

**Oral History of Joseph L. Rauh, Jr.**  
**Conducted by Robert S. Peck**  
**Re 1976 Elections**

Mr. Peck: This is continuing the Oral History of Joseph Rauh. We're up to the 1976 election.

Mr. Rauh: Well, what had happened in 1972 with the McGovern debacle – I've never thought that he did so badly. There were a couple of reasons why he did so badly; why it turned out that way. One was a good friend of mine, [Senator] Tom Eagleton, and the other was [AFL-CIO president] George Meany. Between the two of them, they did old McGovern in. So the race then was, I thought, a rather pitiful race for the nomination in '76. There was only one man in the race who really gave you the feeling that he could be a good President and that was Mo Udall, but we don't have a congressman very often getting the nod. I thought Carter was terrible. There had been an awful lot of material showing that he was fairly close to a racist, I felt. There was that story on the governorship where they used racist things like the former Governor – what was his name?

Mr. Peck: The fellow with the axe handle [Maddox], right?

Mr. Rauh: No, no, this is the good guy?

Mr. Peck: Busby?

Mr. Rauh: No. I don't have it exactly, but there was a lot of material there that the guy was really against blacks. Sanders. Governor Sanders was running against him and what Carter did was show pictures of Sanders with the black basketball players who had won some championship or something. It was quite racist, but Carter and Hamilton Jordan were very smart. They knew that there were lots of black intellectuals out of Atlanta, Emory and other

schools. They captured the issue and put it away. So, in fact, I have these recollections of the Carter thing.

First recollection is the opening night of the play at Ford's Theater on Martin Luther King. There was a play, a one-man play on Martin Luther King. We were invited, so we went. My wife and I walked up to the Ford Theater that night and I see clearly that minute as I do now – that was the spring of '76, and there is Andy Young standing there. We started shooting the breeze, Andy and my wife and I. Olie always says, "Well, why are you for Carter? What's he for?" And Andy said, and this is fairly close to precise, Andy says, "I don't know what he's for, but I think he can be elected. What you people don't realize is that Atlanta probably has more influential blacks throughout the country because of its educational institutions than anyplace else. I think Carter is going to make it, and I'm going to be with him."

Well, that was so shocking to me that this fine, wonderful assistant of Martin Luther King was talking that way, but it stuck in my brain ever since.

By then, I had had a run-in with Carter at the ADA convention which is about at the same time – we used to have them April and May. I think that this year it is June. We agreed in the ADA leadership that we would invite all the candidates to speak on Friday night at a public forum. If they didn't come and speak Friday night, they couldn't speak. We weren't going to have them sort of dribble in and out. Of course, they always turned to me to get the people. So I got [Mo] Udall, Fred Harris, Henry Jackson turned us down, oh – [Terry] Sanford. So I got Sanford, Udall and Harris, and never got a response from Carter. It was Friday night and the three of them spoke. Boy, was that a dull night; I mean Udall was funny, but it was no presidential thing. The other two weren't even funny.

The next night we were having our reception we have before the banquet and in walks Carter with a retinue of half a dozen of those guys. Don Fraser, who was the Mayor of Minneapolis, was the chairman and he had a right to do what he did. I went up and told him he ought not let the guy speak at the reception because it would have broke my word to the other three. Well, Don's a nice guy, he didn't like to argue, so he says okay. Well, I think Carter got on a chair or a table or something and started speaking, and I got out of the room with a comment that "no George Wallacite was going to tell me what to do, or some such comment. It was noticed, and I have always been on the outs with Carter. I think that he was a lousy President, I think he was the most conservative President, really since . . . well, I guess really the most conservative Democratic President in this century. I don't know who you could say that was more conservative.

Don has subsequently apologized to me. He said that he didn't realize that when I make a promise like that to the other three that I try to live up to it.

So then Carter got very rough with me. One night they were on a plane with a lot of reporters, and he started in on me. It was night, so they all filed their stories, and all said I couldn't be reached. Well, the reason I couldn't be reached was they were on a plane at midnight, and they filed their story. There was a big story in *The Washington Post* about Carter attacking me. There was nothing I could do to respond, although I did have a lot of friends who wrote pieces about it afterwards, but the damage had been done.

Well, I voted for Carter, but my wife was for Mondale. She turned the ticket upside down. I think Jordan really was a genius. He started this business about government can't do anything. I mean, that doesn't start with Reagan. Reagan carried it to its logical conclusion,

but the idea that the government is not able to do for the people what poor people can't do for themselves, Carter was ahead of Reagan on that. Anyway, I did vote for him. I think he was a terrible President. He started this thing rolling about the government isn't able to carry those who can't protect themselves. Anyway, in 1980, I was for Kennedy and then after Kennedy I went for John Andersen. That was the only time I've voted for a President other than a Democrat. My own view was that John Andersen's operation there shows how Perot's going to operate, too. I don't want to compare the two human beings. I like John a great deal, but the fact is that he had a lot of votes right after the Democratic convention, and they all went up in smoke.

Mr. Peck: My memories of the '76 convention, I had worked for Udall, too, so obviously his speech to the convention, I thought, was a very important high point for me. Barbara Jordan's speech, of course, being magnificent.

Mr. Rauh: Yes, it was a beautiful keynote that she had done.

Mr. Peck: I also recall Carter's attempt to pay tribute to Hubert Humphrey in getting his name wrong. Hubert Horatio Hornblower.

Mr. Rauh: Yes, yes, that's right. I had forgotten that. Jordan must be a genius to have piloted into the Presidency of the United States a man who was really quite wrong for the time and the place and the party, and everything else. How he was able to pull it off – there were very clever things people were saying, like he was a George Wallacite, he had been very close to George Wallace for a while, and then as soon as he gets elected, he puts up a picture of Martin Luther King, so when people jumped on him: "Well, what about my picture of Martin Luther King?" It was a brilliant performance, and I guess Perot knows a good thing when he sees one, and he's now got the guy [Hamilton Jordan].

Mr. Peck: Well, it's said of Carter though, that he's made an excellent ex-president.

Mr. Rauh: There are great ex-presidents, there are great ex-attorney generals, there are great ex-everything, but it is too late to make any real difference. But you are right, everyone says he's a fine ex-president. He knows how to hammer a nail in a poor man's house. That's all right with me, but it has nothing to do with the period of his Presidency which preceded the downhill role of the President of the United States ever since.

Mr. Peck: Well, you did have friends in the Administration, even though . . .

Mr. Rauh: Oh, yes.

Mr. Peck: . . . even though you didn't get along with the President. Why, other than the fact that the Administration had great difficulty with Congress, which from the beginning was an adversarial sort of situation, why don't you think that of all your friends who made it into the Administration, why he couldn't get more done?

Mr. Rauh: I'll tell you a story. George McGovern became head of the ADA, I guess in '76. Carter took office January '77. We had the ADA convention in the Spring of '77, and George wanted to have the usual talk with the President, so we asked for a date. We went over to the White House. We saw [Vice President Walter] Mondale. Well, it couldn't have been a more perfect putdown because Mondale was one of us. We met with [Stuart] Eisenstadt and Mondale. I don't know what excuse they used – the President was out of town, or too busy, so the issue quickly comes up on military expenditures. We wanted to cut to military expenditures, and divert it to social programs. Our position was perfectly simple. Everybody went around the room, our crowd, and we find suddenly we are sitting there, and Mondale is turning the meeting

over to Eisenstadt who is supposed to defend Carter there. I couldn't believe my ears but I heard Eisenstadt say, "Well, of course, he promised to cut military expenditures. We did that, we cut the amount of increase that he was going to ask for." I could hardly believe my ears that they had worked out this formula for saying they were carrying out their program, not by cutting last year's expenditures, but by cutting what had been programmed for the following year. I thought Molly Yard was going to have apoplexy. She said, "I ran in western Pennsylvania. I was for you, and I really worked my heart out for you guys. If I had known that was your position, brother, I would have been against you hook, line and sinker." Molly really gave it to Eisenstadt. Molly is no small potato when she gets wound up, so nobody else has to say anything. George didn't have to say anything; Molly Yard had demolished the whole – such a crazy argument to say you're cutting a thing when you're cutting the amount of increase, not the actual amount. If your top domestic guy – Eisenstadt – accepts that kind of argument, he isn't making much of an argument for our side of the case. That's why I told this story. The story is illustrative of how they were not going ahead with the liberal side of the thing, like cutting military expenditures. I guess we all went out of that room just sort of feeling awful. Among the leaders of the ADA, Arthur Schlesinger immediately said this is the worst conservative Democratic President since Grover Cleveland. He said this made them comparable.

Mr. Peck: Well, one place where perhaps his decisions were not as conservative was –

Mr. Rauh: Judges. I give him credit for good judges. There's no bad politics in appointing liberal judges. Jordan knew his game very well. There were places where you could do things without hurting yourself politically. And you can say, "Look at what wonderful

judges we appointed." They did appoint some great judges, no question about it.

Eisenstadt was up here a few months ago. He's writing a biography of Carter, and we argued it out. He's a perfectly pleasant guy, although I must say, having come up with that nonsense about will we cut the increase. They said they were going to cut the expenditures by something like \$5 million or \$10 million, can't remember what, but they did cut the amount that had been programmed for an increase, but the total was more than it had been the year before.

Mr. Peck: Right, right. That's a cut in the new language.

Mr. Rauh: Yeah.

Mr. Peck: The next time I have you appearing in the D.C. Circuit is 1978, and the case is against National Right to Work Legal Defense Fund. Do you remember this case?

Mr. Rauh: Yes – I am trying to pull it together. There's a provision in the Labor Management Act that seemed to imply that employer money couldn't be used in some way that the National Right to Work people were using it.

Mr. Peck: The purpose is not for the employers to essentially fund an anti-union organization that is trying to undermine the status of the union.

Mr. Rauh: Well, that's what our argument was. We had about ten unions bringing the suit, and we demonstrated that they were getting lots of money from employers. Well, it was an employer-funded anti-union organization. We had it in front of Judge [Charles] Richey. Judge Richey is a strange guy. At the beginning of that case, he was so much for us that nothing I could do was wrong. As the Republicans took more and more hold of the government, he became less and less partial to us, and he finally ruled against us. This occurred at a time in my life when I had become practically a maverick lawyer, in the sense of taking the cases of

dissidents inside the unions who I thought were fine. I had the case of Jock Yablonski against Tony Boyle. In this instance, I took up with Ed Sadlowski as a dissident. The labor movement didn't start to get terribly angry – although they sided with Boyle largely – they didn't get terribly angry at my trying to knock Boyle out. When I went after the Steelworkers to get Sadlowski in as president, there was a real blacklist. It didn't matter to me. It [the case] was going on for years, taking lots of depositions. I can't remember the exact time, but I was already getting on, I was 70 years old. It didn't bother me the blacklist. I kind of thought it was kind of funny. They wouldn't let me argue the case in the court of appeals, and they lost it. They blew it. And I still think that it was – Ab Mikva thought it was a violation of their free speech rights, but the case wasn't argued to them in a constitutional way and in some ways, I was the perfect attorney to argue that because I was more known as being for free speech than being for the last ditch of labor rights. Anyway, they blew the case. Reed Larson, the president of the Right-to-Work, goes around, and he's home free. He takes dough from anybody he wants. That was a problem in my life. I couldn't go on being a labor lawyer, but it didn't particularly bother me. I realized there was a blacklist, when a fellow named Richardson, who is with the Hotel and Restaurant Workers here, called me up and wanted to hire me. He was in a big fight with somebody. I don't know if I can deal with you. He said, "What is it?" I said, "I'll take the case if you will clear my taking it with [AFL-CIO President] Lane Kirkland. Call up and tell Lane Kirkland that you want to hire me to handle this case for you or this matter or whatever it was, and I'll do it. But I want to be sure that I'm not going to have a fight down the road, and Kirkland says that he didn't know about it and therefore free to do anything he wants." That's the last time I heard from that guy. That's my evidence in the case. They're just as bad as the employers. The employers don't want

somebody to sue employers. Unions don't want anybody who sues employees. After all, I knocked out of the labor leadership a murderer. They didn't think that was such a hot idea.

And then there was Eddie, while we didn't have a murderer, we had all sorts of violations of law and we lost out. The labor movement wants to have a right to have a lawyer who is beholden to the incumbent. They can hire the lawyer, and they want the lawyer not to represent the membership, but the leadership of the union. I just thought that was a terrible thing.

We took some cases. I enjoyed it. The reason I brought it up now, the right to work case, and another case were about the same time. They were all based upon the fact that I was vulnerable, if you want to say vulnerable, because I didn't accept the principle that if you were a labor lawyer you had to do what the boss of the union said. I felt you had a right to do what you thought was to protect the membership. But that's not a winnable battle.

There was another case – it was out in the Ninth Circuit – Ellis against the Brotherhood, well, it's well known. It went to the Supreme Court, and I was a lawyer in the case. What happened was the Right-to-Work people sued, I think, the Brotherhood of Railway Clerks for using dues money for political expenditures. My view was that that was right. You couldn't. As a matter of fact, Walter Reuther agreed with that, and that UAW, when I was their general counsel, put in a plan whereby you could get a rebate of your political expenditures, so that I was not in any strongly anti-union position, I was carrying out the Reuther theory; my theory, Reuther's theory . . . it was our theory together.

**[Side B]**

Mr. Rauh: I won it, 2 to 1. The line was ideologic: you can deduct for anything connected with bargaining, including organizing. Well, we won. Then the Brotherhood

went to the Supreme Court. This is about the time – it is also mixed up with the blacklist, and they took the case away, and they blew it. The minute I read their brief I knew that it was blown. The reason I knew, I had carefully laid the basis for the Court to say take the ideological line that if the union could do anything connected with collective bargaining, but when there were ideological differences like helping the NAACP, or something else, especially Democratic versus Republican, a worker had a right not to have his money go to an ideological thing with which he disagreed. Well, in their brief, in the *Ellis* case, they said, in a footnote, this is a Railway Labor case, but it is not under the Wagner Act. We reserve the right to argue under the Wagner Act that there is no line – that the union has the right to spend the dues money as it determines, and there is no line. What I spent years working to get was a line between ideological and nonideological, and in one nice footnote they knocked the heck out of thing. They lost the case. I don't know if you saw recently, Bush and the Republicans are making a big thing out of it; they are using it. But under our theory, organizing was a perfectly legitimate part of collective bargaining. They had no theory for arguing that it wasn't. Once you say, all right, he's just a lily-livered, liberal intellectual, free First Amendment guy, that's the only argument you've got is that a person can't have his dues used against him ideologically. Now they're in an awful mess on this thing. They're having a terrible time figuring out how to do the accounting for the thing. Those cases were really there together. There was the *Ellis* case on spending dues money for things. There was the right-to-work case, and there was my representing of dissidents. It all fit into one pot and then there were some rough times.

What would have happened if I had been younger and fought back? We had plenty of business, that wasn't our problem. Our problem was that we had probably as good a

labor practice as there was, and that was now gone. What the heck, I never went around saying there was a blacklist against me. If you asked me a question, I'd say that there was a blacklist, I don't know what's going to happen. A lot of the people in there were my friends, some of them acted quite ugly. It got much rougher with the Steelworkers and the Mineworkers, but the Mineworkers, the labor movement was a little bit careful about how they would dump on a guy who had tried to oust a murderer from his job as the head of a union. They didn't have to worry about that, there were no murderers in the Steelworkers, but there were black and white violations. You know Leon Williams is head of the Steelworkers now, and people talk about what a fine guy he is. Well, I don't doubt that he is a fine guy. He's a socialist, liberal, socialist, the fact is that as far as union democracy is concerned, there ain't none. And they were the worst, the Canadian locals out of which Williams comes, he's Canadian, they were the most repressive. They were just violent in their fighting back against us and, of course, we lost. He still works for the Steelworkers, Sadlowski, and he's a decent guy, a good guy, but he's crushed. He's out of the political life of the union anymore.

Mr. Peck: The next time I have you in the D.C. Circuit is *Brown v. Califano* which was companion to *Adams v. Richardson*, in 1980. This was the challenge to the neighborhood schools plan, in which the D.C. Circuit ruled against you. There was no opportunity to make a facial challenge to the plan.

Mr. Rauh: I'm confused now a little bit, Bob.

Mr. Peck: Well, maybe I've got it wrong.

Mr. Rauh: Well, let me tell you what I think, and maybe we can straighten it out. This is a rather more complicated thing now. It starts as *Adams v. Richardson*. Richardson

is Elliot Richardson.

Mr. Peck: During the Nixon Administration, he was HEW Secretary.

Mr. Rauh: All right, that would have been . . .

Mr. Peck: '72; in '73, he moved to Justice.

Mr. Rauh: All right, early 70's. He is the Secretary. We had decided, Jack Greenberg and I, that we were going to force enforcement of desegregation of the schools. There's a day certain there, July 3rd. I haven't gotten the year yet, when [Robert] Finch and Richardson issued a statement that they don't believe in withdrawing federal funds as a way of forcing integration. They were against that; you don't do it that way; you bring suits that require them to integrate, but you don't take their money away. That makes things worse. That's July 3rd, but of what year but I'm a little confused. So, we had the suit ready to go. We filed it, and it's assigned to John Pratt. When I saw that, I felt pretty blue because John Pratt had – small world department – John Pratt had been our opponent in the Harvard integration case. I figured, my God. But it didn't work out that way at all. John Pratt was perfectly straight with us, he held the case for ten years, he ruled with us most of the time. But, when you talk about *Brown*, you're getting ahead of the story. We got our injunction from Pratt ordering Richardson that he had to enforce the Title VI of the '64 law. We got our injunction from him. They went to the court of appeals, and the court of appeals had an en banc hearing, and we won. They affirmed that order, so that that was really the law of the case. So, when you say that we lost in *Brown*, you are getting too much ahead of the story here.

Mr. Peck: Well, that decision, the en banc decision, was '73.

Mr. Rauh: Yes. When was your *Brown* decision?

Mr. Peck: This is 1980.

Mr. Rauh: I'll get into that in just a second. I treat *Brown* and *Adams* as on the same point, so that we did establish the proposition, which may have been unestablished by later decisions, because in the end, Pratt, having held it for 10, 11 years and given us all sorts of help in integrating the schools, said we didn't have standing. Standing changed this time. Burger was less on standing. So, if you take *Adams* through all the Secretaries that we had, *Adams* was all right. That was the case of the – oh, I've got it now – that was the case of the southern and border states that *Adams* applied in, and the NAACP was a little pissed off because we had this case for the Legal Defense Fund. They wanted a case, so what we did was to sue for the rest of the country. We brought the same *Adams* suit against the rest of the country with a plaintiff named Brown, I guess it was. I'm having trouble remembering, what's his name, the Watergate judge.

Mr. Peck: [John] Sirica.

Mr. Rauh: Remembering what Sirica did in *Brown* and the court of appeals to cause you to think that we lost *Brown*. What I'm now seeing is *Brown* as the northern *Adams*, and *Adams* as the southern and border one. But I'm not clear on how we could have lost *Brown* while we were still winning in *Adams*.

Mr. Peck: By the time it got to the D.C. Circuit, I think the standing had turned around.

Mr. Rauh: Oh, standing.

Mr. Peck: So that what the court ruled was that you didn't have standing for a facial challenge which was what this was at this point.

Mr. Rauh: Yes. That may be – that kind of straightens it out. Then it got

more and more difficult; Clarence Thomas comes into the picture. We took his deposition in those days, but I consider that *Adams/Brown* litigation a victory in the sense that we were able to get a good deal of integration out of it. If you want to say that it was ultimately dismissed after about 10 years, well, that's true, but how many cases do you hold onto with injunctions ready for action like this. So I've always thought, and I think the civil rights movement thinks, that we did a heck of a good job with getting so much on the integration out of this, but I now see why you're right about *Brown*. I should say a word that John Pratt who was not an advocate of the civil rights movement, but as a judge, John Pratt really struggled to be fair in that case, and we were able to get a lot of integration out of it. I do think that you can say that that helped with the integration. We were like everything else. We were part of the problem on the school desegregation. Busing was brought into the cases. It got to where we won some and lost some. The big thing was we did win in the first affirmance of the Pratt order which the Court said made clear that this was not a case of telling the U.S. Attorney he had to indict somebody, this was a case where you could tell the government they had to enforce the law.

**(End of Tape)**