

Joseph Rauh and the Defense of Hollywood Against McCarthyism

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Based on Joseph Rauh's Oral History for the D.C. Circuit Historical Society

In the mid twentieth century, civil rights lawyer Joseph Rauh witnessed the epidemic of McCarthyism in America. Paranoia and distrust took root, forming a breeding ground for suspicious and frequently unsupported accusations of communist sympathies against neighbors and celebrities alike. The entertainment industries, already in the public spotlight, suffered intense scrutiny as potential disseminators of communist propaganda. No one was immune, and any association with suspects could bring on an investigation. As he relates in his oral history, Joseph Rauh took a major personal and professional risk in defending playwrights Lillian Hellman and Arthur Miller in response to the United States government's high-profile investigations.

In 1952, Senator Joseph McCarthy and the House Un-American Activities Committee (HUAC) were at the height of public influence. When HUAC subpoenaed Lillian Hellman to appear for questioning, Hellman (author of *The Children's Hour* and *The Little Foxes*) asked Joseph Rauh to represent her. Rauh thought she was "probably the greatest lady playwright in the history of this country" but knew she had attended many communist-run conferences in the 1930s. He soon learned that Hellman's case would be complex. While she was perfectly happy to talk about her own associations, Hellman decided that she wouldn't name any names, didn't want to go to jail, and also didn't want to plead the Fifth Amendment. Rauh recalled, "When one thinks for a minute, those are rather inconsistent things."

The American Communist Party had enjoyed significant growth in the first half of the 20th century among workers and creative types, especially when the Great Depression revealed the apparent weakness of capitalism. The Second Red Scare – when fear of communists overtook American political and popular culture after World War II – quickly suppressed this upwelling, with McCarthy and HUAC leading the charge to identify and root out communist sympathizers. The passage of the Smith Act in 1940 had made it a crime to advocate a forceful overthrow of the government. Anyone who admitted membership in the communist party technically violated the Smith Act, so many who appeared before HUAC pled their Fifth Amendment right against self-incrimination to avoid admitting their prior associations. Hellman recognized that pleading the Fifth would effectively blacklist her in the eyes of the public, who viewed such silence as equivalent to an admission of guilt. Yet to waive this privilege meant Hellman would be compelled not just to speak about herself, but also about others and their associations with the Communist Party. A refusal to answer, of course, could mean jail.

Hellman's contradictory requests made life difficult for Rauh. After "many starts and stops," Rauh suggested that Hellman write a letter to HUAC requesting that she speak about herself on the condition that HUAC wouldn't compel her to name other names. The Committee dismissed the request out of hand. Hellman and Rauh prepared for her hearing, arming themselves with a different tactic. The statute of limitations in this instance was six years; Hellman had not been a communist for the past four. She would be able to answer questions openly about the past four years and would only need to plead the fifth if asked about her conduct five or six years' prior.

Hellman appeared before the Committee, and they asked her if she was a member of the Communist party. After denying her membership in the previous four years, she referred the Committee to the letter she had written requesting exemption from naming other names. An associate of Rauh's distributed the letter to the press, and Rauh recalled, "the Committee and the counsel [were] having a fit because we look[ed] so good in the letter and everything." Rauh and Hellman decided to gauge their success on the wording of the *New York Times* summary the next day. As Rauh put it, "if it reads that 'Lillian Hellman pleads the Fifth Amendment,' we lost. If it reads 'Lillian Hellman refuses on principle to name names,' we won." The article turned out to be perfect. Rauh remembered, "I don't think that the Fifth Amendment [was] mentioned until about the sixth paragraph of the story." Rauh's public relations technique was copied a number of times afterwards.

Playwright Arthur Miller, in contrast to Hellman, was a simple client for Rauh. Miller (author of *The Crucible* and *Death of a Salesman*) had decided that he would not name names but didn't mind going to jail. "If you got him into jail," Rauh recalled, "he wasn't so angry; if you kept him out of jail, he was very happy. He was the perfect client." Miller was quickly charged and convicted for contempt when he refused HUAC's request that he name names. He and Rauh went to the D.C. Circuit to reverse the decision. Both Miller and Rauh "wanted a decision on the First Amendment so badly [they] could taste it," but the court wanted to get out of ruling. According to Rauh, "[t]he court didn't want to say there was no First Amendment right here, but they didn't want to say there was either." The court let Miller off on the grounds that he hadn't been specifically ordered to answer the question in his earlier congressional hearing, so his refusal to point fingers was not disobedience. Rauh recalled, "That was sheer nonsense. He knew, I knew, that he was under orders to answer the question." Still, at the end of the day, Miller had survived at the Court of Appeals and beaten HUAC.

Miller may have been an easy client, but the Miller case brought much excitement to the Rauh family outside of the public spotlight. The day before Arthur Miller's hearing in 1957, he called Rauh and asked if he had to be there. Rauh assured Miller that he did, and Miller responded that he didn't know where to stay – he and his wife couldn't stay in a hotel. The public would steal snippets from her dress, and had before. So it was arranged that newlyweds Arthur Miller and Marilyn Monroe would come to stay for two weeks at the Rauh household. When Rauh came home that night, he found his 16-year-old son Carl in front of the TV, legs propped up on a chair. Rauh recalled, "I said, 'Carl, you got to go to the station tomorrow morning and pick up Marilyn Monroe.' He fell off the chair."

Client or not, the celebrity of the Rauhs' guests loomed large. At breakfast the first morning, Marilyn said she was thirsty, and Carl and Rauh "knocked each other down in the doorway trying to get the glass of water." Rauh's wife, Olie, remarked that it was the first time she'd seen them out of their chairs for any reason. Carl began coming home from school for lunch midday, allegedly to shower but really to chat for a few extra minutes with Marilyn. When talking to the press, Carl made the *New York Times*' "Remark of the Week" when asked to describe what having Marilyn at his house was like. He responded, "Well, it ain't quite like having your brother at home." Monroe and Miller stayed for a few weeks, and Rauh joked, "Everybody had a good time, except Arthur. He got convicted, but the rest of us had a fine time."

Joseph Rauh displayed the tact and ingenuity necessary to navigate a jury far more fickle than that in the U.S. legal system: public opinion. Defending high-profile clients in an era of rampant finger-pointing, Rauh managed to help his clients evade the repercussions of Cold War paranoia until McCarthy's power in the United States slipped through his fingers.