TRANSCRIPT OF INTERVIEW

The interviewee, Ira Kurzban, is represented by “I.K.”, while the interviewer, Kristin Smith, is represented by “K.S.”.

K.S.: Hello my name is Kristin Smith. I am a third year law student at the University of Pennsylvania Law School. I am about to interview Ira Kurzban as part of the Oral Legal History Project here in the Biddle Library of the University of Pennsylvania Law School. Today is March 1, 2001.

K.S.: Where were you born?

I.K.: I was born in Brooklyn, NY, Maimonades Hospital, but I don’t want to give you the date.

K.S.: Ok, what were your parents’ occupations?

I.K.: My father was in the painting business, he was a painter. He had a fourth grade education. He had an incredible story – He came to the United States from Romania via Canada and Belgium when he was twelve years old. He had to come on his own and worked in a button factory in Belgium when he was twelve years old, and then when to Canada, and then eventually to the United States. My mom was born in Brooklyn, NY.

K.S.: Do you have any siblings?

I.K.: Yes, I have three brothers, one of whom I practice law with, who is my next oldest brother. I am the youngest of four brothers. I have two older brothers, one is in the construction business, he’s an engineer, and the other is a medical doctor, he’s a radiologist.

K.S.: Did you grow up in Brooklyn?

I.K.: I grew up in Brooklyn, until I was 18, and then I left and went to college at Syracuse University and then I went to the University of California at Berkeley.

K.S.: How did you decide to go to Syracuse?

I.K.: I just thought it would be an interesting place to go. You know, I had applied to a number of schools. They had offered a scholarship, which was something that was important, and I eventually had applied to other schools after my first year and decided to stay at Syracuse because I had gotten very much involved in campus life and I liked it there, it was an interesting place to be actually, at that time.
K.S.: And what did you major in while you were there?

I.K.: I majored in political science and minored in religion.

K.S.: Very interesting. What activities were you involved in during college?

I.K.: Well, that was during the late 1960's and the early seventies, and it was a time of great upheaval on college campuses and a lot of political activism, and I eventually became the president of what they called the “University Union”, it was not actually the student government, it was the part of the student government that actually put on music festivals and plays and those kinds of things for students. And I got very involved in doing that and we brought some very interesting speakers to campus. At the time, people from the Black Panther Party came, and people from the Chicago Seven were invited to come, Timothy Leary was invited to come. It was sort of a history of that time period in terms of the people we invited; it was very interesting. We also got to meet very many famous musicians who subsequently became famous, probably are not so famous today, but people like Joni Mitchell, Livingston Taylor, James Taylor, all of whom played in a little coffee house we had. So we had people who subsequently went on to become very, very famous who played in very small cafes that we could set up at Syracuse, so it was kind of an interesting time, an interesting environment, and in the middle of it I decided to go to school in London. I went to the London School of Economics for six or seven months in 1970.

K.S.: What did you study while you were at LSE?

I.K.: Political Philosophy. I was very interested in political theory and political philosophy. And I had the privilege of studying with two very interesting people, one of whom was Ralph Milliban, who was considered a Marxist and the other was another philosopher who was considered the most conservative, Michael Oates, who was considered the most conservative political philosopher in London and in England at the time, and it was a very interesting education. They tended to treat political philosophy much more seriously than in many respects we do here. We tend to treat it more like the history of political thought here, and there they really struggle with it; it was very interesting to be there.

K.S.: Did you meet many students from other nations while you were at the London School of Economics?

I.K.: Mostly British students. We lived together with a group of American students, but there students from all over the world, and you certainly got a very different exposure to ideas and places and so forth. And for me it was wonderful because I also got to travel, throughout not only Western Europe at the time but also Eastern Europe, and Eastern Europe I think in those days was obviously very different
than today and was very interesting in many respects to see how people were living in Eastern Europe under Communism.

K.S.: Upon your graduation from college, did you decide to go to law school then or did you decide while you were in college?

I.K.: No, I never decided to go to law school, until I was a graduate student. I was never one of those people who always wanted to be a lawyer, actually I always wanted to teach. I was always interested in political theory and political science and political philosophy and was going to do that. I went to the University of California at Berkeley in a graduate program, in a Ph.D. program in political theory, and got through my masters and then decided that I really didn’t want an academic career, but continued to do both. I tried to do my Ph.D. and my law degree at the same time. And that was at a time before they really had kind of joint programs. Now I know a number of the schools, including Berkeley, have joint, where you could do a joint law degree and Ph.D. program. They didn’t have it at that time. They sort of said, ‘If you want to do it, you can try and do both at the same time.’ And I did; but I never finished my dissertation. So, I’m still not a doctor. We only have one doctor in my family and I’m not it.

K.S.: Did your interest in immigration law begin in law school?

I.K.: No, I never had any interest in immigration law, actually. (laughing) Until I graduated law school, when I graduated Berkeley I wanted to do civil rights work. And one of the things that really, I think, shaped my career was meeting Leonard Boudin, who as you may know was also a Fellow, and has passed away. In my mind, he was one of two or three of the greatest civil rights lawyers of the twentieth century, although he didn’t always get the recognition that he deserved, except from the University of Pennsylvania. Ah, and Leonard was a teacher of mine at Berkeley in my second year, and started to talk to me about what the National Emergency Civil Liberties Committee was doing, which was a civil rights organization that was started during the 1950’s, during the McCarthy period. It was a time at which the American Civil Liberties Union, unfortunately, was actually turning their own members in to the FBI, believing they were communist sympathizers, and so forth. People were not being defended before the McCarthy Hearings in the early fifties. So the National Emergency Civil Liberties Committee was started and it was a very interesting organization because it was made up of the banking partner of J.P. Morgan and a number of wealthy people and at the same time a number of people who were further to the left and more sympathetic, and a number of people who really believed in the First Amendment and felt very strongly about it. Leonard was named as their General Counsel. The National Emergency Civil Liberties Committee went on to do some of the most interesting cases in America, although they never got very much credit for it because they weren’t very good at publicizing what they did. I mean, they did the first comparable worth case in the United States. They represented Daniel Elsberg in the Pentagon Papers case. They represented Julian Bond when the Georgia
legislature refused to seat him, he was the first black legislature after Reconstruction in the South, he won election and had to go to the Supreme Court to get seated. And they also did the first class action immigration cases in America and started to represent Haitian refugees who were in Miami in a case called Marie Pierre and Marie Sanon versus INS. And those were in the early seventies – '73, '74, about that time. I didn’t graduate law school until 1976, but Leonard had told me about them, he said, you know, he thought it would be interesting to do it, and they wanted to have a lawyer in Florida, and I had a brother who was practicing law in Miami at the time, my brother is a few years older than me, although he never admits to it. And he was doing labor law, which was something else that I was very interested in. And this was kind of a great opportunity for me. Of course, all of my friends at Berkeley thought I was completely out of my mind, because Miami in 1977 is not and was not anything like what it is today. I mean, Miami is considered an international city and a vibrant city because of the Latin community and South Beach. None of that existed in 1977. So, when I went to Miami in 1977, it was kind of a barren, dying city in many respects, but I thought had a lot of potential in terms of civil rights work. I really went because I wanted to be a civil rights lawyer. The other aspect of it that I think is very interesting, you were asking about my interest in immigration law, Berkeley in 1975 and 1976 was probably one of three or four law schools in America that taught immigration law because of a fellow named Don Unger, who was a very prominent immigration practitioner and a very good lawyer. But, it was never taught anywhere... it was taught at Berkeley but I never took it because I had no interest in it. So, I never took any immigration course, and graduated law school thinking I was gonna go to Florida and be a civil rights lawyer. That’s still what I thought I did, actually.

K.S.: You litigated a case regarding Florida’s election laws, although twenty years before the most famous recent case. How did you decide to take on the Smith v. Smathers?

I.K.: Well, Smith v. Smathers was a very interesting case because the Socialist Workers Party came to me and said, ‘We want to run candidates and we’ve tried to write in candidates on the ballot.’ And what they did is actually they were kind of in the forefront at that time of write-in candidates and third-party candidates, obviously for their own reasons. There weren’t many people around the country who were challenging these laws and they decided, in I guess a strategic way, to go out and challenge laws that restricted third-party candidates from running. And at that time, you know, it was unheard of—we didn’t have the Green Party, we didn’t have the Libertarian Party. None of these other parties were really operating, at least at a level of challenging the election laws. Today, ironically, you know, it’s almost old hat. Any third party organization who wants to run, or political party who wants to run, always has a legal staff to challenge the restrictions. So, they had come to me and had asked me to do it. One of the interesting things about being in Miami then and I think to a large extent even
today, there were very few civil rights lawyers. There are very few lawyers who are willing to take cases, there are very few lawyers who are willing to take pro bono cases, particularly in Miami. So they came to me and they asked me to do it. I didn’t know what I was doing. I had just started practicing law, and within a few months I wound up in the Florida Supreme Court arguing a case about twenty feet away from the Justices of the Florida Supreme Court. And of course, the first question that they asked me was, ‘Isn’t this organization some communist organization that you are representing?’ And that’s how I started my legal career in terms of civil rights work.

K.S.: The Smith case involved constitutional argumentation. Constitutional issues are said to be incredibly difficult for litigators to argue. Do you enjoy this challenge?

I.K.: Yes, I think... I’ve always regarded practicing law as a profession, more than anything else. I’ve put in the time, I think, to try and develop the craft of practicing law, and the art of practicing law. You know, I guess I’ve always felt the more interesting the cases are, the more that I like the cases. Unfortunately, its resulted in my doing many pro bono cases, in the millions of dollars in my firm, not to the great liking of my partners, but its been a very interesting experience to be in private practice. I think one of the things that makes it interesting is that we have a private practice where we are able to do them pro bono. There aren’t many private firms, certainly not firms of this size, we have around six or seven lawyers, that do these kinds of cases, in this magnitude. I’d like to think this is because all of my partners are bright, and not myself, but at least I’ve gotten help from them and have gotten help from others along the way.

-K.S.: In 1980, you received much media coverage for your representation of Haitians immigrants in Miami who were seeking political asylum. How did you get involved in this matter, that specific case?

I.K.: Well, the 1980 case was Haitian Refugee Center v. Civiletti, which later became Haitian Refugee Center v. Smith. The way that I became involved in the cases was that I was representing the National Council of Churches. One of the reasons that I went to Florida was to do work representing Haitian refugees. So, this was a real chance to try and do something. The first cases we did were really the continuation of the cases Marie Sanon versus the United States and Marie Pierre versus the United States, but what happened in 1979, which was very interesting, is that the Immigration Service decided to focus on 4000 Haitians who had come. They detained them and the idea was to start what they called a Haitian program to expedite their deportation from the United States. But, so I was at the time representing the National Council of Churches, but something very interesting happened along the way, which was that they had funded an organization locally called the Haitian Refugee Center. And the Center decided that they wanted to be independent, and rather than chose to stay with the organizations that were funding them and that were funding me, I decided to go and help the Haitian
Refugee Center, and to do it pro bono. They became really the driving force in a number of cases, this was only one of them. But many of those cases, titled Haitian Refugee Center, were done by this organization made up almost exclusively of Haitians, in the community in Miami, who had said they wanted to stand up for their rights and the rights of their countryman. And that’s how I began to get involved in that case, along with our affiliation with the National Emergency Civil Liberties Committee, so it was kind of a combination of both.

K.S.: Did you receive trouble from the INS in terms of getting in contact with your Haitian clients?

I.K.: Oh, there were a lot of things that happened at the beginning. There were a lot of threats made. I remember one of the first cases I ever did, where a client of mine took the fifth amendment on the witness stand in an immigration case. The judge, who were then not necessarily legally trained, but were what were called ‘Administrative Hearing Officers’ of the INS, threatened me, the attorney threatened me with bar action for having my client assert the Fifth Amendment, and then threw my client in jail. So, the next day we had to go to federal court and get him out. But there were a lot of them, we received a letter at one point during the course of that litigation from the General Counsel of the INS, threatening us about quote ‘soliciting clients’. We wrote back saying, first of all there was a Supreme Court case, Primus, which allowed you, in effect, to solicit people in an organization. And secondly, we weren’t getting any money out of it -- we weren’t actually soliciting clients for money, we were assisting people who sought legal help because they were detained. What they were trying to do is put up barriers between us and the detainees so that we couldn’t represent them and effectuate their rights, but they relented eventually. That actually became part of the litigation. There was an issue within the litigation where they stopped us from representing the people, and we sued under the First Amendment as well, seeking that representation.

K.S.: In the case Haitian Refugee Center v. Smith, adjudicated by the 5th Circuit Court of Appeals in 1982, your complaint on behalf of the Haitian Refugees stated, “the INS instituted a program “to achieve expedited mass deportation of Haitian nationals”. You were also quoted as stating in the National Law Journal in 1983 that there’s always been a 2-tier system in immigration, and that people who could afford a good lawyer got good service while people who were indigent never received that treatment” – Do you think the INS would have isolated those Haitian refugees you represented in the Haitian Refugee Center case had they not been Haitian or had they not been indigents?

I.K.: Yea, I think both of those are important points... Its even today, the vast majority of people who go before immigration judges are unrepresented, and don’t know how to effectuate their rights. There is no system, public defender system, to allow them to have somebody represent them. But I think there’s a combination
of both the indigency issue, and in many respects, even more importantly the issue of race. I think race has played a predominant role in the treatment of Haitian refugees. And I can give you a very current example, that’s very topical today, although it may not be when somebody watches this tape twenty years from now, but the case of Elian Gonzales, the little boy from Cuba who came to the United States, for which there was obviously a lot of discussion throughout the country. When he came, his relatives showed a photo of him. His uncle said this is my nephew, here’s a photo of him, and based on that, they gave the family custody over Elian. When a Haitian family goes and asks to have custody over their nephew or niece or immediate family member, they are told they must get certified copies of their birth certificates from Port Au Prince, and they have to get other documents evidencing it, affidavits and so forth. So, the interesting thing in immigration is that there is a tremendous amount of discretion because many things are done informally. How that discretion is applied really relates to the kind of disparate treatment I have seen, at least, over the past quarter century, because you see how Haitians definitely wind up in detention longer, wind up in detention at all, are deported quicker and so forth. Really given, in many respects, less rights.

K.S.: While working on the Haitian Refugee Center case, you were quoted in the NYT saying, “[The INS feels they have] gotten a lot of political heat. They felt they were going to lose the case. This is a way of softening the blow and making it look like they were doing it on their own.”, when they relaxed their decision with the Haitian Refugee Center. How did you get the media’s attention to your clients and how much do you think it effected the INS’s policies?

I.K.: Oh, I think the media had a tremendous impact on these cases, it always has. One of the interesting things in Miami is that fifty percent or more of the news in immigration in the United States comes out of Miami. There always seems to be something; it always seems to be in the national press. But we really devised kind of a coordinated strategy. I think that the people at the Haitian Refugee Center understood that this was not just a legal battle, that this was a political battle, it was a battle really for the hearts and minds of the American people, in terms of their unequal treatment before the immigration service and it was a battle that was only going to be won politically as well as legally. So, from the very first days of whatever we were doing, we always tried to work with members of Congress. We always tried to publicize it so that you had people working politically, working with the media, as well as going to court. I think also the media saw this, I mean independent of what we did, because sometimes you can talk to the media and they’re just not interested. I think they saw this as a very stark pattern of discrimination. You know, Cuban boats were coming in, Haitian boats were coming in, at the same time, you know Cubans were being released, and Haitians were being detained. I mean, it was obvious.
K.S.: When Reagan came into office, he expressed the need for cheap foreign labor and even suggested bringing Mexicans across the border on temporary work permits. Given this approach to immigration, why do you think his administration took such a strong stance against the Haitians in 1980? When Reagan came into office, he expressed the need for cheap foreign labor and even suggested bringing Mexicans across the border on temporary work permits. Given this approach to immigration, why do you think his administration took such a strong stance against the Haitians in 1980?

I.K.: Oh, because, there was some kind of schizophrenia I think in the administration, but one of the first things that Reagan did, even before he made those kinds of statements, was to say he had William French Smith go to Congress, then the Attorney General of the United States, and say that we had lost control of our borders, we pursued unrealistic policies, that we intend now to take control of it. And they outlined a program. They said we’re going to interdict people, we’re going to detain people, and we’re going initiate expedited deportation. But that’s what became the focus of the case Jean v. Nelson, because they only interdicted, detained and engaged in expedited deportation of Haitians and no one else and that’s what we were able to prove in a federal court.

K.S.: Jean v. Nelson, which you argued before the Supreme Court was a landmark decision in that it reinforced that even aliens cannot be stripped of their constitutional rights. How did this decision effect your later immigration work, that is did you see a more equitable INS arise from the decision?

I.K.: No, and one of the things that actually always amazes me is how there is sort of a very short institutional memory. I don’t want to say that we didn’t have any success, a number of these cases, for example the earlier cases, Haitian Refugee Center v. Civiletti, resulted in having regulations on political asylum and really helped to get the Refugee Act of 1980 passed. I think there’s no question about it. The Jean v. Nelson clearly did two things, one is it prompted the Immigration Service to really look at their detention policy and certainly stopped in the short run the discriminatory treatment towards Haitians, because they all were released and the government stopped detaining them in the same way that they did before. But in the long run it never kind of ceases to amaze me how there’s no institutional history. You know, we would do something and then four years later it would be like Jean v. Nelson? Jean v. Nelson? You know, what’s that? Haitian Refugee Center v. Civiletti? So what, that was five years ago, kind of thing. This is now, and they would often go back to the same kind of policies, and that’s why we kept going to court.

K.S.: Many immigration lawyers have used the leverage they have to extort money from illegal immigrants and/or have had fraudulent or professionally irresponsible practices. Many immigrants, who might otherwise have stayed in the US, have been forced to leave or suffered even worse harms because of ineffective representation. Have you dealt with any of these cases?
I.K.: Yes, I dealt with a number of times and a number of different ways, but most of what we try to do is to get both the bar associations and the immigration service to act because as long as the bar won’t treat it seriously or the immigration service won’t treat it seriously, people will continue to go to unscrupulous brokers, and part of it is almost a natural thing, that is they go to people who speak their own languages, they go to people who are in their own communities, who are making promises and representations to them. Some of those people I think do a good job, but many of those people are unscrupulous, many of them just take money from people, and many of them have no business giving advice on very complicated matters. And that arises every couple of years when there’s an amnesty or there’s a new program. I know we’ve seen it repeatedly for example in South Florida, even now, this past year, Congress passed an extension on a provision of the law called 245 i which allow people who are illegal now to apply for residency. Many of those people are going to people who are giving them very bad advice, and are telling them its an amnesty, when in fact its not. So what we’ve tried to do is work with the bar, and we’ve tried to raise consciousness and awareness within the Immigration Service of why this is important.

K.S.: The dictator Jean-Claude Duvalier fled Haiti in 1986 after almost 30 years of rule. At this time, the INS spokesman said there may no longer be any need for political asylum for Haitian refugees – did you continue to represent asylum cases?

I.K.: We did, during the military coup, because between 1991... September 30, 1991 there was a military coup in Haiti, which ended with President Aristide’s return on Oct. 15, 1994. During that period we did, and we represented many, many people, particularly people on Guantanamo in a series of cases involving Haitians there, called Haitian Refugee Center v. Baker, and some other cases Haitian Refugee Center v. Cuban American Bar Association, which we intervened on, on behalf of Haitians. But, during other periods I have not, part of the reason is that I have represented the democratically elected government of Haiti, so I think in those times President Aristide has been in power and was elected we’ve declined to do political asylum cases from Haiti.

K.S.: You became General Counsel to Haiti during the period you spoke of after 1991 when there was a coup. How did you find yourself in this position?

I.K.: Well, after representing Haitians seeking political asylum from 1977 really until to 1991, when there was a democratically elected government, you meet many Haitians. Many of those people ultimately went back, many of whom I represented went back and became ministers and members of the government. So I was asked initially to try and go after the assets that the Duvalier family had taken from Haiti. They took over five hundred million dollars, even in a short
period really, from 1971 to 1991, over a twenty year period they had taken five hundred million dollars, stolen it, and they had asked us to help recover it.

K.S.: In 1991, after a coup in Haiti, many refugees who tried to come to the US by boat were intercepted and repatriated by the Bush administration. Do you feel the Bush administration was motivated by politics enforce the repatriation?

I.K.: Yea, and I think this kind of goes back to what we were talking about before, the relationship between the legal issues and the political issues in these cases. There’s no question about it, I mean if we look at the action the United States government took with after to Tianamen Square, for example, with regard to Chinese students in the United States, and we look at what they did with regard to Haitians right after the coup, they estimate there were around five thousand people who in the first three or four months were executed by the military government in Haiti and yet our response was only to stop the interdiction for really less than a week, less than two weeks. Then we restarted the interdiction and were sending many of the people back, many of whom wound up being killed later on. So there is a very big element of politics in it, and it ultimately is a political decision as to which groups the government is going to decide to bestow a benefit on. But in the details of what happened here, there were legal issues. Of course the interesting thing in the Baker case was I got to argue that case against the former Solicitor General of the United States, who I think in probably the second time as far as I know in legal history, argued a case in the District Court. Most Solicitor Generals, as you know, argue in front of the Supreme Court, or they sometimes argue in the Court of Appeals but it is very rare that they would argue in a district court, and in Haitian Refugee Center v. Baker, the solicitor decided to argue the case himself. We still won.

K.S.: Did you represent any of the HIV infected refugees?

I.K.: Well, I helped, yes we did, originally in the Baker case. But then it became part of another case which lawyers from the Center for Constitutional Rights, people like Michael Ratner, actually took over, and they wound up doing, kind of the, the second, I would call, the second Baker case, trying to represent people who ultimately were stranded there, or not given much treatment, because the United States would not admit them because they were HIV positive, and wouldn’t send them back, so they were living in these camps in horrible conditions.

K.S.: You played quite a leadership role amongst the immigrant lawyers community. In 1987 you became President of the American Immigration Lawyer’s Association. In a letter s published in the Immigration Journal, you stated that the ALIA needs to take a more active role in the development of immigration policy. Do you feel you successfully met that goal as president of the organization?
I.K.: I think what I did as the President was kind of open up the organization. It was an organization that was in many respects closed to certain groups of lawyers, many of whom just did business law, many of whom lived in the major cities, principally New York, and to some extent Washington. We increased the membership substantially because I think the way that I became President was unique in the organization because no one had ever actually gone from not being an officer to running for president and that’s basically what I did. Usually, much like the American Bar Association, you kind of, you know, go up a step ladder until you reach the presidency. It was at a time of great upheaval among the immigration lawyers. The government was prosecuting a lot of immigration lawyers. They were going after them for what we felt were not really justified reasons, to intimidate them, and I decided to run, and I think just the fact of even running and winning made a difference. In terms of overall policy, I don’t know that we have really done very much to change that policy. I mean, one of the major things that I wanted to do was really to further judicial review, by challenging the doctrine that you could not sue consular officers, which is a very prominent part of immigration law. You know, consular officers make a decision abroad, most courts have said there is no judicial review. We wanted to try to get legislation to stop that. Well, fifteen years later, we not only don’t have consular review, we don’t have any judicial review as a practical matter, very, very limited judicial review and as you may know, at the time we are doing this tape, the Supreme Court is hearing two cases on whether or not there is any judicial review at all, even in habeas corpus or even constitutional habeas, so I don’t know how successful I was on the policy side, but we got a lot of people interested in immigration law.

K.S.: You also mentioned as President of the AILA two ways to change the US’s immigration policy: 1) through legislation, i.e. lobbying Congress, and 2) through petitioning administrative agencies during notice and comment rulemaking – which method do you think has the most potential for producing change?

I.K.: Well, there’s no question that going to Congress and getting changes, Congress basically rewrote the Immigration and Nationality Act in 1996 in a very negative way. But its clear that Congress and the courts have really deferred, as you know most things that the Congress does, particularly in immigration law. So, I think there is a lot to be said about getting Congress to make these kinds of decisions and trying to work with the Congress to do it. Although, again, you know, they pass these broad laws, there’s a lot to be said in a rule-making process. We have had an influence, I think, particularly the American Immigration Law Association has had a substantial influence I’d say in changing regulations. You know, the government has promulgated them, we’ve gone back and given them detailed comments, and they’ve actually changed a few of them along the way.

K.S.: What was your motivation for writing the Immigration Law Sourcebook?
I.K.: I was teaching, and they were my notes, and my wife said, ‘Why don’t you try and publish it?’ and I said, ‘No one would want to read this.’ And she kind of encouraged me to do it, and I sat down, and the first book was really kind of like an outline, you know what you would have when you were studying for a course, you know getting one of those Barren outlines, whatever those outlines are today. And was kind of more or less in outline form. Since then, it has grown each year because of my spending a lot of time and attention on it, but that’s how it started.

K.S.: Do you have any mentors in immigration law?

I.K.: Oh, well, Jack Wasserman was probably the greatest immigration lawyer who ever lived. For those people who treat immigration law as a profession, he was probably the single most important immigration lawyer of the twenty first century. Leonard Boudin, I think, had a very big impact, not only as an immigration lawyer but also as a civil rights lawyer. You know, he argued most of the famous immigration cases actually in the Supreme Court, which most people don’t know, but he did. And he argued all of the right to travel cases. And Ira Ollivan, who was a, and is still, one of the great unknown, but considered one of the great immigration lawyers in America, and Ira was one of the inspirations for me getting involved in the Haitian Refugees as well. So I would say all of them. And of course, my family. My father, you know, being an immigrant. My family always kind of encouraging us to help other people.

K.S.: In 1990, you argued a very different case before the Supreme Court, INS v. Marcie Lucie Jean. You sought fees and expenses from the US Government as entitled under the Equal Access to Justice Act, which allows a court to award fees when private parties prevail in litigation against the US and the US’s position is not “substantially justified” – Was it more difficult for you to argue this case as opposed to asylum cases, since you were one of the beneficiaries of the sought after judgement?

I.K.: No, actually it was kind of an easy case to argue because it was a silly case. I mean, the government, I thought, took a very silly position in this case. There position was that you were not entitled to fees for litigating for them, that’s basically what this case was about. We had won in the District Court, we had won in the Court of Appeals, they had given us the fees. This was just the government saying, ‘we don’t want to give these lawyers any money. We don’t want to set a precedent of giving a million dollars in fees to, you know, ten or whatever it was, different lawyers. And we were, I think, very fortunate. And I think one of the reasons why I’ve had any success in doing this is that we were fortunate to have an association with Fried Frank Harris Shriver and Jacobson. In particular, Bob Juceum, who is one of the partners there, who is a wonderful lawyer, brilliant lawyer, who has a wonderful, big heart and had his firm spend untold amounts of money in assisting us in these cases. Bob’s firm was involved in that case as they
were in Jean v. Nelson. And, I have always look to him also as one of those mentors who has really made a difference in the legal community.

K.S.: Your representations of Cuba, Haiti and Panama have been used by the media to discredit you and your family members – have you ever regretted taking on these cases?

I.K.: Oh no, that’s what makes it interesting, I think. You know, we’ve always taken on unpopular cases and unpopular causes. That’s what civil rights lawyers do. If they were popular, you wouldn’t need civil rights lawyers.

K.S.: How did you come to represent Cuba?

I.K.: We represented them locally, actually there’s only one law firm that represents Cuba in the United States, its Rabinowitz Boudin in New York, which is Leonard Boudin’s firm. They had asked me to be local counsel in a number of cases. The problem is being local counsel for Cuba in Miami is pretty close to suicide. You know, people have very strong feelings about these issues. The cases where I’ve represented them on, actually though, have been very non-political cases. But everything is political in Miami, where they don’t allow Cuban music. The Latin Grammys to come to Miami because of the strong feelings on these issues. So, but most of the cases were not actually politically charged cases, I mean most of them were either commercial cases or something of that nature, although one of them was kind of the precursor to the Elian Gonzalez case. A young woman of fourteen years old came to the United States with her boyfriend, and her parents wanted her back in Cuba. That became a very big case in Miami at the time.

K.S.: You represented a group of Nicaraguans in 1997 and received a court order against the INS and the Justice Department – how did you find working with the INS under the Clinton Administration as opposed to the Bush and Reagan administrations?

I.K.: Worse. That’s always one of the great surprises, although I guess after doing this for so many years, I’m less and less surprised. I think what happened in the Clinton Administration, interestingly, the Commissioner was considered fairly liberal, the General Counsel was a former and is today, I guess, a law professor. Actually, the two General Counsels, one following the other, David Martin and Illanakoff, were both law professors and have written the treatise on immigration law. It was just interesting to me to see what happens to people when they get in those positions. I think in order to show how tough they are, or to develop some type of camaraderie with the rank and file people who are often very conservative, they tend to become even more conservative than some of the moderate Republicans under the first Bush administration. I thought we had a better relationship with the General Counsel, Bill Cook under the Bush administration than I think we had with the General Counsel’s office under Clinton. It really says
something about what happens to people when they do work for the government, how that shapes them, how they feel beholden to other forces that may be beyond their control.

K.S.: Aristide was just restored as President of Haiti – were you happy to see this happen?

I.K.: Yes, I think his situation is a very interesting one because the reality of Haiti is very different than the way its pictured in the press in the United States, very different.

K.S.: There have been a lot of reports during Haiti’s elections that there was corruption by Aristide’s party, the Lavalas Party - do you think Haiti is on the road to democracy?

I.K.: I think Haiti is definitely on the road to democracy. I think the reports are not accurate about what happened. Actually, what happened was no one complained about the election, except there arose a dispute over the methodology over how to count ten senate seats in an election where fifteen hundred people were elected all over the country for every single position. So, and there’s never been any allegation that there was any corruption in Aristide’s election for president. There were two separate elections, one on May 21st of virtually every other position, every deputy, every senator and so forth, and then the presidential election on November 26. No one has ever alleged there was corruption in the November 26th election and Aristide is sort of like George Washington was in the United States. He was a revered figure in the country and so, I don’t think there was any need for corruption. I think the country is on the road to democracy. I think when we look at our own democracy and what happened in the first twenty years of our own democracy. We had a chase rebellion, we had a president elected, as you know, by the House of Representatives, Thomas Jefferson, because we couldn’t figure out a way to elect him. So there were things that happened in that process, and I think we need to let that process go. Certainly Haiti is on the road to democracy. This is the second election now where they’ve had a non-violent transference of power in the two hundred year history of Haiti. President Aristide voluntarily relinquished his position even though he hadn’t served his full term. President Prevail, just this February 7, voluntarily relinquished his position, so I think they are, I think Haiti’s got many, many problems, but democracy is not the major one.

K.S.: Are you still working with Haiti now?

I.K.: Yes, I am. My hope is for the next five years we will be working with President Aristide. To try and, as he says, take Haiti to a level where people can go from poverty with dignity instead of misery as they are now.
K.S.: What exactly is your position with the government of Haiti? Are you still the General Counsel?

I.K.: I’ve been the General Counsel and as the General Counsel I’ve done a couple of different things. One is we run a Human rights project in Haiti and we’ve been instrumental in helping to prosecute human rights violators in Haiti. One of the major cases was a case involving a massacre during the military coup in a place called Rabiteau, which is a section of Ganaive, one of the major cities in Haiti, over twenty people were executed at that time. We’ve now brought people to trial, sixteen people were convicted. It was the first major human rights trial in Haiti’s history. So that’s one of the things we do, and the other thing is represent Haiti in the United States, either in individual cases or in litigation and provide advice, we hire people to do lobbying and so forth.

K.S.: In your career as a lawyer, how important has the media been as a tool to effect change?

I.K.: I think its very important. I think it raises people’s awareness. But I still think you have to do the day to day lawyering and you have to do a very good job of lawyering. Because I’ve seen both – I’ve seen people who spend a lot of time in the media and don’t prepare their cases well, and not much good comes out of it. And on the other hand, if it’s a political issue, I mean some of these cases are really not political in nature but some of them clearly are, where you’re trying to educate the public because the battle is a much bigger battle than what’s in the courtroom. And I felt that in terms of representing Haitian refugees. We went to court, I don’t know, there were probably thirteen or fourteen major class action law suits from 1977 to the 1990s and yet the battle was always ultimately played out in the public forum, in the press and in Congress.

K.S.: What reforms do you think are necessary to the US’s immigration policy?

I.K.: Wow, you have a few hours? I think first of all the detention policy is one that strikes me as being very detrimental both to our view of ourselves as a nation, that is what are we doing detaining people who are often seeking freedom and to the rest of the world, what does that mean to the rest of the world. You know, I was reading the Human Rights Report very recently on Haiti and one of the issues they said is well, Haiti has prolonged detention. Well, we have prolonged detention now in the United States. If we can deport somebody, the United States government is arguing, the Solicitor General is arguing, and argued last week in the Supreme Court that the government has the right to detain indefinitely. What that means for us as a nation, we shouldn’t be detaining people indefinitely, there’s something wrong with that. And so I think the detention policy needs to be carefully reviewed. I think the policy on political asylum, in terms of what we do and how we treat asylees while they are waiting for a final determination is
something that we need to take a further look at. How we treat people, based on politics, which clearly the law doesn’t say, but somehow has clearly infected the law in terms of giving special benefits to certain groups versus others. So I think there’s a lot to be done in the asylum area. I think there’s a lot to be done in representation. We need to figure out a way in which people can really be represented. We hold out the promise of a hearing, but in fact most people don’t get the benefit of that hearing because they don’t speak the language, they don’t have someone representing them. And then my major pet project is to restore judicial review because I really feel what the Congress did in 1996 is truly un-American. I mean, we have people in the Congress who stood up in the well of the House of Representatives who said no man is above the law when the President was being impeached and I think all Americans believe that and yet these are the same people who voted to allow a law that says for seventeen different reasons, for seventeen different ways you can no longer go and sue the Immigration Service no matter what they do. If an immigration officer says to an individual, ‘I’m not allowing you in the country because of your race,’ you know, in other words, ‘I don’t like you because you are Chinese or something else,’ there’s really no judicial review of that. If a consular officer abroad does the same thing, there’s no judicial review. There’s no judicial review of any discretionary decision. If the Attorney General throws somebody in jail, there’s no judicial review on the discretionary aspect of that. And I can go through the whole list, there are seventeen different categories of what we call ‘preclusion of review’. But it truly is un-American. I mean, because if you can’t sue the agency, you can’t correct lawlessness. And that’s really what it’s all about, in going to court.

K.S.: Although we are a nation of immigrants, most people have no idea what it is like to immigrate to the United States today. How do you think we can bring awareness to those problems?

I.K.: I think one of the things that we’ve tried to do through the American Immigration Lawyers Association is publicize that by having essays, you know, essay contests, by rewarding and giving awards to and having a national dinner each year of immigrants who have made contributions to the United States. You know I think in the back of American’s mind there is that awareness that yes, immigrants have made an important contribution to the country. But when you start naming names, you know, it really is kind of overwhelming. I mean people who have made major, major contributions, you know from Einstein to Isaac Stern, all of whom have been immigrants into the United States, I think people have a very, very different sensibility. And I think we need to do a better job, though, of educating people about those things because what is remarkable to me is that in a time of very low unemployment, there is still a pretty strong anti-immigrant sentiment, which we really never had in the United States before.

K.S.: What do you see as your greatest accomplishment so far in the field of immigration law?
I.K.: Oh, I thought you were going to say my greatest accomplishment was trying to raise my five children. That’s the most difficult challenge I ever had, I think. In terms of immigration law, I think my book has made a contribution to immigration lawyers around the country, which I find ironic because when I did it, I never thought it would wind up being the way it was. In terms of actual practice, I think I would have to say the Haitian litigation, the set of Haitian cases that we did, because it did effect on an individual basis, hundreds of thousands of people. I mean, ultimately when you look at all the cases, including the farm worker case, which really effected a lot of Haitians also, we would up probably saving a hundred or two hundred thousand people, who now live in the United States, have families in the United States, their children are growing up in the United States. And I think to some extent the Nicaraguan case, too – the one we recently did. I had the same kind of feeling, you know that by doing the litigation, it really made a difference. The Haitian litigation really made a difference in people’s lives on a day to day basis. I mean, beside from the big political issues, aside from the press and everything, you know it is the most wonderful feeling to be in a city like Miami, and you’re in a cab, you start talking to them, they know who you are, and they’re really grateful and they say ‘thank you’. You know, there’s nothing ever, in my view, that could compensate you for that. I still have people who tell me, ‘thank you very much for what you did’ and that’s wonderful; that’s what, to me, practicing law is all about.

K.S.: On that note, thank you very much for the interview.

I.K.: Thank you.