

**Oral History of Joseph L. Rauh, Jr.**  
**Conducted by Robert S. Peck**  
**February 21, 1992**  
**[Side A]**

Mr. Peck: Okay. Today is February 21, 1992. This is the oral history with Joseph Rauh. When we left off, we were toward the end of the 1950's. We had talked a little bit about the convention, the Civil Rights Act, the Senate Rackets Committee hearing. I'm not sure what else appropriately falls into that category. I know that at some point you represented the NCAA over its television rights for college football. Was that in the '50s or was that the '60s?

Mr. Rauh: That was in the '50s. It was early in the television days. I had a friend, actually, from the war who was on the committee of the NCAA to deal with television. The argument for our side, at least at first bluish a good argument, was that it wasn't a *per se* violation. I didn't know, in all honesty, you could have blown my brain out on antitrust law with a peashooter, but I did know there was a difference between *per se* and reasonableness. I thought you could make an argument for it being a question of reasonableness, and reasonableness was easy, because what you had was that the football receipts covered the intramural athletic expenses; if you didn't do that, then you had to have an additional charge to the students for athletics, and that was a mess. So football receipts were really carrying the athletic programs, so that it seemed there was a reasonable ground for wanting people to go to the game, but you had to admit it was a *per se* violation.

Well, I did some work, and I was ready to argue the reasonableness. We were making some real progress; it was big stuff in the press, and the press seemed to be rather favorable to us. The two groups that didn't want to cave in to the NCAA and go along were

Notre Dame, who wanted to be on their own thing every day, and Pennsylvania – Harold Stassen – and that one, I think, was temporary.

With Notre Dame, they always want to be first, and so it was very serious. I think, it's my recollection that Father [Theodore M.] Hesburgh was one of our opponents, that he had come in at just about that time.

At any rate, we were hauled down to Justice one day. Stanley Barnes was the Assistant Attorney General in charge of the Antitrust Division, I think. He later was a Ninth Circuit judge. And there was a real misunderstanding. I thought I heard Victor Kramer, who was the top expert at Justice, say that something went for reasonableness, not *per se*, and Vic has told me since that I misunderstood him. At any rate, we stood by our guns and for many years we had the limitations that, they're all off now pretty much, and there was a case, oh, I was long since out of it, a case rather against what we were trying to do. It never got to the courts while I was there, but it was a great deal in public opinion. It was more a public relations job of selling the idea that this was the best way of handling a difficult problem.

Apparently, television has not had the disastrous effect on gate that my clients said it would have. It just didn't have that effect. People loyally went out to see the home team play, and so that probably, it may be that the thing was a mistake from start to finish to try to have some kind of rules for it. What the alternative would have been was it would have been a lot of money for a few schools, instead of more spread out. If you're going to apply the antitrust laws strictly to the educational system, why it may be that it was a mistake to try it. But we were quite successful in holding onto the rules as long as we did. And I never really followed it after I got more involved in other things.

Mr. Peck: I'm sure no one at that time had any idea of the kind of money they'd be talking about today.

Mr. Rauh: My God! Think of it! I imagine Notre Dame can finance not only its athletics out of it but its education, too!

Mr. Peck: That's right, that's right.

Mr. Rauh: I've seen Father Hesburgh so much in the civil rights stuff, but I don't know that we ever, that he ever or I ever mentioned that period. He was obviously a most attractive person, but they do have the most attractive people that they put into jobs like that. I mean, he could have persuaded anybody of anything. So it was a real battle of advocacy. As they say, in a sense you can say that we won during the period I was handling it, that we did pretty well, even Notre Dame didn't telecast except when they were put on the one network that we sold the NCAA to. So in that I can claim a victory over Father Hesburgh, but I mean it as a joke, because he is such a terrific persuader for anything he's for.

Mr. Peck: Right. Well, it's funny that you were on opposite sides then and in almost everything else, not. Also, around that time, wasn't that when you represented A. Philip Randolph in the case involving membership in the Railway Executives?

Mr. Rauh: That was 1950.

Mr. Peck: Oh, it was earlier.

Mr. Rauh: It was earlier. In 1950, I was representing really the Sleeping Car Porters there for a while. It was 1941 when I wrote the executive order on the new war plants, the discrimination in the new war plants, and I didn't know Mr. Randolph. I was a young lawyer in the Office for Emergency Management, and I got called in one day by my – I was Deputy

General Counsel of the Office for Emergency Management. Wayne Coy was the head of it; he was a Presidential Assistant, and it was sort of a holding company of new groups that were trying to get prepared for war and – have I told you this story?

Mr. Peck: I don't think so.

Mr. Rauh: Because if I have, I don't, I don't mean to repeat! I'm sure I do.

Mr. Peck: That's all right – go ahead.

Mr. Rauh: Well anyway, Wayne, when I got to the office about 9:00 one morning – this is in June of 1941 – my secretary said, "Mr. Coy wants to see you right away. It's urgent." So, his office was in a different building from where we were housed, and I ran over there. And he said, "Can you write an executive order?" I said, "Anyone can write an executive order. What do you want to put in it?" He said, "Well, there's a guy named A. Phillip Randolph who is threatening the President with a march on Washington if he doesn't get an executive order ending discrimination in the new plants that are growing up for the war production." And I said, "Well, it so happens that this is a cinch" because I had worked on a similar problem a couple of years ago." We were going to have an executive order that anybody who violated the National Labor Relations Act couldn't bid on a government contract. You didn't have to use the sanctions of the NLRA, you could use, this was another sanction. We never got the order, but we kept drafting, I mean, we had drafted the order. I said this is really quite a similar thing, only I think easier, since you could order them to make tanks in a certain way, so you have the tanking order and make it with certain people. So I didn't think it was very hard.

Well, he seemed to be very relieved that we weren't going to have a long legal battle while the President is saying, and then he said, "Well, that's all right, Joe. Go ahead, I need

the draft tomorrow morning. Go downstairs where the Budget Bureau is and they'll give you all the forms and everything."

So I went out the door and just as I was shutting the door I heard him holler at me, "Come back." And he said, "Don't forget the Poles." I said, "What do you mean?" He said, "The President's had a couple of phone calls from Buffalo, where there's a new plant. I don't know whether it was for ammunition or what, and they haven't hired Poles. Discrimination against Poles goes on there. The President said as long as he's giving Randolph what he wants on the blacks he might as well give – I guess, colored people was the way they would have said it then – and so stick the Poles in."

And a lot of historians have come to me and said where did you get "national origin" from? Because, see, in the state laws that existed then, you used to say, "can't discriminate on race, creed or color," and all I did was add national origin. They said where did you get national origin from? I haven't the vaguest, gosh-darn memory of where the words national – where I got those words to stick in there. But the only thing I can say is, the only place I think those words were at that time was in immigration statutes, so it may have been that I had something in the back of my head from an immigration statute. I can't be sure. But anyway, I always use that example to show how the black thrust affected the rights of other people, that it was here, the first time you ever had anything to stop discrimination against the ethnic minority, immigrant minorities, came because A. Phillip Randolph was in there fighting like mad for his people.

Well, subsequently to that – well, that was '41. In '46, Mr. Randolph hired me to bring suits to stop what was an agreement between the railroads and the lily-white union of

firemen to block the agreement which was that you couldn't have a black fireman on a diesel engine. You could have a black fireman on a coal engine, because that was dirty work, but a diesel engine, all a fireman had to do was fiddle around with a few knobs and that was the job. It really wasn't a job because it could have been done by the engineer or anybody else, so it was really featherbedding. But we fought, I mean, if there's going to be featherbedding, we didn't see why the blacks, who historically had been firemen, shouldn't have the jobs. So I was hired by Mr. Randolph to do that and we brought suits in '46-'47, in that period. We won them all. The real brains in that suit were not mine, though, they were Charlie Houston's, who had brought the *Steele* case. You remember *Steele*, that they said this was state action, the union was state action there, and so that Charlie Houston really was the father of that thing. We were the ones who actually enforced Charlie Houston's *Steele* case because Mr. Randolph put up the funds so we could bring several suits and we did make these people the most privileged southern blacks because they got the same wages, they got as they would for real work. So we had a class of leisure, and when Mr. Randolph and I used to go south for meetings with these people, you'd have thought Mr. Randolph was the Second Coming. They just worshiped the ground he walked on. Of course, he was a great man. Well, then one day he says to me, how do I get into the Railway Labor Executives? I said, "I don't know a thing about it, maybe there's some state action there we can find." So we filed a complaint, I think, with the Labor Department, and they decided to cave in. The Railway Labor Executives decided to cave in and let Randolph and the Sleeping Car Porters in. Mr. Randolph called one morning and said they're going to have a meeting with me this evening, will you go with me? I said, "Gee, sure, I'd love to." Well, the Hamilton Hotel then on 14th and K, which is now a retirement home of some kind, it's the

northeast corner of 14th and K, was sort of a labor hangout. So we went, we went to the room we were assigned. It was a big parlor. And there were about 20 comfortable chairs in there, and we walked in and nobody says anything, and nobody got up to greet Mr. Randolph, who was a great man. The chairman of that was the head of the Brotherhood of Railway Clerks, George Harrison, and he finally said, "Randolph, I'm glad you're here." And, you know, we're looking for a chair! And nobody got up. There were no chairs, and nobody offered to go in another room and get even a bench to sit on. So Mr. Randolph and I were standing in a corner, and in another side of the room is George Harrison, and the rest are all seated, all these rather, shall we say, rotund labor executives. Well, it's so embarrassing to be, for me, if I had been black I wouldn't have been so embarrassed, but I mean, I was so embarrassed for Mr. Randolph, this beautiful figure, a well-spoken, dignified man.

So George Harrison says to Mr. Randolph, "I understand you want to get into the Railway Labor Executives Association." Randolph says, "Yes, I do, we do." And Harrison says, "Well, the fee for a year is so-and-so," (and it was an astronomical amount of money for the Sleeping Car Porters, who were a small union, I think, maybe 10,000 people, about that), and Mr. Randolph says, "We will pay our share." There may have been one other statement, and then Mr. Harrison says, "Well, you're now a member. Thank you and goodnight." And we walked out! We never did shake a single hand of anybody in that room. We walked out, and we got on the corner opposite the Hamilton, so it would be the northwest corner, and I said, "I don't know about you, sir – " He was so dignified. You didn't call Phil, Randolph. He was really a guy, I was much younger and everything – I was 39, I guess – and Mr. Randolph was 60 or 70 – and so I said, "I don't know how you feel, sir, but I sure need a drink." And he said, "Mr. Raw – R-A-W–

Mr. Rauh" – cause he never could get my name straight – "Mr. Rauh, where do you suggest we go?" Well, this was 1950. And I said, "Well, sir, there are two places. We can go down to the railroad station, because there was a recent case and they wouldn't, if I make clear who you are, they'll serve us, or we can go to my house, where my wife will be honored to have you." And he said, "Mr. Rauh (Raw), we've just had a symbolic drink. I bid you good night." And he vanished into the darkness. It was the most dignified thing you can imagine for this man to have really, he thought it was undignified to come to my house as a way, because the reason being that we couldn't go to a normal place, and he thought it was undignified to go to the railroad station, which was the only place in town. So that sort of bonded our friendship and we, I have a picture of him on the wall there, it's down below, see it's right under the light switch. That's Mr. Randolph on his 80<sup>th</sup> birthday. And so we had beautiful relationship for many years.

A terrible thing happened in later life. I represented a man named Sadlowski in an effort to bring union democracy to the Steelworkers Union. He ran for president against the machinery. Well, Bayard Rustin was a – oh, I don't know what you'd call him for the Steelworkers, maybe a consultant or what, and he helped the machinery of the Steelworkers against us. And he issued a statement by Mr. Randolph, which was very ugly, about Sadlowski, but about me, too, that Sadlowski's lawyer was stirring up trouble in the labor movement. I knew, by then, that Mr. Randolph was senile. Whether he had Alzheimer's, the word wasn't used in those days. And I tried to get through to Mr. Randolph, but all the mail was not shown him or if it was shown him he wouldn't have been competent to deal with it. So in the end Mr. Randolph hurt the cause I was espousing, but I've never thought of him as having done anything wrong. He was sick by that time. But he was one of the greatest men I ever met. And the story

of the relationship is really that story.

Mr. Peck: Before we leave the 1950's, in one of the profiles of you I saw a description that was just put cryptically as "recurring battles with J. Edgar Hoover." Maybe you can fill in some of the blanks there.

Mr. Rauh: Well, let's see, or try to . . . I think it's 1950 . . . Max Lowenthal, a New Dealer and a man obsessed against wiretapping, wrote a book about the FBI and Hoover. I was opposed to wiretapping, I mean, I had all the usual ACLU complaints about Hoover. Indeed I had given a talk in 1949, I believe it is, and I may be able to dig it out for you if you'd like to see it, it was an attack on the FBI on civil liberties. Would you like to see it?

Mr. Peck: I would.

Mr. Rauh: Turn off the machine. [INTERRUPTION] What I just handed you was a speech I made at the conference of what was then called the National Civil Liberties Clearinghouse, I believe was the name of the group. It's no longer in existence. It was an attack on Hoover and the FBI. And Hoover's reaction was not exactly what you'd call friendly. He had a guy named Lou Nichols who was his public relations guy, and Nichols went around town attacking me. Drew Pearson picked it up and was about to run it when Phil Graham, who was the local Drew Pearson outlet, called him up and told him he had rocks in his head to listen to crap like Nichols was spreading about me. They killed the column. But the next year, what I was coming to, why I remember this example – I think it was the next year, Max Lowenthal's book comes out. Well, you can't believe this – it's evidence of the real fear in Washington – that *The Washington Post* couldn't have me do a book review of that without having a pro-Hoover book review. So one Sunday morning there is in what was the Outlook [section], or the

predecessor of it, there are two book reviews. One, Hoover's the greatest man that's ever lived, and the other is mine. And I thought mine was rather moderate, it was sort of on the line that Max Lowenthal had written the indictment, the question of the trial is still open, but I obviously identified myself with Max. And all it was – it wasn't even 9:00 when the phone rang. It was Felix Frankfurter saying, "Joe, what a wonderful thing you did! You really nailed that swine Hoover!" And I remember those words because that was a common word that Justice Frankfurter used for people he didn't like, and then of course I did remember that Frankfurter had cross-examined Hoover at the *Anderson* case up in Boston, which was the case for the deportation after the Palmer Red Raids. Hoover always claimed he wasn't in the Palmer Red Raids, but Felix always said he was, and that he cross-examined him in the case. And I used to tell reporters, for God's sake, get that cross-examination! They would get the whole file of the *Anderson* case up in Massachusetts, and it was missing. And history will never know what the Frankfurter-Hoover thing was, except that Frankfurter said he murdered him, but I wasn't there! At any rate, during the day, a lot of people called. It was the big thing in Washington that day, was these two reviews. And then I went to the football game. And I came home, and I said to Olie, "Well, we're out of the woods." She said, "what do you mean?" I said, "Well, Hoover couldn't have done anything this afternoon because he was at the football game!" They announced that the FBI chief was at the football game, so I said that was a great relief. So that's how dumb I was. At 12:00, when the Senate met, Mr. Hickenlooper, Bourke Hickenlooper of Iowa, I think, got up and addressed the Senate on my wrongdoings. And it was some wild kind of an address that he made about me, and all my FBI file and cases I had, the *Remington* case, this case, that case – I'd represented the Polish Supply Mission in '46 – all of it was true!

Everything was perfectly true! It was the adjectives that Hickenlooper added. So, those are two examples of . . . and of course, in the loyalty program period, see, this was, we already had the loyalty program in '49 and '50, when in my civil liberties speech, I always said that Hoover was solely responsible for the fact that you had this system without the right to face your accuser. I don't say he was responsible for having a loyalty program, but Max Lowenthal was an advisor to Truman, very close to Truman, and he pointed this out. And Truman really wanted – I believe this – that Truman really wanted to have a face-the-accuser rule applied, but Hoover said he wouldn't, I mean, Hoover just threatened and it never was in fact. You could be thrown out without facing your accuser, until there was a case in the, *Green v. McElroy*, let's see if I can find the date of that –

**[Side B]**

Mr. Rauh: The date of the case, it pretty much gave the right of confrontation, is 1959. So that you had for that long period Hoover insisting that he would not safeguard the United States if he had to give the names of people who came forward and gave him information. So it was a running battle there and I finally got to argue that proposition in front of the Supreme Court in 1959. There were two cases up there, and my case was declared moot. It was the *Taylor* case. That was the same day as the other case, but I did get to argue the proposition in front of the Supreme Court. That was made possible by the *Peters* case, which is the one that Burger had argued because of Frankfurter. Thurman Arnold was trying to knock out, Thurman Arnold and I were in a race to see which one was going to knock out the confrontation thing first, and Thurman won. He was there in front of the Court in the *Peters* case, which is the one [Simeon E.] Soboloff wouldn't argue, and Frankfurter discovered a way not to decide the issue,

namely, that the loyalty initial board, the bottom board, had cleared Dr. Peters, and Frankfurter says to Thurman Arnold, "Well, you were cleared down below – why don't you argue that there's no right of the government to appeal? They can't appeal from a criminal case! This is just the same, and if it doesn't say in the executive order, the government can appeal a verdict of loyalty, why didn't you argue that?" Arnold, with all the chutzpah in the world, says "Well, I don't want to win on any technical ground like that!" And Felix jams the paper down and shouts out, "We'll decide – the Court will decide which is that!"

Because they didn't decide that case, I got a chance the year after that, I guess it was, to argue the point in the Supreme Court, and the Court agreed with the petitioners in both of the cases. So, I was fortunate in that regard. But there was a running battle with Hoover, and, oh there were many things – Hoover wouldn't – I tried to – Walter Reuther was going down to make a big speech, and I tried to get him some protection, and Hoover just said no. I think it's about '49, my partner Levy and I went down to Tom Clark, the Attorney General, to ask for an investigation of the Reuther shooting. Walter Reuther had been shot – this was '48, I believe – and God knows, we don't know to this day who did it. I mean there are so many possibilities – the communists, the employers, the Mob, because Walter had wiped out the numbers game in the thing. So there were plenty of possibilities. And so I was asked by the UAW, I was one of their lawyers, would I go down there. Herb Levy and I went down to see Tom Clark. We explained the thing, told him what we thought was the grounds for federal jurisdiction, and Tom Clark, very agreeable always, said he would take it up with J. Edgar Hoover and let us know the next day if we came back. So we went back the next day, and Tom looks at us and says, "Edgar says no. He's not going to go in every time some nigger woman claims she got raped." Well, we

argued with him. In essence he said, "Your argument's not with me. It's with J. Edgar." So I'd say we had rather a running battle, but wherever either of us was, the other one was on the opposite side, and now Hoover's getting his comeuppance, but he's long gone. But the books are coming out right and left about how bad he was.

Mr. Peck: Well, is there anything else that I haven't covered from the 1950's that you want to talk about before we begin the '60s?

Mr. Rauh: Well, I don't think of it at the moment, but maybe you'll see something as you – I mean, if at any time you want to go back, I'm available for it, but I don't – my mind doesn't work abstractly.

Mr. Peck: Okay. Well, you know, in 1960, another Presidential election. You were a Humphrey supporter. I guess, by the time the convention occurred, you tried to urge Humphrey to throw in with Kennedy, become the Vice President, but at some point you were physically blocked and actually punched by one of Humphrey's aides to prevent you from getting to him!

Mr. Rauh: That's substantially accurate. My friendship with Hubert really started in 1947, when we formed the ADA. I met him in March of that year, '47. We had a Midwestern conference and he was the keynote speaker. I just fell in love with him. He was persuasive, caring; he also liked to have a good time. The first time we ever really had a talk was at a bar in the hotel where the meeting was, but this was after the meeting was over, we spent a few hours there, talking. He was absolutely, I thought, wonderful, and then he was very active in the ADA. We worked together in the '48 convention to get the minority civil rights plank. I always hoped that one day Hubert would be President.

There was real friction inside the Humphrey camp between those, I'd say, largely ADA-ers who wanted Hubert always to be the liberal leader and those who really wanted him to become much more middle of the road. I think there was good faith on both sides, that they thought that was a better way to get elected than we did, but there was some bitterness. At any rate, Hubert's way of handling that was to put a group together of those who believed he should moderate and those who didn't. So we had a task force of maybe five, six, seven, eight people. We'd meet and talk, and it was rather a bitter battle that went on there. But in early '59, Hubert said he was going to run, he was going to run as an all-out liberal and in fact, he did. We were out in Wisconsin in March, I think the primary was there. And Kennedy beat us badly. It hurt everybody, because Hubert was almost the third senator from Wisconsin. They didn't have any Democrat, and Hubert was on their border there in Minnesota. The labor people in Wisconsin you'd have thought just would go all out for Hubert, but the Auto Workers in Racine, and all these different big plants, they went their religion, not their geography. They were largely Catholic. I'll never forget the meeting we had after the returns were in. It was about one in the morning, and it went on for a couple of hours. The question was whether Hubert was going to pull out that night or go on to West Virginia. He decided to go on, I don't know, I was so mixed up I couldn't tell you which way I thought – we had no money, we had nothing, and here is the smooth Kennedy machine, and it just was, we didn't know. Well, Hubert decided to go on, and so I said to him – there must have been 25-30 people in the room there – I said, "Well, Hubert, don't you think we better arrange for your homecoming to Washington tomorrow, because we don't want to walk in as defeated people, we want to walk in as people cheering on to West Virginia." Well, somehow I was able to get back from Milwaukee to Washington in the next few

hours and I didn't go to bed and we had a rally at the airport when he came in and we went on to West Virginia. By this time, there were real differences in our campaign. A lot of the people that came in for Hubert really were for Lyndon, and when we went into West Virginia we had Bobby Byrd was on our side because he was for Johnson, and we had, it was a pretty mixed crowd by the time we were in West Virginia. Well, the Kennedy performance in West Virginia was nothing short of brilliant. What they did was to convince the people of West Virginia if you voted for Humphrey you were a Protestant, anti-Catholic bigot. And so if you wanted to show you were an honorable, non-discriminating American, you had to vote for a Catholic in that Protestant state. And it worked.

When we were in Humphrey's suite that night watching the returns, it got to be clear that we had lost. I remember going to the headquarters at about eight o'clock and there, we had a big blackboard, standing next to Hubert and watching him watch it, it was like torture because it was 60-40 against us in a Protestant state, and you couldn't believe it. Then we went back to the hotel. Our crowd, the ADA part of it – Jim Loeb and Marvin Rosenberg and I – wanted Hubert to pull out in favor of Kennedy and go for the Vice Presidency. A number of others didn't want him to pull out – they wanted to use their leverage for Johnson. And it was a real battle, and Hubert sided with us. And Jim Loeb was at the typewriter and wrote the – he was the first director of the ADA and he wrote the concession statement. It was a very nice statement. Well, I got on the telephone to Kennedy's headquarters and read it to Bobby, and he couldn't have been more delighted with it. He was, of course, the enemy. Everybody in our camp hated him – he was a tough guy. At any rate, that was one of the few battles we won in that campaign was to have Hubert be gracious to the Kennedys because we really hoped he'd be Vice

President.

A few minutes later, we were watching television and there must have been 50 people in the suite and the telephone rings from down below. And I'm standing next to it then, so I picked it up, and the hotel clerk says "Mr. Kennedy is on the way up." So I simply announced that. Of course, everybody thought it was Jack. Only I look and there's Jack live on television. So I knew this was going to be Bobby and I knew how much everybody in that room hated his guts. I didn't know what was going to happen. The door opens and Bobby walks in and it's like the Red Sea parting, because Hubert and Muriel were at the other end of the room – and Bobby walks down this new corridor that's been made and I couldn't tell – Muriel hated him more than anybody else, I think – and he leans in and gives Muriel a kiss. And I didn't know if she was going to sock him or what. God, it was awful. Anyway, the tension finally broke and Bobby asked if we wouldn't, if Hubert and a few of his top aides there wouldn't come over to their headquarters. So we did, and Hubert was very nice with Jack that night and Jack was very nice with all of us. There wasn't too much hard feeling. The show was over, but going back on the plane the next day, Hubert opened his heart to Mary McGrory that he hadn't been able to keep his people together, that he hadn't done a good job.

Those of us who wanted Hubert really to be President tried to get him the Vice Presidency and we kept at it. I thought I had Hubert's ear, that he was willing to do it. But I think I was wrong. I think that Lutheran base all around there – there was a real anti-Catholic feeling, and Hubert wasn't going to be the Vice President on that ticket. I didn't know all that at the time. I kept in good touch with Sorensen and Feldman – they were really the two top staff people. I was for Kennedy, and we went to the convention. We had won the primary here

[D.C.], the Humphrey crowd had won the primary so we were all delegates. I was there and the Vice Presidency had not been agreed upon yet. On June 10th, about, there was a fundraiser for George McGovern for Senate from South Dakota and when Kennedy finished speaking, he motioned to me to come outside with him. I did. He said, "Will you ride back to the Capitol with me?" I said, "Certainly, if you want." On the way he said, "Your friend Jimmy Wechsler is going to kill my chances to be President of the United States tomorrow by printing a story that I am not physically able to be President because of this disease and that . . ." and he gave me a long medical thing that I didn't fully understand. It was obvious he was asking me for help with Jimmy, who was one of my best friends. I said I would call Jimmy, and I said, "Will you just give me enough now, repeat enough so that I know what I should say, so I can simply tell this to Jimmy and say will you take another look at the story before it goes out." Well, he did and we were getting fairly close to the Capitol by now. And it was silent for a minute. I said, "Well, since I'm going to do this, and since I'm for you, do you think I'm entitled to know your intentions on the Vice Presidency? I've told you many times I'm for Hubert. What is your intention?" And he said – I wrote this down, it's in my book in the library. I wrote it down because it was not an unimportant statement for a guy who was going to be the nominee – he said, "Joe, it will be either Hubert Humphrey or another Midwestern liberal." In my opinion, he was thinking of Orville Freeman at that moment, and Orville thinks so, too. Orville may someday write his book, almost to the nomination or something; it would have been almost to the Presidency. At any rate, I thought that was a fine answer. So I reported that to Hubert, of course. And I thought that when he came out there to the convention he was really going to, there was a chance he would be the Vice President.

Well, I had some reason for wanting to see him to report something. And I went to the hotel headquarters where he was and I felt something in the air was – there was something wrong. I couldn't tell what it was, but I wasn't what you'd call greeted as the loyal aide. There was a sort of snickering in the air, and they said they didn't know where he was. Well, I decided to just, I left, and I was walking down the hall and I heard him. And I thought I was welcome, so I knocked on the door, and a fellow – Pat O'Connor – came to the door, and, I was just not thinking, I just sort of walked by him to go in the door. I didn't think there was anything wrong with that. And I said – and then he did swing at me and I said, "what's going on?" I had a briefcase and I put it down. I was about to fight when another door opens, and it's Jim Rowe looking at that door and then slamming it shut and then he went in the other door and slammed it shut. So I just walked away. I didn't, there was no fight, there was one blow struck – and I walked away and I couldn't figure it and then I said oh my God, Johnson's in that room. And of course that's the way it was. Hubert came out for Stevenson and thereby ended any Vice Presidential ambitions. It was then down to I guess Freeman or Johnson, and he took Johnson and you know how the story goes – I did say in front of 40 million people that there was a double-cross which, if you believe my meeting, it was, he said to me it was between Hubert or another Midwestern liberal. It was. I guess that's the story.

Mr. Peck: Right. Well, in his discussion with Johnson, Humphrey made the deal to support Stevenson on the first ballot and then if there were subsequent ballots he would throw support to Johnson, wasn't that it?

Mr. Rauh: I can't answer that. I mean, I wasn't in on it then. With Hubert for Stevenson and I was really working with Kennedy people. I was on the drafting committee of the

platform committee, and we were just, they just gave us Bobby Kennedy's orders were to the platform committee, what's his name, Chet Bowles was the chairman, to give the civil rights movement what it wants on this platform, so I really wasn't in on the – . Once Hubert had declared for Stevenson, it ended any chance of his being Vice President, I don't think I saw him again at the convention. So I really don't know what the deal was ever. I do know that Humphrey and Johnson were in the room when this event that I described occurred. That's the last I knew of the thing.

Well, Hubert, we made up and we were friends again and we were friends in '64 with the Freedom party and I would say that Hubert acted much nicer than his assistants did about the Freedom party thing. I would say that his conduct on that was as fine a political act as ever happened in my lifetime. I went to see him every night before I went to bed at the convention and always said, "Hubert, you gotta give us some more! You can't, you gotta give more!" And he'd say, "Joe this – " and we argued a bit. He never once said, "Look, Joe, go ahead and let me have it. I'll be the Vice President. Sometime I can help you." He wasn't within a mile of saying anything like that. I just thought it was a beautiful thing that he didn't. There was some ugliness with his associates who said I was keeping him from being Vice President by standing with the Freedom party. The time was for them to cave in, and so forth. I said we never will and there has been an historical dispute about what, whether we won or lost. I think history will someday make perfectly clear there was a great victory and that's one of the reasons why you've got the '64, '65 and '68 laws. But Hubert's conduct there I thought was, in fact, I had have many fights with the Humphrey people. I never had a fight, really, with Hubert. I just have the highest respect for him. We did disagree during the war period there from '64 to '68. But, I think

Hubert's heart was with us even while he was so scared of Johnson, he did some things that he shouldn't have. He was a beautiful human being.

Mr. Peck: Before we leave the '60 convention, you considered trying to do some sort of floor fight over the Vice Presidency. You chose not to do that.

Mr. Rauh: Well, it was ridiculous. If you think we made fools of ourselves, you'd have thought we made real fools of ourselves if we had gone any farther. I'll tell how we were saved. They were having a roll call for nominations, and Hubert was nominated, I can't remember which state yielded to who – now wait a minute, I want to get this right. Johnson was nominated by, I can't remember, I guess Texas probably did it, although I don't remember it exactly. When we got to Massachusetts, John McCormick moved – and it took two-thirds – that we suspend the rules and nominate Johnson by acclamation. That saved us because it passed, so there never really was any effort to nominate somebody against Johnson. We were opposed to Johnson, but I don't remember anybody saying, "Well, let's run X," because I don't know where you'd have got X from. You couldn't run Humphrey anymore, that would have been a negative, I mean, you couldn't. I think, like Buchanan, it was a protest vote. It wasn't even a vote. It was a protest noise that we were making, but I'm telling you that it would have been going in a cage with a lion for us to really put anybody up. Who could you put up? There wasn't anybody there that was going to stand up and oppose Johnson. So there was never any real fight. There was terrible disappointment, and a lot of the liberals were quite angry because we had always promised them that it wouldn't be Johnson, but there it was.

Mr. Peck: Well, also in 1960, you had two D.C. Circuit cases. One was *Porter v. Herter*, 278 F.2d 873 (D.C. 1960), and the other was *Shelton v. United States* 280 F.2d

701 (D.C. Cir. 1960).

Mr. Rauh: *Porter v. Herter* was a good case. Charlie Porter was a radical from Oregon, Eugene, Oregon. Lovely guy. And he wanted to go to China. Of course, the rules were you couldn't get a passport to go to China. So we brought suit and there just wasn't any substantial – I really thought we had a chance of winning it in the Supreme Court, whether you won in a court of appeals was who your panel was, I mean, we were still in the stage where you got the right panel, you can still win a pretty far out case like the *Schachtman* thing and so forth. Do you remember who our panel was?

Mr. Peck: I didn't write it down, but I –

Mr. Rauh: Because I can't remember it.

[TAPE ENDS]