RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY

NEW BRUNSWICK

AN INTERVIEW WITH CHRIS HANSEN

FOR THE

RUTGERS ORAL HISTORY ARCHIVES

INTERVIEW CONDUCTED BY

SHAUN ILLINGWORTH

NEW YORK, NEW YORK
MARCH 3, 2015

TRANSCRIPT BY

KENNETH WASILJEWS

Shaun Illingworth: This begins an interview with Chris Hansen on March 3, 2015 in New York, New York, with Shaun Illingworth as part of the ACLU Oral History Project. Thank you very much for coming in today.

Chris Hansen: My pleasure.

SI: We thank the ACLU for giving us this space. To begin, could you tell me where and when you were born?

CH: I was born in 1947 in Chicago.

SI: Tell me a little bit about your early years and where you grew up.

CH: I lived in the Chicago area my entire growing-up years. Most of the formative years were in a place called Glen Ellyn, Illinois, which is a western suburb of Chicago, where I was from third grade until I came to New York.

SI: Tell me a little bit about your early education. I know you went to Carleton College earlier. What interested you and where did you go?

CH: My high school was a place called Glenbard West in Glen Ellyn, and then I went to Carleton College in Northfield, Minnesota for an undergraduate degree, and the University of Chicago for law school.

SI: Growing up when you did, you came of age in the '60s.

CH: I did.

SI: There were obviously a lot of social movements going on at that time. Were you aware of the Civil Rights Movement? Did that interest you as a teenager?

CH: Yes, I was a little young for the Civil Rights Movement. I was certainly aware of it, but I can't say I was engaged by it. The first sort of political fight I can remember being engaged in was the '64 presidential election.

SI: Were your parents very interested in either social movements or politics in general?

CH: Politics, yes. Social movements, probably not. But we discussed politics at the dinner table every night.

SI: Going through high school, what interested you the most?

CH: I'm not sure anything really interested me the most in high school. [laughter] I certainly was interested in politics and I did debate, and I did student government. I wasn't an athlete. I was a sort of academically minded kid.

SI: Were you interested in things outside of school? Activities? Scouting maybe?

CH: No, I never was. Well, I was a Cub Scout, but no is the short answer to that question. I guess the answer is no. I was very active in school, but I'm not sure I can describe myself as having out-of-school passions.

SI: The area where you went to school, how would you describe it?

CH: Solidly middle class. Solidly middle class, exclusively white, homogeneous to an extreme. Glen Ellyn is in DuPage County, Illinois, which is among the most conservative counties in the country.

SI: Since I'm not that familiar with the geography, would you go into Chicago often?

CH: It's about a forty-five-minute drive into the city, and no, we didn't go very often. Once a year, or once every two years. Something like that. Maybe twice a year on occasion. My parents would take us to museums or stuff like that.

SI: Now you mentioned the '64 election. Were your parents for [President] Johnson or [Senator] Goldwater?

CH: My parents were both for Goldwater, as was I at the time.

SI: When did you graduate from high school?

CH: '65.

SI: '65. You would have been a junior and probably pretty aware of what was going on.

CH: Yes.

SI: Were your parents pushing you to go to college?

CH: It wasn't a question. In our neighborhood, you went to college. You just did. You didn't even have to discuss it. It's just what you did.

SI: Okay. At that time, did you have a career idea?

CH: No. Yes. No, I misspoke. Yes, I had a career idea. I knew when I was seven or eight that I was going to be a lawyer.

SI: Why was that?

CH: Partly, because I liked to argue. I always liked to argue, partly because I was an argumentative kid, as well as an argumentative adult. I always attribute it to my best friend's mother, who when I was, I don't know, maybe ten, said loudly to everyone in sight that I would either become a great conman or a great lawyer. [laughter] I thought that seemed right, and I thought she got me pretty well.

SI: How did you decide on Carleton as for college?

CH: It came down to the University of Michigan at Ann Arbor and Carleton, and Carleton sent me a copy of their student newspaper while I was trying to make the decision. The student newspaper had a very lengthy story about whether they should suspend a student for having used a curse word in the snack bar, and it turned into this huge free speech fight on the campus about whether he should be punished. It looks ridiculous in retrospect, but that's what the fight was about, and I thought, "Well, that sounds like an interesting place." So I went there.

SI: You went there in the fall of '65?

CH: Yes.

SI: Is this kind of on the cusp of the student movements, student uprisings and rebellions?

CH: Yes.

SI: How would you describe the campus when you first got there?

CH: Very conservative. You know, it's a liberal arts campus, and so it was conservative within the context of liberal arts campuses. But we had a chapel requirement when I started. My freshman year there was one two-hour period when girls were allowed to enter a boys' dorm, or vice versa, and there were all sorts of elaborate rules governing that experience. Door had to be open. There had to be at least three feet on the floor at all times. There were all sorts of complicated rules to make sure no hanky-panky occurred. So I would describe it as very conservative.

SI: Was it a coed school?

CH: Yes.

SI: How did that change over the four years? Did it loosen up?

CH: The year after I left, they had co-ed dorms. So in the course of five years, we went from what I just described to coed dorms. The rapidity and dramatic nature of the change, I think, is almost unmatched. It's quite remarkable, I think.

SI: You said it was a conservative campus. When the Vietnam War became a very public issue in '67, '68, and '69, were there protests on campus?

CH: I remember protests on campus, but not much. The protests that did occur on campus mostly concerned campus issues more than they concerned international or national issues. There were students on campus who went off to Minneapolis or places like that for anti-Vietnam War demonstrations, but most of us had a student deferment and were perfectly happy that we had a student deferment.

SI: What did you think of the war at the time?

CH: I had very mixed feelings about the war. Very mixed feelings. It didn't seem to be accomplishing anything. On the other hand, it seemed a noble cause.

SI: Did this school have any kind of ROTC requirement?

CH: No.

SI: Anything like that?

CH: No.

SI: So you said that you had this idea that you wanted to be a lawyer. Did you go right into a pre-law type program?

CH: There really isn't such a thing as pre-law. People who are going to go off to law school can do almost anything. People who do that tend to gravitate toward the social sciences, not the hard sciences. But there isn't really a sort of formal pre-law program. At least there wasn't at the time. I was a political science major, and I took a lot of social science courses.

SI: Could you kind of characterize what the faculty was like, what their leanings were, what they were teaching you?

CH: I would say they were middle-of-the-road Democrats mostly, but I thought we had a fairly straight-down-the-middle education.

SI: So during this time, were you also getting involved in the same kind of activities you had in high school, like student government?

CH: I was certainly involved in student government while I was at Carleton. I did other things, but you're pressing my memory now. We're talking fifty years ago. I certainly was active on campus, but I can't think now what else. Oh, radio station. I was a disc jockey and a manager at the radio station, at the campus radio station.

SI: What kind of music did you play?

CH: Middle-of-the-road. You know, Sinatra [and] Ella Fitzgerald kind of music.

SI: Looking again at social change, did you see rock-and-roll and Bob Dylan having an effect?

CH: Yes. When I started on the radio station, we had an hour of folk and an hour of middle-of-the-road and another hour of middle-of-the-road. By the time I finished, I think all the middle-of-the-road programs were gone and the folk program was gone. I think it was all rock-and-roll.

SI: You said if there was a protest on campus, it would be over a campus issue. Could you give me an example?

CH: Mandatory hours for girls. Girls all had to be back at their dorm by X o'clock every night. Or boys can't go in girls' dorms and vice versa. Stuff like that.

SI: Were you more apt to go off campus or get involved in outside communities at this time?

CH: No. The way Carleton is set up, it's in Northfield, Minnesota, which is sort of the middle of nowhere, and it is set up to be an egalitarian society, so that you can't live off-campus. You can't have a car, and you're pretty much stuck on campus for the entire time you're on campus.

There are buses that go into Minneapolis on the weekends, but that's about it, and you can't really get much out of the college community.

SI: What would you do during the summers?

CH: I did a variety of things during the summers. I worked in a factory one summer. I worked in a factory two summers. I mowed lawns one summer. I did something the other summer, but I can't remember what it was. [laughter] I also travelled a fair amount during the summers.

SI: Where would you go?

CH: Just around the country.

SI: Okay.

SI: Was there any particular interest that took you around?

CH: No, my college friends and I would get in a car and drive to a coast. Yes, it was a lot of fun.

SI: What factory did you work in?

CH: I worked in a factory that made plastic things, like plastic bowls and plastic utensils and stuff. I was a glorified janitor.

SI: Okay.

CH: I wasn't on an assembly line. No, I was not on an assembly line.

SI: So I wanted to ask, since you're from Chicago, were you there during the '68 [Democratic National] Convention?

CH: I was.

SI: All right. Did you go down by the convention?

CH: I did go down by the convention. I was not part of any of the protests, but I was in the city during the protest time periods, mostly going to or from the city for other reasons. It was a scary time. It was a very scary time, particularly to be nineteen or whatever I was, and long hair and traveling in downtown Chicago. It was not a friendly environment.

SI: Would you still characterize yourself as more conservative at this point?

CH: Well, my position is that I have not changed my political views at all over the years, although I think I'm being a bit disingenuous about that, frankly. I was a conservative because I was a civil libertarian, not because I was a moralist. So it was the strain of civil liberties to the conservative movement at the time that attracted me, and I think that's still true. I think it was true the whole time I was here at the ACLU, and I think it's still true. So I certainly liberalized over the years in terms of voting, for example, but I am of the view that my core views have not really significantly changed since high school.

SI: Now tell me about your decision to go on to law school.

CH: It was never a question. As I told you, when I was eight I knew I was going to be a lawyer, and if you wanted to be a lawyer, you had to go to law school.

SI: How did you choose Northwestern?

CH: Chicago.

SI: Sorry, Chicago.

CH: I applied to five or six places, and Chicago offered me a free ride. So I went for free.

SI: Great. Tell me a little bit about those years. Were there any professors that had a real impact on you?

CH: No.

SI: Okay.

CH: I hated law school. I thought it was a waste of time. I still think it was a waste of time. I used to tell law students who came through the ACLU or college students who were thinking about whether to go to law school or not that law school was a complete waste of time and you're going to hate it, but being a lawyer is a blast, so hang in there. It'll get better.

SI: Why was it so bad?

CH: Boring. And law schools, certainly Chicago at the time, was a factory for people who wanted to be big corporate lawyers for the rest of their lives, and I didn't want to be a big corporate lawyer for my life. So I was completely uninterested with everything that was being taught and everything that was going on. The school could have made me understand why what I was learning was going to be useful to what I wanted to do, but they didn't.

SI: Did you have an idea of what you wanted to specialize in law?

CH: I knew I wanted to be a litigator. Beyond that I didn't have a clear vision. No.

SI: Okay. So while you were in school, did you see yourself maybe being public defender or something like that?

CH: The job I got the first year out of law school, I was a public defender.

SI: Where were you working?

CH: Brooklyn. Brooklyn, New York.

SI: You graduated in '73?

CH: '72.

SI: '72.

CH: So the fall of '72 to the fall of '73, I was a public defender in Brooklyn.

SI: Okay. Can you tell me a little bit about that experience?

CH: That's a great job. That's an absolutely fabulous job. You are a hit at parties because you always have stories to tell about your clients, and you're in court all day every day, which is very exciting and fun. For someone who has the personality I have, it's a blast. I loved that job. I thought it was a great job.

SI: Can you maybe share a couple stories about cases that you had handled?

CH: I once represented a guy who was charged with stealing a car. We got him out on bail. We got another court appearance for him two weeks or three weeks later. When the time came for him to be in court on that day, he didn't have a way to get to court. So he stole a car to get to court, and parked in the judge's parking lot. You just had lots of those kinds of stories to tell. I once represented a guy who was out on bail for a murder, which was very, very unusual. You never got out on bail with an allegation of murder, and this guy was forty-five and overweight and looked like he was a member of the Soprano's crew. [Editor's note: Mr. Hansen is making an allusion to *The Sopranos*, an HBO television drama about an Italian-American organized crime family in New Jersey, which aired from 1999 to 2007.] He had a private lawyer, but his private lawyer wasn't--it was night court--and his private lawyer just wasn't showing up and wasn't showing up and wasn't showing up, and I went back in and said to the guy, "You know, you're out on bail on a murder. You're being accused now of another murder. There's no way I'm going to get you out tonight." He said to me in a sort of gravelly voice, "Kid, keep the bail under a million," and I went out and he got out on bail. I'm still convinced there were things going on in the room I didn't know about at the time. [laughter] Because it was unheard of for someone to get out on murder at all, and for two murders over two different times periods? Something was going on there.

SI: Wow. One of the things you often hear about public defender's offices is just how much of a caseload there is, that you have to do triage. Was that the case at the time?

CH: Yes. The year I spent there I was only in criminal court, which is the court in New York that deals with misdemeanors and early stages of felonies. But yes, the volume was very high, and we weren't assigned to cases. We were assigned to courtrooms, and so almost every case that came up you had no idea anything about the case until you opened the file thirty seconds before the case was called. We in fact went on strike that year to try and establish a system whereby lawyers got assigned to cases, not to courtrooms, successfully. But there were times when I'd deal with a hundred cases during the course of a day in a courtroom.

SI: Had you just planned to do a year or were you planning to move on?

CH: No. I was very happy there. This is the story of how I got to the ACLU. I had read a review in the *New York Times* of a book called *Prisoners of Psychiatry*, which was written by a New York Civil Liberties Union lawyer named Bruce Ennis, and I loved the book. I took a mental health law course at Chicago, which was one of the very few courses I actually liked at Chicago, and I thought the book was just amazing. I then discovered that his wife was a legal aid lawyer with me in Brooklyn, and I went up and told her that I loved the book and she should

tell her husband how much I loved the book. About a month later, she came to me and said, "He's looking to hire somebody." Do you have any interest?" And so I applied and got it. I've always said I think the reason I got the job was because I was very happy where I was and I did an interview without any real pressure. I wasn't feeling the pressure of, "Oh, I got to get this job. I got to get this job," because I would have been perfectly happy to stay at legal aid. But Bruce [Ennis] made me an offer, and you just can't pass up an offer at the ACLU--NYCLU at the time.

SI: Had you had any prior involvement with the ACLU or one of the chapters?

CH: No.

SI: So this was a mental health project at the New York [ACLU] affiliate?

CH: The New York affiliate in the late '60s hired Bruce to be the first mental health lawyer in the country, the first person doing test case litigation on behalf of mentally ill and mentally retarded people in the country, and the NYCLU had a mental health project for a number of years. In the very early '70s, the ACLU and two other organizations set up something called the Mental Health Law Project [MHLP]. The Mental Health Law Project then was a national organization devoted exclusively to doing test case litigation for people who were mentally ill and mentally retarded. Bruce became a "two-thirds/one-third" lawyer; I can't now remember whether he was two-thirds NYCLU and one-third MHLP, or the other way around. I was technically hired at the time to be an MHLP lawyer, to be essentially Bruce's associate in New York working for MHLP.

SI: Tell me about the first year or so on that job. What was the situation like? What were you doing?

CH: Well, the big case on the docket for almost the whole time I was part of that project, which was close to ten years, was Willowbrook [State School]. Willowbrook was a state institution for mentally retarded people on Staten Island. There were six thousand residents at Willowbrook when the institution was sued finally. Just before I arrived at the NYCLU, Bruce had sued Willowbrook, arguing that it was an inhumane place and that it needed to be both reformed and abolished, and in particular, transformed into a network of community-based residences, group homes and foster homes and so on. That case had already been started at the time I arrived at the NYCLU and I ended up spending, I would say, the most of my time for ten years on that case.

SI: I see that you're involved in this case, but what does that mean on a daily basis? Would you be going out collecting data or research or writing briefs?

CH: All of the above. A lot of the ACLU work is simply writing briefs. Willowbrook was not like that at all. Willowbrook was the antithesis of that. So we toured Willowbrook a lot. The first time I was at Willowbrook was Thanksgiving of 1973, so I'd only been working at the NYCLU a month at that point. It was literally Thanksgiving Day. I must have been to Willowbrook during the course of those ten years seventy-five or a hundred times at least, maybe more. So there was a lot of that, and every time you did a tour, you talked to as many people as you could. You talked to staff. You talked to residents. Some of the residents were capable of talking to you. You tried to figure out what was going wrong. We certainly did all the classic sort of discovery things that you do in lawsuits: interrogatories, requests for production of

documents, stuff like that. Then we had a trial. There was a preliminary injunction trial before I arrived. The final trial was in the fall of '74. So I participated in the trial. I was one of the lawyers who helped try that case. In 1975, Hugh Carey was elected governor of New York and Hugh Carey resolved to settle the case and so January, February of '75, we spent an enormous amount of time in settlement negotiations with the governor's budget director. We settled the case with a settlement that was signed in April of '75. Then from '75 until I left the NYCLU, we were trying to make the settlement actually mean something. The settlement was very detailed, very complicated, very elaborate, and not only required improving the institution but required creating all these alternatives to the institution. Just because you get a court order requiring [that] something happens doesn't mean it happens, and so you spend a lot of really, really interesting time trying to make it happen, and we did--I would say--maybe half a dozen to a dozen trials over the course of '75 to whenever it was I left, early '80s. Hundreds and hundreds of negotiations, and monitoring stuff. It was a nearly full-time job for most that time.

SI: Now when you would go there, particularly before the trial, did you have trouble doing what you needed to do? Were the administrators a hassle?

CH: We should have had that trouble; we did not. I don't know why the administrators let us come and go freely, but they did. I've never understood that, but they did.

SI: Can you describe what you saw there?

CH: Yes. You would walk into a room. It would be roughly the size of this room, and I don't know feet. I can't tell you--

SI: This is maybe twelve feet by twenty feet?

CH: Maybe. Your guess is as good [as mine]. [laughter]

SI: It's a standard conference room.

CH: I think it's a little bigger than that. Yes. You walk into a room that would be roughly this size, and in the room would be fifty individuals, depending on what kind of building you were going into, whether they were all men or all women or all children. There was nothing in the room except the individuals and one staff person and one chair up against the door, and a television that was on a platform about six feet above the air. That was literally all there was in the room. No other chairs for any of the residents. No toys, no games, no books, no nothing, and the television was on very loud. Only one staff person in the room. There was blood and feces and urine all over the floors and walls. The bathrooms were literally uninhabitable. They were so crusted with feces and urine and blood. Half, roughly, of the residents were naked; the other half were poorly clothed. The smell was awful, just dreadful. It was all of that feces and urine, combined with a little bit of cleaning solution on top of it. Often there were residents openly bleeding from wounds and not being attended to. When you walked into the room, if the residents were ambulatory--and they were in most of the wards, though not all the wards--residents would often mob you when you walked into the room, looking for hugs, so starved for affection that the sight of any human being on the ward that might potentially give them even the tiniest bit of affection would cause them to mob you and hug you hard. Lots of them. If you were in a men's ward, there were often men openly masturbating in the ward. In the children's

wards, the children were usually kept in a pen about half the size of this room that had a chest-high barrier. The staff was on the outside of the chest-high barrier; the fifty or sixty so children were on the inside of the barrier. Unattended, no toys, no nothing. One of my--I don't if favorite is the right word--but one of my most vivid anecdotes is we were touring one of the children's wards with the director of the facility, Bruce and I, and Bruce said to the director, "Why are there no toys in there for the children to play with?" The director said, "Well you know, Bruce, you're right," and he turned to one of the aides and he said to the aide, "Get me a toy," and the aide went off to a locked cabinet off to the side, unlocked the cabinet, took out one stuffed animal, relocked the cabinet, brought the stuffed animal over to the director, who then lobbed it over the chest-high barrier into the group of kids. There were non-ambulatory children's wards. The children in those wards were kept in what were called "cripple carts". A cripple cart is a five-foot-long wooden platform with small, less than a foot high things along the side to prevent people from rolling out. No mattresses, no padding of any kind. Roughly three feet wide. Two and sometimes three children were stacked in each cripple cart, sometimes one on top of each other. It was not a nice place, Willowbrook.

SI: Was raising public awareness of what was going on there part of your work?

CH: We certainly did that. You know Geraldo Rivera did an expose that helped precipitate some of the outrage. [Editor's note: Geraldo Rivera, born in 1943, is a reporter and television news personality, who in 1972 produced a Peabody Award-winning investigative report about the Willowbrook State School for WABC-TV in New York. The report was titled *Willowbrook: The Last Great Disgrace*.] I don't believe it had much of an impact, frankly. Bobby Kennedy did an expose--[a] very, very public and very well covered expose of Willowbrook in '68; nothing happened. [Editor's note: Senator Robert F. Kennedy (D-NY) toured the Willowbrook State School in September 1965 and provided dramatic testimony of what he had witnessed before the Joint Legislative Committee on Mental Retardation on September 9, 1965.] Geraldo [Rivera] did it in '72; nothing happened. My view is that the litigation was what caused the change, not the publicity. Still, when you do litigation of the kind we do at the ACLU, you try to get as much publicity as you can for what you're doing.

SI: That was how it was at the beginning when you were going there. By the early '80s, as you're trying to implement the settlement, did you see things getting better?

CH: Well we never though the institution was going to get much better, and it certainly got better. It got cleaner. There were a lot more staff. Finally, they started some day programs so that people could get off the ward and go do something during the day, and there were more activities even on the ward. The medical care certainly improved. But our goal essentially was to close the place and to get people into group homes, and that happened. It happened slowly, and it still hasn't completely finished. But it happened, and it happened more slowly than we would have liked, but still pretty quickly, and became a model for all of New York State and ultimately a model for the country.

SI: In terms of negotiating, were you negotiating with the state to get more funds?

CH: Post [the case]?

SI: Post the case.

CH: Post the case. No. Money was not the problem, primarily. When you do cases like that, where you're trying to change a large administrative agency through litigation, sometimes money is the problem but usually not. Usually the problem is either intransigence or incompetence or inattentiveness. With Willowbrook it was a little bit of all three, at least under [Governors] Nelson Rockefeller and--I've forgotten the name of his successor--Malcolm Wilson. [Editor's Note: Nelson Rockefeller won the gubernatorial election of New York in 1958, and was reelected three subsequent times, resigning three years into his fourth term in 1973 . Malcolm Wilson was Rockefeller's lieutenant governor from 1959 till 1973, and then served as governor until 1974. He lost the gubernatorial election in 1974 to Hugh Carey.] It was at least as much intransigence as anything else. Once Hugh Carey came in, that part dissipated, so then we had incompetence. Incompetence was the problem. So we set up structures to try and bring in essentially management consultants. We didn't call them that, and they were "M-R," mental retardation experts more than anything else, to try and get past the incompetence problem.

SI: What kind of effect did working so long on Willowbrook have on you?

CH: I'm not sure how to answer that. I mean it certainly set me on a path whereby twenty-five of the years I spent at the ACLU were doing that kind of litigation, that is, trying to transform executive branch agencies in a large comprehensive way through the use of litigation. That was probably the majority of my career. So in some sense it guided where my career was going a little bit. One of the disadvantages of working at the ACLU is that you are often very separated from your clients, or your clients are nominal at best. You don't really have clients. You are an issue organization, and often we go out and try and find the clients and the clients are just there because we need to have a client. Willowbrook was not like that all. Willowbrook invoked passion on all of us who worked on it every day. We were passionate about what we were doing.

SI: By the early '80s, did you want to move off of that?

CH: I was getting sick of that work by the early '80s, and there was a financial crisis brewing at the NYCLU. I had shifted on to the NYCLU staff at some point, when Bruce went up to the ACLU. So I was getting bored with that stuff, and I was sort of ready to move on, and then as I say, there was a financial crisis at the NYCLU and I was let go. So I got a job almost immediately, almost instantly, at the ACLU, working on *Brown v. Board of Education* for one year as a consultant and then moved on to staff.

SI: Before we leave the NYCLU, at the Mental Health Law Project did your staff grow? Did you the program growing or did it remain pretty much the same?

CH: Well, for a long time it was just Bruce and me. When Bruce left, I essentially became Bruce and we hired somebody to replace me, and then we ultimately hired two other people, one other lawyer and one mental retardation expert, to help on Willowbrook. So I guess at the height we were at four professional staff, but when the financial crisis came, three of us lost our jobs and the remaining person didn't last long either. So it pretty quickly collapsed. That project doesn't exist anymore. The Willowbrook case is still going on and it's still at the NYCLU, but the truth is it's not doing much.

SI: Now were you involved in any other aspects of the NYCLU's work?

CH: I did some of the other cases, although not a lot. I did a couple of First Amendment cases and I did some other stuff, but I can't now think what it was. The other case that sticks in my mind is whether you have First Amendment rights at private shopping malls, large giant private indoor shopping malls, which was my case. Oh, I did a case involving marital status discrimination, whether your landlord could kick you out if you brought in a co-tenant who you were not married to. So I did a few other cases at the NYCLU, but Willowbrook was by far was the central part of my career at that point.

SI: In general, did they have a sizeable legal staff at that point?

CH: When I started at the NYCLU in '73, it was the largest affiliate in the country. There were probably ten or twelve lawyers. When we all got let go in the early '80s, I think it went down to three or four, and it's built back up now, but it got pretty small for a while.

SI: At that time Ira Glasser was the Executive Director [of the NYCLU]?

CH: During the crisis, Ira had already left and had gone up to the ACLU. So no, Ira left in the real late '70s or real early '80s, and this crisis was in sort of '82 or '83 or '84. I can't quite remember when.

SI: Did you have much interaction with the leadership of the affiliate?

CH: It was sufficiently small that both when Ira was there and when his successor was there, you were in and out of their office every day, literally every day. We had almost no contact with the board, and which is also true here at the ACLU--some, but very little. But the Executive Director at the NYCLU was actively involved in everything.

SI: Do you recall who succeeded Ira Glasser?

CH: Dorothy Samuels.

SI: Would you say that both of them were supportive of your work?

CH: Yes.

SI: Okay.

CH: Ira, certainly, and Dorothy, yes until the crisis hit.

SI: Shifting over to going on the national staff and dealing with *Brown v. Board of Education*, that was another implementation case, right?

CH: Yes, sort of.

SI: The issue of school desegregation?

CH: Yes, sort of. The Supreme Court had declared in '54 and '55 that the Topeka public schools had to desegregate and Topeka didn't do anything except abolish the mandatory

requirement that black students attend those all-black schools, but there were still largely all-black schools and the white schools were still all largely white. In '79, a group of local black lawyers reopened the case to try and challenge the fact that this desegregation never completely had been accomplished, and it was assigned to a staff lawyer at the ACLU named Richard Larson. There came a point where Richard was overwhelmed and needed more help, and they asked me if I would come and take it over from Richard for that year when I was in consultancy job.

SI: What was involved there?

CH: Well first of all, I had to learn about school desegregation law, which I knew nothing about. I mean knew absolutely nothing about. I'd then spent ten years basically doing almost nothing but mental retardation, so I had to learn about desegregation law. Like the Willowbrook case, desegregation law is factually complicated. It turns largely on two big categories of information. One is faculty assignment. Where are faculty assigned? Are black faculty disproportionately assigned to black schools and white faculty disproportionately assigned to white schools, for example? And it turns on student assignment. To what extent do the schools differ from what you would expect them to be if the assignment patterns were random? Topeka is a very small town. If I remember right, there's something like twenty-five elementary schools. There's only three high schools, four or five or six middle schools, I can't quite remember. So we spent an enormous amount of time looking at the enrollment patterns. Then what we wanted to show was that the enrollment patterns--in both instances we thought the patterns showed remnants of segregation--we then took upon ourselves the burden of showing that the remnants of segregation were in fact remnants and not either new violations or coincidence or random things. So we looked at, for example, every single boundary change that the school had engaged in from 1955 until the time of the trial to see what kids got moved, what was the racial composition of the kids that got moved when the boundary was changed, what effect did it have on the sending school and what effect did it have on the receiving school. What about school transfers? If a kid was allowed to transfer from one school to another, what was the reason the student was allowed to transfer and how many were granted and how many were denied, and so on? So we spent an enormous amount of time looking at details like that and trying to figure out whether in fact the existing disproportionalities were still a remnant of 1955, and we ultimately concluded they were.

SI: Once that was decided, did you move to use some tactic like busing to remedy it?

CH: Well, we just had to have a trial. We had to convince the judge that we were right, and we lost in the district court and won in the court of appeals. Then after we won in the court of appeals, we had to have a second trial on "Okay, given the fact that the school district has not done enough, what are we going to do to remedy that situation?" So we had a second trial in which the issue was what's the remedy going to be.

SI: Were you mostly analyzing data in New York, or were you on the ground in Topeka often?

CH: Both. More in New York than in Topeka. You don't want to spend a lot of time in Topeka, and so I spent as little time in Topeka as I could. What you would do is get all the documents and have them shipped to New York and look at them here mostly. It's true, both in

Willowbrook and in *Brown*, we relied very, very heavily on experts, and so sometimes the experts had to do more site examination than I had to do.

SI: Now were you working through the affiliate out there?

CH: Yes, I was working with the affiliate; no, not much. The affiliate was only nominally involved.

SI: Okay. Did you encounter any hostility from any sector to what you were trying to do?

CH: Sure. I mean, nobody shot at me, and there have been ACLU lawyers who have been shot at over the years. The way citizens of Topeka seem to work is they're incredibly friendly and incredibly nice and it's masking what is some ugly underbellies, and so nobody was affirmatively rude to me, nobody was affirmatively nasty to me, but if you scratched the surface even a little bit, you could feel the hostility.

SI: So, at the end of that trial where you were determining what the remedy would be, what did you find there?

CH: The judge accepted the school district's remedy, which primarily involved magnet schools and so Topeka built a bunch of magnet schools.

SI: How long were you involved in that case?

CH: I started on that case when I left the NYCLU, so it must have been '83 or '84, some place in there. The case was basically over in the late '70s. You can't close one of those cases very quickly because you need to show not only the school district has accomplished the task but that it has maintained its accomplishment of the task. So it went on until, I think, mid '90s, something like that where the case was finally closed. Might have been even later than that, I don't remember for sure.

SI: I'm curious, working on this case in the '80s during the Reagan administration, did having a conservative administration in office affect your work at all?

CH: The short answer to that is no. With Willowbrook, the Justice Department was on our side and played a very, very significant and heavy role in Willowbrook. In *Brown*, DOJ played no role at all and the Executive Branch played no role at all. The courts were becoming more conservative and so there was a lot of anxiety about what would happen in the courts. I was never sure we were going to win, but if we won, everybody was panicked that it would go to the Supreme Court and the Supreme Court would reverse, which they might well have done, except I kept saying--and I think I turned out to be right--if they're going to change school desegregation law, they're not going to use *Brown* as the vehicle to do it. There are too many school desegregation cases that come to them. They can use something else as a vehicle. The symbolism of reversing school desegregation law in *Brown* was simply too overwhelming. It was politically not possible for the Supreme Court to do that, even if they wanted to.

SI: After your work there was complete or you had left the case, what was your next case?

CH: I was only that case exclusively for a year. I then was on it for a long time thereafter, but I was only on it for exclusively for a year. Then the next ten years I was the deputy director--associate director?--I've forgotten what my title was [laughter]--of the Children's Rights Project. At the time the ACLU had a Children's Rights Project. The focus of the Children's Rights Project was to sue child welfare agencies, agencies that take care of children who are abused and neglected or who investigate whether children are being abused or neglected and trying to reform those systems. Those systems are often as dysfunctional as the mental retardation system was in Willowbrook. It was a national project, not an affiliate project, so we did cases all over the country. So I spent ten years essentially trying to do what I had done with mental retardation, only this time with child welfare and to do it not just in one case, but in multiple cases all over the country.

SI: Kind of take me through that work. Did that involve bringing suits or more direct action with the agencies?

CH: No, it was a litigation project. I was a litigator my whole career at the ACLU. We did nothing but bring lawsuits. But like Willowbrook, bringing a lawsuit at some level is almost identical. It doesn't matter sort of whether it's children's rights or mental retardation. The process is essentially the same and similarly, the interesting part of the process is not winning the case. The interesting part of the process is implementing the case, is getting the court order and actually getting the state or the city or the county to make the changes that the order requires. Again, that's the challenge and it's the most interesting challenge and the most time-consuming challenge.

SI: Can you tell me a little bit about that work? Was there a particular case that springs to mind that kind of exemplifies what you would do?

CH: Well, I probably worked on a dozen, maybe fifteen cases, during the time I was there. There are three that sort of stand out in my mind, one of which I was the second or third lawyer on it for most of the time, which was a case called *Wilder v. Sugarman*. New York City at the time, distributed kids--New York City had a child welfare system that relied heavily on private agencies. They did not mostly run their own foster homes or their own group homes. They mostly relied on private agencies and contracted out with the private agencies to do that service. The private agencies were organized around religion, so there were Jewish agencies, there were Catholic agencies, and there were other--they were called Protestant, but if you weren't Catholic and you weren't Jewish, you were Protestant in the system. Kids were dealt out to the various agencies on the basis of religion. If you're going to do that, if you're going to do Judaism and Catholicism and everybody else in New York City, it's going to have a racial component. So black kids were mostly in the Protestant agencies and white kids were mostly in the Catholic and Jewish agencies. Catholic and Jewish agencies were a lot better than the Protestant agencies. So we essentially challenged that whole system of how you distribute kids and the quality of services the kids receive, but it had a race component and a religion component as well as a child welfare component. I did a second case in Kansas City, Missouri, which was a straightforward challenge to the adequacy of the care being provided to the kids who were investigated for possible custody and taken into custody in Kansas City. It went on the whole time I was there. And I did an interesting case in Louisville, Kentucky, involving kids not getting adopted promptly enough. The goal in child welfare is to make a decision as to whether you're going to

send the kid back home or whether you're going to get the kid freed for adoption and adopted. Agencies are not very good at making those decisions promptly and once they've made those decisions, they're not very good at implementing those decisions. Kids in Louisville were languishing. Even after a goal of adoption had been set, they were languishing in the process of trying to get the kids adopted and they were also languishing in the process of getting kids freed for adoption. So we sued in family court in Louisville to try and resolve that situation. That was the only case I was able to close while I was at [The] Children's Rights [Project]. We were successful in reforming the adoption system in Louisville.

SI: Tell me a little bit more about the system in New York and what you were able to change and what stayed the same?

CH: Well, I'm not sure we were able to change anything very much. We got a consent decree in the case. We settled it and it prohibited sending kids out exclusively on the basis of race and religion, and it required all the agencies with one minor exception to accept kids of all races and religions. That was moderately revolutionary at the time. Some of the Catholic agencies had begun to do that; the Jewish agencies had not. So there was some considerable ferment within the system. It was a case that was legally very complicated. It went back and forth and back and forth through the courts endlessly, and had successes and failures and successes and failures, and ultimately dribbled away almost into nothingness. I think we made some significant change in terms of the race and religion issues. I'm not sure we made any significant change in the quality of foster care issues.

SI: Was that case primarily brought because of poor care being delivered, or was it because it was religion and state mixing?

CH: I would say it was more race and religion than quality of care, but you can't separate those two. If in fact the Protestant agencies had been of equal quality to the Jewish and Catholic agencies, I'm not sure we would have brought the case. Jewish and Catholic agencies were pretty darn good by comparison with stuff elsewhere in the country. Protestant agencies were pretty darn bad by comparison. So it wasn't just that there was race and religion discrimination taking place, it was that it had a real significant negative impact on kids of color and kids who weren't Jewish or Catholic.

SI: Now in these other areas outside of New York City, did they have also a religious base?

CH: No. That's mostly unique to New York City. Some states they do the entire--the city or the state or the county provides all the services and they don't use private agencies, and some states and cities or counties, they use private agencies, but they're not religiously based for the most part. I keep saying states, cities and counties because some states are state-based systems and some states are county-based systems and some states are city-based systems. They vary fairly widely.

SI: Going to places like Missouri and Kentucky, were you able to see a clear institutional racism at work there in how African-American children were treated as opposed to Caucasians or others?

CH: I can't answer that with a yes or no. Foster care systems are very disproportionately black and Latino, particularly black. The might of the state comes down much more heavily on poor people than it does on rich people and much more heavily on black people than on white people. In every place you go, if you look at the percentage of kids who are in child welfare, the number of black kids is higher than it ought to be. In that sense, yes. It was however not a factor--the cases were not about race or religion; they were about trying to improve foster care services. Get a quick decision made as to what is going to happen to the kid and then implement the decision.

SI: Tell me about some of the difficulties with dealing with the agencies and how you would overcome them.

CH: Well, as I said before, it's exactly the same as with mental retardation. It's incompetence, intransigence and inattentiveness. The litigation always solves the inattentiveness problem, if you stick with it. The agencies don't always take the litigation seriously, but if you stick with it, they ultimately end up taking it seriously. It's usually incompetence, and again the solution often is to try and bring in experts. Sometimes it's inattentiveness. Louisville, it was inattentiveness, and once we made them pay attention, they were competent enough and they did solve the problem. It requires trying to figure out what the problem is and tailoring a solution to that problem according to how you diagnose it.

SI: You were there for about ten years working on those …

CH: I was at Children's Rights about ten years.

SI: Again, would you say that that project received its due attention from the organization and resources?

CH: Yes. One of the virtues of working at the ACLU is that lawyers never worry about money, at all, ever. You spend what you have to spend. Sometimes we consider money when we decide whether to take a case or not, but once you've taken a case, you do what you got to do. Whoever the executive director is--it was Ira [Glasser] for most of my time--it was his problem. I didn't worry about it and he never consulted me about it and I never consulted him about it. The issue just never came up. We had a lot less contact with the executive director at the ACLU, but largely because it's a much bigger organization. There were twenty or twenty-five lawyers at the national office at the ACLU when I started. There were a hundred when I left. So the separation between the staff lawyers and the executive director is wider than it was, for example, at the NYCLU or it was in the early years of the ACLU.

SI: So after you wrapped up your work with the Children's Project, what was next for you in your career?

CH: I went to what was called the national legal staff. At the time, the ACLU had three or four or five special projects: reproductive freedom, women's rights, children's rights. Seems like there was another one, but I can't think of what it was. Then it had something called the national legal staff, which was four or five lawyers who were not assigned to any subject matter area and who were free to essentially roam and do whatever they wanted to do, as long as it was a legitimate civil liberties issue. I moved on to the national legal staff, which is sort of where I

spent the next twenty years. The national legal staff in that form didn't continue all that whole time, but that was essentially the rest of my career.

SI: What was your first initiative that you got into there?

CH: Well, I still had a little bit of *Brown* left over, and so I was still working on *Brown.* The first big thing I did as part of the national legal staff, I wanted to do First Amendment stuff. So the first sort of big thing I did was a case involving what ought the free speech rules to be on the Internet. The Internet was just coming along. Nobody had ever sort of figured out what the rules were going to be for the Internet. It is the case in the law that there are fewer First Amendment protections for television and radio than there are for books and magazines. There are things that the government requires TV stations not to say and not to show. The government basically doesn't do that for books and magazines, and so we early on--as the Internet just began to be visible--we early on began to suspect that one of big First Amendment fights was going to be whether the Internet would have the same rules as TV and radio, or whether it would have the same rules as books and magazines. That's [an] incredibly crucial question. We didn't imagine the Internet was going to turn out to be what it did. But whatever it turned out to be, the question of whether the government could censor speech on the Internet we knew was going to be an important question. When there are new forms of communication, the government always tries to censor it immediately, and the government always tries to censor it around sex and always in the name of protecting children. So Congress very early on passed a law prohibiting speech that was harmful to minors. No--speech that was indecent on the Internet, which was the prohibition on TV, and that was and is the prohibition on speech on TV and radio. You can't engage in indecent speech on TV and the radio. So government passed a very similar law very early on to prohibit indecent speech on the Internet, and we knew that was going to be where the fight was going to be and we jumped into that fight as hard as we possibly could.

SI: You say you knew it but would you say it was a case of looking ahead or this has now come about and you reacted to it?

CH: No, it was clearly looking ahead. We clearly knew there was going to be a First Amendment fight over the Internet way in advance. To show how far we were looking ahead, we didn't have the Internet at the office when we started working on that case. I often tell the story when I tell the *ACLU v. Reno*--which is the name of the case--story to law students, I often tell a story that gets a huge laugh, which is we didn't have Internet access at the time, we didn't know what the Internet was, and so we flew down to Washington to see the Internet. When you say that sentence to most law students these days, they find it incomprehensible. "What do you mean you flew to Washington to see the Internet? The Internet's everywhere." But we did. We just knew that it was coming and we knew that sex was going to be the subject matter, and we were ready the minute Congress passed that [law]--Congress passed that law pretty quickly and we were ready the minute Congress passed that law--to sue. And did. We sued on the day the law was passed. We still just barely had Internet access at the time at the ACLU. I think we had email and we must have had some Internet access because we found our plaintiffs online. So we must have had some Internet access, but it was someone else in the office who was the expert at the time and not me. It was someone named Ann Beeson. I don't remember whether I was ever even on the Internet before we filed that case. One of the stories I tell--I feel like I have to leaven this with an occasional story--one of the stories I tell is we wanted the case [to] be called

"*ACLU v. Reno*" because we wanted the ACLU to get credit for protecting free speech on the Internet. You were asking about publicity before. It's [not] quite publicity, but it's sort of the same thing. The ACLU didn't have a website, and so we didn't have standing. We didn't have a right to bring a lawsuit complaining about censorship if we weren't being censored. So we quickly threw up a website, but we didn't have anything on our website that was even vaguely indecent. So we weren't really in any danger of being hurt as a result of the law. So we needed something indecent on the website in order to have standing, in order to have a right to bring the lawsuit. So the then associate director at the time, Barry Steinhardt, suggested that we put up the text of the George Carlin "Seven Dirty Words" monologue, where George Carlin does this very funny monologue about the seven dirtiest words in the English language, and that was the thing that got TV censored. [Editor's Note: George Carlin (1937-2008) was an influential stand-up comedian and iconoclastic social critic. A 1973 broadcast of Carlin's "Seven Dirty Words" comedy monologue on WBAI, a Pacifica Foundation FM radio station in New York City, triggered an FCC indecency censure, which was ultimately confirmed in a 1978 Supreme Court decision *FCC v. Pacifica Foundation.*] That was the thing the Supreme Court said was sufficiently indecent that it couldn't be put up on television. Now it's attached to the Supreme Court's opinion in that case, and so we put up the Supreme Court opinion with its attachment. So we knew that was indecent. On the other hand, it was attached to a Supreme Court opinion, so we weren't entirely clear. That seemed too highbrow, if you will, to put us at any risk of prosecution and we needed to be at some risk of prosecution in order to bring the case. So Barry suggested we hold a contest, and we asked people who came to our website to guess what the seven dirtiest words in the English language were and to put their guess on our website. We therefore quickly had a lot of words beyond those seven dirtiest words that we thought gave us standing.

SI: Can you tell me a little bit about preparing for that case? That went to the Supreme Court?

CH: It did go to the Supreme Court, yes. The law required that it be done before a special three-judge court consisting of two district court judges and one court of appeals judge. We sued in Philadelphia. We sued because Philadelphia had at the time a really, really good affiliate and a really good affiliate legal director, Stefan Presser, and we sued in Philadelphia because the Third Circuit was one of the strongest at the time First Amendment circuits. We thought we had the best chance of winning in the Third Circuit. And we sued in Philadelphia in part because it was convenient. It's a short train ride. We did a lot of discovery. It was a hurry-up kind of thing because the law was in effect and we were asking the judges to keep the law from going into effect. So that required you to speed up. We did some of the discovery. We did a fair amount of discovery, but it went very fast. When we tried the case in Philadelphia, there was a second case brought by a group called the Center for Democracy and Technology, and they were quickly consolidated into [our case]. Interestingly the lawyer who did it for that case was Bruce Ennis, who had been the person who hired me back at the NYCLU. So Bruce and I tried the case in Philadelphia. On the first day of the trial in Philadelphia, the court historian came into the courtroom and took our pictures while we were seated at counsel table. I thought that was pretty cool. None of the three judges on the court at the time we did the case had ever been on the Internet, didn't know what it was, didn't have a clue what it was. We brought someone in to the courtroom and set up a computer and showed them what the Internet was. We took them to websites so that they could see what a website looked like. We took them to chat rooms so that

they could see what a chat room [looked like]. We took them to very carefully selected chat rooms, although there were so many fewer chat rooms at the time it wasn't as big a problem as it would be today. We took them to some social media websites--what passed for social media sites at the time. There was a thing called The WELL, which was a social community in the San Francisco area. [Editor's Note: The WELL is one of the oldest "virtual" or online communities, and was created in 1985 as a dial-up bulletin board system by Stewart Brand, editor of the *Whole Earth Catalog*, and Larry Brilliant. The WELL is an acronym for "The Whole Earth 'Lectronic Link".] I think that was the only thing that was social media about the Internet at the time. We just gave them a little tour. We tried to figure out what subject matter the judges were interested in and we tried to take them to websites that we thought would suit their interests. One of the judges was interested in something--I want to say sailing, but I'm not sure--and we took them therefore to a sailing site, if it was sailing. I don't remember now for sure what it was. We had experts explain what was going on, and so we then had, I would guess, a two-week trial in Philadelphia on the nature of the Internet and the need to censor speech on the Internet. We also put on evidence about whether it was necessary to have a criminal law as the solution to the problem of children accessing porn on the Internet. There are other techniques, including filtering software. So we put on evidence about that.

SI: That was one phase of the move to keep censorship from affecting the Internet, but from what I understand, after that, the government tried a new tactic?

CH: Well, after we won in the trial and it went to the Supreme Court and we won in the Supreme Court and then the government passed another law because we won a little bit in the Supreme Court. We won, but they were hinting that there was a solution to the problem. Congress could pass a law, so Congress tried again and we went through another round of litigation in Philadelphia challenging the second law, which went back and forth to the Supreme Court twice and was ultimately successful.

SI: After the three-judge court in Philadelphia, then you went to the Supreme Court on the first law?

CH: Yes.

SI: Tell me about that trial.

CH: Well it's not a trial. It's an oral argument. What happens at the Supreme Court is you file briefs, [that is] file a written argument, and then each side gets a half hour in front of the Supreme Court to make the argument as to why they should win and then it's over. We won 7-2 in the Supreme Court. We won 7-2, but the two were as much on our side as not. So it went relatively smoothly. It wasn't a terribly complicated or even exciting argument. I'm told that none of the Supreme Court justices had been on the Internet at the time that argument took place, and I'm told--I don't know if it's true--but I'm told that a number of the justices went down to the basement and had their clerks show them what the internet was, either in preparation for the argument or in preparation for the decision. I don't know which.

SI: Were you a part of the team that presented in the [Supreme] Court?

CH: The short answer [is that] only one person argues from each side and Bruce argued for us.

SI: All right.

CH: I was there. I was at counsel table. Unlike a trial where you can have ten lawyers participate in some form or another, at the Supreme Court only one lawyer for each side gets to talk.

SI: Okay. Was that your first time at the Supreme Court?

CH: It was my first time at counsel table at the Supreme Court. I'd done briefs in the Supreme Court. I'd done amicus briefs in the Supreme Court. A lot of what the ACLU does is amicus briefs, and I'd done amicus briefs in the Supreme Court before, but I think it was the first case where I was counsel of record and was at counsel table. I'm trying to think. I've been at counsel table six times and I'm trying to think--one, two, three, four--I can't remember the other two. So maybe. I think yes, but I'm not sure.

SI: Afterwards, was there any kind of press conference?

CH: There was a very big press conference. I can't remember whether we were in this room or the old building. I think we were in the old building. It was the most well attended press conference I ever was at in my career. It was jam-packed, and it got front-page attention and network TV attention. We filed the case and it took us a year and half or two years to get to the Supreme Court and maybe even longer, I can't remember. By that time, everybody had been on the Internet, or at least a lot of people had been on the Internet. The consequences of the case were much clearer by the time the decision came down than they were when we brought the case in the first place. [It] got a lot of attention when we filed it, but the consequences were clear by the time it was decided.

SI: In working on this case, did you work with any other aspects of communities that worked on the Internet, like corporations or anything like that?

CH: Not the corporations, we were trying very hard to stay away from the corporations, and it didn't work that way in those years. There wasn't a Time Warner and a Verizon and a Comcast. None of those things basically existed in the way they do now. ISPs were very small. Internet service providers were very, very small--sometimes individuals and there were fifty thousand of them, as opposed to four of them or whatever there are now. So we didn't have anything to do with them and wouldn't have done it if we wanted to. The other case, the one that Bruce was involved in, they did have some corporate clients. I've now forgotten who. Microsoft maybe. I've now forgotten who exactly. We were co-counsel with other public interest-oriented groups, including Electronic Frontier Foundation [EFF], which fancies itself the ACLU of cyberspace; it's not. The ACLU is the ACLU of cyberspace. But EFF was co-counsel. CDT [Center for Democracy and Technology]--somebody else was co-counsel, not CDT because CDT was on Bruce's case. EPIC [Electronic Privacy Information Center] was co-counsel with us. All of our plaintiffs were website operators. Most of our plaintiffs were website operators, and many of them were sort of progressive kinds of people.

SI: How did you find them?

CH: Ann went out and found them. Ann Beeson, who I mentioned earlier, went out and found them. She went online. It's a very, very tricky process because what you're looking for is someone who is engaged in speech that might be considered indecent but is valuable enough that the justices want it protected. Finding that line is in fact incredibly hard, and Ann was incredibly successful at finding people on that line. For example, she found a website called "Stop Prison Rape," in which people who had been raped in prisons shared personal stories, often using street words to describe what acts had happened to them as opposed to clinical words. So there were some very graphic descriptions on that site. That's the one website that sticks in my mind at the moment. That's the kind of thing you're looking for, very explicit stuff about sex, but stuff that the justices would think was really valuable.

SI: Now, in the second case--

CH: It was essentially the same thing. The law was tweaked just slightly, but it was essentially the same thing, the same process. It got complicated a little bit, because it had to go to the Supreme Court a couple of times over what were essentially side issues, but it was essentially the same case.

SI: Aside from the issues of censorship on the Internet, what other issues did you delve into with the [national] legal staff?

CH: I was doing *Brown*, as I said, for a while. I did some education stuff. I did a case in Hartford, Connecticut, involving inadequate education being provided to kids in the city as opposed to the suburbs, which also had a racial component to it. I did a couple of education cases, trying to improve the quality of education in various places. Almost everything I did was either First Amendment-related or race-related, or racial justice-related. Nothing else is coming to mind immediately. That's interesting. I did a lot of other stuff, but nothing comes immediately to mind.

SI: Were these cases that you sought out or would they just say, "Well, you have this expertise, so will you take this case"?

CH: Sort of neither of those. It was my job to think up a case and bring it. I used to tell people I had the best job in the country, and I think I did. It was my job to look for an injustice, somewhere, anywhere in the country. I was unlimited by subject-matter area. I was unlimited by geography. All that I had to find was an injustice that was civil liberties-related, and it was my job to figure out a way to fix it. That was a pretty good job. [laughter]

SI: Let me pause for a second.

[Tape Paused]

CH: We're okay.

SI: All right. One of the focuses of this program is how the 9/11 attacks and its aftermath affected the ACLU. What do you remember about the acts themselves?

CH: I'll talk about that, but I just want to flag—I had one big case that we haven't talked about yet—very, very near the end of my career, so we can do it however you want.

SI: Was that the genetics case? [Editor's Note: The legal title name of the "genetics case" is *Association for Molecular Pathology v. Myriad Genetics, Inc.*]

CH: Yes, yes. Okay. So 9/11. So, I was here. I was in this office, which is only what six blocks, eight blocks from the World Trade Centers, the morning that the planes hit. I always got to the office early, and so I was one of the few [here]. There weren't that many of us here literally in the office at the time, because it was eight-thirty or nine or something like that in the morning. Some announcement came on, saying we were all supposed to get out of the building. I've forgotten how that worked. I thought, "Screw that. I'm not leaving the building," because they didn't say why. I went into somebody's office. It must have been Steve Shapiro's office and turned on the television, and saw the planes hitting and said to myself, "Oh, well maybe I should leave the building." [laughter] I went downstairs, and we all sort of milled about downstairs in the lobby and on the plaza in front of the lobby for fifteen, twenty minutes maybe? At that point, suddenly the air was filled with paper and dust. I mean, really filled with paper and dust, and we all said, "Well, this isn't good. We better leave." So we all began to walk north on the FDR Drive, which was at that point empty of cars. I can't remember why, but it was. I walked back to Grand Central [Station] and took the train home. We were out of the office for at least a week and maybe longer; I can't quite remember. For the first few days when we were back in the office, there was a police cordon up like Chambers Street or some place in that vicinity, where you had to go through and you had to explain why you were entitled to go to southern Manhattan. But there wasn't a terribly rigorous cordon. One of the things I remember is how odd it was. I was in the middle of a case, one of the free speech cases. So I had a lot of work to actually to do, and we were doing it with—it must have been the second one. It must have been the second Internet case, because we were doing it co-counsel with a law firm at Latham & Watkins, which has its offices at 55th [Street] and Lex [Lexington Avenue], something in that ballpark. So we went up and worked there for a while, and one of the striking things was how incredibly normal it was at 55th and Lex, and how incredibly abnormal it was at Chambers [Street] and Broadway. But we were back in relatively quickly and at that point, I don't think there was much more difference for us than there was for anybody else.

SI: Just in general, did you have a sense that this was going to have a big impact on civil liberties in this country?

CH: I didn't know right away that it was going to. Within a few months, the tide--the PATRIOT Act and all that--began to roll, and the ACLU jumped into the fight about the PATRIOT Act very quickly and promptly and correctly. It became clear pretty early on then that one of the big challenging issues of the next twenty years was going to be government overreaching in an effort to defeat terrorism.

SI: You were involved in the Internet free speech case at that time in 2001 and 2002. Were you in the mid-2000s still involved in those kinds of cases?

CH: I don't remember.

SI: Okay.

CH: I honestly don't remember.

SI: Did any of your work lean more towards dealing with the fallout from the PATRIOT Act?

CH: Yes, I did a little bit on that in the few years after that, but not much. Very quickly, we developed a special--there were lawyers who were hired and became specialists in that stuff and I was not one of those, and so other people mostly did that.

SI: You said when you joined the national legal staff that there were five or six lawyers. Did that grow? You said it changed organizationally.

CH: Well, it's changed organizationally a lot. I mean at one point--yes, at one point the national legal staff grew to twelve or fifteen, and at that point the decision was made to break it into groups and so the racial justice people were split off from everybody else, and the First Amendment people were split off from everybody else, and the national security people were split off from everybody else. Sort of like projects but not exactly. Then however many years ago the ACLU went to the center system whereby now everybody is in a project and there's no such thing as the national legal staff anymore, which I've often said is a huge mistake. Everybody is in a project, a specialized subject-matter area project, and then there are centers that conglomerate three or four of the specialty projects, and then it goes to the management.

SI: Do you say it's a mistake because of overspecialization?

CH: Yes. I think you need some generalists, both because I think the organization needs generalists. I think you see similarities across different subject matter areas if you are exposed to different subject matter areas that we talked earlier about how Willowbrook and the children's rights work was the same thing. I wouldn't have seen that if I hadn't worked on both of those things at the same time. I wouldn't have known how to deal with the children's [rights work]. I would have been starting over with children's rights if I hadn't understood implementation. But also because it's just more interesting for the lawyers, although I often say there are two kinds of people that come to the ACLU. There are people who come to the ACLU because they are passionate about a subject matter area, and there are people who come to the ACLU because they are passionate about civil liberties and can work on essentially any subject matter area. I'm one of the second. I'm one of those people that would have been perfectly happy working on any subject matter area, and I think the organization benefits from people like that as much as from the people who are passionate about immigrants' rights or gay rights or whatever.

SI: I kind of skipped over this. There was obviously a leadership change on the staff level around the time of the attacks, Ira Glasser retiring and Anthony Romero becoming the executive director. What are your thoughts on both as leaders?

CH: I'm a big fan of both, although I will say for the record Aryeh Neier was the hero of the ACLU. [Editor's Note: From 1993 till 2012, Aryeh Neier served as the first president of the Open Society Foundations, a philanthropic foundation established by George Soros.] Aryeh was Ira's immediate predecessor, and Aryeh is responsible for the modern ACLU as well as Human Rights Watch as well as Soros. Aryeh is the single most important person in civil liberties terms

in the world in my generation, in my lifetime. Ira, I love Ira. I think Ira was fantastic. I think he was incredibly good at his job. Aryeh is a visionary. Aryeh got the project system going. Aryeh got the project system set up. Ira kept it going. Aryeh was a terrible finance guy and was always just barely holding it together. Ira got the place running smoothly in a way that Aryeh with his vision wasn't as good at. But Ira also had vision, and Ira was maybe the single most articulate person on civil liberties issues. He was an incredibly good public spokesperson for civil liberties issues. I'm also a big fan of Anthony's. Anthony is tough as nails and firm as nails. It would have been really easy for him to come in and start compromising, particularly in light of 9/11, and there have been ACLU's that have compromised. We were shameful during the Japanese internment. We were shameful during the McCarthy era, and we could have easily been shameful again and we weren't. The credit for that largely belongs to Anthony, who was as strong and tough as you could possibly be.

SI: In terms of organizational culture, did you see many changes between Glasser and Romero?

CH: Yes, big changes. He doubled the size of the staff. He quadrupled or some such the size of the affiliates. The organization just exploded in size, just hugely exploded in size. The time when there were four lawyers who worked nationally on ACLU issues was long gone. He also hugely increased salaries for everybody on staff, which made a huge difference in terms of recruitment and retention. He maintained the quality and maintained the prestige of the organization. Whether the doubling in size has been worth doubling in size is not entirely clear to me. I think yes. We have become much, much more bureaucratic. It used to be if I needed a new pencil, I could just go down to the storage closet, take a pencil. Nothing works like that anymore, and it can't when you have this many employees. It just can't. We're much more managed than we were, which is, I think, a necessary consequence of the size. Those of us who didn't like being managed chafed under that a little. [laughter] But there's nothing you can do when you're this big.

SI: Now before we talk about the genetics case, outside of your work directly with the ACLU, were you also involved in other activities within the legal field or maybe in more general politics or social movements?

CH: No. The short answer to that is no. I taught a little. I taught one class back in the mid '70s, and I taught one class in the early 2010s, if that's a word. [laughter] Very, very, very late in my career, I was on a federal judicial committee, but mostly the answer to that is no. This was a fulltime job and a fulltime passion and plenty to keep me busy.

SI: In terms of working with students, what did you find most rewarding or what was the thing that you tried to get across to them?

CH: It depends on whether you're talking about the students I taught or the students who came to the ACLU. The students I taught I don't have any useful answer to that question. One of the things about the ACLU was we constantly have young lawyers coming in and students coming in, and at least in the later years of my career, that was one of the most fun things about the place. When I started, the model of the ACLU was we had professional secretaries, and they were called secretaries at the time. They came and stayed forever, and that has its benefits but it also has its drawbacks. We moved to a model where all of the assistants now are essentially

college graduates who are killing a year or two before they go off to law school, or in some instances, trying to decide whether to go off to law school or not. That brings an incredible energy to the organization, which I think is invaluable. I think it's so wonderful. The same is true of the young lawyers. I spent much more time as the years went by--I don't want to say supervising, although certainly supervising young lawyers, but sort of encouraging young lawyers and helping along young lawyers as much as I could. I loved doing that. I thought that was just enormously fun.

SI: Is "gene patenting" the right term?

CH: Yes.

SI: That case dealt with whether you could have a patent on genes for cancer research?

CH: It dealt with the question of whether you can have a patent on a human gene.

SI: Tell me how you got involved in that case.

CH: The ACLU at the time had a person who was fulltime who was called a science advisor [named] Tania Simoncelli. Tania's job was to find cutting-edge issues of science that had civil liberties implications. That's a wonderful job, but a very hard job, because then, if she found an issue, she then had to find somebody on staff that she could sell the issue to and make it go somewhere. The combination of those two tasks is really hard, and she was incredibly good at it. She came to me one day and said there are patents on human genes and I said, "You don't really mean that. What you mean is there are patents on the methodology by which we look at human genes, right?" She goes, "No, there are patents on the genes themselves," and I said, "Well that's just wrong. Let's sue somebody," and we then spent--Tania and I together, spent two years trying to figure out whether my commonsense kneejerk reaction was right or wrong. When we had that conversation I knew nothing about genetics and I knew nothing about patent law, but it seemed vividly wrong to me that a piece of the human body could be patented. So, as I say, we spent all this time trying to figure out whether I was right or wrong. We read a lot. We talked to a lot of people. We traveled all over the country talking to experts and others about what to do, and finally decided to sue. We, after considerable investigation, settled on suing over patents held by a company called Myriad Genetics, which are patents on genes that if you had mutations in those genes, certain mutations in those genes, you have an increased risk of breast or ovarian cancer. Myriad owned those patents and Myriad as a result would not allow you to be tested to determine whether you had one of the harmful mutations or not unless you were tested by Myriad. Myriad did in some instances a really terrible job and in other instances, artificially inflated the price and was a bad corporate citizen, would not share information with the scientific community about what mutations were in fact harmful and what weren't. So Myriad was a bad corporate citizen, which was one of the reasons we picked them. The other reason we picked them was it was breast cancer, and it was our view that everyone understood breast cancer, that it was a way of making the issue understandable. The other likely candidate was a series of mutations, a series of genes mutations, which correlated with an increased risk of Long QT syndrome, which is a terribly devastating medical condition, but nobody knows what it is, and mostly including me. If we'd done the Long QT syndrome case, I think the case would not have had the impact it had. But everybody understands breast cancer. There's literally no one who

hasn't been touched by breast cancer in some form or another, or is at least scared of being touched by breast cancer. So Myriad was the obvious choice for both of those reasons and we decided to sue Myriad to try and invalidate the patents it had on human genes.

SI: Well tell me about that case and how it developed.

CH: The first step in any of these kinds of cases is to figure out who the plaintiffs are. We solicited and ultimately were successful in getting four national organizations of physicians to allow us to represent them. Very courageous thing for those organizations to do. Most people thought we were going to lose this case and most people thought the issue was tired because the patents had been granted ten or fifteen years earlier and everybody had thought the fight was all over. So it was very courageous. We got six physicians, all of whom were nationally recognized expert geneticists. We got two genetic counselors and six individual women who had or were at risk of having breast cancer, genetically based breast cancer. We brought the lawsuit--it was very hard to get plaintiffs. Most of our doctors were university-affiliated doctors, and their universities really didn't want us to represent them. In several instances, the universities forbid the doctors or the genetic counselors from doing it, and they had to go to the president of the university to get permission. We were soundly mocked for bringing women as plaintiffs, because in classic patent law terms, women have no standing, no interest in patents, even involving breast cancer. The fight in patent law is a corporation who wants to invade the patent versus the corporation who holds the patent, and the citizens who are affected by the patent are deemed irrelevant. So we filed the lawsuit. We filed it in New York. Oh, we had to develop a legal theory. Once we had the plaintiff and the defendant we had to have a legal theory. There's a longstanding rule of patent law that you can't patent a product of nature or a law of nature, and we thought genes were both. We spent an enormous amount of time trying to understand patents, the patents that Myriad had. Patents are seventy-page, single-spaced, double-columned documents that are really, really boring and filled with incomprehensible jargon, sometimes science jargon and sometimes patent jargon. We spent weeks sitting at a table with some geneticists and some patent lawyers and us trying to figure out what they meant, and what the patents actually purported to cover. We filed in New York. We filed in New York because we wanted a court that would be sophisticated enough that it would understand the issue. We didn't want a court that would be swayed by local interest in a biotech company. We didn't want northern Cal [California], for example, because everybody in northern Cal is a venture capitalist or a biotech person. We thought the courts would be too sympathetic. We got assigned to it the best judge we could ever possibly get assigned to it by sheer coincidence. By equally sheer coincidence, he had a Ph.D. geneticist as his law clerk, and the case went forward. We were ultimately successful in the district court. We lost in the court of appeals. We went to the Supreme Court. The Supreme Court decided something in the interim that was relevant, sent it back to the court of appeals for reconsideration. The court of appeals held to its prior decision. Again we lost in the court of appeals. Then we went to the Supreme Court and we won. Nine zip.

SI: Did you present the oral argument?

CH: I did. Yes.

SI: What's that experience like?

CH: Well I've done it twice. It's one of those career cap moments. Everybody who's a litigator thinks that's about the coolest thing you can possibly do, and it is just about the coolest thing you can possibly do, because you are playing for the highest possible stakes in the highest possible setting with the most attention on you and the case. The stakes are just enormous, which at some level is very scary because the entire world changes or doesn't change, depending upon how the case goes. On the other hand, if you're someone like me who likes litigation and likes arguing, that's a dream. That's the most wonderful thing that can possibly happen. The Supreme Court is an interesting place to argue in. The room was filled with major, major, major players. The head of NIH [National Institutes of Health] was there. The head of CDC [Centers for Disease Control and Prevention] was there. James Watson, of Watson and Crick, was there. The room was crammed with powerful and influential geneticists and physicians and patent lawyers. The way the Supreme Court room is set up, the justices are not that high off the ground when you're standing at the podium. The justices are not that high off the ground and they're not that far away, which is a little unusual. In a lot of courts of appeals they're very far away and very high up. The Supreme Court's not that way, but there are nine of them, and so they are sort of arrayed in not quite a semicircle but a curve in front of you and you can't see all nine of them with one glance and they ask a lot of questions. One of the advantages of them being that close is that it becomes conversational, which is the way you want an oral argument to be. You want oral argument to be conversational. That's how you persuade people, is by having a conversation with them. You don't persuade people by: "Oh, please, oh grand exalted one. Let me supplicate you." It just doesn't work. You want to get into a conversation, and if you can get into a conversation, you want it to be a conversation among ten equals--the nine of them and you all having a conversation about what's right and wrong. The setup lends itself to that. They ask lots of questions. You rarely get more than two or three sentences out before the questions come, and then the rest of the time is used up basically just answering questions. Some of the questions are smart. Some of the questions are dumb. Some of the questions are not real questions; they are debaters' points, along the lines of, "Isn't it true your argument is wrong because--?" kinds of questions. Or "Isn't it true your argument is right because--?" You get friendly questions as well as hostile questions, but that give and take is what oral argument in the Supreme Court is about and that's the fun part. My favorite anecdote--since I'll tell another anecdote or two--my favorite anecdote about that argument was not while I was arguing, but while my opponent was arguing. Essentially, we were arguing that the gene is part of the human body and is therefore not patentable because it's a product of nature. Justice [Elena] Kagan said to my opponent, "I understand that you believe that a gene is patentable. Is that correct?" He said, "Yes." It's an isolated gene. Their argument was it's an isolated gene that got taken out of the body, and what makes it no longer a product of nature is that it's different when it's outside your body than it is while it's inside your body. So we had made the argument that that was a principle that didn't know any boundaries. So Justice Kagan said, "Okay. If a gene is patentable, is an entire chromosome patentable?" A gene is a piece of the longer string of DNA called a chromosome, and that's hard because there are fewer of those and there's a lot less manipulation that takes place if you took an entire chromosome out of the body. But the logic of his position requires him to say yes to that, and then she used the example we had used in our brief. She said if they take a kidney out of the body, is the kidney patentable? Again, the logic of his position required him to say yes. He tried very hard to duck the question. He waltzed all around the question for minutes and she would not let him get away with avoiding the question. She finally made him

answer and he said, "Yes, a kidney is patentable," and I thought that was the moment when I felt really good about the way things were going. I thought if she bought--if they all thought that the consequence of ruling against me was to make kidneys patentable I was in pretty good shape, and I was.

SI: That case was argued in 2013, or do I have the date wrong?

CH: It sounds right. Maybe 2012. I can't remember. No, it would have been [2013]. It was early 2013. I retired in 2012, and the argument was after I retired, so it would have been early 2013 [with] the decision then in June of 2013. [Mr. Hansen argued for the plaintiffs in *Association for Molecular Pathology v. Myriad Genetics, Inc.*, before the Supreme Court on April 15, 2013.]

SI: Okay. Was that your last case with the ACLU?

CH: Yes.

SI: Why did you decide to retire?

CH: It was time. I turned sixty-five. It was time. I'd done it forty years. It was time. In part, I was just ready to go. In part, I was discouraged because it's harder and harder to win cases. We used to win all the time when I started at the ACLU and we now win less than half the time. The courts have gotten much worse and they throw up many, many more impediments to victory and many more impediments to even getting to the merits. Part of it, I was just discouraged.

SI: Why is that?

CH: Because the conservative justices have made it harder to win civil rights cases. There's been a concerted effort on behalf of conservative legal scholars and conservative presidents to appoint justices that make it harder, and lower court judges that make it harder to win civil rights cases.

SI: One final question.

CH: Your timing is just about perfect.

SI: Oh, good. You mentioned earlier how going between different subject areas you could see connections between the Willowbrook case and the child welfare cases later. When you got into the Internet free speech cases and the genetics cases, were you building on things that you had learned in earlier parts of your career?

CH: Yes and no. The issue of how you implement a piece of complex litigation decision--the Willowbrook issue and the children's rights issue--basically never popped up again, with one exception, with the exception of *Sheff*, the Hartford education case that I had worked on. [Editor's Note: Mr. Hansen is referring to the education discrimination case *Sheff v. O'Neill*, which was argued before the Connecticut Supreme Court in 1996.] But one of the other things I thought I had learned most over those first twenty years was the importance of facts. I think you win cases on facts. I don't think you win cases on law. I think if you can present the facts in a compelling way, if you can tell a compelling story, you're going to win. The judge is going to

find a way to let you win. There's almost no situation where the law forecloses the judge from ruling for you or against you, so the goal is to make the judge want to rule for you. If you can make him want to rule for you or her, you can in fact win, or at least you normally can win. So learning that lesson, that facts are what matter, was what caused me, for example, in the Internet censorship cases, to insist that we go to trial, that we not do what is called summary judgment, which is I'll just submit a bunch of written arguments and you guys decide it. I thought it was critical that we try that case and that we put on facts and I tried wherever possible to try my cases, not to do papers cases. A huge percentage of the ACLU's cases are done on papers, just on written argument, which I've always thought was a mistake. I always thought we would be winning even more of our cases if we were doing them with trials. Now it's become harder and harder to get to trial because the courts shut you down too early, but if you can get to trial, that's in fact I think always the goal. That was why we tried those two cases, and we tried them several times, but that's why we did trials and so in that sense, yes, it informed it. The gene patent case, I wanted to try, but for a variety of reasons we didn't have time to try it. The patents were starting to run out and for other reasons we needed to educate the judge early on so we didn't lose the very earliest stage. So we did summary judgement in that case. I second-guess that decision all the time, because although we won nine-zero in the Supreme Court, we lost on cDNA, a separate sort of form of DNA, and I think we could have won cDNA if we'd had a trial. [Editor's Note: "cDNA" refers to complementary DNA, which is a form of DNA that is mechanically synthesized in a lab from messenger RNA.] In fact, I'm sure we would have won on cDNA if we'd had a trial. So I second-guess that decision all the time. It was sort of an anomaly for me. It was a conscious decision. I knew I was going against my instincts, and I thought I had good reason and I still think I had good reason to go against my instincts. But I did.

SI: Is there anything that we skipped over, anything that you want to mention for the record?

CH: Well there is one other story that I tell all the time, which I have to tell, because the record ought to reflect this because it's such a good story. It's a Willowbrook story. I told you the new governor came in and assigned his budget director to negotiate with us a settlement, and we proposed a settlement that was seventy-five pages long on legal-sized paper and double-spaced. We negotiated for about two months, and at the end of the two months it was seventy-four pages, legal-sized [and] double-spaced. The budget director came to us and said, "I can't go to the governor and tell him I negotiated for two months and knocked half a page or a page out of this seventy-five page settlement. You got to give me something. Would you single-space it?" So we single-spaced it and it was about thirty-five pages, and I am convinced that the budget director went to [Governor] Hugh Carey and said, "I got it cut in half, Governor. So we can go ahead and sign it now, because I really knocked about half of it out." [laughter] I'm totally convinced that's what happened. [laughter] Peter [Goldmark], the then budget director, has never told me that for sure, but I'm convinced that's what happened. It's just such a delightful story, I can't resist telling it. [laughter]

SI: All right. Thank you very much. I appreciate all of your time. I might have some follow-up questions.

CH: That's fine.

SI: Thank you. I really appreciate this.

CH: Good.

----------END OF INTERVIEW----------

Reviewed by Molly Graham 8/17/2015