

**Oral History of Joseph L. Rauh, Jr.
Conducted by Robert S. Peck
January 23, 1992**

Mr. Rauh: I wanted to mention one thing to you which was where I used expressive language, curse words and so forth. I take it that you are going over this and you'll take that stuff out. You can put in your own adjective or you put in expletive deleted, whatever you like.

Mr. Peck: We may do that famous little phrase there. When we do the transcript, you will have a chance to see it.

Mr. Rauh: I know, but won't you be going over it beforehand?

Mr. Peck: I will, I will.

Mr. Rauh: You feel free. I mean, we're so close to each other. Use what you think. Just go ahead and fix it. We were talking about 1952. Also what made me think of it is if there is repetition – I do repeat myself. Not only that, but there could be repetition that was accidental.

What really happened in 1952? You have to go back to 1951. The question was whether Truman would run again. He could have under the Constitution. He hadn't served more than one full term. He could have run in '52, but he decided not to.

In '51, strangely enough, the front-runner was a wholly different Illinoisan, Paul Douglas. Paul Douglas was the first of the Democrats to talk about waste. He became quite a top figure. In a poll sometime in early or mid-'51 of Democratic county chairmen, he won. However, those numbers went down, and [Adlai] Stevenson became the obvious front-runner.

I remember in 1952 going to see Stevenson with Jim Loeb who had been in the ADA, but at this time was working for Charlie Murphy in the White House. Jim and I went down to see Stevenson. We spent the day with him in Springfield at the Governor's mansion. He was without any doubt the most charismatic guy that ever lived. He snowed us. A lot of the things he said were not what we wanted to hear, but he said them in such a way that you could hardly take issue. He got me when he read me part of his veto message on the so-called Broyles Bill which was a real Joe McCarthy-type performance. Stevenson had gotten it out of the legislature of Illinois. Stevenson vetoed it. We were just devout fans of Stevenson. He was, however, a much better politician than the rest of them. He said, "I won't be able to beat Eisenhower." We said, "It's going to be Taft." This is early '52, and we were so smart. We said, "Of course, it's very hard to beat Eisenhower, you can beat Taft." We also thought he could beat Eisenhower, but that wasn't the simplest task when you had a war hero that way. At any rate, he began to show that he was worried about running against Eisenhower, and he kept saying that he wasn't going to run. Hamlet is the best word to use for it. He couldn't make up his mind. He wasn't going to be equivocal like Sherman, but he got awful close to it a few times.

A lot of people went for Harriman – a lot of liberals went for Harriman – not because they weren't for Stevenson but because, of the others, we thought Harriman was the best, the others were primarily Kefauver. [NY Governor] Herbert Lehman called me in April, I think, of '52 and said that he and President Truman and a number of others were going to support Averill Harriman. They had decided that I was to be his campaign manager in the District of Columbia. Well, that wasn't so strange. I had done an awful lot work in the party. I wasn't a ridiculous choice for being too liberal in this city. I probably would have been too liberal in

many places, but here I obviously wasn't. There wasn't any niche here for Averill except on the far left because Kefauver was a liberal guy and they had a draft Stevenson crowd in there. I said to Governor Lehman, "You are a hero of mine, and I would like to do anything that you suggest, but I would like to speak to Mr. Harriman because there is no way to do – there is no route to this thing – except through civil rights and we got to go pretty far." He said, "Go ahead." I went out and talked to Averill, and I don't think he knew what I was talking about. At that particular moment in his life, he hadn't been in national political affairs. He said, "Yes." So, we wrote a civil rights plank that was pretty damn far out. It was school integration. It was everything you would have wanted if you had been old enough. So we ran in the District of Columbia, and we won. We beat Kefauver, four to one.

There was a wonderful crack in this thing. The votes were counted at City Hall down there at the D.C. Building, 14th & Pennsylvania. They were counting the votes, and Al Friendly was one of the counters. He was the editor of *The Washington Post*. He came up to me and said, "What are you looking worried about?" I said, "I'm not worried; it's going all right." He said, "Going all right; you just carried some black precinct 331 to 3." He said, "It's just a case of Harriman and his brown brother." Then we stayed with Harriman. The District delegation went to the convention for Harriman. It soon was clear that Harriman couldn't go over the top: that Kefauver couldn't go over the top. Then Truman arrived and told Harriman to withdraw. He couldn't tell Kefauver to withdraw because they were aimed at Kefauver. Kefauver had beat Truman in New Hampshire and was the enemy. So the President told Harriman to get out and the thing went to Stevenson in a walk after that.

Mr. Peck: Before you got to the campaign, there was an issue of loyalty oaths

and the platform.

Mr. Rauh: That is absolutely correct. My role in the thing has been written up in a book by John Frederick Martin. I think he is the son of the Stevenson biographer. What happened was that the liberals were awfully sore because what had happened in '48 was that [Senator Strom] Thurmond and the Governor of Mississippi and a number of others had participated in the Democratic Convention [and then ran against the party's ticket]. They had fought us – that was a great fight – on the minority plank on civil rights. They came to this Convention [even though] they had started a third party for the purposes of the '48 election. They had carried four states where they didn't have Truman's name on the ballot under the Democratic label. We proposed what may be misnamed as a loyalty oath, but what its real purpose was to say if you are going to participate in a convention, you can't go out and lick the nominee or, at least, there was a little fallback position there too – at least, you can't keep the nominee off the ballot. We finally just fought for the right to have our guy on the ballot, 'cause you would win. In those days, if you were on the ballot under the Democratic label, you would carry the South. You really didn't need to make it a loyalty oath. It was really a ballot oath. That's what we fought for there. It was finally compromised and ultimately the rule – I think the rule today still stands the way it came out there. If you participate, you are agreeing to see that the nominee is on the ballot, or if you are a member of the Democratic National Committee, you are agreeing to support the candidate. I think something like that is the rule today. That was what came out of that battle. The battle in '52 was precipitated by Thurmond's party in which he kept Truman off the ballot under the symbol and maybe in some places he was totally off. Southerners were educated to vote for the rooster, whatever (I think it was a rooster not a mule in those days) – so

that was the battle in '52. By '56 it was all cleared up. I think that now nobody would try what Thurmond did there.

Again, Stevenson took [Alabama Senator John] Sparkman as his person, and that was bad. Sparkman was probably the best of the Southerners. He was not a racist. He was political, anti-black as to politics, but he was not a racist. He was very fine guy if you could be anti-black and be a fine guy. That's a good question one has to consider. If there is some way you could avoid considering that, he was a first-class guy. On the civil rights plank in '52, we got most of everything we wanted, but not everything. We did, however, get a provision in there against the filibuster. There is a provision in there about majority rule in Congress, not that anyone paid any attention to it. But we did go into the convention demanding majority rule against the filibuster and we got it. That's sort of a hidden secret of history. The Democratic party pledged the end of the filibuster in 1952, and it succeeded in having it used ever since.

Mr. Peck: Before I brought you back to the loyalty oath issue, we were going to talk a little bit about the campaign.

Mr. Rauh: The campaign was really difficult. Stevenson obviously was worried about Truman. As you look back, there wasn't very much squalid in the Administration – there wasn't too much corruption. There was some. Stevenson once in arriving in Washington referred to “the mess in Washington.” Oh, the White House was so mad. It was not a particularly good campaign, except Stevenson was perfect. He would go to the American Legion and tell off Joe McCarthy. People like us and my wife and our friends, we were just in seventh heaven with this candidate. It didn't go against Ike – with jokes on Ike's train – “we just passed the thirty-eighth platitude” and things like that, but platitude or not, he had what it took as

a war hero and he won rather big. Stevenson always had felt that. If he had had his way, he wouldn't have run. He was really pressured into running. He wanted to be President, but he doubted that anyone could be President against Eisenhower. Whether he would have won in '60 if he hadn't run in 1952 and 1956, one will never know.

Mr. Peck: I noticed in 1952 you also had a case in D.C. Circuit *Kutcher v. Gray* [199 F.2d 783 (D.C. Cir. 1952)].

Mr. Rauh: *Kutcher v. Gray* was a beautiful case for which I have the original the Herblock cartoon. That is about the *Kutcher* case. I'll explain it as we go along. So sad. What happened there was Kutcher had his legs amputated at Anzio. He was an admitted member of the Socialist Workers party which was on the Attorney General's list and was probably more radical than the Communist party was at that time. But the country was in the battle. He fought all the way up with his troops, lost his two legs at Anzio, came home, recuperated and they gave him a job in the Veteran's Administration as a file clerk. Kutcher was a man wholly without – he's dead now, but he was a man wholly without education, knowledge or anything. He was a legless veteran. He was the Socialist Workers party's best drawing card. He'd come into the meeting with two canes, stumble up and say a few sentences that he had memorized. He was a manipulated guy but as a danger, there was a joke in there. But he was an admitted member of the Socialist Workers party. So we lost it in the district court before some right-wing judge. Curran – Judge Eddie Curran. He had been the, I think, the U.S. Attorney. He was a very right-wing guy. He said, "It says here you can't belong to the Socialist Workers party." You'd have to read the court of appeals decision because the law was against us. It was so outrageous because they just weren't going to let this guy be fired. They sent it back. I don't know how it happened;

they had another hearing and then they sent it back a second time. I believe it was the second time. I am actually not sure. Each time Curran would rule against us, and the court of appeals would rule for us. After I guess it was the second ruling, I went with my order to Curran to have Kutcher reinstated with back pay. The government comes in with an order not to reinstate him. Curran, after listening to me for a couple minutes and the government for a couple of minutes, I guess it was in his chambers, says, "I'll sign the government's order." I said, "Your Honor, you are going to be reversed." He said, "Well, I have been reversed before," and I said, "Not for the second time." That came pretty close to being contemptuous. But I was contemptuous. If you want to know the honest truth, he kept fighting the court of appeals on this.

I admit it was a hard case, because this guy is an admitted member of the Socialist Workers party. On the other hand, it was so ridiculous a case – it was the kind of case where they had to find some way out. They found a couple of ways out procedurally. They were trying to let him keep his job. They just thought it was such an outrageous thing. Anyway, he goes back to work at the Veterans Administration in Newark, and North Korea invades South Korea. The Socialist Workers party for some reason, I don't know why, because they hated the Stalinists. The Socialist Workers party had Kutcher issue a written statement that North Korea was absolutely right. That's where the eggs really hit the fan. I won the case to get him his job back. He gets a letter saying your disability pension has been stopped because of what you did – what you said about – here we're fighting – the U.S. is fighting in South Korea and you are saying that North Korea is right. Naturally, I demanded a hearing. We go to the hearing over there at the Veterans Administration at 15th and Vermont. Every television camera in the city is there. I walk in with this guy, it takes you about 10 minutes to go a block and we would go, get in, and

sit down and a guy comes in who is the hearing examiner. I figured, I've gotta blow this thing up some way or another. I can't figure exactly how to do it but I was saying to myself, "There must be some way." This is so absurd to take away this guy's disability payment for losing his legs fighting because he says that North Korea is right." I looked at the guy and he starts the hearing and he asks for Kutcher's name and my name. Do you James Kutcher take this man as your lawyer? He wanted to make sure I was his lawyer and not some violent guy with a bomb. I suddenly realized, "I got it." When he said Mr. Rauh, he recognized me, I said I have a question. May I have a copy of the rules for this hearing? I knew that there had never been a hearing like this and there were no darn rules. I said, "May I have a copy of the rules?" He said, "What rules?" I said, "The rules of this hearing. What are we proceeding under?" And he said, "I'll make the rules as we go along." I said, "Well you can't do that. I've got to know now how this thing happens. I've got to go see the Administrator of Veterans Affairs. I can't possibly allow this. It's bad enough that you are doing all this stuff." I said, "This is a kangaroo court."

It was so easy. It was like taking candy from a baby. All the reporters are just laughing at this guy. So he says, "We will have five minute recess." "That's all right with me." He goes back and has to talk to the higher ups. He comes back, I can't remember what he said, but it was something to the effect, "If there is anything you object to, I'll take it up to a higher authority." He came back – there weren't any rules. Herb [Herblock] hears about this, and does a wonderful cartoon: "I'll make the rules as we go along." Anyway, they ducked out of it as fast as they could, reinstated the disability thing. The court of appeals, at this stage is a divided body and everything depends on the panel you get. We got a good panel is my recollection, although I couldn't remember exactly who we got. Do you remember who we had? [Wilbur K. Miller, E.

Barrett Prettyman, and James M. Proctor, who wrote the opinion.]

Mr. Peck: No, I don't. I didn't jot that down.

Mr. Rauh: It was a good a panel, and we won. It was justice done. There is a full book on the *Kutcher* case, if it's of any interest.

Mr. Peck: For purposes of the tape, let me just state that the Herblock cartoon depicts Alice in Wonderland with the quotation, "I'll make the rules as we go along" attributed to the Chairman of the VA Pension Committee Hearing in the *Kutcher* loyalty case. It has. I guess. It's the queen saying, "Gad, I wished I'd said that."

That was also the period in which the Senate Internal Security Committee was doing its investigations. I know that you've said in the past that although Arnold, Fortas & Porter's corporate work was something that you criticized, that they were cashing in somewhat on their New Deal experience. Still you said they did wonderful work in the loyalty cases.

Mr. Rauh: Arnold, Fortas & Porter were simply superb. Paul Porter was the superb-est, and Abe [Fortas] was very good. They were wonderful on loyalty stuff. They represented Dorothy Bailey. This case, I believe, went to the court of appeals. I know it did. What happened was that sometime about 1949, the Loyalty Review Board had two cases before it. One was William Remington who was my client. The other was Dorothy Bailey who was Arnold, Fortas & Porter's client. The charge against her was that she was a member of the Communist party. I have never known if it was true. I was busy with Remington, and I didn't follow that very closely. They held her disloyal. They held Remington loyal. The same day, they balanced them. So naturally there was joy in our office, and there was sadness there. It had nothing to do with them; they put everything into the case. We didn't have to go to court because

we'd won. Our cases in court came up through an indictment in New York which never got to the court of appeals here. It got to the court of appeals in New York. Theirs went to court, and the court of appeals ruled against them. If my memory serves me, the Supreme Court denied cert. They handled a lot of cases for people and usually they were able to do it for nothing. Their other clients were in effect paying for it. That was fine. I have only the highest regard for their performance in the field of civil liberties during this period.

What Porter and Fortas and Thurman Arnold wanted was a decision that you couldn't use secret informers. That comes many years later. They did make clear that they didn't think Congress intended the use of informers. I don't know what Congress intended or not. Anyway it was really stopped to a large degree. Unfortunately, Arnold, Fortas & Porter didn't have a chance when the Supreme Court finally acted. There were two cases. One was mine and one was a fellow named Carl Bereuffy whose case was actually the one that they wrote the opinion in.

Mr. Peck: Since you mentioned him, William Remington had been a Commerce Department official. One of the things he had been accused of was conveying secrets to a Soviet agent during the war. He had been the subject of both a House Un-American Activities Committee investigation and a grand jury.

Mr. Rauh: The details on that are this. Though I think at the time that it came out, he was at the Commerce Department. He had been at the War Production Board and other agencies. He was a very brilliant young man. This history is too long to go through the whole thing. Let me summarize it. Miss Elizabeth Bentley, the spy queen, was not what you'd call Mata Hari. She did testify before both the Senate Investigating Committee and the House Un-

American Activities Committee that Bill had given her secret information. She called him a Communist on "Meet the Press." We brought a libel suit which NBC settled with us for a fair amount of money. They kept on after him, and the loyalty program opened up on him, and the lower board found him guilty and ordered his discharge. That's when he came to see me. I was not in during the hearing stage or the loyalty lower board. We appealed to the higher board. We asked them to call Miss Bentley for cross-examination. Ms. Bentley didn't come. They didn't have subpoena powers. Bill testified and they ruled that he . . . [tape ends]

[Side A of January 23, 1992, Tape]

Mr. Peck: We had left it where this had upset a number of people.

Mr. Rauh: This clearance of Remington upset the publishing house of Devon Adair which had a contract for a book on Miss Bentley which was ultimately published. They wanted her cleared. I believe they got the House committee to reopen it. The main thing in the reopened hearing, which I think was also in '49, was a couple of people down in the Tennessee Valley Authority who said that Bill had been a Communist that summer down in TVA and that made some news. Although there was nothing new on Bentley, she didn't show up again. They did have these two people in the Tennessee Valley. Bill, at that time, I think was 19. He was there from Dartmouth, where he was a junior. They did go after Bill. To show how tough the Justice Department was, they indicted him in New York. They indicted him for denying he had ever been a member of the Communist party. The grand jury that indicted him was headed by the man who had the contract to write the book about her which depended on rehabilitating her through debilitating Remington. In addition, the lawyer for the government before the grand jury was a man named Donovan, I believe, who had been Miss Bentley's lawyer. The head of the grand jury called Mrs. Remington, the wife of Bill, before the grand jury; his name was Brunini, he was a high-ranking person in the church there, he ran the grand jury, he had the contract for the book. It was a pretty shocking story. When we learned of it by telephone from somebody at Devon Adair, we tried to get the case dismissed. We were unsuccessful. The case went on and Bill was convicted of having been a member of the Communist party. We went to the court of appeals and won. The court of appeals reversed and sent it back – that was the New York Court of Appeals [for the Second Circuit]. It sent it back. We tried to get cert. to get the case

dismissed. The government, however, in what I think was an outrageous thing, dismissed the complaint on the membership and indicted him on five counts of things he said in his own defense when he took the stand at the trial. By this time, we knew all about the shenanigans in front of the first grand jury, and since the second grand jury would never have been there but for the first grand jury, Bill would never have testified, we tried to get the thing dismissed. Bill hired a regular criminal lawyer to try the case. He got Bill off on a couple of the counts, but on three of them the jury found him guilty. We then went to the Court of Appeals in the Second Circuit. We had a remarkable bench. Tom Swan, Gus Hand, and Learned Hand – they split two to one. Learned Hand was so shocked by the grand jury that he said that you couldn't possibly affirm that. The other two didn't want to go that far. We petitioned for cert., and now my authority is Justice Frankfurter. There were four votes for cert. going into the conference – the Supreme Court Conference – Frankfurter said. Himself, Jackson, Black and Douglas. During the discussion of the case, Black said he wanted to go for cert. for the purpose of overruling an earlier case, the *Williams* case, which he thought was wrong, and this would be the place to straighten the law out on the problem of grand jury actions like this. Jackson lost his temper and voted against cert., even though he told Frankfurter that he was going to vote for cert. We had three votes for cert. and we didn't get it; it takes four votes to get cert. I was in Frankfurter's chambers one time shortly afterwards, and he told me this whole story of what had happened. It was after Remington was killed in jail. What happened there was they sent him not to a minimum security prison, as they would all other white-collar criminals except Alger Hiss. They sent him to Lewisburg, which was a highly secure place, and two car thieves announced that they were going to – quote – get me a commie – unquote – went in and killed Bill who was in an open

dormitory with bricks in a sock which could never have happened if adequate arrangements for Bill's security had been made. After this, I think it was after Bill had died, Justice Frankfurter told me the story of the cert., and then said, "We did everything we could, Joe, you and I, to save this man. You should not feel badly." I did not say anything, because I was sort of overwhelmed by the fact that he thought that Black was the wrongdoer in this thing, not Jackson, who should not have allowed his temper to change his mind. I love Felix and I couldn't bring myself to ask that question.

Mr. Peck: Another of those issues, actually it was 1952 when you were counseling Lillian Hellman before the House Un-American Activities Committee, and she was not prosecuted. I think she may have been referred to you by Fortas?

Mr. Rauh: Yes, I think Abe did suggest it to her. That, too, is rather a lengthy story. I can tell it or not as you see fit.

Mr. Peck: I think you should.

Mr. Rauh: What happened is a very fascinating legal problem and public relations problem. It is 1952, McCarthy is at his height, the House Un-American Activities Committee is at its height, and she gets a subpoena from the House Un-American Activities Committee. She came in to see me and said she would like me to represent her. Of course, I thought that was great. She's a great playwright, probably the greatest lady playwright in the history of this country. Brilliant woman, had cooperated with the Communists for many years, but I had no idea what she actually was, but she had been in the same conferences the Communists had run. She made a number of statements. First, she would be happy to tell all about herself, her activities, her political affiliations, anything, Communist or otherwise, if she

was asked about herself. But, a) she wouldn't name other people who had been in various meetings with her, b) she didn't want to go to jail, and c) she didn't want to plead the Fifth Amendment. When one thinks for a minute, those are rather inconsistent things. If you don't want to go to jail, the safest way not to go to jail is to plead the Fifth Amendment and the Supreme Court had already ruled that you could use the Fifth Amendment on Communist activity because of the Smith Act, which makes it a crime to advocate the overthrow the government by force or violence.

So, here's this dilemma. If she tells all about herself, she waives the privilege against self-incrimination and then can't refuse to talk about others, so she is going to jail. On the other hand, if she doesn't tell about herself and doesn't want to tell about the others, she has to plead the privilege of the Fifth Amendment for herself. She says she doesn't want to plead the privilege. After many starts and stops, I made the following suggestion: We would write a letter to the House Un-American Activities Committee saying that she is prepared to tell all about herself but she wants them to agree not to demand answers about others because she will have waived her privilege. We got a very negative answer to that suggestion and so we had to do something. It had been shown that you keep the privilege for a period just before the statute of limitations runs out. In other words, if the statute of limitations is 6 years, you could say that you weren't a Communist for the last 4 years, and you still save the incrimination for the later period. We got ready for the hearing. We went in front of the hearing and they asked her if she was a member of the Communist party. She said, "No," and they asked, "were you last year" and she said, "no," "the year before," "no", "the year before", "no." I think it was about this time when she said I refer you to my letter. Dan Pollitt, who was my associate then, gave out the letter to

the press. The Committee and the counsel are having a fit because we look so good in the letter and everything, and so they're having a fit. Here we're giving out the letter so the counsel for the committee, Tavenner was his name, he read the letter into the record. After about an hour it was all over. We agreed, Lillian and I, that the test of whether we won or lost, was whether the *New York Times* account of the story said, "Lillian Hellman refuses to name names" or "Lillian Hellman pleads the Fifth Amendment." 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. It was perfect. Absolutely a perfect story. I don't think that the Fifth Amendment is mentioned until about the sixth paragraph in the story. We were all very happy with that result. That shows a lawyer's public relations abilities, as well as legal knowledge of the case, and I think it was copied a number of times after that. At least Lillian was pleased with the outcome, and she's written a book called "Scoundrel Time" which relates the story of that meeting. I would say I'd give it an A+ for drama and a B+ for accuracy, but there are some mistakes in it.

Mr. Peck: Obviously there were lots of hopes to try and get past the McCarthy period, to somehow take away his power. In 1954, there was the Paul Hughes incident which, I guess, basically was a scam.

Mr. Rauh: It was a scam. We were all taken by a confidence man. There is a man at the Library of Congress writing a piece right now in which he shows that Bill Buckley's ugly hand was in the whole thing. There is no question that this confidence man had fooled me, and *The Washington Post*, too. I think I can be fooled easier than *The Washington Post*, but he was obviously a guy of considerable ability, and he fooled us. I hate to be fooled. I wanted so desperately to find some way to stop this thing. Luckily for the country, Joe McCarthy stopped it

himself by drinking himself to death after his hearings, so the country was inoculated against any future McCarthyism .

Mr. Peck: You've called 1955 the year that the tide turned back toward civil liberties.

Mr. Rauh: In the end of 1954, we had to censure McCarthy. You saw an awful lot of it. There was an article printed in one of the magazines that I wrote about the tide having turned. McCarthy was dead. HUAC had been weakened. Arthur Miller had told HUAC off in '56. They went to court but they lost. So that '57 was sort of the dawn of a new day. May I ask you, do you have the date of the first *Kohler* case up there? When does it come? Does it come later or are we about there? Because that is a very interesting story.

Mr. Peck: I think it comes a little later. .

Mr. Rauh: I just didn't want to get ahead of the story.

Mr. Peck: Right. Since you mentioned Miller, I mean, this happened after the turning of that tide.

Mr. Rauh: It was at the turning of the tide – '56, '57.

Mr. Peck: He first testified on June 21, 1956.

Mr. Rauh: Yes.

Mr. Peck: I understand it was an exciting time in this household, too.

Mr. Rauh: Well, no she [Marilyn Monroe] wasn't here then. She came in '57 when we had the trial. Arthur just came. I guess we just spent a few hours the day before going over it. Arthur was an easy client. You might say that Lillian Hellman required a great deal of skill. Arthur Miller didn't require any skill. He said, "I'm not going to tell about anybody else. I

don't mind going to jail." This was a perfect client. If you got him into jail, he wasn't so angry; if you kept him out of jail, he was very happy. He was the perfect client. I'll tell you about the court of appeals on that case. We were convicted in the district court.

Mr. Peck: Congress charged him with contempt by a vote of 373 to 9.

Mr. Rauh: Yes, and all my friends were calling – do I have to vote for Miller and against contempt, and I said, “No. Vote your political best thing.” We could have gotten up to 50 or 100 votes, but what was the use. We couldn't win. Why put guys on the spot that are honorable guys. I think that the 9 is not an accurate reflection of the feeling up there. I don't know what we could have gotten, but we could have gotten more. Guys there who were my best friends that voted for contempt. We did have that, and they indicted him. Then he was tried. He was convicted. His prison sentence was suspended, and his fine was not exorbitant. In a sense, there was no day, but he didn't want a conviction of a federal crime on the books. It was only a misdemeanor because that statute only calls for a misdemeanor. Why did he want that? We went to court to reverse that. We went to the court of appeals. We desperately wanted to get a decision on the First Amendment. I think both of us wanted a decision on the First Amendment so badly we could taste it. We didn't want a decision on some crackpot point. The court wanted a decision on a crazy thing just to get out of ruling. The court didn't want to say there was no First Amendment right here, but they didn't want to say there was either. So they said he hadn't been ordered to answer the question. That was sheer nonsense. He knew, I knew, that he was under orders to answer the question. That's the ground on which they let us off. The First Amendment case was so appealing. What they did, the Committee, was to ask him questions about his plays, about his writing, about his feelings toward the Committee. If there ever was a

chilling of First Amendment rights, this was the perfect case. I'm dreaming of a win on the First Amendment. Then they would have had to go to the Supreme Court. We might very well have gotten a really staunch case. After all, in the *Watkins* case, Chief Justice Warren says there is a First Amendment right here. He doesn't say what it is, but he says it's here. We had the perfect First Amendment case under *Watkins*. You can't get the Court to go beyond what it wanted to say and what it wanted to say was that he hadn't been directed to answer the question. Of course, Arthur Miller could say, "Well, I beat the court of appeals." He did. They directed that he be acquitted, but it wasn't the civil liberties thing that Arthur and I were praying for.

Mr. Peck: The district court in its original finding, that he was guilty of contempt, relied on *Watkins*, which at that point was just a D.C. Circuit opinion. It was pending at the time before the Supreme Court. So when the D.C. Circuit heard that, it was still pending. They were basically ignoring their own decision on *Watkins*, weren't they?

Mr. Rauh: You have to straighten out the time factor in *Watkins*. The first thing that happened was we won in *Watkins* two to one. Then they had a rehearing, and we lost in *Watkins*. I'm sorry, but my memory doesn't serve me, whether *Miller*, timeframe-wise – can you straighten me out?

Mr. Peck: The *Watkins* decision in the Supreme Court was 1957. The D.C. Circuit was 1958, in *Miller*. They already had the benefit of the Supreme Court's decision.

Mr. Rauh: They wouldn't go for the First Amendment?

Mr. Peck: Right.

Mr. Rauh: You know, I don't think that's been decided yet. What do you think? Do you think that it has been decided? Whether the right of silence before a committee is

a First Amendment right?

Mr. Peck: I don't think it has been decided.

Mr. Rauh: I don't either. You have the Hollywood Ten cases and the Supreme Court refused to go into those cases, so you have those cases. I do not know anything that overruled them in the court of appeals, but there may be something. I haven't kept up as much as I should over the last few years.

Mr. Peck: I'm not aware of anything that has. Okay, so it was during the hearings in the D.C. Circuit that Miller and his new bride stayed here. I read somewhere that you have dined out on this story for years.

Mr. Rauh: That's true. That's absolutely true. Do you want to hear the story? We had the hearing before the Committee in '56, contempt charges come down, Arthur is indicted, the day for the hearing in May '57 comes and the day before Arthur calls and says "Do I have to be there?" I said, "Yeah, you have to be here. Don't you remember, you're the defendant?" He says, "Well, what'll I do about my wife? We can't stay in a hotel. People take snippets of her dress and everything." I said, "Why don't you stay at our house." I came home that night, and Carl was sitting in his usual pose in front of the television with his feet up on another chair. I said, "Carl, you got to go to the station tomorrow morning and pick up Marilyn Monroe." He fell off the chair. At least that's my story. Carl went to the station the next morning, picked up Arthur and Marilyn, and he recognized her some way or other, and they came out. We were having breakfast, and Marilyn asked for a glass of water, and Carl and I knocked each other down in the doorway trying to get to the glass of water. Olie muttered something about it was the first time she had seen us off a chair in a long time. Anyway, we had a nice two

weeks there. They went home over the weekends, but they were here for a few weeks.

Everybody had a good time, except Arthur. He got convicted, but the rest of us had a fine time.

Nobody knew that Marilyn was there. It was a secret. We would come home in the evening and she would talk. She was very bright, but totally uneducated. She was not on dope or drinking.

Whatever happened in the next 5 years we don't know, but we can vouch for that. They were very much in love. She was having a miscarriage, and we got the doctor. I always said that the way to get a doctor is to tell him that Marilyn Monroe is here, because when I hung up the phone from the doctor, the doorbell rang and you know, house calls are okay. Carl came home from school every day for lunch, allegedly to take a shower, but really to have another quick view of Marilyn and talk to her. He came home the last day – the day they were leaving – and he came home from school at about 3:00 and it had gotten to the press that Marilyn was here. Our front lawn looked like Sherman's march to the sea. Everyone knowing that Marilyn was inside, and they wanted her to come out. I think Olie went out and said to the lady press people that Marilyn will receive them in our house shortly but she wasn't ready. So Carl held a press conference on our front lawn. They said, "What's it like?" They asked him all about her. The last question was, "What's it feel like, Carl, (he was then 16) to have Marilyn Monroe around your house for a couple of weeks?" Carl said, "Well, it ain't quite like having your brother at home." The *New York Times* Review of the Week used to have the Remark of the Week. Carl made the Remark of the Week at age 16 with that remark. We were very devoted to both of them and were very broken up about their breakup. Most important of all, we did, especially Olie, had an interview in *Ms.* magazine defending her against all the charges that had been made – drugs, booze, men, in which we saw no evidence of any of that. Most important of all, I think, is our lesson from this.

[Side B]

[The press people] are reckless. Here is Olie Rauh who spent every day all day with this woman, all alone, except Olie would invite one friend for lunch and swear her to secrecy; other than that, they talked a lot. Olie was watching what she was reading, she was reading all psychiatric books, the book we remember the most was one called *The Fifty-Minute Hour* by a man named Linder. Here they never asked a person about her character or habits, who knew something about it, it was all just vicious stuff. So there is, we're proud to say, in *Ms. Magazine*, they sent a reporter, she spent the night with us, she interviewed the kids, she interviewed me, but primarily she lived with Olie for the time, so there is a story about Marilyn that reflects nicely upon her.