

Oral History of Joseph L. Rauh, Jr.
Conducted by Robert S. Peck
Four Cases (1968-1974)
Interviewed During 1992 [Side A]

Mr. Rauh: So there were four cases. Actually, I just thought of this, the ACLU issued a press release during the course of those four, taking our side on all four of them. They were all pretty open and shut cases. Then, there was a misappropriation-of-funds case, but that came, I think, after the election in which they counted us out. Then, of course, we filed a complaint with the Labor Department against the elections, so in that sense, there were two more cases.

I guess it was in the money case, misappropriation of funds, when Jock [Yablonski] dies, they immediately say that the case is mooted, and we won that. Sometime during the course of this, we also asked for attorneys' fees. So that's another case in there.

Possibly the biggest case we ever won from Williams & Connally was in the court of appeals. We had lost in the lower court on the question of whether they could represent both [Tony] Boyle and the [United Mine Workers] union. The court of appeals ruled they couldn't represent both Boyle and the union, that that was a conflict. That was quite an important victory for us because it added to the malevolence of the other side, in addition to being accused of murder and everything else, now their lawyers are accused of wrongdoing.

That got a full column in *The New York Times* – “Williams Firm Disqualified” was the headline. It buoyed up our spirits because our spirits were getting pretty low – remember the fight was all of '70, all of '71 and early '72, I got my shot at Boyle.

What happened there was that the Secretary of Labor had exclusive jurisdiction to bring a suit to upset the election. We could not bring one to upset the election. After the murder

and all the screaming I was doing, they did in fact bring suit to upset the election. I moved to intervene. I lost in the district court. I lost in the court of appeals, and I think Skelly Wright was the judge. I think, what they did, they didn't write an opinion; they sort of said that we were out of our minds, that we didn't have a case. Well, we were just beside ourselves that we couldn't be allowed to intervene because our view of the tenacity of the Labor Department was something like jello. They were just terrible. They were on the side of the unions most often; they didn't have any great ability; as far as I was concerned, if we weren't in the case, why it was hopeless, and it was going nowhere.

Well, Dan Edelman wrote a draft of a petition for cert. We were pretty low because here we had Skelly Wright saying that we didn't have a case worth responding to. I don't know what got into Skelly Wright, but we had an argument before the Supreme Court, and we won.

It really restored our morale, so then the Labor Department let me run the case. It was February of '72 that I took Boyle's deposition for 2 days. I was sick. I had a kidney stone. It was a very painful thing, but darned if I was going to postpone the thing, so I cross-examined Boyle for 2 days. I didn't know this, but Clarice Feldman who was working with us went around and told [Judge] Bryant that I was sick. He couldn't have been more solicitous of me. There were twenty-three times, I think, the newspaper counted them up, that Boyle said he couldn't remember or didn't know, or something. By the end of the second day, Bryant was just giving Boyle hell. We would ask a question and he would start muttering and Bryant would pick it up and try to get an answer for us. I think, in a sense, we won the case that day. Bryant was just convinced that this was a lying son-of-a-bitch. At any rate, Bryant did come down with a

beautiful opinion on all the wrongdoing, all the mistakes, and all the violations of law. To get a new trial you have to prove that the violations would have made a difference and Bryant just destroyed him with the proof of that kind. Sometime, I think it was in May, Bryant's decision came down. Then, he issued an order, really, for short and honest election. He put a monitor in place, and we did get an honest election the second time. In November or December, still '72, we won the election and he [Arnold Miller] was installed.

I remember very well, the problem we had there. The UMWA owned the bank, the United Mineworkers owned the National Bank of Washington. Here, we're about to take over with a miner without even a high school education who owns the majority of the stock of this bank. The bank's full of big shots in Washington, like you never saw. So one day, between the time we knew we had won and the time we were installed, why two of the bank directors waited upon me to discuss the takeover of the bank. One was the present Governor of Rhode Island, Sundlun, he was one of them, and there was another. I came back to the office late in the afternoon, and they were sitting in my outer office and I walked by them. When I got in my office, my secretary said they wanted to see me. I said that was pretty obvious. So they came in and they said, "Look, you own the bank. We're all going to be out. We know that. Let's do this as gentlemen, not throw us out right now. Our terms are up in the spring (this was early December). What's the difference? We'll say that you, in effect, are in charge." And I said, "Well, is the President of the Bank, who is a man named Davis, will he agree to this?" They said they thought so. So I said, "Well, how do we get him, how to we get a hold of him?" So they pulled out a list of cocktail parties that he went to every afternoon, Mr. Davis, and said, well, it looks like he'll be at this one about this time. So they called him up at the cocktail party and he

said he would come over. A few minutes later – oh, we had a press release written. Arnold Miller, the incoming president, and this guy, Davis, what was his first name, I can't recall it right now, but I'll get it, anyway, we were working on a release. It was perfectly all right. We said that the Board of Directors would stay until the terms were up, but that we would in effect control the bank.

So, there is a knock at the door, because all the girls had gone home, it was now 7:00 or 8:00 in the evening, and I went to the door, and this guy Davis, who's got the cheek of, you've never seen chutzpah like this, says "Hello, Joe, how are you? I'm glad to see you." I never met the son-of-a-bitch, and I wasn't buying anything like that. I said, "Come in and sit down," and he sat down. Sundlun or the other fellow said to him, "We have a press release here in which Mr. Miller has agreed, and his people, Mr. Rauh and Mr. Yablonski," that was Chip Yablonski, the son, "and we would like to read it to you." So, one of them read the press release. Davis says, "It's perfectly satisfactory to me." We said to our guy doing the press, okay you can put the release out. So we thought that the party was pretty well over when Davis looks over at Miller and says, "Mr. Miller, I would like to buy your bank." Miller didn't know whether he had a toy or a hundred million dollars in place. So Arnold says to Davis, "Well, Mr. Davis, I really don't think it is for sale. We'd like to be able to help miners with their loans." Well that was a pretty ridiculous answer, because the mine fields are a thousand miles away, and the only office we had, we had a couple offices in the downtown District of Columbia, so this wasn't much of a thing. At any rate, we had the bank.

A couple of days later, we have the final hearing in front of [Judge] Bill Bryant. I presented the order to install Arnold Miller and our whole crowd, and Bill signs it. The clerk

hands it down to me. I handed up a half a dozen or more orders. He said, "What are these for Mr. Rauh?" I said, "Well, I've got several people I want to give them to, Your Honor. If the old crowd tries to draw money, I now have the word of Mr. Davis that he will follow our orders, but he is insisting that he get an original copy of your order." Bryant looks at me as if to say "Boy, am I happy to sign this order." He signs the order with a big flourish. We leave the courthouse then. There's a picture up on the wall of me and Arnold Miller there. Arnold is going back to the Mineworkers to get installed and I go to the National Bank of Washington and serve Davis with this order. I said, "Look, brother, if the old crowd draws anything, you're in real trouble, because I have your word on a press release and I am now handing you the order that you insisted on." He said, "Don't worry." Anyway, we never had any trouble, it was our bank, we had the funds, and we took over.

The problem we had there, now that we had won the battle, and I think I mentioned to you the other day that during the course of the day I had this call from [Judge] George Hart saying that he had just written me a letter, but he had to tear it up, and the letter said, "This is the best piece of lawyering that has come into Washington in my lifetime. I want you to know I believe that even though we are rather political opponents." He had been Chairman of the Republican party when I was Chairman of the Democratic party. He was a pretty conservative guy. That was pretty nice of him, but he said, I really shouldn't write the letter, but boy do I believe it, he said but I tore it up and threw it in the wastebasket.

Naturally I had been offered the general consulship of the union. I said the only right way to do it is to do it symbolically. Chip should be the general counsel, and Arnold said okay. He was decent in that respect. He just wasn't very smart, but he was decent. So Chip

became the general counsel and there was a certain kind of symbolism in Chip's ability to take over the union in a sense be the top person or one of the top people in the union after his father had died for the clean-up of the union.

So I had never had anything to do with the union after that. I didn't want to interfere in any way, so I really got out of it. But it was a great experience.

There is a very good book, I think I mentioned it to you, Trevor Armbrister. The prosecutor called the jail later. You see, Boyle was still the president when this happened. But because we controlled Arnold Miller in the sense that he was cooperating with us, he helped us. He got a confession out of the President of that District that was so corrupt and violent. He really helped us and we finally had pretty well made the case. He was moving up the ladder and then he [Sprague] indicted Boyle. It was a really exciting venture. I think as a civil lawyer, it is strange that I had two murdered clients, Bill Remington in the loyalty security business and John Yablonski. I've always been surprised that so much violence could have occurred in the period of a lifetime of a rather peaceful civil rights lawyer. This was one case where the court of appeals was not helpful.

Mr. Peck: Well, that period was also the period in which the Haynesworth nomination occurred. When did you first hear about that and how did you organize yourself into the opposition?

Mr. Rauh: I'm groping for whose seat it was. I think I know. I think it was Goldberg's seat. Fortas got that.

Mr. Peck: I think it was Fortas' seat.

Mr. Rauh: Yes. That is what I was groping for. If that's right, I know what

motivated me first. It was my seat. That was the Cardozo's seat. Because it went Cardozo, Frankfurter, Goldberg, Fortas, Haynesworth, and that seemed to me an obscenity for the seat of Justice Cordozo to go to Haynesworth. In my testimony against Haynesworth, I made that point that I was not here just as an outside citizen, I had an inside need for their understanding that the seat of Benjamin Cardozo should not go to Haynesworth. We got the Leadership Conference to go against Haynesworth. Clarence [Mitchell] and I testified for several hours for the Leadership Conference. We had a triple header. There were really three things against Haynesworth.

There was a lot of loose talk about we didn't have a case against Haynesworth and that it was a mistake to oppose him. That was loose talk. First, there were the civil rights cases. My testimony really murders Haynesworth on civil rights cases. There were the labor cases and George Meaney went up and testified against Haynesworth. He sort of had a box score of nine to nothing. There were nine labor cases on which Haynesworth sat, and on all nine he ruled against the labor union. The third item is the conflict of interest, because he not only ruled against the labor union, but he made money from the employers of those labor unions by having vending machines in their plants. Haynesworth actually sat on cases where he had a vending company in which he owned or had a majority interest, a company which he had that interest, had a contract to have vending machines in those three. Now that was a big break. Whether we would have won, even with a good civil rights record, from our standpoint, we really had him there, labor's opposition through Meaney, whether we would have won without the conflict, one can't say. We did have the conflict. Bill Eaton, a reporter for the, can't remember which paper, got a Pulitzer Prize for exposing this vending machine thing. He had a couple of other conflicts, but that was the big conflict. The combination of the three did it. On my wall up there, I have the vote in the

Senate on Haynesworth. It was very close. We did win, and we went to have some rest. Only we didn't remember that Nixon had said, "If they don't approve this guy, we'll give them someone worse."

Mr. Peck: For the tape, let me just say that the vote is signed by Birch Bayh, with the words, "Thanks so much, Joe, for all your help in defense of the Court."

Mr. Rauh: The Carswell thing was both better and worse, from our standpoint. We had already testified, the Leadership Conference, against Carswell for the court of appeals job. We didn't have very much in those days. I mean we didn't know much about him at that time, but we did testify against him. I don't think I testified. When he gets nominated, I said to myself, I'm not going to be able to live with this guy if this guy wins. Because he is so much worse than Haynesworth, that the people who beat Haynesworth are going to get run out of town. It was well known that Clarence and I and George Meaney had had a big hand in that, and everybody was saying, "You can't have two fights, Joe. You won now, now be quiet." I said, "You can't be quiet. If this guy gets in, he is so disgusting a human being, that we are really going to get crucified here."

I called up Leon Scholl [?] who was the Executive Director of the ADA and said, "Leon, you've got to come out against Carswell. We can't wait." Because people started coming out for him. They don't want two fights. I said, "What is your chance of being able to clear it, so that we could come out against him?" He says, "Do you think he's bad?" I said, "He's worse than Haynesworth. We have no choice." I said, "This is not a matter of my being petulant. I am just telling you we've got to do something here." He said, "Well all right. Give me an hour." He called half a dozen people and they all said go ahead. So he called, and I announced that the

ADA would oppose him.

This put everybody on the spot. Several of these people, their flacks had said they didn't think there would be a fight over it, but they had no choice. If someone in the old thing who beat Haynesworth was going to oppose it, why they had to, Clarence came out soon for the NAACP, Tom Harris [for the AFL/CIO] had to shift his position. He had told *Newsweek* that he wouldn't oppose. He told them on Friday and they had this in the paper on Monday. Then on Tuesday they had to come out against him, because the thing was piling up. The Senators were so mad at me. I really think that Joe Tydings was going to take a poke at me, he was so mad. He said, "We've just won a great battle. What are you doing here?" I said, "But that's not the point. The point is that this is worse and that we are going to look so bad, you're going to look so bad, but everybody's going to look so bad on our side of this fight if you don't come out against him." Slowly it turned around. It got down to a very few Senators that would make the decision. The Republicans were supporting Nixon, and the Democrats were largely opposing him, but not completely. On Saturday afternoon at 4:00, I was driving home from our regular tennis game and I heard on the radio, "John Sherman Cooper announces that he will vote for the confirmation of Carswell." If my car didn't bang into the side, it wasn't because I was alive. I was just flabbergasted. This liberal Republican, high standards, everything. So I was just beside myself. I got on the telephone with Wilson Wyatt who I had worked with in the housing agency. He was back in Louisville as the head of the biggest firm there, law firm. He said, "No, there is nothing we could do with Cooper. We had opposed Carswell. We can't do anything with Cooper. But, you will get [Senator] Marlo Cook, who will vote the other way this time, because he hates Cooper and he wants to show him up." So, I said, "Really?" And he says, "Yeah, watch out,

you're going to get Cooper.” Well, anyway, it comes down to the last day of the vote, we did get Cooper, and we did win by several votes. But, there were two votes there that the Administration had, if they could win. One was a fellow named Prouty from New England and then there was one other that they rather controlled the votes. They had Prouty and the other one's name escapes me. They weren't willing to throw their vote for Carswell, if it didn't make any difference, and it didn't make any difference. When Cook finally voted with us, there was sort of a cheer in the gallery. Whoever was in charge there was banging away to stop the noise, and I was sort of trying to keep it going. We made it the second time. It has been a useful victory for me personally because when I tried to persuade people to do it a second time, and they said it's hopeless, you can't win two battles in a row, we had a case here where we did.

Of course, Nixon gave up. He appointed Blackmun, who had a very good record in the Eighth Circuit, much better than he showed for a couple of years on the Supreme Court. My comment when the paper asked for my comment on Blackmun was, “Well, I guess we really won a victory with Carswell. Nixon had to appoint a Harvard Summa Cum Laude to the Supreme Court.” Blackmun had been a Harvard Summa Cum Laude in college, not in the law school.

At any rate, that Carswell thing was a wonderful thing, because it showed you could win a second time. Sadly, when the thing came up for its biggest, more recent thing, where you had Kennedy after Bork, the groups wouldn't go, and there was nobody against Kennedy except really Molly Yard and myself. We testified against Kennedy. There were two others actually on the panel. One was an assistant of Molly Yard, or she was in the NOW Legal Defense Fund. The other was really a most interesting thing. Joe Biden is rather obvious. He

didn't want us to get anywhere in the Kennedy thing because he wasn't willing to make a fight. What he did when our panel was announced, it was announced Molly and me, and that wasn't much strength when you come right down to it. I called it the Committee of Septuagenarians against Kennedy, but there wasn't much strength in that, and the third person was a NOW person. He added to the panel at the last minute a gay. What he was really trying to say was Molly Yard, that strident old lady from NOW, and Joe Rauh, that crackpot, and a gay, were all they've got against us. I kept telling everybody, "You're crazy. We have to fight Kennedy." I leave it to history whether I was right or wrong, but we did go in front of it. Biden was very ugly to me personally. He said, "Well you know," it was sort of, "you think you're so smart. You think you know more than we do. You think that you're a better civil rights person than Senator Kennedy here. Do you think that your better than Senator Metzenbaum, and do you think that you're a better civil rights person than I am, Joe Biden." It was really quite ugly, because there was really no answer to that. Metzenbaum accused me of challenging his character. I said I'm not challenging anybody's character, I'm saying that Kennedy ought not be on the Supreme Court and the fact that you've just beaten Bork doesn't prove that he should be on the Court. I felt rotten after the hearing. I felt that the hearing was really terrible and nobody could come with us. There were one or two who wanted to. I don't know, maybe it was unanimous, I don't know what it was. But I know we didn't get anybody that I remember. It just wasn't a nice feeling. You had the feeling the committee had a guilt complex. They knew we were right. They knew that this guy shouldn't be on the Supreme Court. They didn't want a second fight after Bork, so the best thing to do was to throw a couple of curves at a couple of lobbyists like Molly Yard and Joe Rauh who don't amount to much.

Mr. Peck: I think that we agree that they basically had given up, they did not want to fight again.

Mr. Rauh: That's right.

Mr. Peck: Haynesworth stayed on the Fourth Circuit and some say he compiled a pretty good record after this. Do you think the fact that he was subjected to such scrutiny may have improved his ability as a judge?

Mr. Rauh: Yes. I sure do. I think that as of the moment we testified, there was no question that we were right, both on civil rights and on labor and on conflict of interest. If you examine the record after that, it does seem to have improved. If it had been 10 years later, he might have very well been confirmed. But after all, we were dealing with his cases as of the day in '69 when he was nominated. There is a book out by John Frank, a former law clerk to Justice Black in which he takes Haynesworth's side of the battle against the labor/civil rights side. John's a good friend of mine. He was counsel to Anita Hill. We consulted during that period. He is a very decent guy. I just think he is wrong on Haynesworth. I think what led him astray was, he didn't agree with us technically that there was in fact a conflict of interest. He was an expert on conflict of interest, and although I think he agrees that it would now be a conflict of interest, as of the moment when Bill Eaton's pieces came out on the conflict, he didn't believe at that moment that there was a conflict. I think, because he thought we were wrong on the conflict, he sort of defended Haynesworth on the other two items which were there irrespective of the conflict.

Mr. Peck: It's often been speculated that [Senator] Roman Hruska's defense of Carswell was more damaging than helpful, that he thought even mediocre people needed

representation.

Mr. Rauh: I saw that on the tube that night. I just gave a cheer you could have heard three blocks away. How a guy could be so stupid as to say mediocre people needed representation. We had some great breaks in that thing. Hruska was one. I think there was almost a bigger break. James J. Kilpatrick is an honest man. He wrote a column towards the end in which he discussed the Carswell upcoming confirmation vote. He told the truth. He said Carswell lied about that golf course, the golf course story, of course, is that there was a municipal golf course in Florida somewhere and when blacks started playing on it, they put it in private hands so that they could not have blacks playing on it. Carswell had written the incorporation for the golf course and had been instrumental in getting the blacks off the golf course, and he denied it. This was a very important point. He denied that that was his purpose. In his column, Mr. Kilpatrick has the decency to say that "everybody in Florida knew that that golf course was turned into private hands to get rid of the blacks. Everybody knew that, I still think he should be confirmed." But his opinion that he should be confirmed had no impact; but his calling, he a southern, former segregationist, called Carswell a liar, that really helped us. I thanked Mr. Kilpatrick again for helping out on a cause he was not for, but he was a straight shooter, and he said everybody in Florida knows why this thing was turned into private hands.

Mr. Peck: I think that brings us to the '72 election. You were a McGovern supporter. How early did you get involved in the campaign?

Mr. Rauh: I was in it before there was a campaign. I was for George for president before he announced. I never had a big role in the campaign. I took some pitches for him. I'd go and raise the money. I used to be pretty good at that. I don't know if I could do it

anymore. It was a lot of fun. I really wasn't a very big part of the campaign. Towards the end, as it was heating up, I got more and more involved. I went to Mississippi to speak to the new delegations that were partly instrumental in helping make the delegation.

Then along comes California. It took a good deal of knowledge of the election law at that time to deal with the problem. What happened was that George beat Hubert Humphrey and Ed Muskie in a winner-take-all primary. It was run as a winner-take-all primary and he got all the delegates. This put him over the top. If anybody was to beat George, they had to upset that. So, Humphrey who had announced after McGovern had won the primary with a take-all, changed his mind and decided to challenge it. They had a hearing in front of the credentials committee. Joe Califano argued for Humphrey and I argued for McGovern and on straight party lines, Califano won. So they took a hundred plus delegates away from George, and then we weren't over the top. George called and said, "What do we do now?" I said, "We have to sue, we really don't have any choice." He said, "All right." I think this is on a Saturday, about a week before the convention. He said, "Come over to the house tomorrow morning and we'll discuss it." So Sunday morning I went over with about a half a dozen young lawyers who were helping me. That was the only smart thing I did in the whole thing, the rest of it they did. They were so appreciative of joining in this conference with the candidate that they just worked their heart out after the decision was made. Several of them have said to me that that was the nicest thing they ever had done to them. It never occurred to me that I was doing anything, but it was very lucky. They were very appreciative. There was an argument there – there were a couple of McGovern people who didn't want to sue. I had to argue with them. It was really quite a thoughtful discussion that morning. George said go ahead and sue as fast as you can. I think it

didn't take us twenty-four hours to have the complaint. It was a straight contract issue. The contract was that George was running in a winner-take-all.

[Side B]

Mr. Rauh: We filed the complaint as fast as we could. We took the papers around to Judge [George] Hart one night and he set it for 10:00 the next morning. Califano and I argued. Hart ruled against us, but in doing so, he helped us a great deal. He called the performance of the Democrats something like "rotten pool." I haven't got the first word right, it was something pool, what do you say?

Mr. Peck: Dirty pool?

Mr. Rauh: No, it was like that. It wasn't exactly dirty pool. It was some word that is used more often with pool. I can't remember what it was. Anyway, we went to the court of appeals that afternoon. They set the argument for the next day which was the fourth of July. So Califano and I argued in front of the court of appeals the morning of the fourth of July. It was perfectly clear that we had Bazelon, and they had the Senator. Do you have the name of the Senator?

Mr. Peck: No, I don't.

Mr. Rauh: Anyway, they had that. So everything was up to MacKinnon who was the third vote, and MacKinnon had had some experience when he was a political figure in the Republican party in Minnesota. He mentioned this case to me. Luckily I knew something, I knew enough about it to sort of embrace him, and we got him. So two to one, they ruled that they couldn't take the delegates away from us. Of course, the next morning Califano's in the Supreme Court with a motion to [Chief Justice] Burger to stay the thing. Well, a stay is a

decision on the merits and so we argued, papers flying back and forth for about 36 hours. The final thing we did was, I think it was the second night, we were having dinner and we hear a report that Burger's going to issue an opinion on a point that's answerable. I can't at this minute, without seeing the papers, say exactly what it was. So we decided to leak the story to the *Post*, what Burger was likely to do and then file the answer at 9:00 the next morning in the Supreme Court. So we leaked the story to the *Post*. We went home and went to bed. We got up at 3:00 or 4:00 o'clock in the morning. We were down at Arnold & Porter about 5:00 with the *Post* giving Burger's reason. Well, at 9:00, Bill Dobrovir and I show up at the Court with a supplemental supplement answering this point. Burger obviously, we drove him off of that, but we didn't drive him off of the answer. There was dissent and Bill Brennan went along with it, saying there wasn't time to deal with it, which seems to me would also have been time for not upsetting the lower court. Since I sometimes think of Bill as pretty close to divine, why I will forgive him for this concurrence with Burger. We had through the win in the court of appeals, and maybe it was "dirty pool," since we had one judge saying it was dirty pool, and two other judges and the majority say that we were right, and the grave doubt about what Burger was doing because the stay was a decision on the merits. All we asked was for an oral argument if they were thinking of staying it and they didn't give us anything like that. It was a pretty rotten performance by Burger on us. So I went to the convention with George and helped on the floor that night. Of course, we did win the fight. I think it was helped by George Hart, a Republican Chairman in the District of Columbia, calling this thing dirty pool and Dave Bazelon and MacKinnon saying that they couldn't do this. We, in fact, won.

I've only one reservation about that case. These wonderful young people who

handled it really with me, there was brilliant writing stuff they were bringing in, and we kept improving the thing. They were getting leaks from clerks in the Supreme Court. It never occurred to me that I was doing anything wrong in listening to them. They'd come running in saying, Joe, so and so, he's with so and so and he says that your real problem is that Bill Brennan doesn't want to come back for an oral argument tomorrow or something like that. They kept coming in with it. It never occurred to me that I shouldn't have listened, and I did listen. I don't know if the information was of any great value or not. I've often wondered whether I didn't make an ethical breach there in listening to their reports. We were sure getting them. I'll tell you this, the Supreme Court law clerks were really with George McGovern and I guess the Vietnam war. It didn't bother them any. They were leaking their socks off and I was getting the advantage of it. I've thought about it a good deal. I guess if I'd thought more about it, I wouldn't have let them do it, but I did. That's the story of that case.

Mr. Peck: As I remember the campaign, the campaign was full of hope, George the giant killer was going to knock off Nixon. Although we read complaints about the Watergate break-in, it wasn't a story that caught on at that time. Did you have any impressions about it at that time, whether that was something that would develop into what it did?

Mr. Rauh: No. I really did not, and I don't think you are right when you said that it was a campaign that started with a lot of hope. I think George was a hopeful figure, but, two things happened there that caused the landslide. One was Meaney's opposition to McGovern because he hadn't done everything that Meaney wanted and the other was Tom Eagleton's medical problem. I think I may be one of the few remaining people who have remained best friends with George McGovern and Tom Eagleton. I think they're both terrific human beings

and that it was just a tragedy, an inevitable tragedy. It's the kind of thing that happens in politics. George himself now feels that he made a mistake in knocking Tom off the ticket, that he'd have gotten more sympathy and everything else if he had just hung firm. I think that's right, but at that time all the money people said, "You've got to end the Eagleton vice-presidential nomination," and George did it.

I didn't really foresee the whole thing. I guess it really was inevitable once Meaney decided to go for Nixon. They say he was neutral. When a Labor man is neutral, he helps the Republicans. There was no real neutrality there. In fact, the labor movement was very unfair to George. The worst thing they used against him was something that should never have been used against him. There was a vote on a Taft-Hartley provision that permits states to have right-to-work laws, and labor was a big effort to repeal that. The Senators were filibustering the repeal, the Republican Senators, and George had promised to vote for cloture. When the time came we were fifteen votes short of cloture and George called a number of people including Walter Reuther and said, "What do I do?" They said, "Vote what's best in South Dakota," which clearly was against the union, which he did. Meaney kept using that against him, saying he promised. He did, but the situation had changed. It was hopeless. There were fifteen votes behind. So in fact the whole campaign was fraught with difficulties and the break-in was just a small part of that. I think we lost it before we started in that race.

Mr. Peck: 1973 became the year of the Watergate Committee, and the hearings and just the constant parade of all the things that a lot of people suspected about the Nixon Administration which was now being confirmed. How were you reacting to this? How did this figure into the things that you were working on? Certainly Congress seemed re-

invigorated.

Mr. Rauh: There was a strange thing here. I had testified against Ford being confirmed as Vice President, and there didn't seem to me to be any great advantage in Ford. The advantage was in hurting Nixon who was against us in all the things. In relation to Ford, we didn't have any great support for him. In fact, his civil rights record had been miserable. Everybody was against Nixon. I was against Nixon, but there wasn't any sort of light at the end of that tunnel, as though you were going to have some really first call President come in there. I did do some work on the impeachment. I wrote a couple of things for different members of the House Judiciary Committee. I don't think I had what you call a very major role in that.

Mr. Peck: Did the concern with Watergate and the focus the Congress had on it have any effect on the other things that you were working on? Was it a distraction from that work, or was it helpful because the Presidency was weakened?

Mr. Rauh: I'm trying to think whether there was a Supreme Court appointment in that period and I don't think so. You get the Rehnquist one in the first term, don't you?

Mr. Peck: Rehnquist? Yes, that was still during the first term.

Mr. Rauh: I've never really related Nixon's weakness to the civil rights, liberal things for which we were struggling.

Mr. Peck: Was Lewis Powell in '73?

Mr. Rauh: No, he was there with Rehnquist. There were two of them there together. We did not, or at least the Congress did not oppose Powell because there were some good things in Powell's record, some bad things, but we did not oppose him. I guess I never thought in terms of the effect of Watergate. It had a good effect in one respect and that was the

'74 election where you got so many congressman and senators. I do remember this, and I guess this is what you're thinking of. In '74, after that very Democratic victory, I called Fritz Mondale. He had planned a trip to Europe, right after the election and before the '75 new Senate. I was for Mondale for President then, and made a suggestion. The suggestion was this, that Mondale cancel the trip, call together the Democratic party leadership, and make a plan for a great liberal upsurge in '75. I had had a number of "lead balloons" in this world, and that was just as good as any. [Laughter] I didn't get anywhere with Fritz. I think he'd have been President of the United States if he had accepted that suggestion. He would have been the leader of the party. There was no leader at that moment. Carter comes in in '75. Mo Udall is the best of the announced candidates, and is a lovely guy, but never really took off for President. Mondale says he doesn't like staying in Holiday Inns. If you ever saw a hole in politics that a person could drive a truck through, Mondale had a chance right then and there, but he just let it go. Carter started building up and there were other candidates in the race. You had this really throwing way of a real chance. If one looks at the political situation as of the end of the year in '74, the Democrats had nothing. Mondale, he would have floated up there like anything. I guess I saw in the Nixon debacle a real hope for a liberal party, a liberal candidate and a liberal program. I had more hope for Mondale than he did.

Mr. Peck: Since we're into the year 1974, that was the year that *Kelsey v. Weinberger* was before the D.C. Circuit and your pal there Robinson, Tamm and Wilkey. This was the case that challenged under the Emergency School Aid Act the waiver that Weinberger wanted to give to certain schools about the racially motivated teacher assignments. Originally the case had been dismissed in the district court and then you argued it in the court of appeals.

Mr. Rauh: I've really forgotten most of the things about that case, but I do remember an incident. We were meeting with Weinberger, the Leadership Conference, and Clarence and I were leading the delegation. There was a pause in it for a few minutes. I had a doctor's appointment and I was saying goodbye to Clarence and Weinberger. I said, "I have to go and see the doctor," and Weinberger said "yes," meaning that I was nuttier than a fruitcake and the only place for me was with the doctor. I do remember that that was while, I guess, the case was on or just after. I can't remember exactly about the case and I don't remember too much about it. At this period of time, when do we have *Adams v. Weinberger*?

Mr. Peck: *Adams v. Richardson* was '73.

Mr. Rauh: *Richardson*. That's what I was thinking was the big case of that period. Were you coming to that?

Mr. Peck: In my notes here I show that you were on the brief in that.

Mr. Rauh: Elliot [Lichtman] argued it in the court of appeals the first time, that's right. That was a very significant victory. That case lasted for almost 20 years, 15 years, and where we were able to push Secretaries of HEW and then Education into doing more on desegregation than they wanted to do. I remember that case very well. I'm having trouble with *Kelsey v. Weinberger*.

Mr. Peck: In *Kelsey v. Weinberger*, you won a unanimous decision that reversed the dismissal with instructions to the district court, and it was Judge William Jones, that he had to give the relief sought, relying very much on the *Green* case. But since you bring it up, let's talk about *Adams*.

Mr. Rauh: *Adams* was a thought of John Silard's and mine, especially John's.

Desegregation was going so slowly. It was just heartbreaking how slow it was and how little was being accomplished. You never know where ideas come from or whether one person thought of it or another when you're having discussions. We had the feeling that you could get the Court to order the Secretary that he had to, if certain conditions were met, that he had to withdraw funds. That's Title VI of the 1964 law, and it meant what it said. We knew we would run into the argument that the prosecutor decides what cases he's going to prosecute, but contrary to that argument is the argument that a Cabinet officer has to carry out the law. So we got the suit ready to go against Elliot Richardson, who was the head of HEW at that particular moment. I knew Elliot. He was a Frankfurter law clerk some 10 years after I was. He had a good reputation in the Administration. He was among the best of the Cabinet people. He and Bill Coleman were great friends. They had been roommates and law clerks of Justice Frankfurter together. We were bringing suit under the auspices of the NAACP Legal Defense Fund, of which Bill Coleman was the top official, and Elliot made a plea for time that we didn't sue. We prevailed on the Legal Defense Fund to say let's go ahead. We don't want some cosmetic changes, let's get some real changes. I don't remember who filed the papers, Elliot [Lichtman] or I, but we got Judge Pratt. I thought that this was a disaster, because Judge Pratt and I had had a real run-in at the Harvard Club.

The Harvard Club used to be at the Army Navy Club which didn't admit blacks. It was a private club and they didn't admit blacks. Charles Mason, now the husband of Hilda Mason, the Councilwoman, is a classmate of mine from Harvard. Charles calls one day and says, "Do you know that the Harvard Club of Washington doesn't have any blacks in it?" I said, "Ah, you're kidding." He said, "No, it doesn't." I said, "So what!" I'd had so many battles I was tired.

He said, "You've got to join the Harvard Club and lead the fight to let the blacks in." Well, after a while I said okay. Our candidate was Frank Snowden, a Professor at Howard of Classics who became the first black cultural attache in Italy under Clair Booth Luce. At any rate, Charles Mason and I took Frank Snowden to a Harvard Club luncheon. The eggs really hit the fan. Well, they finally served him, but it was most unpleasant. They then made clear that he wouldn't be welcomed a second time. There was a big fight, but we ultimately prevailed, and the Harvard Club changed its bylaws and admitted blacks.

This was the background against which Pratt was assigned to my case. I thought it was a disaster. But it turned out not to be at all. He was a very conscientious judge. He made a great effort to be fair. He got a lot of integration going. He kept the heat on the Secretaries of HEW and Education. In fact, I'd say, he did a first class job. He didn't go as far as we wanted, but I think when you think of the situation, I think that he did a first class job. He kept the pressure on them. We fought with the heads of the civil rights groups, for example, Elliot [Lichtman], I think, took Clarence Thomas's deposition in the case. He was really resisting all the way. I took David Tatel's deposition when he had that job in the Carter Administration. I think the case was a big success. What happened was that as the new judges came on that didn't believe that you should expand standing to sue, we finally after somewhere, 15 to 18 years, Judge Pratt threw it out. By that time, I don't think that it was such a terrible disaster. We'd gotten as much out of the integration through direction of the Court there as you could get, and I was perfectly satisfied. This was a real great effort by John Silard, Elliot Lichtman, and myself. This seminal case was argued by Elliot in the court of appeals.