Oral History of Joseph L. Rauh, Jr.
Conducted by Robert S. Peck
February 7, 1992
[Side A]

Mr. Peck: Okay, today is February 7th, and this is continuing the oral history with Joseph Rauh. We are in 1956 – in the presidential campaign. I know one of the things you tried to do at the [Democratic] Convention was to get passage of a plank in the platform to support the *Brown* [*v. Board of Education,* 349 U.S. 294 (1954)] decision. You were unsuccessful.

Mr. Rauh: Unsuccessful is a nice understatement. What happened was that we were trying to – I mean, it was so obvious. Here, *Brown* comes down in 1954 and 2 years later, America's great liberal party can't decide what to do about a decision of the Supreme Court. What happened was that we fought like tigers, the Leadership Conference on Civil Rights and all the civil rights groups, to get support for the decision by simply saying that they should enforce the law. There was a case there, where, I think it's called *Hoxie* [*Brewer v. Hoxie Sch. Dist. No. 46,* 238 F.2d 91 (8th Cir. 1956)], where vigilantes had tried to postpone integration. And the court [of appeals] had said, "Well, gee, that's terrible, we can't interfere with the action of that court to carry out the Supreme Court decision." But, what the powers that be at the convention – what they all decided was to use that as a counterpoint to us, so they said, and this is the diabolically clever language in the thing – it says, "force can't be used against, for or against the decision." You can't use force to prevent carrying out of the decision, but you can't use force to enforce the decision. And that's, in essence, what – if you read carefully what the platform in '56 says, is what I just said. I've simplified it a little bit but not terribly much – force

from any source at all in enforcing a decision is not supported.

Well, if the question is, "How did we lose?", looking back, how could we have lost? It's almost impossible to think you could have lost that thing. Well, I think it goes all the way to the top. What we had was a decision in the civil rights community to make a floor fight if we didn't get our way. To make a floor fight by '56 you had to have – it's the same number as you had to have in '64 when we had the Mississippi Freedom Democratic party. You needed ten percent of the Resolutions Committee and, I think, seven states demanding a roll call – something like that. We had that.

After the Resolutions Committee made its report, which showed this utterly absurd "compromise," because it really wasn't a compromise, it was just a licking for us. When that came out we had to stay through to demand a roll call. We had the minority, I think we had something like 14 people on there, and we were ready to go.

Well, the plug was pulled on us, but we have never been absolutely certain what happened. I believe what happened was that Mrs. Roosevelt called Walter Reuther and said that she and Adlai didn't want a floor fight over it. She admitted if you had one, you had to win it, but she didn't want to win a floor fight. She thought it was a mistake. We should just accept it. Well, I think the author of the document really was Phil Graham of *The Washington Post*, although there were many authors. In this kind of a thing, you get a lot of authors because you change a nuance here and a nuance there.

At any rate, the speeches were made on both sides – our minority and the other – and we had an oral vote, voice vote, declared null and I'm just standing there on the floor. I was the Chairman of the ADA [Americans for Democratic Action] at that time so I wasn't a delegate

because I couldn't be for any of the candidates because the ADA hadn't taken a position. And I'm standing there and nothing happens. The banners don't wave for the roll call.

It subsequently developed that Michigan, which was the key state for the roll call, which had led the whole fight for the roll call, didn't wave the banner. And I subsequently found out that Reuther had told them not to do it – that the convention had decided not to have a fight over that in a roll call. So there was no roll call.

Well you never – the only way you ever win anything in a convention is if you've got enough for a roll call because otherwise the machinery can win anything. I mean, you can't win a fight without a roll call. And what the machinery of the convention demands is that we don't have any roll calls. That you make a fight up to a point, make your point for your constituency but then *shut up.* And that's exactly what happened here. We would have won if we'd have had the roll call 'cause everybody realizes you can't have an anti-black roll call. You may have *no* roll call, but you shouldn't have it as an anti-black roll call. So I think this is pretty much what the story of that fight was.

As far as the nomination was concerned, Stevenson had it all locked up, and he did one other thing that I didn't think was quite fair. He led Hubert [Humphrey] to believe that he was going to give it to Hubert so Hubert was running for vice president, and then he [Stevenson] threw the convention open on the vice presidency. Hubert wasn't ready, and he just got slaughtered. It was the lowest point in his career there that he got about 100 votes, and it was just so damaging. Two of them had hurt our cause in '60 although, no, you can't ever win a thing like that. So, the convention was in that sense bitter, and I think [Senator Estes] Kefauver was entitled to consideration.

[John F.] Kennedy was lucky he lost – if Kennedy had won that – I think he was second – lots of guys their age: Gore, Humphrey, Kefauver, but anyway, Kefauver got it and the two of them ran, and it was pretty well sure that Eisenhower would be re-elected. It was sad, and I think the beauty of the 1952 Stevenson Common Sense Campaign couldn't be quite repeated in '56.

So, there you get, really, the sad thing of a great Supreme Court decision, absolutely unanimous from right to left on a most important point in American history, and you can't win the fight to support that decision. And it came up immediately.

What had happened was the House had passed a very good bill – a very strong civil rights bill about a month before the convention in '56. It came over to the Senate, and [Senator] Paul Douglas tried to get it taken up on the floor. He made such a motion; we got six votes. We got mavericks; we didn't get Humphrey. We didn't get any of the real people. I had a terrible fight with Humphrey right there in the cloak room. He wrote a letter of apology, said he was wrong. He realized he made a boner when it looked like we had no civil rights people. We had three people on the Democratic side – Douglas, Lehman and I think Hennings – I'm not sure.

On the Republican side we had Duff, Langer, and Bender, I think. It was a real maverick crowd. [Lyndon] Johnson had made up his mind he was going to show Douglas who was running the Senate, and he just buried his nose right in the dirt there.

But, he couldn't bury it forever. So comes '57 and the new Senate elected in '56 was Democratic even though Eisenhower won the election. He didn't have the coattails everybody thought he did. So back comes the bill, the same bill that Douglas had tried to take

up. It had a thing in it called Part Three. Part Three gave the Attorney General the authority to enforce all provision of the Constitution, including, without saying so, the school desegregation [requirement]. It was our victory on school desegregation. When Johnson got a hold of that bill, as he naturally would as the Majority Leader, and it was clear what he was doing, he announced that they were going to make two changes. They were going to take Part Three out and limit it to voting rights, and they were going to put a jury trial amendment on the voting rights part. Well, Johnson did exactly that. He took Part Three out – they won that, it was called the Anderson-Aiken Motion to Delete Part Three – Anderson being the Democrat and Aiken being the Republican and, oh, they beat us badly.

And then there were four versions of the jury trial amendment that kept changing. O'Mahoney was Johnson's man on that, the Wyoming Senator. And we lost on that.

And then comes the really hard part. What do you do? The bill which had once been fine had lost all its luster, but it still was something. It was awfully small, but it was still something. We had a meeting of the Leadership Conference in the library in my law office. It went on all day. Roy Wilkins was under terrible pressure to say it was worse than nothing. There was a considerable NAACP militance at that particular moment, and they were demanding that he tell the truth that the bill was worse than nothing. Senator Morse voted and said it was worse than nothing, and Senator McNamara followed him. I think those were the only two who went against us. But Clarence Mitchell, Roy and I didn't want to give up the bill. We thought that sometimes you got to show you can make some progress. So we were on Johnson's side. We wanted the bill, and Roy, late in the afternoon, said – because it really was up to him. He was at that moment the dominant figure. I mean, there is no [Martin Luther] King yet. There is

having the boycott, but there is no real King. Roy is the leading figure in this situation. And Roy finally said, because Roy's own lawyer was on the other side, the one who didn't want him to take it. He's now a judge in New York.

Mr. Peck: Robert Carter?

Mr. Rauh: Yes! Exactly. Carter didn't want him to take it, but he finally – it was pretty courageous – he sided a white man against his own blacks but he did. And he said he thought I was right and from then on it was all ours – that ended it, Roy's decision there really – ended the thing, and we got the bill. Johnson bragged about it – he did the first civil rights bill in 87 years. It was 87 [years] from '57 back to 1870.

Mr. Peck: Right.

Mr. Rauh: And it was Roy. Johnson did give us credit; we saved his bill for him. He called Phil Graham at 6:00 in the morning and told him I'd saved his bill for him. Maybe we were wrong. I mean, this isn't something where you're so goddamn sure you were right [to save the bill], but we felt you had to move something no matter. Somebody quoted Confucius that a thousand-mile journey is taken with one step, and there were all sorts of old class suits drug out to help our side. And we go the bill. Well, if we were right and the fact that we got the legislation a few years later – if we were right – this was a tremendous step forward.

The bad part there, and this is really related again back to the convention of '56, all the southern Senators went home and claimed victory. Russell and the others went back and said, "My God, look how we've beat them! They can't even enforce the desegregation decision." And that was true. Now we hadn't been able to do it at the convention, and we weren't able to do it in Congress. So they really – I don't think that when I was arguing for taking the bill, I

don't think that at that particular moment it ever occurred to me – the argument that was going to be used. But it was used.

The *New York Times* reporter on civil rights in those days was a Texan by the name of William S. White who has written a book on the Senate, and he was Johnson's presidential promoter. And he was the one who played that thing about how we got beat. I don't think we'd quite seen that taking the bill without the school desegregation, without the Part Three, was so bad. Part Three was in the '64 Act, and everything changed. The story of the '56 convention is really related to the '57 statute because they went in tandem. Johnson won both times.

Mr. Peck: Well, shortly thereafter the [Supreme] Court decided *Cooper v. Aaron* [356 U.S. 1 (1958)]. What was the reaction to the Court? Here was the Court in an extremely rare instance, a unanimous co-signed decision by all the justices.

Mr. Rauh: Naturally, we were delighted with that, but there's not much law in *Cooper against Aaron*, if you think for a minute. How, after they had done *Brown*, could they have done anything else with *Cooper v. Aaron?* They might have put it off for a few months, you know, and not been so aggressive about it. But essentially there was no *Cooper v. Aaron* – which I've quoted five million times in my life – really it isn't much of a legal advance. It simply says that the government can't do what they told them they couldn't do.

Mr. Peck: Right. Well, I mean, it essentially stands for the proposition: we said it before, and we meant it.

Mr. Rauh: That's right. I think that's exactly right. So, you do have this, but there was a real conspiracy. I'll tell you the story because it's relevant even though it's more

personal than – it's very personal. In the spring of '57, when the bill has come over from the House, Phil Graham called me up and said, "Will you and Olie come out to our farm for dinner tomorrow night?" Well, it seemed like a nice invitation, and so I said, "Sure." And then after I said "Sure," he said, "Pick up the Justice on your way out and bring him too." That was, of course, referring to Justice Frankfurter for whom we both served as law clerks. I said, "Sure." I was conned easily. And so we picked up Felix and on the way out – it's about an hour's drive out into the country – why, Felix tells me how wonderful Johnson is and how I'm making the greatest mistake of my life fighting for Part Three because it really ought to just be the voting rights provision. Johnson is right in wanting to just do voting rights. Voting rights is everything important, and he makes a big speech for voting rights. Remember, he is on the Supreme Court, but he's making a big speech for voting rights.

So we get out to the Graham's – it was mid-afternoon then or a little later – and I don't know what, it's just all small talk until we get to cocktails. Then Phil opens up and, at last, I'm awake. This whole thing is Johnson doing a job on me. I don't know. His reporters from inside our crowd must have told him that I was the lone holdout – I was the real problem in getting rid of Part Three and, anyway, those two guys really worked on this thing. Anyway, I told them I was going to fight for Part Three, to hold onto it. A lot of the press began to see what was going on and they would come and say, "What are you going to do if you lose Part Three?" Because they saw that we would have a terrible dilemma if we lost *Brown* again. And so anyway, we did try, but some historians have asked me if I didn't sell out in the sense that Frankfurter and Graham and Johnson had really put that much pressure on. I cannot answer that question because I can't tell you how much, if any, that they had as a matter of influence on my

thinking. I know that I accepted that in the sense that I fought for getting the bill even though it didn't have Part Three. So in a sense I did what Johnson and Graham and Frankfurter wanted me to do, but I can't – to be honest, I don't know if they had any effect on it or not. I just can't – if I'm going to tell the truth I have to say, "I don't know." I did end up where they were. On the other hand, I guess I'm going to my grave thinking that we made a very important decision, and that we made the right one.

Mr. Peck: So certainly the '57 Act has been used very well, I think, in many ways that it wasn't anticipated. So, at least from the perspective of people who weren't involved in that, it has been considered valuable. Another thing that happened in '57, but you were involved even before that, was the Supreme Court's decision in the *Watkins* [*v. United States,* 354 U.S. 178 (1957)] case. And, maybe we can talk a little bit about that.

Mr. Rauh: Oh, we can and would you like to see a piece I did on self-incrimination? Or have you seen it?

Mr. Peck: I've seen it.

Mr. Rauh: In *Constitutional Commentary.* That case in some ways is a good illustration of just how disastrous Joe McCarthy was for the county's common sense. Walter Reuther was a decent, honorable, civil libertarian. I had my differences with him, and I gave you a story of the '56 convention when he, in effect, did sell us out. But I don't know of any labor leader who was as much for civil liberties inside and outside the union as Walter Reuther. Anybody who did as much to fight Joe McCarthy. But, it was having a disastrous effect – McCarthy.

People don't realize that McCarthy didn't want to know anything. He wanted

them to plead the Fifth Amendment. He called them "Fifth Amendment communist." And he wasn't trying to get information. He knew there weren't any spies or at least that this was no way to catch a spy by having them go in front of a television camera. McCarthy knew that, but he just loved charging people with being Fifth Amendment Communists. He had to fight with my great friend, Jimmy Wechsler, called him a Fifth Amendment Communist but actually Jimmy didn't plead the Fifth Amendment.

At any rate, in 1954, Walter felt the union was in such trouble from the attacks on it because people were pleading the Fifth Amendment – most of them were pleading it because they didn't want to name names of other people, who were ready to tell about themselves, like Lillian Hellman who was our client. So, what happened was that Walter issued an order to the staff: "IF YOU ARE ASKED ABOUT COMMUNIST ACTIVITIES, IF YOU PLEAD THE FIFTH AMENDMENT, YOU ARE GOING TO BE FIRED. If you want to fight your fight, for not naming names or anything else, we will give you legal counsel."

Well, in walked John Watkins shortly after that. And he's beside himself. He wants to plead the Fifth Amendment, but he needs a job. And he looked at me sort of sadly, you know, what can this guy, this elitist Harvard guy do to help me out? So I said, "you know Walter's position, and I can't talk him out of it." In fact, I wasn't even so sure he was wrong. I thought he was wrong, and I said so. You cannot believe what it was like if you weren't there. Here's a guy with over a million people relying on him in the union, being weakened in his political strength by McCarthy, trying to figure out what to do, offering these people all sorts of alternatives – legal counsel. I mean it wasn't just offering them any lawyer, they were offering him my whole staff and I was able, I mean, if I needed more help, I could have it. Walter was

very much a tightwad, but here he was being very generous.

So I said, "Look, we've gotta do something, John. And here is what I propose we do. Let's go to the hearing, go ahead and tell him the truth." And the truth was, as he put it, "Look, I never became a party member, but I was close enough so it didn't make any difference." And he was perfectly honest about that. And then we agreed that he would say, "Look, I'm not going to plead the Fifth Amendment. I'll tell you about myself, but I won't tell you about others unless and until you have the court order directing me to – meaning that we could go to the Supreme Court and if we had a court order we could try to keep him out of jail by answering a Supreme Court order to answer. Well, you know procedurally that wasn't going to happen, but it sounded pretty good at the time.

Well, we went up to the hearing. He told all about himself. When it got to "Was so and so in the party with you or working there?" "I can't tell you. I won't tell you without an order from the highest Court that I have to do so." Well, the judge, quite naturally, found him guilty of contempt of Congress. On the laws as it then stood, he had no rights. The Fifth Amendment had not yet been declared [applicable] because it's declared right in *Watkins'* case that the First Amendment applies.

So he is indicted. He is convicted, sentenced to a light sentence because they were waiting to see what was going to happen. So we went to the court of appeals, and we won two to one [The opinion of the court was later refiled as a dissent from the rehearing en banc and can be read at 233 F.2d at 688]. Then there was a motion to reconsider and we lost blank to two. (Laughter)

Mr. Peck: Six to two [233 F.2d 681 (D.C. Cir. 1956)].

Mr. Rauh: Six to two because we had the two [earlier] votes. I guess that was Bazelon and Edgerton.

Mr. Peck: That's right.

Mr. Rauh: So, I guess I had Bazelon and Edgerton when I won and when I lost. I was just determined I was going to get cert., and our cert. petition was pretty hard work. What we did was to list, and I think it's in an appendix to the petition for certiorari, every statement by a House committee member that we're going to expose the Communists in this country. And I really glommed onto that exposure. There had been a couple of writers – Alan Barth was one, I think there were some others who had written the big question – Is there a power in a Senate committee of exposure for exposure's sake. I glommed onto that, and we had an appendix of it.

[Side B]

We had proved that that was what they were doing. Well, the court granted cert., and I was sure I had it won. I mean, from then on it was all downhill because getting the cert. is always the hardest part, as you well know. At any rate, the decision comes down – it's the one over there – it's the middle one there [pointing to a shelf in his study]. Oh no, no, no, no – it's the top middle one. That's Fitzpatrick on Holmes saying – that's the day that I think – June of 1957 – when that string of pro-civil rights cases comes down. I've always said that's possibly the high period on civil rights in America. And that was Fitzpatrick in the *St. Louis Post Dispatch* and *Watkins* is one of those. *Swayze* is one of those and that's –

I was in on that. That was the happiest day of my life I guess, other than getting

married. Anyway, [Chief Justice Earl] Warren says everything just right. Except we may have – one thing I *don't* think he – I wouldn't have said if I'd been him but basically he was right – he said that there's no power of exposure for exposure's sake and the First Amendment does apply, but then he sort of makes clear that the First Amendment is going to be hard to prove because you can't go into the motivations of the Committee.

But it was a wonderful, wonderful result, and I think it was the starting of the slowing down of the House Committee. Joe McCarthy was already gone. I don't know if he died or was just drinking himself into a whatever, but he was already – he wasn't the power he had been – he was censured three years earlier. So, that case is now a leading case still on congressional investigations: that they have to have a legislative or oversight purpose, they can't do exposure for exposure's sake, the First Amendment Free Speech [Clause] does apply there, but they've never applied it. And that, you see, this is '57 and '58, we're trying to get the D.C. Circuit to apply the sentence in *Watkins* that free speech does apply to the proposition that applies to the right of silence.

The court found the most asinine ground for reversing, namely that he hadn't been directed, that Arthur Miller hadn't been directed to answer. We didn't know we had to answer. If there ever was anything silly, and I knew darn well we had to answer that question. We'd been ordered, and I didn't have the slightest doubt that we had to answer it. Indeed, I think I stopped and said, "Arthur, this is the last shot. This is the point you really don't want to answer?" And he says, "I'd rather go to jail." I mean, he didn't – he just said so – we knew we had to answer it, but the court didn't want to decide our case. We had the best possible free speech case. They had gone into Arthur's place. Why did you do this? Why did you do that? They'd gone into

Arthur's criticism of them! They had made – they banged him around for having criticized them. It was a perfect free speech case, but they darn well weren't going to decide it, so they said that the defendant hadn't been properly ordered to answer.

Well, anyway, that's sort of the aftermath of the *Watkins* case. They didn't carry. I think the day of the *Watkins* decision, if there had been no other way to say he had a free speech right, Warren would have said that. But Warren had that other alternative of saying he didn't know why they needed the names added, they had to tell him why they needed the names.

Mr. Peck: Right.

Mr. Rauh: So, that's where – that sounds to me – I can't swear to this, it sounds to me like a Frankfurter, Warren, Black promise (laughter).

Mr. Peck: Will, you know Frankfurter concurred – and elaborated about that.

Mr. Rauh: Yes. So, I think there was some compromise in there. But I think that at that moment in life when that cartoon [on the wall] is done – is written – why, I think we might have had a majority for the proposition that there is a right of silence under the free speech provision of the First Amendment, but it sort of eroded out and, I guess, wouldn't you say that that question is not decided right now?

Mr. Peck: Umm –

Mr. Rauh: How would you put it on that? Because to my mind what I remember is that that's still an open question.

Mr. Peck: Yeah, yeah. You know, while I think it would be very difficult for the court to come to a different conclusion, there's no decision on all fours, yes.

Mr. Rauh: And then there's that *Barenblatt* case. There's lots of law – I

mean, there is some conflict between that sentence by Warren and some of the actions of the court in not taking cert., but anyway, it was fun. *Watkins* was fun. We took the starch out of the attacks on Reuther for being weak on civil liberties. Reuther had been under attack by civil liberties groups because of saying that he'd have to get rid of a person who pleaded the Fifth Amendment, and so we sort of deflated those attacks by virtue of the fact that we had made new grounds for fighting.

Mr. Peck: Now, around the same time period, you had to defend the UAW against charges under the Corrupt Practices Act for featuring nine Democratic candidates on its weekly T.V. program.

Mr. Rauh: Now that case is – there is a Supreme Court case on that. I don't know if you – we ultimately got an acquittal, but let me just tell you the story of it. What more accurately, if my memory serves me, would describe it is that we had a television program, and we put Senator [Pat] McNamara on the program, and they – the government – the Eisenhower government – indicted on the ground that that was a union expenditure in a federal election, which is forbidden, just like corporations may not contribute to a federal election, neither could a union. The corporation ban goes back to 1907 – the union goes back to about – well, it goes back to just Roosevelt and Taft-Hartley – but now they're in tandem – the unions and the corporation.

And, so we were indicted for that. We argued that it wasn't any different than the *CIO* case [*U.S. v. Congress of Industrial Organizations,* 335 U.S. 106 (1948)]. The *CIO* case was an indictment of Phil Murray and the CIO for their putting in the newspaper of the CIO an endorsement of a federal candidate. And they won that case in the Supreme Court. We argued

that this was the same thing. This was – we didn't get away with it. When the district court dismissed the indictment, the government appealed under its direct appeal rights to the Supreme Court. I argued it in the Supreme Court and lost six to three [*U.S. v. International Union of United Automobile, Aircraft and Agricultural Workers of America*, 354 U.S. 567 (1957)]. And the three that found the union had a right of free speech, that was, I think, Warren, I don't remember Black and Douglas or Goldberg. I just – Goldberg was gone I think. It probably would have been Warren, Black and Douglas [It was.]. At any rate, the Supreme Court reversed the district court, sent it back for trial, and Frankfurter, I think, had written the decision against us. I'm not sure but I think so.

So, we prepared, had a trial, and got an acquittal. I got an acquittal from the jury. And (laughter) part of that story – we spent the night carousing, and when we got the acquittal – it was about a week's trial and we got the acquittal – you do some funny things in a trial. We had that judge who had decided the case about time getting to your job being time the employer had to pay for. Some Mt. Something case, what was it – you had to pay for the time that you – when you get to the office and if you're in a, say in a mine, you gotta pay for the time getting to the digging and all of that.

Mr. Peck: Right.

Mr. Raul: And this – that was our judge in this case. And he was a big show-off like thing and he was showing off like mad. He was badgering our witnesses. So, Harold Craigfield and I decided that he would take a couple of drinks at noon because he always took too many. We'd tell him we'd limit the amount and then he was going in and tell the judge that if he didn't stop the badgering, we weren't going to put Walter Reuther on. Because I'd

announced to the jury that Walter Reuther would come and testify. And he was waiting for Walter Reuther. So Craigfield tells that to the judge, and the judge is like putty. From then on, he doesn't touch anything – he wants Reuther in the courtroom so bad he can taste it.

So Walter appears and testifies, and of course he's magnificent. He just says we're trying to explain to our own members just like the CIO thing. Anyway, we get the acquittal. So then we went out and got stewed that night, having won the acquittal, and I made some bets with the UAW people that I'd be – we'd be on the front page of the *Detroit Free Press*. They all said, "The UAW *never* gets a victory on the front page!" Well, the banner headline's like this: UAW ACQUITTED IN CORRUPTION CASE, or ELECTION CASE. And so we just had a wonderful year.

I take the plane back the next morning, and I walk in the door and Olie says to me, "Felix called." He [Frankfurter] said, "See, I fixed it for Joe." I think he had written the decision the other way. I'm not absolutely sure, but I think so. Anyway, we just had – I explained the case to Olie – how it was and what happened and all. But anyway, we loved each other, so he had – he was right – I hadn't even been on the radio or on the phone when Felix calls Olie and says, "I hope Joe realized how much I did for him." Oh, God, that was funny. Anyway, that's the story of that case. But by and large now, I think that [the union action] would be treated [today] as an expenditure.

Mr. Peck: Yes, I think that's right. One thing I skipped over but I think worth talking about is March 6, 1958, when you appeared with a client before the Senate Select Committee on the Improper Activities in the Labor and Management Field, better known as the

Senate Rackets Committee. This was Emile Mosey.

Mr. Rauh: Mazey.

Mr. Peck: Mazey?

Mr. Rauh: M-A-Z-E-Y.

Mr. Peck: Well, the *New York Times* spelled his name wrong.

Mr. Rauh: It did?

Mr. Peck: Yeah.

Mr. Rauh: M-O? It's M-A – M-A-Z-E-Y.

Mr. Peck: And this arose out of a 4-year old Kohler strike. And you got into a shouting match with Senator Mundt.

Mr. Rauh: Senator McClellan.

Mr. Peck: Well, it started – according to the *Times* report – let me tell you what . . .

Mr. Rauh: Yeah, I remember there was a *Times* report on this. Maybe it was – there were plenty of shouting matches.

Mr. Peck: Right. Well, apparently you were responding to an accusation leveled at your client that he was attempting to intimidate witnesses. You were gavelled down and threatened with expulsion from the hearing by [Senator] McClellan. And the accusations came from Mundt, and you were exchanging with him. Then I guess Mundt and McClellan began arguing with each other. I guess at one point McClellan said to Mundt, "If you want to take offense at" something that McClellan said to Mundt, "then that's all right with me."

Mr. Rauh: Uh-huh.

Mr. Peck: But you continued to argue.

Mr. Rauh: (Laughter) Well, let's – we have to put this in context. There are really several stories. We have to try to get them all, and we have to separate them. One is the Kohler story in the courts – with the court of appeals. One is the hearing before the Select Committee. What you addressed yourself to was the hearing before the Select Committee. This is what happened.

Hoffa and the Teamsters were clearly corrupt, and the Democrats were perfectly willing to have an investigating committee do Hoffa. The Republicans responded by saying, "My God, the UAW's more powerful. They're more in politics – we've got to investigate the UAW. So, let's investigate the Kohler strike, which is the best example of the UAW's intimidation. They do terrible things, they go to the house of strikers and picket and threaten them. They wear gloves with brass knuckles under them on the picket line." And so the deal that was finally made was they'd investigate both the Teamsters and the UAW.

Well, the Teamsters went first. Ed Williams represented Hoffa, and also Beck. Ed Williams represented both Beck and Hoffa and they pleaded – Beck pleaded the Fifth Amendment to the first question I think, "Where do you live?" (Laughter) So then they went – after they got rid of the Hoffa investigation, the Teamsters investigation, then they went to the UAW. We had a month's hearing. It was maybe – 5 weeks is my recollection on the Kohler strike. And the hearing – it was a very political hearing. On the Democratic side was McClellan, Ervin, Kennedy, McNamara. On the Republican side was Ives, I think Goldwater, Mundt and Curtis.

Walter [Reuther] wants to go on first. He said, "It seems to me that I'm entitled to

go on and explain exactly what happened." Well, they were deadlocked. The Democrats said "sure" and the Republicans said "no," so you couldn't have a vote. So, they had to compromise even the order of witnesses. So, what they finally did was to put the head of the local – representing the Kohler workers – on first and then went ahead with other people. Walter was the last witness. So, the hearing progressed – now my recollection of the story is not exactly the way you state it – but there's no question I was shouting. And the *New York Times* says I was shouting. But the thing got very heated, that hearing, because Goldwater, Mundt, and Nixon were playing politics. Kennedy was playing Reuther politics. The joke on our side of the aisle was that whenever we were in real trouble, Jack Kennedy would walk down the aisle to take his seat and help us out. I mean, it was perfectly clear that this was – Goldwater, Mundt, and Nixon – trying to get at the UAW, and Kennedy trying to ingratiate himself to the UAW. After all, his brother is the counsel for the Committee. Well, I've always thought that what happened was that Bobby [Kennedy] had some way of communicating with his brother.

Once we had – one of our guys was accused of murder by Goldwater, Mundt, or Curtis. I treat them as a fungible item because I can never remember which one of the three was doing it. But one of the three was – and I think it may have been Goldwater – however it was, just as he's coming down, he said "Didn't so and so commit murder?" Because a guy died that he hit, whether it was murder or not is another story. But, Jack walks down the aisle. So, I mean, it was almost a joke; he simply – he was trying to get the UAW's support to fix the elections and then Mundt, Curtis, Nixon – Mundt, Curtis and Goldwater were trying to show up the UAW as a pretty violent crowd. Well, at one stage of the story, Mazey is on the stand, and this is not the time when I blew my stack – what they had Mazey – we did something, I can't remember, but

boycotted some store because it was owned by a judge who had done something wrong. And when Mazey was asked about that, he sort of implied that the Catholic Church had ordered him to do it. That really – then Mundt really went crazy. They had him and he – I tried to knock over the table. I mean we were in such terrible – it was awful. I mean we were making a charge against the Catholic Church. For God's sake, in American politics?

Anyway, during the recess that night there were all sorts of proposals, including [Leonard] Woodcock, who later became UAW president, proposed that we have Emile say he's unstable and we have him locked up. It didn't sound like that really would work. Anyway, Emile made some sort of halfway apology, which I wrote overnight to the Committee and that went off alright and he got off the stand. But then at some stage, Lyman Conder, the lawyer for the Kohler Company, claimed that I think it – I don't know if it was Mazey or Mazey and his thugs or what – were intimidating witnesses, and I started shouting to McClellan to shut him up. And McClellan had a big gavel and he was gavelling, but I was just going on and on – gavel or no gavel. And then it calmed down and at the lunch hour I went in and talked to McClellan. I said, "I'm sorry about that but look at it from my point of view for a second." He couldn't have been nicer. It all happened at the time, and I think this was sort of a profile that they did on me that's just –

Mr. Peck: Well, there was the story about the incident and where on the jump-page there was a small profile –

Mr. Rauh: Yeah.

Mr. Peck: – where the *New York Times* said about you that you were "about the loudest, most determined, most aggressive and least easily silenced battler for civil rights and

liberties and human rights practicing law in the capital."

Mr. Rauh: (Laughter) I don't know – well, that's half good. Anyway, the hearings went on, the staff of the Committee was all with us – oh, I've got to tell you a story. After the hearing each day, I would go downstairs to Bobby's office and ask him who they were calling the next day. And when I went down after Mazey had accused the Church, Bobby looked at me, and then he and Kenny O'Donnell are sitting there. They'd sit there and throw the darn football back and forth across the desk. And they were throwing that football back and forth and Bobby, without looking up, says, "Joe, don't worry. I haven't heard from the Pope yet." (Laughter)

But it was rather congenial between us and the Kennedy camp because they wanted Walter ['s support] for the nomination against Hubert. And Walter more naturally might have gone to Hubert. And so this was a very political thing. At any rate, the report was issued, and the report, I think, is rather favorable to us. And Walter, because it said some unfavorable things, shouted at me that I hadn't done a good job and all that. But the fact is that we had written – most of the report was written in my office. And that was sort of the end of that part of it – the hearing. Now you got the court part and this is another story and . . . do you have the date of the court of appeals – it was, I know the court of appeals argument was on Rosh Hashanah in one year, and I don't have that year.

Mr. Peck: I'm not sure which case that was.

Mr. Rauh: Well, it was the case in which the question was, "Was this an unfair labor practice strike?" And secondly, because it was an unfair labor practice, "Could people who have committee violence get their jobs back?" And the Labor Board had ruled it was

an unfair labor practice strike, but you couldn't get your jobs back because of the violence. And that was argued – I'm now groping for the year – because I happen to know the day it was argued. And the reason I happen to know is because we always were joking about the fact that whether we were going to temple or to court on Rosh Hashanah. And I said, "I'm going to go to temple the night before and pray that [Judge David] Bazelon says 'not a good Jew,' and will show up in court." Which he did. And we did win the case and we won – and almost all of the people who had committee violence on the picket line were reinstated because they said that the court was – that the employer wrong-doing, I mean unfair labor practice, was worse than the employee wrong-doing on the picket line. And if you'll look over there, you'll find the check – the results from that – by the Kohler Company to the NLRB because once we got that decision – that you weigh these wrongs, we were in because they knew that the court of appeals was on our side, and we got a great settlement. That was the biggest settlement up to that time. I think there have been bigger settlements since then, but that was the biggest settlement up until that time.

Mr. Peck: Seven hundred and fifty thousand dollars.

Mr. Rauh: No.

Mr. Peck: Oh, no –

Mr. Rauh:: You can take it down and bring it over in the light, Bob.

Mr. Peck: Oh, I'm not sure – this is a different case.

Mr. Rauh: It's obvious that what I thought was there is not there. But I think it's in the four million or something, and that's why that isn't correct. But there are books on the Kohler strike, and it's an easy thing to – we can add if we decide we want to.

Mr. Peck: Right.

Mr. Rauh: But it was the court of appeals that turned the tide for us. Because they – I don't think you could say it was a seminal ruling that it was an unfair labor practice strike, but it was a quite seminal ruling that you weighed the violence on the picket line against the employer's wrong-doing and then we had all sorts of hearing examiners and so forth. But almost all of the people were then reinstated, and we were in the driver's seat and Mazey settled the case for a large amount of money. Funny, UAW and Kohler since then have been rather "clubby."

[End of Side B]