

RUTGERS, THE STATE UNIVERSITY OF NEW JERSEY
NEW BRUNSWICK

AN INTERVIEW WITH STEPHEN PEVAR
FOR THE
RUTGERS ORAL HISTORY ARCHIVES

INTERVIEW CONDUCTED BY
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Molly Graham: This is an oral history interview with Stephen Pevar. The interview is taking place in West Hartford, Connecticut, on November 9, 2015. The interviewer is Molly Graham. Let's just start at the beginning with when and where you were born.

Stephen Pevar: Brooklyn, New York, November 29, 1946.

MG: You have a birthday coming up.

SP: I do.

MG: Did you grow up in Brooklyn?

SP: No, I grew up in New York. I lived for one year in Brooklyn. My parents were living with my mother's mother. Then we moved to Levittown and lived there until I was about seven or eight, and then to Springfield, Massachusetts, and finally Connecticut.

MG: Can you tell me a little about your parents, their family background, and what they did for a living?

SP: Neither of my parents went to college. My father was born literally nine months after my grandmother, his mother, arrived from Russia. My grandfather had come here some years earlier and earned enough money to have his family move to New York. My father had three older brothers who were born in Russia, and he was the first of the children who were born here in the United States. I know less about my mother's side of the family. They're from England. Both of them were Jewish, and they met in Brooklyn and got married. They got married just before World War II, and my father immediately left for the war. They didn't see each other for about four years, and he was in Europe a good part of the time. He has confided a number of things--how different he was by the time he came back, similar to many other men. Then they started having a family, and there were three of us. I'm the oldest.

MG: What were your father's family's reasons for immigrating to the United States?

SP: Well, this was in a bleak period in Russia when Jews were being persecuted. My grandfather left first and went to Argentina, then came to the United States. They just wanted to get out of a very dangerous situation. Finally, they were all able to come. Again, I don't know as much about my mother's side of the family.

MG: Did your father ever tell you anything about his service during World War II?

SP: Yes. Fortunately, he was never on the frontline. He was in a mechanics' pool and helped either build tanks or armaments. He did arrive in Normandy, but it was at least a week after the landing. He was several days behind and would help repair armaments that would then go to the frontline, but he wound up staying in France for almost a year.

MG: Your parents met before the war. Were they able to stay in touch?

SP: Oh, yes. Yes, they did. It's too bad. I don't know where those letters are. Anyway, yes, they did. They were very much in love. They got married very shortly before my dad left.

MG: How did your mother spend the war years?

SP: She was involved in a number of war efforts and making clothes--typical with many army wives. She helped in various areas but lived in New York with her parents.

MG: How did your parents meet?

SP: I think they met at a party in Brooklyn.

MG: What did they do for a living?

SP: My dad had a couple of different jobs. Around the time that I was born, he was a salesman primarily, his first real good job. That's how we moved to Levittown, Long Island; he was a salesman for a Chevrolet car dealership and sold Chevys for a number of years. Then he got the job that he had until he retired, which was selling neckties. The largest necktie company in the world was Wembley Neckties, and he had Connecticut, Rhode Island, and a portion of Massachusetts. This was a day when there were men's stores, and they sold fashion neckties. My dad was one of the regional salespeople. My mother was a secretary and worked for the chancellor of the University of Hartford when we moved to Connecticut and was an executive secretary. She took shorthand. She was incredibly fast typist and was an excellent secretary.

MG: Was your father's work or life affected at all by the Depression?

SP: Well, he was born in 1920. During the Depression, he'd be in the teenage years. The entire family, of course, was affected by the Depression, but he would have been a teenager then. When World War II started, I guess he would have been twenty-one, twenty-two, and that's when he went into service.

MG: Do you any memories of living in Brooklyn?

SP: I certainly have memories of growing up in Levittown. I was one in Brooklyn, and then we moved to Levittown. I had a wonderful childhood, a very loving family. Four years after I was born, my next brother Peter was born, and then six years after that, my brother Jeff was born. We had a great family life. We never had a lot of money, but I just have the nicest memories of my childhood.

MG: Can you share some of those memories with me? What stands out to you?

SP: I guess the first thing that came to my mind is both my parents learned how to play golf, and as soon as my father made some disposable money, we joined a golfing club that had a swimming pool and hiking trails and an eighteen-hole golf course. We went there most weekends. I took up golf also and became a decent golfer. I was on my high school golf team and won a tournament when I was fourteen. All of us just spent weekends at this country club. Not the most fashionable, but it was certainly a wonderful opportunity for a teenager to go to this club. I also learned how to swim and swim pretty fast at this country club.

MG: Can you tell me about the schools you attended?

SP: I attended public schools, starting out at Levittown, and when we moved to Springfield. We finally moved to Connecticut when I was in the sixth-grade. I have great memories of school, the typical situations of both dating, and being shot down and having friends. Because I was on the golf team and active in sports, I hung out with a lot of the "jocks," not that I was in the football/basketball jock situation. It was an elite group, and I wasn't quite there, but I just fit in well. I was voted vice-president or something like that. Looking back on it, I had a charmed life growing up.

MG: Was your family politically-minded at all?

SP: They weren't. No, they weren't. For example, the job that I had right out of law school was with Legal Aid on the Rosebud Sioux Indian Reservation, starting out at twelve thousand dollars a year. I had just graduated from Princeton and then the University of Virginia. My credentials were impeccable. I turned down a job offer paying me five times what I was going to earn. My dad said, "Well, I respect you for doing that, but it is not the choice I would have made for myself and not the choice I would have made for you if I could have." He explained that he came from a Depression-era situation where you try to earn as much as you could. You never knew what would happen. His family was really destitute in Russia. Remind me where--?

MG: I had asked whether your parents were politically-minded.

SP: Yes, yes. Right. So my dad, although he was a Democrat--and both my parents were Democrats--was more conservative. For example, I distinctly recall, during the '60s, when the peace movement began and the peace symbol [emerged], that I had a discussion with my father because he felt that having risked his life in World War II and had a number of friends killed in the war, for people to be anti-war, to demonstrate, he didn't like that. Likewise, later on, when I represented the Ku Klux Klan with the ACLU [American Civil Liberties Union] in a case, there again, he said, "Well, I respect you, but I could never do that. Not what they did to us and not what they did to other people." Anyway, he tended to be more conservative. My mother was similar, although she was enormously sensitive. She didn't tend to look at political issues but more personal issues, how it affected people on the ground floor. But neither one of them were politically active.

MG: I am curious about what went into your decision to turn down the higher paying job. And did you participate in the anti-war movement?

SP: A number of people have asked me that, and I've asked myself that. The only way I could say it is that it never occurred to me to do anything else. Why does a bird fly? It was just what I was born to do. In the second year of law school, in order to earn some money, I signed up with a prestigious firm in New York City and earned--I couldn't believe how much money they were paying us. [It was] more money than I had ever seen or had. At the end of that, I'd go back to school, and a couple of months later, I'd get an offer from that law firm. It probably took me twenty more years before I earned as much as they had offered me that day. I didn't even give it a thought. Some of the cases that they had me work on had zero interest to me. I didn't want to use whatever talents I did have for that end. I immediately started looking into legal aid opportunities for public interest work. So, for as long as I could remember, that is what I wanted to do. When I took constitutional law, which was a required course in your first year of law school, I immediately knew that that's what I wanted to do.

At Princeton, my senior year, I took a course called International Law. I went up to the professor afterward, and I just said, "This is just so fascinating. Where are the best law schools for international law?" He gave me a list of five, and those are the only schools I applied to. I got into a couple of them, including the University of Virginia, which had an excellent international law program. I never took an international law course the entire time I was there. I took constitutional law, which was required. I immediately realized it wasn't international law that intrigued me; it was law, and in particular, constitutional law. So I just wanted to work in the area of civil liberties.

MG: Before that point, where you took that international law class in college, had you thought you would study law?

SP: My mother's answer to that question would be that she knew I would be a lawyer at the age of two. She would tell people that. I don't think I really gave it that much thought until maybe senior year that I started thinking of it. Here's another ironic situation. I graduated in 1964 [from] high school. So that's before really the Vietnam War got going. I started at the University of Connecticut, where I attended my first two years and then transferred to Princeton. I was very fortunate. I did very well at UConn and transferred to Princeton. Anyway, I was intrigued by flying, and I signed up for Air Force ROTC [Reserve Officer Training Corps]. You have to make a commitment in your junior year, whether you sign on or not. If you do, then you go to a summer camp, and you become a second lieutenant when you graduate college. I wanted to be a pilot. So now I did think about, "Well, if I wanted to go to law, I could be in the Judge Advocate General, JAG," but I was really a late bloomer. I wasn't very politically interested either. I wasn't really an activist until I went to law school. So law school wasn't a passion. In fact, if anything, someone would think that I would be going to the military service.

Well, my life really did change in my senior year at Princeton when I started meeting some people who were very politically active. Then, in law school, in particular, I continued that. When I graduated, I was indeed a first lieutenant in the Air Force. I was a commissioned officer. While I was at law school, I was promoted to a first lieutenant. So here I am, an officer in the Air Force while the Vietnam War is going on. I'm realizing that this is just terrible. Now I start

examining more who I am and what I want in life and life in general. I do some more reading and meeting with people, and I realize that I am a conscientious objector. So I apply for CO status. It was difficult enough to be a CO if you're of draft age and trying to get out of the draft. It was very difficult to be discharged from the Air Force as an officer, as a CO. They really put me through the wringer. I had interviews and psychological testing. I had to go to Andrews Air Force Base and be interviewed there by a doctor or psychiatrist [and] someone from the Judge Advocate General's office in order to demonstrate my sincerity. Finally, I was discharged as a conscientious objector from the Air Force.

MG: Do you remember what year that was?

SP: Yes. It was 1971, the year I graduated.

MG: Can you talk a little more about that process? What were you learning? How were you forming these ideas?

SP: Yes. The Vietnam War and the prospect of going into the Air Force, even though I likely would never have seen battle, but just being in the Air Force and participating, not just in this war, which I found abhorrent but in war. I started reading some books. One is, I think it's called, *Honest to God*. Anyway, there were several books I read at this time that had really changed my life. I also went to the American Friends Service Committee, AFSC, and, to this day, I contribute to them because it's a Quaker organization that, especially back then, helped people like myself who were struggling with the fact that our country was napalming men, women, and children in a war that we never should have gotten into anyway.

In 1968, fortunately for me, the Supreme Court had decided the O'Brien case [United States v. O'Brien], which held that you don't need to prove a religious objection to war [in order to qualify for conscientious objector status]. You can prove an ethical objection, a sincere and genuine ethical objection, because I wasn't religious in the strict sense of the word. I consider myself to be a religious person, but that's because I have ideals that are characteristic to virtually every religion in the world. You know, "Do unto others as you would have others do unto you." One phrase in the Bible that I find meaningful is, "The kingdom of God is within you." Each person is holy, and you don't look to a god out there. All of our souls have some holiness to them. Anyway, I was able to say with conviction in my heart that I could not participate in a war. Again, fortunately, you did not have to say you would never kill, and I wouldn't say that. If someone were to attack my kids, I could kill. But I could not participate in a war, and it would have to be a very individualized situation.

So I went through this process, and I had to write statements. I had to get statements from others. Fortunately, I had no idea at the time that this would ever have implications later, but I mentioned that in order to be commissioned as a second lieutenant, you had to go to a month-long camp. Well, during that camp, there was an assembly, and this lieutenant colonel or something, he had just come back from Vietnam and was up there talking and saying what they did to the "gooks" and napalming and, "You should have seen this village by the time we were done with it." I actually got up and walked out. Little did I know that the officers who ran this

summer camp wrote that down in my personnel file. Thank goodness that they did. And I was very outspoken during summer camp about the Vietnam War. This was not something that you should do, but I did it because of my personal convictions.

It turned out, later on, to be of enormous significance because when I was applying for CO status, they were able to see this evidence in my personnel file. Again, I had no idea. Even the major at Princeton, who was in command of the ROTC unit, wrote in my personnel file that I was voicing opposition to the Vietnam War and that I was someone who the Air Force should watch out for. So all of these things turned out to be of great importance to me years later when I was trying to be discharged. I had to write to get my personnel file, and there it was. So I was able to demonstrate to the people who were making this decision that I indeed had years of proof. This wasn't something I concocted just because I didn't want to go into the Vietnam War. I had stood up for this for many years.

MG: You brought up your religious feelings and beliefs. I was curious if you grew up with that, or if that was something you encountered later on?

SP: I'm sure I grew up with it, in the sense that both my parents--my dad, his parents were Orthodox Jews, and religion was very important. As I mentioned, my mom was similar to me and all three kids, really, in that I'm sure we got it from her, being instilled with really a love of humanity, an interest in people, generally concerned about one another. So we all grew up with that, and it was something that I felt very deeply about.

MG: Yes, it sounds like you shared some sensibilities with your mother. Did she support the movements of the time, such as the Civil Rights Movement?

SP: Well, they both supported the Civil Rights Movement, but they weren't out there marching. They weren't out there, to my knowledge, contributing funds to it, but I definitely know that they were very supportive of the Civil Rights Movement, Dr. Martin Luther King, and equality. I grew up in a household that was concerned with those issues.

MG: You said earlier that your mother knew when you were a child that you would be a lawyer. What was she seeing?

SP: She was seeing my confrontational style, my questioning, my inquisitiveness, my ability to confront people, and to discuss issues. To whatever extent, a lawyer needs either a steel-trap mind or a certain mindset, and that could be both either a compliment or not a compliment, but I had those things as she saw it.

MG: Did becoming a conscientious objector mean that you did not get to fly again?

SP: Well, it meant I didn't get to fly again, but it meant that I was seeking a discharge from the armed services on the grounds that I could not participate in war in any form, even being a lawyer assigned to an Air Force Base in North Dakota. I could not participate in the armed services. So one of the consequences is it meant I wouldn't be a pilot in the Air Force.

MG: Right. I was curious if you missed that opportunity because it was something you were interested in doing.

SP: No. By this time, I had realized I wanted to be a civil rights attorney.

MG: Did you participate actively at all in the anti-war protests?

SP: Yes, I did. I went to the March on Washington. [Pevar Note: The 1963 March isn't the one I went to. I would have been a junior in high school. The march I'm referring to would have been 1969 or 1970 against the Vietnam War.] I signed up because I was a law student. I signed up to be a monitor of the marches and record things. I became pretty active. I never joined the Students for a Democratic Society. It was more of a personal commitment than an organizational one.

MG: Jumping back just a little bit, I wanted to ask you more about your college experience. Can you tell me about the classes you took and the teachers you had?

SP: Okay. I had two very different college experiences. I went to a large co-ed school for my first two years, the University of Connecticut, in which I was very social. I joined a fraternity, lived in the frat house, got drunk weekends. Fortunately, I had very good grades. I found time to study, but I was really into the social scene. But I always wanted to go to an academic school that focused on academics. Now here's another bit of irony, is that the Air Force ROTC program offered scholarships, and the major at the University of Connecticut suggested that I take the exam. So I take the exam and, lo and behold, I score in the top fifty, and they give full-tuition scholarships to all of those fifty students. So the major comes up to me and says, "Well, you won. You won one of these."

Now, I'm an in-state student, my tuition, I think, was a hundred-and-ninety-five dollars. I said to the major, "Now, is this a full-tuition scholarship wherever I go to school?" He goes, "I was afraid you were going to ask that, and it is." So I tell my dad, and my dad gives me his credit card. Back then, long-distance wasn't free; you needed a credit card. So he said, "Call as many schools as you can." So I start calling around. I call Harvard, and the deadline is too late. I call Yale, and I think the deadline was the next day. I call Princeton, and they said, "Our deadline for transfers was the next week." This was back when they recently had fax machines. So they faxed me an application, and I spent all night writing it and writing the essay and everything, and I faxed it back to them. Then they scheduled me for an interview, which I had to go to maybe three or four days later. The application process ended in seven days from when I got notice of the tuition scholarship. I borrowed my dad's car and drove down. The interview was supposed to be fifteen minutes. So I go into the Office of Admissions and--another lucky break--the guy who I was supposed to see, either had forgotten or something. I said, "Oh gee, I just drove from Connecticut. Tomorrow's the deadline." So the receptionist contacts the Dean of Admissions who was downstairs and tells him the story. He says, "Oh, I've got time. Send him down." Well, it turned out I spoke with him for two hours--the nicest guy. Maybe three weeks after that, I get an admission, and there were only six transfers accepted.

Anyway, Princeton was totally different. It was all-male at the time which I wanted. Let's put it this way: what I wanted was the education that Princeton offered. I'm not sure I wanted to go to an all-male school necessarily. I just committed myself to Princeton. I loved Princeton. It had all of the academics that I ever wanted. I immersed myself in studying and writing my senior thesis in my second year there. They didn't have fraternities, but they had eating clubs. I did join an eating club, but I never became a real active member. I went to some social things, but for me, Princeton was more of an academic [experience]. I did get involved in the school. I went to Princeton basketball and football games, but for me, it was a time to devote to studies.

MG: Were you being surprised by anything you were learning there or discovering new interests?

SP: Well, probably one of the life-changing events--my senior year, although it wasn't a co-ed school, there were some women in the graduate program. I forget how I met R.G.--her initials--but we started dating. She was a leftist economist in graduate school. She was one of the most influential people in my life. I never became a communist economist, but she was into social things way more than I was. But she started my gradual education into social issues. So that, by the time I did graduate [from] Princeton, I was much more politically aware and more politically active. That also helped the decision when I started at the University of Virginia to focus on constitutional law and civil liberties.

MG: Were there any professors that were particularly influential?

SP: At Princeton? No, none in terms of my life direction. I still remember some professors who I just loved their courses, but I don't look back at them as saying that they were influential. The only one who at all was influential in that sense was the international law professor, a guy named [Richard A.] Falk, F-A-L-K. He helped crystallize the thought that I did want to be a lawyer again, and gave me the schools that he suggested that I apply to if I wanted to go into international law.

MG: Was there much activity in terms of the Civil Rights Movement on either campus?

SP: Yes, definitely. By this time, I graduated from Princeton in '68. So from '66, '67, '68, and throughout the United States, there was increasing opposition to the Vietnam War. Then, in the early '70s in law school, even more so, and I became more and more active by the day.

MG: Can you tell me more about your law school experience and what you studied there?

SP: Okay. The first thing that comes to my mind as far as law school is, I had no idea how conservative the University of Virginia was. Fortunately, I was paired up with someone who had graduated from [University of California], Berkeley. So the two of us get there the day before school starts, and he's got long hair, and I've got long hair. We talked about, "Yeah, we smoke dope on occasion," and blah, blah, blah. The next day we go off to school in jeans and a pullover. First of all, there were very few women anyway. So ninety-eight percent are men, and

all of them have suits and ties. We were shocked. We had no idea. It was like we had been dropped on the moon. We looked at each other and said, "Holy mackerel." Both of us are thinking we made a terrible mistake. People were looking at us as if we needed to do something. We were cancers, truly. Richmond was the heart of the Civil War, and we were ninety minutes away from Richmond. It was still the heart of the South and very conservative. I still remember a classmate coming up to me, maybe the second week of law school, and saying, did I realize that I would not graduate [and] that the professors would never allow somebody like me to graduate?

Well, it turned out that he was totally wrong. In fact, about ten days after that, we had a freshman get-together with professors, and one of the professors came over to me and said, "You can't tell anyone I said this, but it is so refreshing finally to see somebody like you and your roommate. I'm from the North, and this is a great school academically, but there's like a noose around everyone's neck here. Please keep going." I mean, we didn't need that sort of encouragement. It's just ironic that we were, by chance, my roommate and I, King Golden, who remains one of my closest friends to this day, that we were roomed together.

Anyway, the first thing that I think about law school is how conservative the school was. By the time I graduated three years later, I would say at least a third of the males were not wearing suits and ties. I'm not taking credit for the sea change, but it was enormous the difference. People started experimenting with not wearing a tie and just wearing a sports coat and then not the sports coat. It was enormous. So that's that part. But the law school, I loved the law school. The professors were great. UVA is still ranked today as one of the top five or six law schools in the country. It was similar to Princeton, where it fed my need and desire for intellectual challenge. It was in law school that I furthered my interest in civil liberties. I took every course that was available on civil rights. I was one of the people who formed the WRO, the Welfare Rights Organization, at UVA. They had a number of WROs at other law schools. We met, I forget how often, but we gave free legal assistance to welfare recipients who were having a hard enough time anyway in the system, but certainly in Virginia because the majority of welfare recipients were black and there was great discrimination still in Virginia. So I was doing that on the side and volunteering, too, with the WRO and other social interest activities.

MG: You talked about how the majority of the population at the University of Virginia were dressed conservatively. Were they also conservative politically and socially? Would that play out in arguments in class discussions?

SP: Yes. Oh, yes. The majority of people were Republican. My roommate King and I would smoke dope--we didn't inhale. [laughter] I may have to cross that out for my kids' sake, but anyway. Again, there was a growing number, as time went on, more and more people, but still, the school itself was fairly conservative. Let's take a break.

[TAPE PAUSED]

MG: Now it's on.

SP: Okay.

MG: Were there times when you felt challenged in your arguments or your sensibilities at law school?

SP: Definitely. Well, for one thing, and this is another amazing coincidence, is that right now, one of the most conservative justices on the Supreme Court is [Antonin] Scalia. Scalia was my contracts professor at the University of Virginia. I was still going through my C.O. process. I don't remember how we got into the conversation, but he and I were standing outside a classroom, and I'm not sure how the subject came up, but I just mentioned to him my opposition to the Vietnam War, and that if push came to shove and I did not get my C.O.--and I told him that I was applying as a C.O.--that I would consider moving to Canada. Now, that would mean I would be a deserter. Again, there were people who were moving to Canada to avoid the draft, and that was a felony. But I was in the Air Force, and that would be desertion. Now, whether I would have done that--thank goodness I didn't have to decide because I was committed to the fact that I would not go into the service, so I would either go to prison, or I'd have to flee.

So anyway, I'm telling that to then then-Professor Scalia. I didn't know what his politics were. We just started talking. I would tell anybody my feelings, not that I was going around telling anybody, but I wasn't ashamed of them. Well, I could tell he was appalled. By the time I finished this story, he was appalled. Looking back at it now, he was probably an avid supporter of the war, saw the need for the war, saw American interests threatened by what was happening. He just said, "Well, you should really rethink this." He opposed my views. I could tell that he respected them, but he opposed my views. An interesting story, this is kind of a footnote, is that I've argued one case in the U.S. Supreme Court, and it was after he was already on the court. I didn't know if he would remember me. I mean, this was twenty years later, twenty-five years later. So I'm arguing this case, and you can get the transcript, which I now have. All of a sudden, in the midst of my argument, I hear, "Now, Pevar." Everybody else said, "Mr. Pevar." I hear, "Now, Pevar." Sure enough, the transcript shows that it was, "Now, Pevar." It was with the same tone that he said in law school when I would say something, and he'd go, "Now, Pevar." He wound up in the dissent. I won the case, but he was one of the three dissenting justices. But communicated to me that, of course, he remembered who I was. [laughter] Yes.

Anyway, law school was another wonderful experience for me. Even the fact that I was challenged politically and that there weren't very many likeminded people there, but a growing number. There were just some wonderful folks there and some very good professors. It was a good time of life for me.

MG: Was the ACLU on your radar at all during those years?

SP: It wasn't, no. It wasn't on my radar, and it wasn't for several years after that. Surprisingly I knew very little about the ACLU. I wasn't even sure what it was. The ACLU back then didn't enjoy nearly the reputation it has today. Most people had very negative views and were convinced it was a communist organization. I had no particular knowledge of it, but the prevailing view was that it was a communist organization.

MG: Tell me a little bit more about the Welfare Rights Organization, the cases you'd take on, and the people you worked with.

SP: We would go to--and I remember there was another guy, Charlie, and either he or I would go, or I would borrow his car, and we would go to communities around the law school where welfare rights meetings were being held, and people would be able to ask us questions. Some we knew the answers to and some we didn't, as to what rights to a hearing did they have if they were denied benefits, or how quickly they should get benefits if they qualified, and if you have three children, how much do you get, and if you have four, how much more do you get? We tried to learn as much as we could about welfare rights.

In 1969, and again, this was during my first year of law school, the U.S. Supreme Court came down with a case called *Goldberg v. Kelly*. It dealt with the rights of people who were denied welfare. So, as a law student, I was able to read and knew about the case. This was in the very early years of the welfare rights program. So one of the things that I was able to do was to explain *Goldberg v. Kelly* to different community groups. One of the things I remember is that some of the black families there were having a party, and they invited me to attend the party. It turned out I was the only white person there, and I just had a blast. I could tell that they accepted me and I accepted them, and it wasn't about race. That experience helped me tremendously when I moved to the Indian reservation, where I was for almost four years, because in many instances, I was the only white person there, too. So the WRO at our law school was created to help welfare recipients. I would go to meetings in communities around Virginia explaining welfare rights.

MG: Did you stay involved in the WRO the entire time you were at law school?

SP: I'm not sure if I joined it in my first year, but I think my second and third years at law school, I was active in the WRO.

MG: What was your plan after graduation?

SP: Well, there were several opportunities. First of all, again, in [the] summer after the second year, I interned in New York City for this law firm. But that only helped me realize that that's not what I wanted to do. A guy who I had become friends with and who was one year older, took a job with Legal Aid on the Navajo Reservation called DNA. I went out to visit him. I said, "Oh, this is cool in a lot of different ways. I mean, living on the reservation and being out West and doing this kind of social interest law." So I started looking into--so I applied for DNA also. I also applied for a fellowship program that is no longer in existence, but it was called the Reggie Program, the Reginald Heber Smith Community Lawyer Fellowship Program. The federal government gave Howard University money to hire about fifty graduating law students and give them special training in public interest law, particularly class actions. So I got one of these fellowships. They called me up, and they said, "Oh, you won one of the fellowships." That same week, I had received an offer from DNA, which I was about to accept when this Reggie opened up. The Reggie paid a little bit more than Legal Aid did. Legal aid was 10,800

dollars. I think that was a national standard. The Reggie Program paid \$12,000 dollars, which was a significant difference.

Anyway, I accepted the Reggie. When they called me, they said, "Okay, we're very late in doing this, and we need to fill these spaces. We have [five] places left, and you could decide. You could go to an Indian reservation in Northern Minnesota, to an Indian reservation in Southern Arizona, to an Indian reservation in South Dakota, or to a migrant labor area in Colorado, and then I remember now, to Legal Aid in Harlem, New York. I'm going, "Oh my god." I don't speak Spanish, so the migrant labor was out. I'm not a city kid, so Harlem was out. I said, "Well, I'm interested in Indian legal services anyway." So I decided between those three. One was in the frozen North; the other was as hot as you could get. So I picked the one in South Dakota. I called them back a couple of hours later, and I said, "Okay, I'll go to Rosebud." That was a very fateful choice. That changed my life. I mean, everything I've done since then has reflected the fact that I lived on an Indian reservation for almost four years.

MG: How did you prepare to live on the Indian reservation?

SP: Not well. Today, I'd be able to go online and find out so much stuff. I'd be able to read books about Indian law. There was nothing like that back then. All I knew was where it was located, very little about the reservation and the people who were there. I didn't know anybody who had ever been there. I had never been there. So I bought myself a car, loaded it up, and drove out to the reservation. It was a shocker. During the three and a half years that I was there, I would say six other attorneys came and left quickly while I was there. A couple did wind up staying longer, but it was a very different environment.

Now, there was a small town, and you could live in the town, and most of the professionals lived in that town. I didn't want that. So I rented a mobile home. I didn't have a telephone. I lived about ten miles outside of the town in an Indian community. I just loved it. I grew my own garden. I could be a hippie, providing legal services. Looking back on it now, I don't see how I did it. I would never want to live that way again. It was a tiny mobile home, fifty-five feet long with two tiny bedrooms and a bathroom and a propane stove. It got so cold in the wintertime, so cold. The last winter, and this helped me decide it would be the last winter, there was a fierce snowstorm, and it blew out the furnace, and once it goes out, you can't relight it. Within hours, that tin box was below freezing. The pipes burst. When the bathroom pipe burst and water hit the shower, it froze on contact. I just huddled up in my sleeping bag for almost two days. By the time the storm ended, I was very sick, and I drove right to the hospital. It was a very different existence there. I loved it. I loved living on the reservation, and I still have some very close friends on the reservation.

I also was not prepared legally. There were no books that explained the rights of Indians and tribes, and I made some terrible mistakes. I mean, mistakes that I still regret. I couldn't possibly have known what the law was because nobody knew what the law was. One of the things that I committed myself to while I was there, although it really didn't coalesce until afterward, is to write the book that I wish that I had had. I have written a book, *The Rights of Indians and Tribes*, and I keep updating it. That's the book.

MG: Right.

SP: It's the book that I wish that I had had. What I tried to do in that book is to explain what rights Indians and tribes have in a way that they will understand it, the non-lawyer would understand it. So it's a very popular book. I mean, it's not on the best-seller list, but it's used in a lot of Indian schools and colleges and tribal organizations, and quite a few people rely on the book. That's the fourth edition. About every ten years, I update it. But there just wasn't much out there to learn about Indian rights.

MG: How are you updating the book? With what information and experiences are you adding to each new addition?

SP: Okay, good question. There's an organization, and it has hit some hard times, so it has stopped issuing these monthly publications. Hopefully, they're going to start again, but it's called the *Indian Law Reporter*, which I have subscribed to. They started in the, I think, early '70s, publishing a monthly compendium of cases. Every ten years, I take all of those months, and I read every single case. It's a laborious process, but I just read all of these cases. I have eighteen chapters, and I put them in chapters, and I underline them, and then I write chapter by chapter. Now, with the Internet, I'd have a much better time doing the next addition, but I was very reliant on the *Indian Law Reporter*.

MG: You first published it in 1983?

SP: Yes.

MG: How long had it been since you were on the reservation that you wrote the book?

SP: I left the reservation in 1974, and I took almost two years off from then until I started with the ACLU in '76. So next year will be my fortieth year with the ACLU. Remind me what your question is.

MG: What made you pick up the subject a few years later?

SP: Yes, okay. Well, first of all, around '74 or '75, while I was on the reservation--no, no. It would be earlier. Around '72, while I was on the reservation, the ACLU decided to form a committee known as the Indian Rights Committee, the IRC. The regional office in Denver was tasked with the responsibility of forming this committee because the ACLU recognized that it didn't have much expertise in the area of Indian rights, and, to its credit, it realized it needed to do that. So it asked the director of this--it's called the Mountain States office--Dorothy Davidson, to form this committee. Dorothy then called a number of people, mostly Indian, to be on the committee. She also wanted some non-Indians. So she asked this one law professor, who she apparently knew, at the University of South Dakota if he would be on it. He said that he couldn't, but that in the news recently that there were some articles and discussion about a case that this lawyer had just won on the Rosebud Reservation, and maybe she should call that person,

and that was me. I had just won an important Indian Civil Rights Act case that was in the news. Well, that was one of the things, too--little bumps in the road that change your life because had Professor Davidson not known about me--yes, I think his name was Davidson--then Dorothy Davidson, no relation, wouldn't have known to call me and she did. I wound up being on the Indian Rights Committee.

The purpose of our committee was to propose policy for the National Board, and we would meet in Denver four times a year. This was great for me because I got free travel expenses to leave Rosebud four times a year and go to Denver, and that was exciting. I was on the Indian Rights Committee, and during those years, we adopted all of the policies that the ACLU still has today. It's never adopted a single policy other than the ones that our committee offered to them. So, then I took those two years off. In the meantime, I'm still going to Denver. Wherever I happened to be at the time, I would go to Denver for the IRC meetings. The Denver office was then commissioned to hire a staff attorney. I knew Dorothy, and I knew the ACLU by this time; I'm on the committee. I said, "Oh, this would be great. I think I'm about ready to end my wandering ways anyway, and I'm out of money." So I applied for the job as staff counsel to the Mountain States Office of the ACLU and was hired.

MG: Did Dorothy have another role besides heading this committee?

SP: She was the head of the Mountain States Office.

MG: Okay. I'm sorry. Is that an affiliate of the ACLU?

SP: No need to apologize. It's no longer in existence. This will eventually come back to why I'm glad this is going to be archived because what Dorothy did and what I did, and the people in our office, nobody knows. Nobody will know unless this is archived. This is a very critical part of ACLU history. Back then, the entire Midwest was almost a vacant area, a no person's land. None of those states had staff ACLU, not even executive directors, never mind staff attorneys. So the ACLU formed what it called the Mountain States Office and first hired Dorothy, who had been the director of the Colorado ACLU, the state affiliate, and commissioned her. Her ultimate goal, and then it became my goal as well, was to develop a presence in these nine states, and I actually have a map. Well, I gave a presentation. So our office is here in Colorado. When we started, not a single one--this is about, what? Twenty-five percent of the size of the United States, of the geographic territory of the United States. None of these states had any ACLU staff in that state.

MG: In what year?

SP: Well, when I started in 1976, none of them did, and it took years. I mean, Montana may have been the first, or Nevada may have been the first to hire an executive director. Our job was to try to develop enough of a presence so that people would join the ACLU. Now, I don't know a lot about the internal operations at the ACLU, but I believe that one of the contributions that Ira [Glasser] made and Anthony increased it, was to give national ACLU money to the states that didn't have staff. [Editor's Note: Ira Glasser was the executive director of the ACLU from 1978

to 2001. Anthony Romero succeeded Glasser in 2001 and remains executive director today.] Until then, you were on your own. The ACLU, as you may know, about forty percent of the member's dollar stays in the state where the member lives. So California, with a lot of members, had six to eight attorneys. Montana and Idaho and Utah and the Dakotas didn't have enough members where they can even hire a staff director. So our job was to be the ACLU presence in those states. If somebody in Helena, Montana or Fargo, North Dakota or Albuquerque, New Mexico, looked in the phone book, and back then that's what you used, for the ACLU, they would get our telephone number in Denver. There wasn't any other office. So we fielded intake from all of these states. Really on a daily basis, I was speaking with a prisoner in Montana, or a welfare rights recipient in Idaho, or a teacher who was fired in Nebraska, and we just had a very active intake line and phone line.

We ultimately worked ourselves out of a job. Our goal was to create such a presence in these states that they would have enough members to hire their own staff. Ultimately, that's exactly what did happen. Now, some of the states needed assistance from the national office. In fact, today, still, North and South Dakota, I doubt whether they have enough money--and Wyoming. They wouldn't have enough members. So the national office helps them stay afloat. But virtually all of these states now have staff attorneys as well as executive directors. But back then, they didn't. Our office handled all ACLU cases in one-quarter of the United States.

MG: Can you say, just for the record, what those nine states are?

SP: Oh, sure. I'll go in a circle. Montana, North Dakota, South Dakota, Nebraska, Kansas, New Mexico, Utah, Nevada, Idaho, and Wyoming. I wound up taking cases in every single one of those states and arguing in courts in all of those states. Our job was to divide up our responsibilities so that we indeed did have a presence in those states. I would sue a jail in Idaho and a jail in South Dakota. We would try our best to have some presence in all of that territory, and we did.

MG: Also, Colorado?

SP: No, and that's why it's not shaded. Colorado, where Dorothy had been the director, was a very active affiliate, and they didn't need backup assistance. Oddly enough, they were not in the Mountain States region. They were an independent affiliate. We were part of the national office, and Denver was selected both because it's somewhat centrally-located and Dorothy lived there, and she didn't want to move.

[TAPE PAUSED]

SP: Let me say that, to some extent, it sounds like I'm patting myself on the back. But unless this is recorded, no one will ever know. Now, there are no statistics or data to confirm my perceptions. So I could be wrong, but I don't think I am. To some extent, these statistics are based on the fact that I've been with the ACLU forty years, so not very many people will have had an opportunity to do what I have done in forty years. I would say that I filed more cases as lead counsel in the case than any other ACLU attorney in the history of the ACLU--probably

between 125 and 150 cases. Because I was in this region, I filed it in numerous courts. I was dealing with numerous different judges. I've argued cases in three different U.S. Courts of Appeal, and one in the Supreme Court. I mean, it's different than anyone has had. I also think that I won more cases than any ACLU attorney in the history of the ACLU, where I was lead counsel. Now, there are probably attorneys, like Steve Shapiro, who have won more cases where they were on the case but not as lead counsel, where it was your case, and you conceived of the case, and you argued the case, and you developed the facts of the case and presented the witnesses for the case. [Editor's Note: Steven Shapiro is the Legal Director of the ACLU. He has held the position since 1993.] [NOTE: He's not the Legal Director any longer.]

I also think that it's likely that I won a higher percentage of cases than any other attorney with the ACLU. I have won about ninety-five percent of my cases. I have lost a handful of cases. I probably have argued in more different courts than any other lawyer in the history of the ACLU because of the nature of what I was doing, what I was required to do, both federal courts and state courts. I probably have handled a greater diversity of cases than any other lawyer who has ever worked for the ACLU because I was tasked with the responsibility of having an ACLU presence in nine states. So I would litigate a sex discrimination case in Wyoming, a race discrimination case in Idaho. I have sued more than one-quarter of all the jails in Idaho and Wyoming. I'm sure that there's nobody else in the world who could say something like that.

There's a reported decision in which a federal judge in Wyoming--after I had sued, I don't know, fifteen jails, I asked for, to be awarded Denver rates, attorney hourly rates, because you get an award of attorney's fees, instead of Wyoming rates because Denver rates were twice Wyoming rates. In order to win, what we call, out-of-state rates, you had to show that there was no one within that state who was likely to take the case; that your clients needed to go out of state. The federal judge granted me out-of-state rates, and said, "I have sat on, I forgot how many of Mr. Pevar's cases, and in the twenty years or so since he and I have been involved in prisoner's rights and litigation, there was no one in Wyoming who has ever filed one of these cases. So I am awarding Mr. Pevar out-of-state rates." So there are people who are aware of what I was doing, but I would say nobody in the ACLU is aware, or certainly not today. Ira Glasser was probably aware when he was there, but the current administration. I'm not criticizing them. How would they know what somebody was doing in the '80s and '90s? Anyway, I feel that I have a story to tell, where fifty years from now, or a hundred years from now if someone wanted to know how the ACLU got going, I doubt whether anyone knows or would dream that there was a period of time in which the ACLU was so small and so underfunded that they had one lawyer for nine states.

MG: Was there anywhere else in the country, maybe in the South or in the very Northeast, where someone worked in multiple states?

SP: The only thing that was similar to it was in Atlanta, there was the Voting Rights Project, and they took voting rights cases in many states, but there was no other regional office that did what we did. It was like the country doctor. You'd be delivering a human baby one day and a calf the next day. We did everything, and there was no other regional office that did that.

MG: Can you clarify for me--were you doing this as a staff attorney for an ACLU affiliate or specifically the Racial Justice Project?

SP: No, excellent question. I was on the national staff. I was not connected with an affiliate.

MG: Okay.

SP: Yes. The national office decided it needed to have some presence. It was almost an embarrassment that this great expanse out there--they couldn't go to an affiliate because there wasn't an affiliate; someone in Montana would have to call the New York office. So they decided to at least have an office somewhat closer, and they opened up an office in Denver, and then put in our phone number and all those telephone directories, and hired Dorothy to do all the administrative, fundraising, membership recruitment. She then hired me to do all the legal part in that same region. It was pretty much the two of us, her doing one kind of work and me doing another kind of work in those nine states.

MG: I thought Dorothy was an Executive Director of the Montana affiliate?

SP: No, she was the Executive Director of the Colorado affiliate until she was hired by the national office to be the Director of the Mountain States Office. Like me, she became a national staff person and no longer an employee of any affiliate. So she, like me, would go to Montana and all of the other states, but she was never the director of any state affiliate other than Colorado, and she left there to join the national staff.

MG: Where was the Indian Rights Committee based?

SP: In Denver with the Mountain States Regional Office. It was one of the first things that Dorothy did do when she became the director of, again, the national Mountain States Office. I'm not sure which came first, whether Dorothy proposed to Ira--or actually, it might have been Aryeh Neier who was the director then, that we have an Indian Rights Committee or whether national came up with the idea itself and then figured out that the best place to have it would be in Dorothy's office. [Editor's Note: Aryeh Neier was the Executive Director of the ACLU from 1970 to 1978.]

MG: Do you want to spend some time talking about the Rosebud Indian Reservation?

SP: I can. Well, a whole bunch of emotions come up. I mean, my legal work was one part of my life. My social was another part. The fact that I lived really the way most, or many of the Indian people lived, in a small trailer off of the road. I guess I'll start with the legal first. We had a Legal Aid office, and the director was a very colorful guy named Bill Janklow. Bill Janklow, who died a few years ago--I'm sorry to say--a couple of years afterward became the attorney general of South Dakota and then became probably its most popular governor. He was elected and reelected. He and I were very good friends. We disagreed politically on some issues, but to his dying day, we were communicating with one another. Anyway, the [Legal Aid] office had, I think, at most, four attorneys. There may have been a time when we had five. But at most, it

was four attorneys. First, our office was in the town of Rosebud. I was a Reggie, and I was assigned to his office. He applied for a Reggie because it didn't cost him anything. I was paid through Howard University in Washington, D.C., but it was an extra attorney. So there were basically three staff attorneys and then me, although I viewed myself as another staff attorney. We each had our own office, and it was Legal Aid, If you're indigent, you could get our services. Virtually everybody on the reservation qualified. Because we were in the middle of the reservation, the vast majority of our clients were members of the tribe.

We had a full-time interpreter in our office because many of our clients did not speak English well, and I never did learn Lakota very well. So we had interpreters who would help interpret with our clients, although the majority spoke English well, and I was able to speak directly with the client. Our cases were sometimes in tribal court, sometimes in federal court, and sometimes in state court, depending on what the legal claim was. Because I had the training in class action litigation, I wound up filing a number of class action cases--a class action case dealing with welfare rights, which was right up my alley, of course, having done that in law school; a class action case dealing with the Federal Truth in Lending Act, where a number of Indians from the reservation would go off the reservation to buy a car, and they would really get hoodwinked. [Editor's Note: The Truth in Lending Act, or TILA, was passed in 1968. It increased laws to increase disclosure and for companies to inform consumers.] I finally sued one of the merchants off the reservation. We would just give legal advice on whatever our clients needed, whether it be child custody, divorces, consumer protection issues, criminal issues. We handled a little bit of everything at the Legal Aid office, and we were very busy, very busy. We had a very large caseload.

MG: Can you talk a little bit more about the child custody cases? I know that you have written articles about it, and maybe say how it uniquely functions on a reservation?

SP: Well, there are two kinds of child custody cases as we see it today. The child custody cases that I was handling back then were very individualized, like in a divorce, a mom and dad--whether a tribal court or state court--who would get custody? After I left the reservation, Congress passed the Indian Child Welfare Act in 1978. [Editor's Note: The Indian Child Welfare Act, passed in 1978, was designed to keep Indian children with Indian families when taken away from their parents.] That law was aimed at what was happening in child custody cases in state courts.

I am currently litigating the only class action case seeking to vindicate the rights of Indian tribes and Indian families in child custody cases under the Indian Child Welfare Act. So one of the things that I developed from my years on the reservation was a desire to help Native American tribes and individuals--and I use the words "Native American" and "Indian" interchangeably, although I usually say Indian. Anyway, currently one of the biggest cases I have is an Indian custody case, seeking to protect the rights that Congress extended to Indian families and Indian tribes under the Indian Child Welfare Act. I can talk about that when we get there. That's happened within the last couple of years. But sticking with Legal Aid-- this is from 1971 to 1974, and I gave my clients whatever help they needed in their individual situations.

Now, my social existence is a total other book. It was very difficult, at times, living on an Indian Reservation. I know racism firsthand, both the good parts to it and the bad parts to it. I remember playing basketball, a pickup game. There were several basketball courts nearby, so balls were always flying into one another. Someone said, "Watch out, white guy." Those were the first words out of his mouth. He looked over, he saw a ball heading in my direction, and he wanted to warn me. "Watch out, white guy." In the same way, I'm sure--I have now a greater sensitivity to what the only Native American or only black or Hispanic person might feel in an all-white social club--I know what that's like because in many places--like, I joined a softball team, and I was the only white guy on the softball team. I would go to parties and bars, and I was the only white person there. In fact, and this is a story that if it's recorded, it's recorded, but the very first time I was invited to a party--oh, I mean I was dying to socialize, and it was not easy meeting people and getting to know them on a social basis. I, of course, met clients.

Anyway, about six months after I was there, I got a divorce for this nice guy. He said, "Stephen, we're having a party to celebrate my divorce, and please come over." I said, "Oh, thank you. I'd love to come over." He gave me directions; everything is off that main road. I got there, and I assumed I would be the only non-Indian there, and I was. Well, about an hour later, and everyone had been drinking somewhat by this time, in walks Russell Means, who was--this is right before the Wounded Knee thing, and he was then probably the best known Indian activist--he and Dennis Banks and Clyde Bellecourt. [Editor's Note: Russell Means lived from 1939 to 2012. He was an Oglala Lakota activist and member of the American Indian Movement, or AIM. In 1973, he was one of the leaders in the occupation of Wounded Knee, South Dakota, where Native Americans protested for more rights. Dennis Banks is an Anishinaabe native and co-founder of AIM. Clyde Bellecourt is a White Earth Ojibwe native and co-founder of AIM.] Russell Means was synonymous with Indian activism. So he walks in because he's apparently a friend of the guy who was divorced. He immediately sees me and walks over to me and says, "What are you doing here, *Wasi'chu*?" Now *Wasi'chu* is the Lakota word for white person, but it's normally used in a derogatory way, or it can be, and he definitely was. "What are you doing here, *Wasi'chu*?" I naturally wanted to just disappear.

Russell Means is a big guy, also. He probably outweighed me by sixty pounds, [he's] and much taller than. He's looking glaringly at me. The owner of the home, who had invited me there, walks between him and me--wow, I can't believe I'm getting emotional forty years later, and says, "I invited him here. He's my guest." Russell Means goes, "Are you taking the side of a *Wasi'chu* over a brother?" And he said, "If that's the way you're putting it, then yes I am." I thought that there was going to be a fight, either with me or between them. This is in the early '70s when Indian rights--there was a line that you could cross, and you had to be very careful. Means muttered something and turned around and just walked away. I didn't stay that much longer, but that was an eye-opener. It just tells a lot of my situation on the reservation. Now, I started dating an Indian woman there, and it couldn't have been--it was just the opposite [from the experience with] Russell Means. I was so welcomed. She was the oldest child of four, three other girls. We just had a blast. They wanted to adopt me into the family and give me an Indian name. So, by no means, am I saying that I was subjected to race discrimination and, as illustrated, the owner of the home stood up for me, but I was keenly aware of the racial disparity.

Sometimes it was a good thing, and sometimes it was a bad thing, but it was rarely a neutral thing.

So, I lived on an Indian reservation for three and a half years, and I had just a wonderful experience, both good and bad. I went back to my mobile home, and I would smoke on occasion. I learned how to do macramé and make my own bread. I had a sourdough starter, a nice stir fry. The landlord allowed me to use a large patch of land for a garden, and I grew all this incredible food, which subjected me to some--not criticism, but the Sioux men are hunters. What I was doing was women's work. I remember an Indian fellow just saying, "Gosh, I wish that I could grow some tomatoes like this. These are so good, but I would be laughed out of my family if I planted anything. Men just don't do that." So it was a traditional thing. I'm sure today, or I'd like to think today that there are more gardens and people are doing that sort of thing. But back in the '70s, it was still very traditional.

MG: Yes, I was curious about the customs and traditions on the reservation. You were a liberal hippie guy. Did you have to make any other kinds of social adjustments?

SP: Yes and no. Fortunately, because I was white, nobody expected me to comply with the Indian traditions, although you couldn't disregard them. When we went to meetings, Indians generally are very religious. They start every meeting with a prayer. They often end meetings with a prayer. There's an enormous respect for elders. I quickly learned. Like, at a town hall meeting, you might turn to the person next to you and have [a side conversation]. You wouldn't dare do that when an elder was speaking. Everyone focused. Likewise, you needed to be there in time for the opening prayer, and you remained very reverent. You usually stood up. So there were things that you were expected to do in the community, but fortunately, white people had exemptions. They didn't expect you--it was fine that I grew a garden. I had a pass in that. I didn't have to do certain things.

You learned things. For example, the interpreter that was there for the first year and a half, a wonderful guy named Spencer Bear Heels. Spencer and I became good friends. We were walking out of the Legal Aid office one day, and I had an apple. An Indian boy rushed up to me and said, "Give me that apple." I was flustered, and I gave him the apple. Spencer breaks out into laughter. I said, "What's so funny?" He goes, "Well, first of all, you weren't required to give it to him, but you didn't understand the way Indian people ask for things. Traditionally, Indian people expected you to do for one another what you could, and, in our language, we don't often say, 'May I, please have.' We will just say, 'Give me,' and it's the same sense of, 'May I please have.' You should be as equally as free to say no. So he translated Lakota into English and said, 'Give me that apple,' but it was, 'Sir, may I please have that apple.' And you could've said, 'No, I want to keep that apple,' or whatever."

Anyway, those kinds of customs I was learning in kind of an ad hoc basis, things would go on. Oh, here's another that I didn't learn until I had been there for some months, and I felt horrible. Many traditional Indians do not look you in the eyes unless you are very good friends with them because, in the animal world, the only animal that looks into another animal's eyes is an animal that's superior to that animal. A bear will look into a wolf's eyes. A wolf will look into the eyes

to try to guess what his victim is thinking. If you look at [your dog] Monkey--if you're walking Monkey, and Monkey goes up to another dog, look to see which dog looks the other dog in the eyes. So traditional Indians would come in--the way I learned this is that I said, "Spencer, I've been here, I don't know, six months, a year. I still don't feel as though I'm really getting in touch with my clients. I look at them, and they're always looking away. They won't look at me, or they'll look over my head. He laughs again, and he goes, "They are showing you respect," which I was not showing them. I was looking in their eyes. Little did I know that what I thought was trying to communicate was embarrassing them. I was demeaning them. I just felt awful when I realized that.

So you could do some terrible things unknowingly if the culture's different. I learned so many things, being a racial minority, being in a different culture, being in a different environment. I don't know if you've ever seen the South Dakota Plains. I've got some photographs. You could be places where you will not see a tree. I remember driving to one of my Indian Rights Committee Meetings, and I took the girlfriend who I had started dating, who was born and raised on the reservation. Way in the distance, we could start seeing the Rocky Mountains, way in the distance. I said, "Janeen, what do you think? Those are the Rocky Mountains." She goes, "Well, they're pretty, but they make me feel closed in." Right. Oh my god. "Closed in." Again, they must've been seventy-five miles from where we were and in the distant horizon, but her life was treeless, or few trees and certainly no mountains, and to have a barrier there.

So, in so many different ways, I saw, from firsthand experience, what cultural difference can do to someone and living on the reservation and experiencing those winters. Here in New England, winter is an inconvenience at most. There, it was life and death. I mean, people froze to death. You didn't drive in a car without a blanket, especially the res cars, the reservation cars, because most people had these clunkers that would stall. I lived along a main road. I'd say at least once a winter someone would--I would save their lives just because I had heat in my house and their car had broken down. So it was a very different existence, and again, one that I would not want to live in now, but then I loved it. I just loved everything about it.

MG: Are those experiences in your book?

SP: No.

MG: When you were seeing Janeen , were there things you had to learn about dating on the reservation?

SP: Well, here's one thing. This might have been our first or second date. There was one movie house on the reservation. It was called The Starlight Café, and it was fifty cents for adults and ten cents for children. So I go to pick up Janeen , and I invited her to the movie. I had met her sisters. I think they were four years younger, or six years younger, eight years younger. Janine was eighteen. So we're talking now twelve-year-old, ten-year-old, eight-year-old, whatever. I said to the girls, "We're going to the movies. Do you want to come with us?" They said, "Oh well, let me go ask our mom." They came back crestfallen, and they just said, "No, we can't go." I said, "Oh, that's too bad." I just said, "How come?" One of them probably didn't have the

maturity to keep this a secret, "We can't afford it." Ten cents. Her mother didn't have thirty cents to give them to go to the movies. So that was another culture shock. I said, "Well, please ask your mom if you could go if I pay for it." At this point, I was afraid to do that because it might embarrass her. And they rush back, "Yes, we can go."

Anyway, I learned after that, that each time I did something, I had to say I was going to pay for it. It was literally hand-to-mouth. Likewise, at Legal Aid, I remember a fellow coming to Legal Aid because he had heard that his son had been arrested for curfew violation. The tribe had an eleven PM curfew for teenagers. He said, "I can't even find out from the jail if he's in there." So I call up--and that was one nice thing about Legal Aid is that often you could get information that other people couldn't. I said, "Is so-and-so there?" They said, "Yes, he's in juvenile detention for a curfew violation, and he's got a ten-dollar bail." I said, "Oh." The father's name was Grover. I said, "Grover, yes, your son is--" and he was terrified. His son hadn't come home. He didn't know where he was. Like any parent, he was just worried. He didn't have a telephone. He didn't know who to call. So I said, "Yes, and he's got a ten-dollar bail." Grover just became quiet, and then I realized. I said, "You don't have ten dollars." He goes, "I haven't seen ten dollars in a long time." He would've done anything to get his son out of jail. I gave him ten dollars. Who doesn't have ten dollars with them? So that part of the reservation was constant.

I wound up purchasing dozens of pieces of art, some good and some not good. But I don't think I ever said no because people would come into Legal Aid frequently, and ask if we would buy this painting or this beadwork or quillwork or whatever because they had no money and there were very few people on the reservation who did have money, and most of them [who did have money] were white. So some of the things that I bought I'm sure are very valuable today. I have bags of things. I have no intention of ever selling them. I'm sure that they're very valuable. I have peace pipes, artwork, buffalo horn carvings, just beautiful artwork. I should donate them to a museum or display them because this was back in the '70s when there were some--as there still are today, I'm sure, but it's probably declining. I mean, people doing some very traditional Indian work. That was another example where I was often confronted with cultural differences.

MG: Was anyone in Janeen's family or in the community opposed to the two of you dating?

SP: Probably. Yes, probably. But nobody in their family. We went to many family events, and I felt very welcome. She had a large family--uncles, aunts, and cousins. I was almost always the only white person there, but I was very welcomed by her family.

MG: What were the options in terms of employment and industry there?

SP: Few. I'd say unemployment was over seventy percent. I bet today it's not much higher than that, other than the fact that they've opened a small casino. It's off the beaten path, so it's not earning a lot of money, but it's providing some employment opportunities. They also have a ranch. I wouldn't be surprised though if unemployment is still fifty percent. So there were very few opportunities, but people there were very tied to the tribe and tied to the land. They stayed there despite the hardships because of how committed they were.

MG: How long was the Reggie Fellowship? Were you eventually hired as a permanent staff member?

SP: Oh, good question. First, it's for one year, and you're allowed to renew for one year. So I did that. But then the fellowship ran out, and no one could be a fellow for more than two years, so then I was hired as a staff.

MG: Was your work different as a permanent employee?

SP: No.

MG: I am sure there is so much we can talk about in terms of the cases you were dealing with and the people you encountered, but maybe for the sake of time, we will fast forward just a little bit.

SP: Okay, sure.

MG: If we get together again, maybe I will ask some more questions about this time.

SP: Yes, good.

MG: At the end of the three and a half years, what made you decide to leave the position?

SP: There were two things. One is, that's when I had that terrible experience with the heat going out, and I became very sick. That happened in February or something like that. As it got closer to winter, I just said, "I can't. I don't want to go through another winter." That was one. The second is, I was changing personally in some ways that I didn't like. I was becoming more reclusive, quiet. Someone who knew me before I went there and who knew me afterward, as many as my friends did, said that I had changed dramatically. I wasn't nearly as outgoing. I spent most of my nights by myself, listening to music on headphones. It's almost like stories that you hear of people in solitary confinement that it's difficult for them to be around people after that. By no means am I saying it was like solitary confinement. I was dating Janeen . Although the last year I was there, she went away to college, to Stanford. I dated somewhat, but not a lot. So I still wound up spending a lot of time alone. I could tell that I was becoming withdrawn and developing some things that I didn't think were good in the long run. So the combination of the winter coming up. I had been there three and a half years. If I would come home for a Christmas or see friends, they would comment on how quiet I was or withdrawn I was. I just said, "It's time to go."

MG: I recently interviewed an African American alumni of Rutgers who attended during a time when it was not very diverse. Even though they were in a large college community, they felt pretty severe isolation.

SP: I'm sure that that was part of it, too. I was not only physically-isolated because I chose to be not living in the town where the other white professionals were; all of the other lawyers lived in

Mission. There was an Indian Health Service, IHS, hospital that gave free medical care. All of the nurses and doctors lived either in Mission or in Rosebud, the two towns. None of them lived out in the community that I knew of. I'm quite sure none of them did. I became good friends with one of the doctors and one of the nurses. But still, my life was different than most. I chose to live out in the Indian community and just spent a lot of time alone.

MG: Before we talk about the next chapter, was there anything else you wanted to say about what you were learning in terms of the legal issues facing Indians and the things that would end up in your book eventually?

SP: Well, I learned a lot about the fact that Indian law is very different. Now, in the early '70s, when I was there, much of the law was not even formed yet. I would say there have been, since the early '70s, a hundred Supreme Court cases dealing with Indian rights. It might be fewer or could even be more, but the fact that there were that many, just shows the number of unsettled areas of law there were. So it was a time where people were thinking about what the law ought to be and what the law is. So probably three-quarters of what's in my book is there because of what has happened since the '70s.

The Native American Rights Fund, NARF, was formed, maybe in 1968, 1969. I'm not sure what funding, but I think the Ford Foundation helped set that up. It was a think tank for Indian legal issues. I went to meetings, maybe twice a year, that NARF had of lawyers in Indian Legal Services, ILS, programs. There was a small group of us who were pretty close, and we would have these meetings to try to decide what the law was. What are you doing, Fred, on your reservation? Or, is the state trying to tax the income of Indians on your reservation? Or, do tribal members who live on the reservation have to get a state driver's license? I mean, there were so many issues that now are resolved, but back then weren't that all of us were facing. So we didn't have the Internet. It was far more difficult to communicate these common issues than it would be today. So there was just a lot of areas that all of us were struggling with back then.

MG: Was there an organized Indian rights movement in the early '70s?

SP: Yes, I would say. Well, that was when AIM was really getting going. I mean, Wounded Knee, the takeover of Wounded Knee was in 1973, while I was there. The Custer Courthouse--Custer, South Dakota Court House was burned down by Indian activists in the early '70s while I was there. [Editor's Note: On February 6, 1973, in Custer Country, South Dakota, Dennis Banks and Russell Means, and other members of AIM, protested the manslaughter charge given to a man who murdered a Native American. They damaged the courthouse and set a fire which damaged a part of the building.] It was a time of enormous upheaval in Indian rights, and Indian rights were on the front burner.

MG: Has this history been overshadowed by the Civil Rights and Women's Movement? It's not something you hear a lot about. Did AIM borrow their doctrines, in the way the Disability Rights Movement did from the Civil Rights Movement?

SP: Definitely, and it was an outgrowth of it. Unless you lived in an Indian community, you probably wouldn't have known about it, but Indian activists took over Alcatraz. [Editor's Note: On November 20, 1969, eighty-nine Native American activists occupied Alcatraz and declared it their island in protest. They held out until June of 1971.] If you Google it, you'll see banners hanging from the outside of the penitentiary. Indian activists were trying to gain attention and to implore people in Congress to spend more time on Indian legal issues. Two FBI agents were murdered on the Pine Ridge Reservation, which was a reservation just west of Rosebud, in 1973, I think it was. [Editor's Note: In 1975, two FBI agents were murdered on the Pine Ridge Indian Reservation in South Dakota by AIM member Leonard Peltier. He is currently serving a life sentence.] So especially in the Dakotas, but in Indian country generally, the early '70s really marked the beginning of the Indian Rights Movement.

MG: That would be a good oral history project.

SP: Yes, it would be.

MG: What was your first step when you decided to leave the Legal Aid Office?

SP: My first step was to get off the reservation, to see some friends, to reconnect with my culture, not to work. I bought a different car, and I started bicycling. I started bicycling on the reservation, but I put my bike in the back of the car, and I literally spent almost the next two years going back and forth across the United States. I spent a month with a friend in Tucson. I spent three months with King Golden, my law school roommate, in San Diego. I spent some time in Seattle. I just spent time with a lot of friends. One time, I bicycled across the United States. I just wanted to relax and just have a good time and see a lot of family and friends after having lived on the Indian reservation. I just had a tremendous desire to reconnect.

MG: Did you keep a diary at all during that time?

SP: I did. I did keep a diary. I kept a diary on the reservation, in fact. I have never read it back. It wasn't a daily diary on the reservation. Let's see. When did I start my diary? Yes, I think I did keep a diary on my trip, and I kept a diary for twenty years or so. I mean, volumes of diary.

MG: I would be curious to hear some stories from the cross-country trips, but we can save it for another time if you'd like.

SP: Sure.

MG: You could also probably add to your stats, the person at the ACLU with the most mileage.

SP: That's true. Yes, that's true. [laughter] Well, now, those two trips were not with the ACLU. But while I'm with the ACLU, I was traveling to all those different states.

MG: Did it take two years for you to feel like you were acclimated, I guess?

SP: It did. To illustrate that fact, the job that I took was with the ACLU. Dorothy asked me to start, maybe June 1st or July 1st of 1976. I said, "Dorothy, I've been training for the last six months to do a cross-country bike trip with these two guys. Can I start on September 1st because we're biking the summer?" She said, "Well, on one condition. There's an ACLU conference in Philadelphia in June, and you just need to attend that." I said, "Oh man, we're starting our bike trip in late May in Oregon. Okay, here's what I can do." I wanted the job, but I didn't want to give up my bike trip. So I said, "Will it be okay if I will bike to a city, leave my bike there, fly to Philadelphia, attend the conference, and then fly back and resume my trip." She said, "I don't care what you do, but we'll agree that you could start work on September 1st, but you have to be at the Philadelphia conference." Now, the Philadelphia conference, this was 1976. So it was the 200th year of the Declaration of Independence, and they selected Philadelphia. It was a big deal, and she wanted her new attorney to be there. So I worked out where I could safely leave my bike. We started out, the three of us started out where. The bicentennial had something called the Bikecentennial. They had mapped out a bike route to celebrate. You could bike for one day on the route, or you could bike the whole route. We decided to bike the whole route. Well, I had a friend in Missoula, Montana. Conceivably, if I averaged about a hundred miles a day, I could get to Missoula in time to catch a plane to Philadelphia. So because I wasn't working, I was in better shape than the other two guys. They were struggling to keep a seventy-five, hundred-mile average. So the fifth or sixth day out, I said, "Guys, I'll never make it." So we split up, and I then went on to Missoula. I made my plane. I left my gear, went to the conference, flew back just as they were getting into Missoula, and then we continued on. [laughter]

MG: That sounds amazing.

SP: It was amazing, truly amazing. Yes, it's funny.

MG: We are getting into the ACLU now, but I wanted to check in because I have been here for a few hours. Do you want to keep going or stop and pick up here next time?

SP: What do you feel like?

MG: It is up to you.

SP: Why don't we do a little bit?

MG: Remind me again, the position you were hired for.

SP: Legal Counsel for the Mountain States Office. Dorothy had opened that office a few years earlier and had hired an attorney. He did what I did and then told her that he wanted to leave. So she needed to hire somebody else to fill his spot and advertised it. Because I was still coming back for the Indian Rights Committee, she said, "Joe is leaving. You should consider applying." I said, "Oh, man. That would be great. I'd love to. I'd love to work with you. I'd love to come back to Denver." I interviewed for the job and then was offered the job. Then we had to negotiate the time to start. So I was the only lawyer in her office. I hit the floor running. I mean, Joe already had cases, and there was a backlog of intake. I mean, there hadn't been a

lawyer there for a couple of months. Joe had already left. She had wanted me to start when he left. So there was a mountain of stuff, and I was enormously busy. It's a good thing--as a single guy who could spend eighty hours a week. I was probably averaging seventy to eighty hours a week, and I loved it. I just loved it. Filing all these cases and flying around and meeting folks all over the Midwest. It was a great job, a unique job.

So Dorothy and I decided what cases I should take. It wasn't until maybe a year after I was there that Dorothy felt that it would be a good idea to have a legal panel. She was not an attorney, although she's keenly aware of legal issues. But she thought it would be helpful, as it was, for me to run by my cases and to try to do things more systematically. Pretty much it was, "That's a good case, and I haven't taken one in Montana in a while, I should take that." But we hadn't really developed particular priorities. I usually had a docket of between ten and fifteen cases, traveling so often. That's how things were going. I didn't have a paralegal. I had a secretary. I almost always had law students because one of the first things that I did was develop a relationship with the University of Colorado Law School. I would have law students to help me read intake and to do research.

MG: Was Aryeh Neier the Executive Director at the time you were hired?

SP: Yes.

MG: I was curious about that Philadelphia conference and the impressions you formed and about the people you met.

SP: Well, first of all, I didn't know a lot about the ACLU. In fact, it might have either been at that conference or--it could've well have been at that conference where a discussion was occurring [about] whether the ACLU organizationally should take environmental issues. There was a debate on the floor. I actually went up to encourage the ACLU to take environmental cases. It was defeated overwhelmingly. I realized, largely with speaking with Dorothy and others--and the argument against it was not that we're opposed to environmental issues, but that's not the ACLU. That's the Sierra Club. That's the Environmental Defense Fund. People aren't calling up the ACLU to deal with greenhouse gasses, and we don't want to go there. I still remember it because I almost look back on it with embarrassment. The mere fact that I even went up to encourage the ACLU to take environmental cases just shows that I didn't have much understanding of what the ACLU did. Again, I do believe that was the Philadelphia conference, and it was before I had started working for the ACLU. The only experience I had had was with the Indian Rights Committee, and that was a committee. So anyway, I didn't know a lot about the ACLU, [and] what we did.

In fact, Dorothy years later reminded me that I almost didn't get the job because when they asked me, during the interview, what I felt I could contribute, I offered the fact that I had done a lot of consumer protection litigation with Legal Aid. The ACLU doesn't do consumer protection. Dorothy told me afterward that if it hadn't been the fact that people knew me from the Indian Rights Committee, I probably wouldn't have been selected. I mean, almost none of the things

that I said that I wanted to do with my time were ACLU issues. I hadn't even studied what the ACLU did.

MG: But your experience was related, even if it didn't come up in the interview. I'm thinking of what you did with the Welfare Rights Organization.

SP: Right, right.

MG: You had said earlier that there was a case you had won that got you on the ACLU's radar.

SP: Yes.

MG: I am wondering if you had said any other those details about that case.

SP: No, I hadn't. Alright, I'll try to do it economically. In 1968--well, one hundred years earlier, 1896, the U.S. Supreme Court decided a very interesting case. You be the judge, okay. I teach Indian law. Now, I'm teaching at NYU [New York University], or I will be an adjunct there. The Cherokee have been removed from the southwest, and they're now in Oklahoma. They have a sophisticated court system. A Cherokee is arrested by tribal police for murdering another Cherokee, and he is prosecuted in Cherokee court, found guilty, and sentenced to hang. He files an appeal, a petition for writ of *habeas corpus*, an appeal in a federal court, saying that his constitutional rights were violated because some of the procedures that are required in state and federal courts by the U.S. Constitution were not being provided in tribal court. So the issue was whether a tribal court has to run its system the way the U.S. Constitution requires of all other courts. How would you decide that? Basically, do you think that this Cherokee, his name was [Robert Harrison] Talton, that Mr. Talton, had constitutional rights that he could assert in a tribal court?

MG: It does not sound like he was given due process.

SP: Right. That's exactly right. Okay. If I had known you were aware of due process, I might have used the word due process. He was claiming a denial of due process, exactly right. Does a tribal court have to provide due process?

MG: That sounds up to the tribal court.

SP: Okay. In other words, you would say no. You and I and others don't have constitutional rights in a tribal court.

MG: Well, I don't want to take anybody's constitutional rights away.

SP: That's what you would be saying. I mean, the answer that you gave, that he didn't have due process, is the same as saying that people in tribal court don't have constitutional rights other than what the tribe wants to afford them. That's what you feel. Okay. Well, you're right. You're absolutely right. The U.S. Supreme Court in 1896, held that because Indian tribes are

inherent sovereignties, they can provide whatever rights they want and they don't have to comply with due process.

Alright. In 1968, Congress held a series of hearings in the years prior and found out about this. In fact, the Senator from Nebraska said, "I'm shocked." He used the word shocked. "I'm shocked that there are American citizens," which of course Indians were, "who could be prosecuted in a court in the United States and be denied due process. We can't have that." So they passed a law called the Indian Civil Rights Act, ICRA, that imposes by statute, almost all of the due process rights that we have under the US Constitution. [Editor's Note: The Indian Civil Rights Act, or ICRA, was passed in 1968. It provides Native Americans on reservations most of the guarantee of rights that are stated in the Bill of Rights.]

So it's still true today that you don't have constitutional rights in the tribal court, but you do have federal statutory rights. However, there was only one remedy provision in ICRA, and that remedy applies only to people who are incarcerated, and yet many of the rights afforded in ICRA apply in a civil context, like freedom of speech. Under ICRA, if you wanted to run for office and they refused to let you run, but they didn't arrest you, [then] you could not go to federal court and say my rights under ICRA are violated because there was no remedy for a non-custodial, non-incarceration [violation of ICRA]. Well, in 1971, the lawyer who I replaced filed a lawsuit in federal court asking the federal court to rule that under an umbrella federal statute that was passed after the Civil War that basically says, "Federal courts can have jurisdiction over--can hear any case arising under the civil rights laws of the United States." It was kind of a catch-all to make sure that if a civil rights law was passed by Congress and they neglected to put in a remedy provision, this would provide the remedy provision.

Anyway, he then leaves, I arrive, [and] the federal court rules against him and his client, his Indian client, saying that you don't have a right to go to federal court for these non-incarcerated [violations of ICRA]. I argue the appeal, and the Eighth Circuit Court of Appeals uses this 1866 law and holds that all Indians have rights under the Indian Civil Rights Act, including rights in a non-incarcerated situation. This was huge. It made national news that Indians now could go to federal court and seek to vindicate all of their rights under the Indian Civil Rights Act, not just those in a criminal setting. That came down in 1972, and it was the very first Court of Appeals to address that issue. I argued a case in the U.S. Court of Appeals weeks out of law school. It was terrifying. Few attorneys even get to a U.S. Court of Appeals, never mind a twenty-one year old. Twenty-one? Yes, twenty-one, twenty-two, fresh out of law school. I had never been to any court, and here I am in federal court in the U.S. Court of Appeals in Saint Louis, and I win this big case, three [to] nothing. That's what that fellow, Davison--yes, that's right. His name was Davison, and Dorothy was Davidson. He had heard about that. Now, as a footnote, in 1978, six years after I won my case, the U.S. Supreme Court ruled nine to nothing that no, that 1866 law could not be applied in this situation and that tribal courts had to vindicate those non-incarcerated rights, but that's another story. That was a terribly long answer to a very short question.

MG: Oral historians like long answers.

SP: Oh, they do? Oh, okay. Well, then you got what you wanted. It was an exceedingly important case, one that many people were looking to because this law had just been enacted. The purpose of the law was to make sure that Indian people have the same basic civil rights as everybody else. [Congress] probably wanted to provide a federal remedy for all violations, but [Congress] didn't, and the U.S. Supreme Court said that federal courts cannot read into that statute a remedy; that wasn't in the statute.

MG: I also had some questions I should have asked earlier about the conference. Were you aware of any other debates within the ACLU at the time? I am sorry I keep bouncing around.

SP: No, no, that's fine. The other big debate--and the environmental debate and this other debate was one that, I think, has surfaced and resurfaced but--economic issues. To what extent should the ACLU--and I can't remember if this came up in Philadelphia in '76, but it has been a constant, whether the ACLU should deal with economic issues, like where banks redline. They don't lend money to poor people to buy homes in white communities; or zoning, where communities will zone industrial areas in black communities, but never in white communities. They want to preserve the pristine nature of white communities. Those were economic issues, and the ACLU has long debated whether to go into those areas. It's only, I'm guessing, in the last ten or fifteen years that the ACLU has recognized that economic issues are indeed civil rights issues and that we have started taking these cases, but that was another big debate back then.

MG: In your new position, were you finding ways to communicate with the national staff and board the work you were doing and maybe the needs you had? Is that too clunky a question?

SP: No, no, I'm thinking about it. Well, first of all, because I was on the national staff--back then, I would say the entire national staff, other than the Voting Rights Project, which was national staff, the Capital Punishment Project, which again was the national staff and the Prison Project--that may have been the only other national staff. I don't think there was the Immigration Rights [Project]. No, there was women's rights.

MG: The Women's Rights Project.

SP: Yes, women's rights. What I'm calling the national staff was maybe eight attorneys total.

MG: Do you remember who they were?

SP: My first legal director. Oh, god. Bruce.

MG: Ennis? [Editor's Note: Bruce Ennis was the Legal Director of the ACLU from 1977 to 1982. He died of leukemia in 2000.] [NOE: If Bruce began in 1977, he wasn't my first Legal Director because I started in Sept. 1976. It was probably was Mel Wulf.]

SP: Right. Bruce Ennis was my first Legal Director. The other lawyers there--wow. I think Jack Novik, N-O-V-I-K, was on the staff when I was. Jack died maybe two, three years later, of pancreatic cancer. [Editor's Note: Jack Novik worked for the ACLU for ten years as national

legal counsel and as acting Legal Director. He died in 1988 from lung cancer.] Wow. Who else was there when I started? Burt Neuborne came later, yes. [Editor's Note: Burt Neuborne was Legal Director of the ACLU from 1982 to 1986.] I'll have to think of it. I will say at most there were eight of us in the United States who were just general national legal staff, who were not assigned to the Women's Rights Project or Children's Rights Project--that was another project--but generalists. We held meetings in person, maybe once or twice a year, but we had conference calls. I think I was the only person who was not in the New York office. So a conference call would be them in a room and me in Denver.

So I was in pretty constant communication, but it was more of a "what's up" than "hat help do you need?" I rarely had help from the national office and rarely asked for it. Everybody was swamped. Chris Hansen. [Editor's Note: Chris Hansen has been at the ACLU since 1973. Since 1984, he has been Senior Staff Counsel.] He worked for the NYCLU [New York Civil Liberties Union]. I can't remember if he was on the national staff when I started or not, but he was there on the national staff around that time. Anyway, I would send in reports, listing my cases. I certainly could ask for help, but I rarely did. I think they were happy about it because it was just a small group of people, and we were each swamped.

MG: Where did your funding come from?

SP: National, yes.

MG: Maybe we can turn to the day-to-day cases you were taking on.

SP: Yes, yes. Now, one thing that I can do is I brought up--and you can take all of this.

MG: Okay.

SP: I mean, if you want.

MG: I do. It would help me craft my questions.

SP: Well, I was shocked when I realized I had all of these newspaper clippings. I really didn't know I had this many. They're in no particular order, but I started flipping through it, and I had forgotten almost half of these. Now I sent you the list of cases that resulted in reported decisions. Those are maybe half of the cases that I actually filed because many of them didn't result in a reported decision. Probably half of the jail cases didn't result in any court reported decision. I filed suit alleging overcrowding, inadequate medical care, inadequate lighting, ventilation, plumbing. I would go there with an expert, usually the same guy. Ward Duel was his name. I'm sure he's deceased now. He was very old then. He was an environmental engineer and he'd test the air quality. He'd test the water. He'd do fire inspection. He would take samples. He had this funny thing of--I don't think we ever went to a jail where there wasn't sludge on the shower--sludge--and he would take his fingernail, and he would make a W, and then he would take a picture of it--W for Ward. I have a collection of W pictures from jail after jail. Anyway, so many of my cases didn't result in court decisions, but they all resulted in

newspaper clippings, usually from local communities. This I took out. Now that's Dorothy Davidson. This is Aryeh Neier, and that's me back then.

MG: And that is your mustache.

SP: And that's my mustache, which I had for a long time. Most of my life, I had a mustache. This was the ACLU. Here's when I had even longer hair. "Tiny ACLU Staff Rides the Range," and this is a good article from--

MG: 1980.

SP: 1980, okay. Good. Well, this will give you some background on what was happening at the time. But I have articles on most of my cases. Often they're in the *Grangeville Idaho Gazette* or the *Reno Star* because they were big news there. "Suit filed against city by employee ACLU." Oh, this is a fantastic--well, this is one of the reported decisions. Anyway, this is really a treasure trove of materials.

MG: Yes.

SP: I'm sure these are one of a kind. So I don't know whether you want to take them. You're welcome to take them.

MG: I could scan them for you.

SP: Really?

MG: Yes, yes.

SP: Well, I'll leave that up to you. It would be a lot of work.

MG: It would take me a little while, but I would be happy to do it.

SP: Wow.

MG: It is material I would like to review anyway.

SP: Okay.

MG: You have been so generous with your time, and they're all things that I would like to read if you do not mind.

SP: Plus, scanning them would preserve them.

MG: I am an archivist.

SP: Right, right. You will be astounded. I was astounded. I'm trying to remember which--I was trying to get prayers out of the graduation assembly.

MG: It is a cartoon with a billboard, which says, "Welcome to Grangeville, unless, of course, you're one of those card-carrying ACLU commie atheists, who don't believe in the one true God. If you have to ask, you don't know him, in which case you're welcome to just stay the hell out. Amen." [laughter] That is from November 1990.

SP: [laughter] Yes. Right, right. Now, this is one of the church/state [Establishment Clause cases are often called church/state cases] cases that I filed in Grangeville, Idaho. That's Idaho. We were trying to stop these very religious prayers at graduation. But you will find numerous different kinds of articles. One thing that I was hoping to find, which I'm sure is in here that I'd like you to look for anyway--and if it's not here, then I will look someplace else. One of the cases I took in the early '80s was on behalf--and all of my cases resulted from telephone calls or letters. So I get a call one day from someone in Idaho who is crying on the other end of the phone, or not long into it, started crying. Now I don't remember if all of the details that I'll mention now came in the first phone call or later, but probably in the first phone call. She said that she had just moved to Idaho Falls, Idaho from Utah, both she and her husband, and that she was driving a car, her own car, and she was pulled over because of a broken taillight. The officer did a check of her license plate, and it turned out that a parking ticket hadn't been paid and that there was a bench warrant for the owner of the car, which was her, Julie Giles.

Julie said, "Well, I've never not paid a parking ticket." She found out later that her husband had borrowed the car, gotten a parking ticket, and he didn't pay it. But in any event, at this point, it still was an inconvenience. The officer said, "I'm sure we can work this out, but I do have to take you down to the police station." At the police station, they said, "Yes, because the fines have gone up, it's seventy-five dollars." She didn't happen to have seventy-five dollars on her, nor a checkbook. They said, "Well, can you get someone to bring the money?" She says, "Well, my husband will be coming home tonight. He's a lineman for the telephone company. I can't call him." This is [in] the day before cell phones. They said, "Well, okay, but unfortunately, we're going to have to keep you in jail until then." She said, "Oh, man." Well, the worst was yet to happen. The jail had a blanket strip search policy. Although it was handled professionally and it wasn't one of these where you leave the blinds open, and males are looking in. Still, she had to take off all her clothes. A matron examined her vagina, examined her anus, looked in her mouth, looked up her nostrils, to make sure she didn't have drugs. Now, you have to keep in mind that she was arrested off the street, so to speak. I mean, she would have to have thought that morning, "Oh, I might be arrested today. I'm going to put some drugs in my vagina," in order to justify looking there. She went through this.

Now, she's telling me this story on the phone and getting more and more emotional. Then she tells me that she is Mormon and has very strict, very strict, ethical rules about privacy. Most people, and most women, in particular, would find this abhorrent, but this was particularly abhorrent. She goes, "I have never been naked in front of anybody in my life since my adult years, other than my husband. Even if I go to a health place, we don't shower in the open. So I went to the police captain, and I went to the mayor, and they all said, 'Oh, come on. No big deal.'

Everybody keeps shuffling me away." I'm going, "Julie, this is horrible." Anyway, the letter that I'm sure is in here--we went to court, and we lost in the federal district court. The judge there, Judge Callister, just started spouting off, "Oh, I was in the army. Are you saying then?" He kept using these analogies that made no sense. Anyway, we appealed to the Ninth Circuit Court of Appeals and won. She wrote me a letter--I made a couple of copies, and I'm sure that it's in here somewhere--how important it was to her that someone took her seriously about this. So that's one. When you read it, you'll know the context because otherwise, you wouldn't know. Here's another set of--here it is. Amazing.

MG: Do you mind if I read it?

SP: No.

MG: "Dear Mr. Pevar, I just wanted to drop you a note and tell you how much I appreciate you and people like you, who take an interest in seeing that citizen's rights are not violated. You are the first person in this past horrible week, who seemed to care that something unjust had happened to me. I hope that something can be done to ensure that nothing like happens again to someone else in similar circumstances. I've always felt that I was basically a strong person. But combined with everything else I have gone through this year, that strip search was just about enough to push me over the edge. Even if nothing happens to change this barbaric policy in Idaho Falls, thank you for caring and trying. Sincerely, Julie Giles. Excuse my stationary. I don't have legal paper in my home. 1981."

SP: Yes. Now I remember that she did write this before we even went to court. She wrote this one week after it happened. Just the fact that I cared about it and said, "We need to do something about it," prompted this letter. When we resume, one of the overarching themes--and this isn't unique to me; I'm sure every ACLU attorney can say this, but what is unique to me is that I got to take these kinds of cases and so many others in a wide variety. I will have to say that I have helped more people than I would have thought humanly possible. I have changed more systems than I would have thought humanly possible--entire prison systems, entire mental health systems. One of the series of things in here that you'll come across was William F. Buckley wrote an editorial. [Editor's Note: William F. Buckley was a conservative author and commentator who lived from 1925 to 2008.] I'm going to just read the first paragraph.

MG: Go ahead.

SP: Okay. So let's say you're in New York and you have no idea what's going on and you see this article. The title is, "Thank You ACLU for Trying to Save Us from Silent Night," by William F. Buckley. "The American Civil Liberties Union has discovered South Dakota where dreadful things are going on at Lincoln High School in Sioux Falls. The school choir is rehearsing for the Christmas concert, and plans, among other songs, to sing 'Silent Night' over the dead body of Stephen Pevar of the ACLU." Now, first of all, I often read William F. Buckley's editorials. I had never seen anything like, "Over the dead body of." I mean, that's an invitation. That was something. What I had done is sued, on behalf of a number of people, these very religious Christmas programs in public schools. The kind of program that I went through,

that everybody who grew up back then went through. I bet that these programs don't happen that often. They'll have holiday programs, largely because of this lawsuit and in raising of consciousness. But this was back in, I think, the late '70s or early '80s. I'm sure I will find it. Oh, I could tell you--'79, okay. It provoked Nat Hentoff of the *Village Voice* to write a rebuttal, "Putting Sweet Jesus Back Where He Belongs." [Editor's Note: Nat Hentoff is a music critic, columnist, and author. He was born in 1925.] So these two actually should go together. But Hentoff, who is also Jewish, as I am, wrote about these Christmas assemblies, maybe to Christians are great but not to others.

In fact, this is one of the few cases I lost by the way. I won a portion and lost a portion. The judge agreed that some of the programs crossed the line, but he allowed what we felt were still religious programs, anyway. Hentoff, as soon as--oh, this the point I was going to make. In the Eighth Circuit, the United Presbyterian Church of the United States filed a friend of the court brief on our side, on the grounds that these programs hurt religion. They diluted religion. We were coming initially from the point of view that you shouldn't impose religion on non-believers or people of other faiths, but actually, the other side of the same coin is that one reason why you want to keep the church and state separate is not just the offense to outsiders, but it dilutes the religion. It secularizes religion.

So anyway, one of the biggest cases and the sea change caused by some of my cases was getting people to think about these religious Christmas assemblies. It made national news. A number of my cases made national news, but you could imagine what this would do to people. Truly, as I was flipping through, some of them [the articles] just had an interest in that little community. There's a case that's discussed here about a police captain who was fired by the police commissioner in Madison, South Dakota. Now, it became an important case just because of the judge's decision. Otherwise, that's an isolated case. But the number of isolated cases that I've filed--and that guy is a police captain, and he's still alive. I bet he would be happy to give an interview. I wrote down a few people.

MG: Okay. Where did you write that down? If it is in the pile, I will find it.

SP: No, no, it's not in the pile. Here are some of the plaintiffs who I have represented over the years, who I believe are still alive. This is my copy.

MG: Let me turn this off for a second.

SP: Sure.

[TAPE PAUSED]

SP: Just quickly. Pam Biggs, she and I still exchange holiday cards every Christmas--B-I-G-G-S, Pam Biggs. She's a perfect example--actually, I'm thinking of Shirley Reimann, the story I was about to tell. But Pam Biggs, to continue with her, her son was beaten up by the school principal. It's a religious community, and the principal was--well, I'll just say it. It's a Mormon community, and he was--I forgot his title--deacon or something, but a bigwig in the church. So

although he had beaten up several students, they were overlooking it because of his religious affiliation. Pam wouldn't allow that to happen and came to the ACLU with another family whose son had been beaten up. We filed suit against the principal. It was huge in that community, huge, and everyone recognized it as not just a school issue but a religion issue. We won that case.

I bet Pam would be happy to talk with you about the importance of doing something about religious leaders or school officials in general--but the one that I got confused with because both are women in Idaho is Shirley Reimann, R-E-I-M-A-N-N. I hope she's still alive. I have just lost contact with her. But she also lived in a predominantly Mormon community in Idaho, but she was not Mormon. The majority, which was Mormon, decided to have the high school graduation in the Mormon Church. Now, if it wasn't a Mormon Church, it would be wonderful. It seats two to three times as many, it's air-conditioned, [and] all of the students can invite their grandparents, whereas if it was in the school gymnasium, it would just be the parents in these hard-folding seats. But the non-Mormons who were a very small percentage, and, I might add, were members of other Christian churches. I mean, this is the perfect example of why there has to be government neutrality because the Presbyterian and the Catholic today, in one community they may be in the majority, but they're in the minority in another community like Shirley Reimann was. They did not want to go to sit in the Stake Center, S-T-A-K-E, in order to watch their child graduate. I mean, it has religious symbols up there that weren't theirs.

Anyway, I filed a motion for a preliminary injunction, and the hearing was the day before the graduation, and I'll never forget it. I knew the judge from another case that I had had in Idaho. On the stand, I asked the superintendent of schools, "Well, the judge has to make a decision whether to force you to return the graduation to the high school auditorium or to leave it in the Stake Center. Now, Mister," and I forget his name, "if the judge were to order you to move it back tomorrow in the auditorium, could you do it?" And he said, "Yes." In my closing argument, I said, "Because he can, he must." So the judge retires; he goes in his chambers for maybe fifteen minutes, and he comes back with some notes. He said, "I'm forced to make a decision quickly. The graduation is tomorrow. Because the rights that we all have as Americans of religious liberty and making sure that the government doesn't discriminate against us because of our religion, and because you can, you must." So I'm sitting next to Shirley, and she just squeezes my hand, and it was just great. Ever since that case, I doubt whether--and this was the prevailing practice. I mean, in Idaho, close to half the people are Mormon, but in the southeastern part, eighty to ninety percent are Mormon, and they were always having their graduations in the Stake Center, which definitely was a more comfortable place unless you were not Mormon. I mean, this changed all of that. It affected thousands of people, and it influenced other decisions. They would hold other school events in religious buildings.

Now, if Shirley is around, she would be wonderful to talk to about how important it was to them. She just said, "I'm just putting my foot down." I hope it doesn't come across that I have a thing against Mormons. Julianne Giles was a Mormon, and I represented her. It had nothing to do with their religion. It just had to do with the fact that a majority was trying to take advantage of it.

[TAPE PAUSED]

MG: Just say that one more time.

SP: Yes. Another guy who's on my list of people who you might wish to interview is Tom Spiering, S-P-I-E-R-I-N-G. He's one of the cases listed there. He was a police captain. I'll never forget his call. He called up and asked to speak with one of the lawyers. I mean, most people did. They thought we had an army of lawyers. "Could I speak with one of the lawyers?" He started off by saying, "Now, I want you to know I'm a police officer, and I don't agree with everything you guys do. We may have some political things, but I was fired for speaking. And I think my First Amendment rights were violated. I've gone to a few lawyers, and they're either not interested in suing the town, or they want more money, and I just can't afford it." Anyway, the reason I mentioned it is when you come back--I won his case. I didn't know it, but he carves guns. He takes wood and carves guns. He carved and gave it to me as a gift; I think it's called an AK-47 or something like that. I mean, an automatic rifle that looks real and has moving parts. Guns freak me out, so I have it downstairs, but I bet its worth a lot of money. If you ever come back and you want to take a picture. To take a picture of this gun that this, I'm sure, a right-wing police captain, who probably detests the ACLU until his rights are violated. I know that he's still alive, although I haven't spoken with him in a bit. He'd be a wonderful, colorful person to talk with. Anyway, there's several people.

MG: Feel free to email me those names.

SP: Okay, sure.

MG: Well, I really look forward to the next time we can do this. I have so many more questions. I am just really thankful for all the time you spent with me. I am really impressed by all your work.

SP: Yes. Well, thanks. I mean, I never tell anybody this. No one knows this. Not that I'm concealing it from anybody, but I never sat down and told my wife this. I didn't meet my wife until the early '90s, so most of the cases she has no knowledge of, and I wouldn't have any reason to bring it up. So a lot of this I'm talking about for the first time in thirty years.

MG: Well, it's all stuff that deserves to be preserved and on a record, and I feel really lucky that I get to hear all of this.

SP: Well, thank you. I'd love to have somebody record this.

MG: Well, here I am. [laughter]

SP: [laughter] In fact, one of the things that you'll notice is that a few things are in envelopes.

MG: Okay. I do not want to destroy the provenance.

SP: No, the reason they're in envelopes is that, about five years ago, one of my wife's friends is a journalist and writes articles. Laurel, my wife, told Lisa what I did, and she met with me for twenty minutes. She said, "Someone should write a book about some of your cases." She goes, "Let me take a look at these newspaper articles." I haven't even looked at what these notes are, but if there are any articles that are in envelopes, Lisa put them in there. She may have gone through these to try to organize them in some way, and that's what that is.

MG: Well, I'm going to turn this off for today. Thank you so much for being so generous with your time, and I'm looking forward to the next time.

SP: This has been so much fun. Also, for me, you could tell, I get kind of emotional with these things.

MG: I was touched by the impact you have made in people's lives and how it continues to make an impact.

SP: Yes, right. Well, and I, of course, cannot separate my work with the clients. I see their faces. I see Julie Giles' face as I'm telling you about this case. All of these have a story, every single one of them. I've filed a hundred-and-twenty-five, hundred-and-fifty cases.

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Reviewed by Molly Graham 5/19/2020

Reviewed by Stephen Pevar 8/25/2020

Reviewed by Molly Graham 8/26/2020