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AN INTERVIEW WITH ARYEH NEIER
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Shaun Illingworth: This begins the second interview session with Aryeh Neier for the ACLU Oral History Project within the Rutgers Oral History Archives on March 2nd, 2015, in New York, New York. Thank you again for having me. Last time we left off talking about the Vietnam War's impact on the ACLU and its operations. You were fairly new in your position as the executive director, and you were in the midst of this ongoing war. One of the things that I wanted to follow up on from last time was [that] you were talking about a strategy, I believe Burt Newhouse --

Aryeh Neier: Burt Neuborne.

SI: --Burt Neuborne, and Leonard Freidman came up with.

AN: Leon Friedman.

SI: Leon Friedman, sorry. So you talked a little bit about it, how it was a little bit divisive within the board. Could you elaborate on that, and also how you thought of their strategy for declaring the war unconstitutional, I believe?

AN: The ACLU had defended a large number of people who objected to the war, but it had not challenged the constitutionality of the war itself. They began--that is, Burt Neuborne and Leon Friedman began to evolve plans for challenging the war itself. The argument was, essentially, that the constitution reserves the power to go to war to the Congress of the United States. The Congress had never officially declared war, and therefore the president was acting unconstitutionally in going to war. I was, on the one hand, somewhat skeptical of this approach. On the other hand, I sympathized with their efforts. First, these were among the best attorneys that we had. Burt Neuborne was a particularly outstanding litigator, and was subsequently appointed as the national legal director of the ACLU, so his own standing within the organization had an impact on me in persuading me to go along with what they did. But I was skeptical--not about the argument that there was a violation of the constitution--I was skeptical more from the standpoint of whether it was appropriate or possible for the courts to rule on such a question. The war power was almost inherently a political issue, and I thought it might be too great a reach for the courts to try to intervene, and such. But I permitted the effort to go forward, and they did engage in litigation to try to challenge the constitutionality of the war. Ultimately, I don't think the litigation had any substantial impact; there was never really a moment when there was a restraint upon the exercise of the war power as a consequence of the litigation, even though there were moments when it appeared that the courts were imposing some kinds of limits. I think the litigation may have had a modest value in terms of promoting the adoption of the War Powers Act, in which Congress purports to limit the power of the president, although since the enactment of the War Powers Act it hasn't seemed to exercise a significant restraint. You might say that President Obama's present-day effort to get congressional authorization for the war against ISIS does reflect some kind of legacy from the dispute in that era over the War Powers Act. I think that's probably the strongest case that one could make for some kind of impact of that effort.

SI: So it sounds like, from what you said, they came up with this strategy and brought it to you and you said you would support it.

AN: I went along with it.

SI: Is that how a lot of initiatives came about? Was it bottom-up?

AN: Yes. Initiatives arose in different ways; they could have emanated from me as the executive director, they could have emanated from the board of directors of the organization or from individual members of the board of directors who pushed certain approaches, they could have emanated from individuals within the organization--attorneys on the staff--or very often they could have emanated from particular state affiliates. Wherever they started, there would have been a need for the other constituent bodies of the organization to deal with them in some fashion. No one was really able to go off on their own in pursuing a particular approach or a particular strategy, but this certainly emanated from the attorneys who were directly involved.

SI: When you first became the executive director, maybe that first year or so, what do you recall as being the things that you really wanted to accomplish?

AN: I became the executive director of the ACLU after the organization had undergone a difficult period, a period of a certain amount of demoralization. What had happened is that my predecessor as the national executive director, John Pemberton, had performed well during his first several years as the national executive director, and then I would say that in his final two years as the national executive director, he had undergone a personal collapse and there had been a very substantial impact on the organization. His family life collapsed during that period, and personally he did not exercise significant leadership that final two years. So when I became the executive director, a lot of good people had left the national staff of the ACLU, a number of people who were not high-quality performers had been put into significant positions. I had observed this at close hand having been the executive director of the New York Civil Liberties Union, and I had a fairly clear idea of the changes that I wanted to make. So there was a fairly wholesale shift in the staff within the first weeks that I became executive director; I let go a number of people and brought on new people. Also, I set about seeking foundation support to launch a series of special projects. I had done that at the New York Civil Liberties Union. The national ACLU had not been as advanced as the New York Civil Liberties Union in taking advantage of the establishment of a tax-deductible entity capable of receiving foundation grants, and I went after a number of foundation grants very systematically and launched a number of significant projects. So I created a women's rights project, and was fortunate enough to hire Ruth Bader Ginsburg to direct that project. I created a prison project, and that became a very large operation with foundation support undertaking extensive litigation around the country to deal with prison conditions and various restrictions involving inmates. I launched a number of other specialized projects for which I sought foundation funds; I also focused on a certain number of issues which were important during that period. Political surveillance was a major issue at that time because of the great number of protests against the Vietnam War; the federal government and local police departments around the country

had engaged in systematic efforts to collect information on people who were taking part in various protests, so political surveillance became another of the issues that I focused on during that period. So it was a very energetic period, it was a period in which I was trying to deal with a range of issues across a wide spectrum and trying, almost overnight, to transform the organization.

SI: Well you brought up two projects I wanted to talk about: the prison project and the women's project.

AN: Yes.

SI: Looking back, it seems obvious that there would be a women's rights project at this time, but how did it come about? Was it as much of an obvious development as we now think of it? Were there people who were against it?

AN: I don't think it was as obvious as it became, but there was significant support within the organization for the project. First, there had been a couple of members of the ACLU board, who had been longtime members--they preceded my association with the organization. One was a former New York judge, a woman named Dorothy Kenyon, and another was an African-American woman named Pauli Murray. The two of them had been a kind of women's rights caucus on the ACLU board as long as anybody could remember, and had always wanted the organization to get more deeply involved in women's rights matters. Then during the period that I had been the executive director of the New York Civil Liberties Union, I had also gotten involved in a number of women's rights matters. They're matters that almost seem foolish today. For example, there used to be a requirement that those who were called--today we refer to "flight attendants," [but] in those days one referred to "airline stewardesses"--and they had been required to stop serving as stewardesses when they turned thirty-two or when they got married. In effect, they were meant to be flying sex objects at the time. We had brought suit in the New York Civil Liberties Union on behalf of a group of these airline stewardesses to challenge those rules. The case was mooted when they were able, in labor negotiations, to win the right to keep working after they were thirty-two years old or after they got married. Or there were cases involving girls at secondary schools and the question of athletics for girls at secondary schools. I remember one case involving a young woman, a high school student, who was an excellent tennis player, but there was no girl's tennis team at the school, there was only a boy's tennis team. She wanted to compete for that, and we brought a suit in her behalf. There were these things which today seem almost ridiculous, but nevertheless we brought those suits. So I wanted to undertake a women's rights project. It was also, of course, the period in which a significant feminist movement was being born. There had been a feminist movement in the late nineteenth century and then leading up to the point of women's suffrage in the United States in 1920, but that feminist movement had disappeared, and then the rebirth of the feminist movement in the late 1960s contributed to the atmosphere in which I sought to create a women's rights project. When I proposed this to the ACLU board, I got essentially an enthusiastic reaction led by the two longtime

champions of women's rights on the ACLU board, but others also provided support. So within the organization there was no difficulty in creating a women's rights project.

SI: Can you tell me about what went into setting it up?

AN: Well I needed to do, essentially, two things--that is, find an appropriate leader for it, and secondly, find the financing for it. As far as the appropriate leader was concerned, I simply began asking around, "Who is there who is doing work in this area?" A couple of people mentioned to me that there was a lawyer who had brought a couple of women's rights cases on behalf of the New Jersey affiliate of the ACLU. She was a law professor at Rutgers at the time, and I asked to meet her. That was Ruth Bader Ginsberg. About the same moment, all of the major law schools in the country were suddenly deciding they needed a woman on the law faculty, and so there got to be a bidding war for the women who were identified as the top law faculty people. Both Harvard and Columbia were among the law schools that made offers to Ruth Bader Ginsberg. She wanted to accept such an offer, [but] she wasn't interested in Harvard because her husband was a partner at a law firm in New York, and it was much more convenient for her to be in New York than to be elsewhere. She had been commuting from New York City to Rutgers up to that point, so she was very interested in the Columbia offer. The Columbia dean was somebody who had been active in the ACLU--a man named Mike Sovern had been the dean of the law school at Columbia--so we were able to work out an arrangement where Ruth would be two-thirds on the staff of the ACLU directing the women's rights project, one-third on the staff of Columbia Law School, and she would engage her students at Columbia Law School as her assistants in the litigation she would pursue on behalf of the ACLU on women's rights. So that worked out very well. Then, as far as the financing was concerned, I was generally using that period to obtain foundation funding that the ACLU had not had previously--in part because it never really had a tax-deductible entity previously. I was having difficulty at the Ford Foundation; McGeorge Bundy, who was president of the Ford Foundation, on one occasion lectured me about my going on television [and] speaking on behalf of people who were opposed to the war in Vietnam, and told me all the damage I was doing to the country by protecting these draft resisters. McGeorge Bundy was not interested in funding for the ACLU, but Ford wanted to get involved in women's rights. They turned down the various other proposals that I submitted to them, but the staff there had to recognize that Ruth was going to do the most significant litigation on behalf of women's rights and they wanted to get involved in that. So the Ford Foundation staff recommended an arrangement whereby Ford would contribute to the ACLU project, but it would require that none of the funds should be expended on abortion litigation. I was unhappy about that, [but] at the same time it was my opportunity to make a breakthrough at Ford and I didn't want to turn down the grant. I agreed to the restriction, and then simultaneously created a separate reproductive freedom project which I got financed elsewhere--principally from John D. Rockefeller III, and from other funds that he raised for us from other wealthy individuals. I think there was a sort of serendipitous aspect to that, because it kept Ruth Ginsburg away from any of the abortion litigation. It meant that others undertook the abortion litigation, and I think that ultimately she may never have been able to get confirmed as a justice of the

U.S. Supreme Court if she had handled the abortion litigation. It probably ultimately allowed her confirmation, but at the time I wasn't pleased about having to create two separate projects--a reproductive freedom project and a women's rights project--but I was able to do that. Then, an officer of the Carnegie Corporation also was persuaded to support the women's rights project. I was able to argue that in the period that had taken place at that point, that women's rights litigation played a significant role in equality efforts generally, and that the effort to promote racial equality was doing badly at that point in the early 1970s whereas the women's rights effort was catching fire and it was helping to establish principles of equality. You might say, for instance, today, that gay rights litigation is the pathbreaker for other equality litigation. Women's rights litigation played that role in the early 1970s. The officer of the Carnegie Corporation, a man named Eli Evans, was persuaded by that and on that basis we got support from the Carnegie Corporation for the women's rights project as well, and so Ford and Carnegie became the principal funders of the women's rights project.

SI: So once you have somebody leading the project and you have the funding, do you step away as the executive director or do you play an active role?

AN: No, you work very closely. I was immensely interested in the strategy that Ruth Bader Ginsburg was developing, and talked it through with her extensively and felt that she was very much on the right track.

SI: Okay. Now going to the prisons project, how did that come about?

AN: Okay. It came about because two attorneys, both of them active in the ACLU in different places, got involved in prisoners' rights litigation in the late 1960s. One of them was a law professor at the State University of New York in Buffalo; his name was Herman Schwartz. He was active in the Buffalo chapter of the ACLU, but the State University of New York at Buffalo is not very far away--it's about thirty miles away from Attica Prison--and Herman took an interest in what was taking place in Attica Prison, and he became well known to the inmates of Attica Prison. At a certain point when I was director of the New York Civil Liberties Union, Herman had called me and said he thought he would be able to establish an office within Attica Prison as part of his effort to represent prisoners there. I should say that some of the early prison litigation involved prisoners who had become Muslims--that was the period of the Black Muslim movement within the United States -- and they complained about a diet that included quite a lot of pork, and they wanted a non-pork diet. They sought to observe other aspects of being a Muslim in prison: worship services, and the like. Then they began raising other issues that involved prisoners, and Herman began bringing cases in federal court on behalf of prisoners of Attica. In the same period, an attorney in Virginia named Phil Hirschkop also became involved in prisoner litigation. Hirschkop had been significant in a number of important civil rights cases; he was the attorney in Virginia who brought, on behalf of the ACLU, a case called "Loving" to the U.S. Supreme Court involving interracial marriage, and he'd handled a number of significant rights cases. [Editor's note: *Loving v. Virginia* was a 1967 civil rights case brought by Mildred and Richard Loving, an interracial couple who were sentenced to a year

in prison in Virginia for marrying one another, in which the Supreme Court ruled that laws banning interracial marriage were invalid.] Those two lawyers individually were pursuing prisoners' rights cases. I had worked closely with Herman when I was at the New York Civil Liberties Union, and I was aware of Phil Hirschkop's comparable efforts in Virginia. After I became the director of the ACLU, I brought the two of them together and we agreed that we would try to establish a national prison project. They would be associated with it as members of its board, and they would continue each to conduct litigation--Herman as a law professor [and] Phil as an attorney in private practice--but there would also be a staff. The ACLU had, in 1964, when I was on the national staff of the ACLU, created a project dealing with the Freedom Summer in Mississippi and other parts of the South called the Lawyers Constitutional Defense Committee. One of the attorneys who had volunteered to go to Mississippi in connection with the Lawyers Constitutional Defense Committee had stayed in the South continuing to handle civil rights litigation, and had eventually formed a law firm in New Orleans in which he would engage in private practice but also would devote much of his time to civil rights litigation. This was a lawyer named Al Bronstein. I knew that the law firm he had formed in New Orleans was not doing very well financially; it was mostly involved in pro-bono civil rights cases, and he basically couldn't make a living out of the relatively few commercial cases that he was engaged in. So I knew Al Bronstein as a very good litigator, and proposed to Herman and to Phil that we bring him on to direct this prison project. I persuaded Al to relocate from New Orleans to Washington D.C. to put together the prison project. So Herman became the chairman of the prison project, Phil became a member of its board, and essentially that was where the project came from. It grew out of the activities of those two lawyers.

SI: Okay. Where were you able to find funding for that?

AN: I had a lot of difficulty with the funding for that; I had not been able to get the Ford Foundation to support the prison project. The very first funding, the very first modest contribution, came from the Playboy Foundation. The reason the Playboy Foundation was interested in it, there were two reasons. One was that prisoners very often wanted to get Playboy, and in general the prisons prohibited Playboy. It was censorship by the prison authorities. So there were a couple of cases when Playboy had subsidized litigation dealing with the right of a prisoner to get Playboy in prison, so they got interested in prisoners' rights out of that. The Playboy Foundation was not a tax-deductible foundation, it was a business expense of the magazine. But the other factor is [that] I had a friend in Chicago--his name was Burt Joseph--and Burt had been active in the Illinois ACLU. Burt called me shortly after I became the director of the ACLU and he congratulated me on my appointment, and he said, "By the way, I have a new job." I said, "What's your job?" He said he would stay in private practice, but he would also serve as chair of the Playboy Foundation. So we then worked together. The Playboy Foundation didn't give away a great deal of money, but I would say about twenty percent of the money that it did give away came to various projects at the ACLU through Burt Joseph. Burt had a particular relationship to Hugh Hefner, who created the magazine, and to Hugh Hefner's daughter, Christie Hefner, who became president of the magazine. That is, Christie Hefner was

raised by her mother when her mother was divorced from Hugh Hefner. At the age of eighteen, when she reached adulthood, she moved from her mother's home to her father's home. Her father Hugh Hefner, as the publisher of Playboy, had no idea what to do with an eighteen year old daughter. So the attorney who had represented the magazine a number of times was Burt Joseph, and Hefner asked Burt and his wife whether they would, in effect, become sort of substitute parents for Christie--whether they would, in fact, raise her. She would essentially live with them rather than live with him. She did live with them, and I got to know her still as a teenager, still eighteen years old or nineteen years old, when she was living with the Josephs. She also become committed to the ACLU through the Josephs, and she also then became an officer of the Playboy Foundation, and that was also a factor in the Playboy Foundation's support. But they gave the very first grant for the prison project, but then we got much larger support, something called the Edna McConnell Clark Foundation--which is still a substantial foundation, it grows out of Avon Beauty Projects--became the major supporter. Then at a certain point, when I ran into difficulty financially with the prison project, the foundation that bailed me out was something called the Grant Foundation, which came out of a firm called W.T. Grant, which many years ago used to operate five and ten-cent stores around the United States. So those became the two major supporters of the national prison project.

SI: It's interesting, this relationship with the Playboy Foundation. Aside from the prison project, were they mostly supporting free speech-related issues?

AN: Yes.

SI: Now, you're starting these projects, and it sounds like they started pretty early in your tenure.

AN: Yes.

SI: But then of course there's these other issues of national significance that come up. One that has been discussed often in these interviews is the move to impeach President Nixon; can you talk a little bit about your reaction to that?

AN: Sure. I was not a leader of that effort; I was a follower rather than a leader. I initially had doubts about the ACLU involvement on that, because the ACLU had a long tradition of not taking stands on candidates for elective office or candidates for appointive office. It wanted to be non-political, and I was concerned that this would put us over into a political category. The affiliate of the ACLU that led the way in pushing impeachment was the Southern California affiliate of the ACLU. This became an issue in the national board of directors as a result of the efforts of the Southern California affiliate. Eventually, I was persuaded and shifted sides and became a supporter of ACLU involvement in the impeachment effort. In my own thinking about it, I analogized it to our involvement in police abuse matters, where we had sought the establish[ment] of mechanisms such as a civilian complaint review board to deal with complaints of abuse by the police. Ultimately it came to seem to me that impeachment was the analogue of this so far as the President of the United States was concerned; that is, it was the constitutionally prescribed mechanism

for dealing with high crimes and misdemeanors. There were very significant abuses of civil liberties that were committed by Richard Nixon, and as I say, ultimately I became a supporter but I was not a supporter at the beginning. I was slow to move in that direction. By the time the matter came for a vote within the ACLU board, I was a supporter, but not at a significantly earlier stage.

SI: By that time, by the time it got to a board vote, were most members that you had contact with for the effort to impeach him?

AN: Yes. I don't remember the size of the vote at the ACLU board meeting, but it was a divided issue. It was an issue where a significant number of board members felt that it was politicizing the organization, and opposed involvement in the impeachment effort on those grounds, but a majority favored impeachment. But I think a fair number of those who formed the majority were in the same position that I was--that they were initially skeptical, initially resistant, and then ultimately were persuaded to support impeachment.

SI: Did you sense any consequences to this decision? You mentioned earlier how McGeorge Bundy had denied funds based on [similar issues]. One wasn't even a political move, of defending dissenters of the Vietnam War. Was there any fallout from the Nixon [controversy]?

AN: I would say the only fallout was in the other direction; that is, it was a very popular thing to do, and it brought us a significant influx of money and members. There was an aspect to the timing that was fortuitous. We had the board decision to support impeachment, and we decided to publish a full page advertisement in the *New York Times* calling for impeachment. We placed that advertisement in the "Week in Review" section for a particular Sunday. We would have submitted the material for the advertisement a few days before the advertisement appeared; we had an advertising agency, a big advertising agency of that period that was close to us--Doyle Dane Birnbach--work on the ad, and I had written much of the text of the ad. I signed the ad along with the chairman of the ACLU. Fortuitously, that appeared on the Sunday in the *New York Times* after what was known as the "Saturday Night Massacre." The Saturday Night Massacre was the occasion when Nixon wanted to fire Archibald Cox as the special prosecutor dealing with Watergate. [Editor's note: The Watergate scandal was a political scandal precipitated by a break-in at the Watergate Hotel in 1972; the subsequent investigation ultimately revealed a series of civil liberties infringements carried out under the Nixon administration, which ultimately led to the president's resignation.] His Attorney General, Elliot Richardson, had declined to fire Cox. The Deputy Attorney General -- I'm blocking on his name--also declined to fire Archibald Cox. Nixon fired both Richardson and the Deputy Attorney General [William Ruckelshaus], and then the highest level official in the Justice Department after them was the Solicitor General, who was Robert Bork at the time, and Bork agreed to fire Archibald Cox. So Richardson, the deputy attorney general, and Cox had all been fired on that Saturday night, and the firing of the three of them was the Saturday Night Massacre. Basically, the country exploded against Nixon over those firings and it meant that the advertisement got far more attention. The advertisement included a request for funds to

pay for publication of similar advertisements in other newspapers, so we were deluged by funds of that sort. The result was we published that advertisement many times over and published additional advertisements, and did it all on the basis of the funds that came in from the advertisements. My recollection is we ultimately published 165 full-page advertisements in newspapers around the United States based on the funding of the advertisements in response to the advertisements. Of course, all those people then became ready targets for other involvement in the ACLU, so it produced a surge of membership and surge of funding for the organization. It was as popular as anything that we had ever done, and there was no significant backlash against it.

SI: So that was a high point for membership and fundraising?

AN: Yes.

SI: Can you tell me a little bit about the fundraising apparatus, as it existed then? It sounds like you did a lot of foundational fundraising.

AN: It was not much of a fundraising apparatus--essentially, I did the foundation fundraising. There was a period in which I employed first one person and then another person as an assistant dealing with foundations, but I never had more than one person at a time assisting me with respect to foundation fundraising. Foundation fundraising involves meetings with foundation personnel, involves drawing up proposals, it involves submitting reports on various projects, and generally keeping in touch with the donors with respect to the foundation. So I did that with one assistant helping me at different periods. Then as far as the other fundraising was concerned, that was basically membership fundraising, and we had a membership department that circulated materials and so forth. We had very little of a fundraising apparatus. It got to be much larger after my tenure.

SI: Now in this period, was there also still competition between the affiliates and the national organization over fundraising?

AN: There was always a certain amount of strain between the affiliates and the national office. The strain involved the mechanisms by which we shared contributions. There was, in those days, something that we used to refer to as "primary membership responsibility," and we used the initials P-M-R. You heard the initials PMR over and over again in the ACLU in those days. Certain large affiliates had primary membership responsibility; that meant that they did the main work of staying in touch with the member and soliciting the contributions, and they remitted a portion to the national office. For the rest of the affiliates, for the great majority of them, the national office had primary membership responsibility. It did the service work and it remitted a portion [of the contributions]. The formula in those days was whoever had primary membership responsibility took the first \$2.50 off the top for the cost of maintaining that responsibility, whether it was the affiliate or the national office that maintained it. Then the rest of the money was shared sixty percent to the affiliate, forty percent to the national office. But then foundation funds tended to be given on an earmarked basis, and so if they were given on an earmarked basis, whoever received the foundation funds had to use them solely for the purpose for which the donor earmarked

them. They couldn't be shared in that fashion. The system always leant itself to dispute of one sort or another.

SI: As the executive director, what was your view of the affiliates and what their role should be in the organization?

AN: The affiliates were the strength of the organization; that is, wherever in the country a civil liberties issue arose, there were people locally ready to deal with the issue--to provide legal representation, to engage in advocacy, to deal with the state legislature, to deal with local government, state government, whoever was necessary. So if there was a problem with a library in Portland, Oregon, you knew that the Oregon affiliate would be engaged in that effort. You could count on that. You couldn't do anything of that sort from a national office in New York. At the same time, if you were going to have a coordinated legal strategy to move an issue forward, then you basically have to do it through a national project. If you were going to do what Ruth Ginsburg did in the women's rights area, which was to plan a legal strategy that would make incremental headway in the U.S. Supreme Court, that couldn't be done through the disparate efforts of a great number of affiliates. It had to involve something centrally directed by the national organization. So we tried to do both: we tried to be, on the one hand, a service organization dealing with local issues as they arose, and at the same time, a strategic organization addressing important strategic issues with a coordinated strategy.

SI: I thought I turned this off. Sorry about that. Let me just pause this.

[TAPE PAUSED]

SI: Well, another major issue that came up during your tenure towards the last few years of your time with the ACLU was the defense of the right of Nazis to march in Skokie.

[Editor's note: *National Socialist Party of America v. Village of Skokie* was a famous case in 1977 regarding the right to free speech, in which an ACLU lawyer named Burton Joseph successfully defended the right of members of the National Socialist Party of America--formerly the American Nazi Party--to march through Skokie, Illinois, which had a large Jewish population.]

AN: Yes.

SI: How did that come about? When did it become a major issue on your radar?

AN: Right, well first you have to recall that the ACLU had been involved in many cases involving free speech for American groups describing themselves as Nazis. The most prominent individual who was a self-described American Nazi had been a fellow named George Lincoln Rockwell, and the ACLU had handled a number of cases involving Rockwell, and I had personally dealt with Rockwell a number of times and arranged representation for him. We took these cases in stride; they were routine, as far as the ACLU was concerned. In 1977, when the Skokie case arose, the Illinois ACLU initially regarded it as so routine that they never informed the national office about it. It didn't arise at Skokie in the first instance. There had been this little group of Nazis in the Chicago area

who wanted to hold demonstrations in a part of Chicago known as Marquette Park, and Marquette Park essentially divided a neighborhood that was predominantly Eastern European immigrant from an essentially black neighborhood. There was racial tension in the Marquette Park area between those groups, and the little group of American Nazis wanted to exploit that tension and hold demonstrations in Marquette Park. They had been denied permission to do so, and the Illinois ACLU represented them in dealing with Marquette Park. At a point when they were enjoined from holding demonstrations in Marquette Park, they were eager to do something to capture attention, and so the Nazi group sent letters to a number of Chicago suburbs saying that they wanted to hold demonstrations in those suburbs. About a dozen Chicago suburbs ignored those letters, but one of the Chicago suburbs, the village of Skokie--it was still called a village, even though it was substantially larger--sent back a letter in effect saying, "Don't you dare." Skokie then also enacted a series of ordinances to prohibit the Nazi march, so having received the "don't you dare" letter, the Nazis, not knowing anything about Skokie beforehand, focused on Skokie as the place where they wanted to hold the demonstration. So quite routinely they went to the Illinois ACLU and asked for representation dealing with that, challenging the ordinances, as the Illinois ACLU had represented them on the Marquette Park matter. The Illinois ACLU said "yes," and the case exploded because then everybody discovered that Skokie was home to an unusually large number of Holocaust survivors; there were supposedly about seven hundred Holocaust survivors in Skokie. We only found out about it in the national office when we started getting press calls about Skokie, and then we were in touch with the Illinois ACLU and learned more about the case. So that's how the case got started.

SI: So it had obviously began with PR issues, but it sounds like you would have taken the case anyway.

AN: The ACLU gets a huge number of cases. In general, the practice was always to take free speech cases. We didn't take every other case that came to us; other cases often involved significant questions of resources. If you're asked to deal with, let's say a school desegregation case, there's a huge amount of effort you have to engage in--an immense amount of fact-finding and testimony--and a school desegregation case can occupy a staff for a substantial period. By and large, free speech cases were very different. They were very easy; that is, there was some prohibition on speech, you raised the constitutional issue. There wasn't a big factual question--you didn't have to put on a lot of testimony, gather a lot of evidence, do a lot of research. It was simply an issue on the face of it and a court could very quickly decide whether some limitation on speech was constitutional or not constitutional. So let's say somebody went around with a loudspeaker in a residential neighborhood on something, and they hadn't gotten a permit in advance for a loudspeaker. Well, it was constitutional to say that if they're going to use a loudspeaker in a residential neighborhood, let's say after 10pm at night, that isn't something that you can just say is free speech because it will disturb a significant number of people and there's no real restriction on somebody's opportunity to express their point of view. But if the expression of the point of view is denied on the basis of the content of the point of view, that's a free

speech issue. They're simple cases. So we took all the free speech cases, [but] we didn't necessarily take every other case that came along. We were more selective in other areas, but free speech cases, we took them all.

SI: How did the Skokie issue build from there, where you first started getting calls from the press?

AN: Well, then the case started getting national publicity, and there were various denunciations of the ACLU for defending free speech for Nazis and especially doing it in an area where there would be the Holocaust survivors. That became the focus of a lot of the press attention, and we started getting letters from people who said they were members and they were resigning as a result of this. We got many hundreds of letters of that sort. When we checked, a lot of the people who said they were resigning had never been members in the first place. Some of them, of course, were members of the ACLU, [and] it was clear there was going to be some financial impact.

SI: Do you think there was an inflation of the numbers reported in the media?

AN: The media often didn't differentiate between the people who claimed to be members and said they were resigning, and those who were actual members. So it looked worse in the media than it actually was.

SI: How would you describe the impact of Skokie on the organization?

AN: I think it had an exaggerated impact in the following respect--[an] exaggerated financial impact. This was 1977. Jimmy Carter had become president in January, 1977. I mentioned earlier that the ACLU had had a significant influx of members during the impeachment effort against Richard Nixon; in fact, the Nixon period generally had produced a very substantial influx of members. Many people were very worried about Nixon's violations of civil liberties, and it's unfortunately the case that adversity is very good for cause organizations. If there's a real threat to civil liberties, or people perceive a real threat, they will join the ACLU. There was no period in my lifetime in which the perception of a threat was as great--well, no, maybe not quite right--maybe going back to McCarthy. But after McCarthy, there was no period in which the perception of a threat to civil liberties was as great as during the Nixon period. When Nixon resigned and Gerald Ford became President, the transformation in civil liberties was immense. I remember the week after Ford became president, I was at a meeting in the White House and I remember reflecting at the time that I had never been inside the White House during the Nixon period, but things were completely changed when Gerald Ford became president. Gerald Ford appointed Ed Levi as his Attorney General, and Ed Levi was a civil libertarian. The Ford appointee to the U.S. Supreme Court was John Paul Stevens, chosen by Ed Levi, also very much a civil libertarian as he demonstrated in his many years on the U.S. Supreme Court. By and large, the public did not appreciate how great the shift was from Nixon to Gerald Ford, and I think the main reason for that was Ford's pardon of Nixon. By pardoning Nixon, Ford created the impression nationally that he was a continuation of Nixon. He was not a continuation of Nixon; civil liberties were much better off. But the public knew when

Jimmy Carter came in that Carter was nothing like Nixon, and so the perception of a threat to civil liberties of the Nixon era did not continue. I think a significant number of those people who had joined the ACLU during the Nixon era didn't feel a great obligation to stick with the ACLU during the Carter period when they thought the threat to civil liberties was ended. So I think we had a falloff in membership renewals just because broadly the country didn't think there was such a great threat to civil liberties. Now, all this coincided with Skokie, and so I think a general falloff in contributions was probably more attributable to the general atmosphere. Yes, there were people who resigned over Skokie and people who didn't renew their membership over Skokie, but I think it got inflated by the fact that it was part of the general shift within the country. There's no way to measure that; this is simply my impression of the situation. So I think we were hurt somewhat financially by the Skokie thing, but it wasn't a significant part of the financial problem as it appeared to the general public.

SI: I just have one last question for this session.

AN: Sure.

SI: What led to your decision to leave the ACLU in, I believe it was '78?

AN: '78. I had started working for the ACLU in 1963--it was fifteen years. It's a very demanding position, and I was very tired, and I would say that I had made a mistake by not establishing a more effective or a broader fundraising apparatus. I was in a position where I was doing most of the work to get the foundation grants for the organization, and I really was exhausted by the constant need to chase that foundation funding and to do everything else that was required as director of the ACLU. So I wanted a period to regenerate, to get my wind back, and so I was looking for an opportunity to step down. I delayed that because of Skokie. I didn't want it to appear that I was resigning in the middle of the Skokie matter, so the Skokie matter essentially took a period of about fifteen months, and after the Skokie matter was over I announced my resignation.

SI: Thank you very much. I appreciate it. I might need follow up on this, but I'll be in touch with you.

AN: Great.

SI: Thank you so much.

AN: Okay, [you're welcome.]

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Reviewed by Molly Graham 5/27/2015

Reviewed by Aryeh Neier 6/5/2015