the state level--but it was certainly possible politically and socially to go in and to target these majority minority cities for emergency management, whereas there would have been a great deal of controversy if they had gone to some of the other communities that may have been facing challenges as well.

And, you know, I don't know this to be true, but there had always been the rumor that the genesis of the whole concept, or at least its modern application of it, had a lot to do with interest by developers and speculators in gaining control of a publicly-owned park in Benton Harbor [Michigan] where they wanted to transform beautiful beachfront property that was a public park into a private resort community and that because the city government in Benton Harbor was so steadfast and strong in resisting these efforts that they needed a method or a mechanism to arrest power from these people and do what they wanted to do with respect to that area. So, the concept of emergency management was one that was used. I don't know that to be true. That's rumor, but it certainly makes sense to me, and I can certainly see as well how in a city like Detroit where you've got historically a city council that has been populated by people who are strong and militant and defensive, people like JoAnn Watson or people like that, that

they would definitely want to get control of the city away from people who are going to resist efforts to come in and to gentrify the city.

[0:58:47]

**PB:** So, in your...in your broader analysis, why--I mean, we've heard so many of the common narratives about why Detroit was placed under emergency management: financial irresponsibility, municipal mismanagement, all of these racist tropes that have been used for so long. But in your analysis, why was Detroit placed on emergency management?

**MF:** Oh, I do think that it had everything to do with gentrification and the agenda that was in place for making that possible. I think that there were deliberate attempts to destabilize Detroit economically from the outset. I think even the Detroit Free Press came and published a very detailed and well-documented study of city administration by Coleman Young and the fact that he left the city in very sound, strong economic conditions, and I think that when you begin to see things happen in a city after he leaves such as--well, it was clearly redlining with respect to insurance rates, you know, making insurance, cars, and other things beyond affordability. When you start to see destruction basically of the public education system, when you see that there are major retail chains and businesses that refuse to come into the city to do business, you begin to see what I think was an effort to make the city unlivable, to basically cause people who were here to leave because they just couldn't...it just wasn't a place you could live a normal decent kind of a life. And, you get the back end of it where there are stubborn Detroiters, people that just refuse to leave the city that they love. And so, what do you do? You shut off the water service to thousands of their homes to make it impossible for them to live. And for others, you begin a process of tax foreclosures that are unlawful, and you start taking their homes.

So, I think emergency management was the last piece of the pie, that after destabilizing the city economically, gaining control of certain aspects of infrastructure, the final thing to do is just come in and just take full control of the city itself. And then, when you have full control of the city and its infrastructure, you make sure you've got political leadership that's going to be cooperative. And

once you've got that in place, you just start sending in billions and billions of dollars to rebuild the city. That's how I see it.

[1:02:04]

**PB:** And what role did the declaration of bankruptcy have on this process?

**MF:** Oh, it was a major part of it. It was called for, if I'm not mistaken, by the emergency manager, and it was an important piece of the pie. Get rid of a lot of the baggage so you've got a nice clean situation for developers to come into it and to rebuild the city.

**PB:** The whole blank slate idea.

**MF:** Yeah.

[1:02:41]

**PB:** So, moving past emergency management, how has the city changed since the emergency manager was imposed, and what are some of the lasting impacts that you see?

**MF:** Well, I think just on the surface, it's a very different kind of a place. You know, even when I bring...when I'm driving visitors around or something, they say things like, "I've always heard such terrible things about Detroit, and I'd drive around downtown, and I'd see all of these white people walking around, and I see all of these buildings that just look so nice, and everything looks so clean, and people just seem unconcerned about crime," and all of these things. And, I think that's the most visible change that we've seen. There are many people that think all of that's wonderful.



And, I think it would be wonderful if the people who have been here historically were allowed to participate in it, but, you know, they aren't. You know, it doesn't help that many of those who are really sort of taking advantage of the situation make it even more difficult for people to participate in this. You know, Quicken Loans, which is a huge employer in the city, we discovered had a policy of prohibiting anyone with a felony conviction from working in any capacity within their organization, even as janitors and cafeteria workers. Nobody with a felony conviction could work in their organization. And on behalf of a couple of applicants, we filed a challenge to that with the Equal Employment Opportunity Commission which has made a determination that to have a blanket felony exclusion by an employer is tantamount to racial discrimination because of the over-involvement of people of color in the criminal justice system so that, you know, if you ban everybody with a conviction, then that's going to have a racially disproportionate impact on your workforce. And as a result of some negotiations, they pledged to eliminate that requirement, but who knows. But, that is one example of how even a private company participates and can participate in preventing local people from becoming involved.

[1:05:29]

**PB:** So, how has policing changed after emergency management? Could you talk a little bit about that stop-and-frisk policies under emergency management?

**MF:** It's never really been clear what happened there. The police department, you know, certainly was impacted by emergency management, but I think it was impacted more by a federal decree that it was operating under. The police department was being monitored very carefully and very heavily by federal officials for some years because of a long history of police misconduct in the department. So, they were required to report pretty regularly on what was happening within the city and that kind of thing. The current police chief, James Craig, is said to have been a protege of people who developed approaches like stop-and-frisk and that kind of thing, and there was a moment when there was some suggestion that they were going to begin using that in the city. There was a very quick reaction to that by the community, and I don't know that it has--it was or has been official policy of the police department. It may be in practice, but I

don't know that to necessarily be something that is done, you know, as a matter of policy.

[1:07:11]

**PB:** Do you attribute that to the work of community members who have stepped up to be part of that conversation?

**MF:** I certainly think that it had a huge impact. I think that the department itself was very quick in trying to quell fears about engaging in activity that is unconstitutional or violates the Fourth Amendment, and I think that the public response had a huge role to play in that.

[1:07:48]

**PB:** So, you mentioned in terms of the impacts of emergency management on the water shutoffs how low income, historic residents of Detroit got targeted as a means of displacement and kind of settling the city's books on their backs. Could you walk us through kind of the...that background of the water shutoffs and the origins of the Lyda [v. City of Detroit] case?

**MF:** Okay. Well, this practice of shutting off water is a very old one. It's been around for, I'd say, a good fifteen years or more. It involves terminating water service for large numbers of people, primarily poor families, for nonpayment. What has never been fully dealt with is the...the utility's role in making unwarranted shutoffs because lots of the people who were being shut off never received the type of notice that they were supposed to receive. They had inaccurate bills. They had inherited bills. They may have moved into a property, and they were being charged for water debts that their predecessors had racked up. There were guesstimates made about their bills when there wasn't a water meter installed. There were situations when people had paid the water bill and it wasn't properly credited. So, it goes on and on in terms of the utility itself, and it's ineffective and inefficient management which resulted in a lot of this happening.

The other thing is that there are any number of people who find themselves subject to water shutoffs who would love to be able to pay but they can't afford market-rate water service. And in many cities, utilities have adopted affordability plans which basically provide that if you are unable to pay the market rate for water, you pay what you can afford, it's indexed to your income, and everybody wins that way. You get to keep your water service, and those who aren't paying market rate have to pay less because they're not taking up the slack for people who aren't paying at all. So, at least they're paying something into the system and helping to maintain the utility and spreading the burden more so than it would normally be. Detroit Water and Sewage Department has steadfastly refused to even look at the possibility of an affordability plan of that kind, and that has been a huge problem with respect to this population in the city. So even when everything is functioning properly, you're just dealing with people who just can't afford to pay.

Now, the popular lie by people who are disingenuous, well, they're just choosing not to pay, that they would rather spend their money on flat screen TVs and electronic gadgets and things like that as opposed to paying a water bill. And so, that's reflected in their approach to enforcement. They will tell you that they turn off water to send a message. They say, "If we turn off the water for some people, then other people who aren't paying will see that we're serious, and they'll come and pay their bills." You know, refusing to acknowledge that people aren't paying their bills not because they don't want to, because they just don't have money. And so, it just results in thousands of people being paid--I mean, having their water shut off.

So, there is a legendary civil rights lawyer in Detroit named Alice Jennings who had had enough, and she convened a group of lawyers to come together to discuss prospects for challenging this practice through litigation. There were any number of concerns raised in those initial meetings about the viability of this idea, expense and procedural hurdles and standing and a lot of other things, and Alice Jennings' reaction was basically, "So, what's your point?" It was, for her, resolved that a case must be filed, and she charged bravely ahead with it. There were several of us who went along for the ride, and what emerged from it was a lawsuit that made multiple claims based on a number of theories, but the two primary

theories were denial of procedural due process and equal protection with respect to due process.

It was, as I mentioned earlier, the issue of the utility having issued rules and guidelines for customers that provided a whole series of steps that were to be taken before water is turned off. You know, people were supposed to have been provided with accurate billing, they were supposed to provide notice of contemplated shutoffs, they were supposed to be provided with opportunities to come in and to challenge with one of their case manager people the decision that had been made, opportunities for appeals within the utility structure, all kinds of things that were supposed to happen before water was being turned off, and we found that none of those things were happening for some people. In some cases, there was no notice at all given of the shutoffs. In some cases, they were provided notice that the water was going to be turned off on a specified day, and they would come out and turn it off two days earlier. So, all kinds of things like that were happening. And so, we said that there was this denial of due process. That was one of the primary aspects of the case.

The other was equal protection. The debts that were owed by people who were having their water turned off often were under a thousand dollars. They might be 200 dollars behind, 300 dollars behind, something like that. They were having their water shut off. We presented the court with a long list of major corporations including the State of Michigan where they had debts that were six and seven figures and nothing was happening with their water, and we said that you have two classes of water customers. One class is allowed to maintain, to have debts in the hundreds of thousands of dollars, and they continue to have water service. And the other, they owe a couple hundred bucks, and their water is turned off. And, we said that that violated equal protection. The court chose not to go with us on any of that.

[1:15:39]

**PB:** Do you attribute--so, in my research of the Fourteenth Amendment and equal protection and due process arguments, which is limited, admittedly, one of the key points that is continuously raised by the bench is that the...the issue in

question is not considered to be a fundamental right. Was that the case in the court's ruling in Lyda?

**MF:** Yes. With respect to--well, I can explain the rationale in both situations. With respect to due process, the case had a life that extended--let me back up. The primary reason the case was dismissed was because the court said that the city was in bankruptcy and that the bankruptcy code prohibits the court from interfering with decisions about the assets of the bankrupt city and that by getting involved in these issues, then that's exactly what they would be doing. And so, that was...they said that basically the case was a non-starter for that reason, that the courts are not able to do that. But, they said that if in fact they were allowed to do it that they still would rule against us.

And, they said that--in respect to due process--that the life of the case had been such that after it was filed the court began to adopt--the utility and the city began to adopt new practices that were not formally enshrined in their document but that they were using in order to deal with these things. They started putting door hangers on the doors of people who were going to have their water turned off. They had a new program that allowed for them to come in and pay 30 percent of the unpaid debt in order for them to have their water reinstated--water service reinstated--and then if it got turned off again, then they had to come up with a larger percentage of it, etc, etc. They had water fairs where they would allow water customers to come into Cobo [Hall] and to find out different charitable organizations and other things that were available to help them to pay for their water. And so, the court said in light of the fact that they have started doing things differently, circumstances have changed, and we can't...we're no longer going to look at what they used to do. We have to look at what they're doing now procedurally, and since that's not before the court, we won't look at anything. So, they dodged that one.

With respect to equal protection, they said that they didn't regard commercial water customers and residential water customers as being similarly situated. Without anything in the record, they said that perhaps it's more complicated to turn off water for a major corporation than it is residential customers. So given that that might be a rational reason for them doing what they did, then that's all that was necessary in the absence of our complaining about residential customers

being part of a suspect category or suspect class like a racial minority. We couldn't do that. Water customers were of all races.

So then, they took it upon themselves to raise the issue that you raised which was with substantive due process where is water a fundamental right that requires, even in the absence of our proving that other things that we normally have to prove, something that's so critical that it requires more in order to take the steps that they're taking. And they said, in their view, no, that the right to water is not so fundamental. It is not within the tradition of U.S. society to make it such. And then, they were not going to regard it as such. And then, they go on later in the opinion to talk about how terrible it is that water is so vital and this case causes them grave concern because water...not having water for even a day or two can cause serious consequences for those who don't have it. And, it's just kind of hard to reconcile those things for me, but, you know, courts seemed to have no trouble with it.

[1:20:34]

**PB:** Do you attribute that more--and this doesn't have to be either-or--to the composition of the court or the system in which they're operating in terms of adhering to the confines of the Constitution?

**MF:** It's hard to know. My personal opinion is that it has everything to do with the system and certain concerns that the judges may have had that they probably should not have allowed to interfere with their assessment of this case. But, I think that the general perception outside of the oppressed communities within of Detroit is what is happening in Detroit is great and that it's wonderful and that to do anything to interfere with that or to cause it to be side-tracked or derailed in any way is to do great harm to a city that's in desperate need of a lot of help and assistance and that given that this bankruptcy was perceived to be something that was really useful and helpful and necessary, that they weren't going to get involved in second guessing the city's leadership or the state's leadership on something like this.

[1:21:56]

**PB:** Can you talk a little bit about your analysis of the Headlee Amendment and the legal grounds for water affordability?

**MF:** I can. It is--I am officially retiring from debating with anybody about this issue because I think that it is a deliberately created red herring by those who have no interest whatsoever in seriously considering water affordability for the city of Detroit. What it involves is a provision of the Michigan Constitution that requires that any time a municipal government is going to charge its citizens any amount of money that if it is effectively a tax of some kind that they are not unable to do that unless a majority of the voters have approved it and authorized it. And in the case of the water affordability plan, the way that most of them work is that there is some additional amount that is charged to water customers to finance this, and the position that has been taken by DWSD [Detroit Water and Sewerage Department] and by the city is that that can easily be regarded as a tax and that it runs afoul of this provision of the Michigan Constitution that's called the Headlee Amendment. Because it is unconstitutional, they're not even looking at it. They refuse to talk about it.

In support of their argument, they point to a case called Bolt versus the City of Lansing [Michigan] which involves an additional amount that was charged to the citizens of Lansing for their sewer system. The problem is that if you read the Bolt opinion, any reasonable person comes away from that opinion concluding that the court explicitly authorizes something in the nature of an affordability plan because they identify the very specific criteria that...specific things that are considered to determine whether something is a tax or not, and when you subject the water affordability plan to this test that they created, it comes out clean. It is something that is in no way a tax based on the way it is.

Just to give you an example, one of the things that they say is that a tax is something that is involuntary, that whether a citizen wants to pay a tax or not, they gotta pay it. They have no choice in the matter whatsoever. I don't like paying income taxes, but I gotta pay 'em. Whether I like it or not, that's the nature of a tax. And they say if you look at voluntariness, you see whether this fee that's going

to be charged is one that's voluntary or involuntary, and with respect to water service, it is completely voluntary. So if I owned a parcel of land in Detroit and I have a house sitting on it, I can make my own decision about whether I want to live in that house or not. If I decide I have another house, since I'm not living in it, I don't need water service, so I'm cancelling it. I'm living in this other house. I can make choices as to whether I want to do it. If I'm not giving water service to this house, I don't have to pay this affordability fee. Right? I do have to pay property taxes on it, whether I'm living in it or not. That's a tax, I gotta pay for that. And so, it distinguishes the two. It's not the same thing.

And, this point has been made repeatedly to those with the power to reevaluate their legal position. They either say, "We don't want to talk about it. We're not going to talk about it," or they'll say, "There's no real analysis that's been done of this legally." And then, the city council's legal department did an exhaustive legal analysis of this, this thick. They look at that, and they're dead silent. So, I've just concluded that this has been just a convenient excuse for them not to talk about affordability, and I refuse to get involved with discussions about it anymore because they've demonstrated repeatedly that they're disingenuous about it at this point.

[1:26:58]

**PB:** So, another impact of emergency management that you mentioned is tax foreclosures. Could you walk us through that 2016 class-action suit against Wayne County treasurer [Eric Sabree] and the city and some of the impacts of that case and the settlement?

**MF:** Yes, more to the former than the latter, but the situation in Detroit was this: on a pretty regular basis, most desirable annually, there should be an assessment of real estate in a municipality. Property values change from year to year, and if you're going to tax the real estate, it should be based on the actual value of it. The city of Detroit had not been assessing the value of real estate for years, and they were nevertheless basing taxes on values that properties had years earlier. And in many of these neighborhoods, in poor neighborhoods, the value of the property has been steadily declining, but they continue to be taxed at rates that were from



years...rates that had been calculated years earlier, and this was just unaffordable for many people. They couldn't pay that. They're living in this low-value home because they don't have much income to begin with, and they certainly can't afford to pay rates on a home that's worth much more than what they're living in. So many people were in trouble because they had not been assessing the values regularly.

The other thing is that many of them were not supposed to be paying property tax at all. Within the law was the...what was a property tax exemption where if you could demonstrate that you were indigent that you could be exempt from having to pay a property tax at all. Many people didn't know about this, and some people who knew about it were making attempts to apply for exemption, and their efforts were being frustrated by ridiculous things. You know, anecdotally, we heard stories about how people would go, they would call, and they would say, "I want to apply for property exemption." And they'd say, "Well, you need to come in and pick up an application." So then, they gotta figure out how they're going to get from their home in Greenfield or wherever they live downtown to pick up an application. "Well, can I fill it out here?" "No, you gotta take it home and fill it out and mail it back in." So then, they take it home and they fill it out only to notice that it was supposed to have been turned in last week.

And so, this kind of thing was happening, and large numbers of people were having their homes foreclosed because of non-payment of taxes. Class action was filed, and it was successfully resolved. I apologize. I don't recall all of the elements of relief, but it made it entirely possible for many people who could have and should have been eligible for the poverty exemption to not have to suffer for not having been formally granted that in the past, and going forward there were additional opportunities for people to be more cognizant of it and to take advantage of it.

[1:30:45]

**PB:** And what was your specific role in that case?

**MF:** I was part of the legal team, but it was a very large team, large law firm. I'm blanking on the name of it. I should--that's the problem of an old brain. Very large firm based in Washington D.C., dedicated thousands and thousands of attorney hours to this case.

**PB:** Is it the LDF [NAACP Legal Defense Fund]?

**MF:** Not...not...not... No, it's a private law firm that did this. It's unforgivable that I can't remember the name of it, but, yeah, they had many associates that were dedicated to working on it, thousands of hours of attorney time that went into it, and the case probably could not have happened without their involvement.

**PB:** One of the questions that's sticking with me is...

**MF:** Covington and Burling.

**PB:** Say it again?

**MF:** The name of the law firm, Covington and Burling.

[1:31:50]

**PB:** Thanks. One question that sticks with me is as part of these conversations about what some of the city's rulings have been--I'm just going to call it judicial cowardice from the bench. With the current composition of various levels of judiciary, whether that's state or federal or in-between, the current wave of appointing more conservative-leaning judges, what do you make of the future prospects for seeking redress for racial injustice through the courts?

**MF:** I mean, probably we'll become increasingly more bleak, but I've never looked to the courts as a place to get effective racial redress. Yeah, I've said that, and it's just as a general matter even beyond racial questions. I frequently say that when I was a very young lawyer, I was afraid to go to court because I was afraid I was going to go in there and mess up somebody's case. Now after having practiced for close to 35 years, I'm afraid to go to court because I'm afraid some judge is going to mess up my good case, and I think courts are to be avoided at all costs. That's generally my personal philosophy. They are the place that you go when, you know, there's just no place else to go, and you're just going to make a desperate attempt to try and deal with it. But if there are alternative ways of dealing with you, then you can and you should. Just as an institution, with the exception of someone like Judge [Damon] Keith, you don't find people who are prepared to deal with the realities of the racial situation in this country.

I frequently point to the Bakke decision [Regents of the University of California v. Bakke] which was issued back in the late 1970s regarding affirmative action where, to me, it really illustrates the situation. Before Bakke, affirmative action, the concept of it, it was a reparations concept. It was...affirmative action frankly acknowledged that people had been harmed by race in serious ways and there needed to be something done to repair that harm, to place people in a position that they would have and should have occupied but for that harm. When that concept reached the US Supreme Court in the late 1970s, immediately they rejected it. They said that this is not something that sits well with us, and they completely reoriented the whole concept of affirmative action. They said that you can't use affirmative action for reparations purposes. The only way that you can use it in higher education is to increase diversity within the campus environment for purposes of enhancing the academic experience of the students there.

And, what that really means to me is, look, I'm a white male, and this whole reparations thing is uncomfortable to me, and because I'm privileged as a white male to reject things that don't make me comfortable, I've got to find something about this, or I'm deciding to find something about this that makes me comfortable, something I can live with. So, this idea of having diverse views in the academic environment is something I'm comfortable with. That's fine. That's harmless. You can have different people from different backgrounds debating ideas, and I'm fine with that. So if you're going to have affirmative action, then that's the way it's going to happen.

And that became law. It permanently determined the nature of affirmative action and the extent to which it can be used on up to the present day so that universities now are trying to defend affirmative action programs and have to fit it within that paradigm. We're doing this for purposes of diversity of views and viewpoints and representation of different thoughts as opposed to this community was devastated by history of discrimination and slavery, and we need to make sure that there's a place for them. They can't do that. So, it's just...it's the very embodiment of white power and white privilege and the ways in which everything in the society has to fit within the restraints of what makes powerful white people feel comfortable. So, I'm not going to go to an institution like that expecting racial justice. I mean, that's not intelligent.

[1:37:09]

**PB:** What I'm wondering is if you're reflecting on this through your career, what do you identify as some of your greatest successes?

**MF:** There are many things that I think have, yeah. Sometimes it's not because of what judges have done, it's just because of the way circumstances have worked out. I mean, early on in my career, you know, when I was working in Camden, there was a low-income housing project that had been--it was HUD [Housing and Urban Development] financed and administered by the local housing authority and all kinds of corruption in the process. They built this 93-unit complex out of trash. This thing started to decompose within months after people occupied it. And pretty soon, there were only thirteen families left in the 93-unit complex, and the other units were occupied by vermin and prostitutes and drug users. And, the legal services program that I was working with had--before I got there--had filed a class action suit, which never was enforced. And after they got a positive ruling and I got involved in enforcement--and I do have to give credit to a federal judge there named John F. Gary (??) who, maybe to atone for some things he did early in his career, took an act of interest in this. And, you know, through his stern hand and through our advocacy on behalf of these families, long story short, we were able to get that complex rebuilt from the ground up and turned into an extremely

attractive gated community and titled to each of these units, turned over to the residents for the price of a dollar.

It is even more significant because this complex sits on the riverbank that looks across at the skyline of the city of Philadelphia. This area had been targeted for gentrification, and so there was massive opposition to having these low-income people living in choice real estate to the point that when they were about to begin construction, there was an individual who was acting suspiciously around the complex. An off-duty security guard went, approached him, and asked him what he was doing. When he acted suspicious, he tackled him, and when... They...they found out that he was standing next to a car that was piled floor-to-ceiling with cans of gasoline and the gasoline trail that had been poured out to the street. So, their inability to win in court led them to try and blow up the complex. When the residents freaked out and asked me to find out what's going on, most of the police were telling me that the guy had been brought in, released, and there was no further information about him, and the vehicle had been rented from some place in Philadelphia, and that's the only thing that they could tell me. So, I was recently there, and that complex is still sitting there amidst amazing sports complexes, an aquarium, office buildings, and all kinds of things. So, I really am happy about that one.

And then, there are little things where I helped to reunite two parents, both of them with developmental disabilities, with their children who had been taken by the state because they had been accused of not being competent enough to take care of their children. And so, they were loving parents who, with some assistance, were able to take care of them. So, reuniting that family made me cry. So, those were the little things. But, you know, here in Michigan, there have been a number of things, you know. I mentioned the Quicken Loans thing, but helping to start the school-to-prison thing. You know, we're representing a Black police officer now who was harassed by--when he was off-duty and out of uniform--by white police officers even after he identified himself as a police officer himself. You know, there are a lot of things that I have been very blessed to have the opportunity to participate in. And many times, it's not so much the results you get in court that you mentioned but the fact that you're in a position to get in there and duke it out, and there's a lot of advantage to that.

**PB:** Is there anything that we missed that you wanted to get on the record?

**MF:** No, I think that's--we've covered a lot of territory.

**PB:** Thanks so much for your time.

**MF:** No, I appreciate it. Thanks for the chance.