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ADVOCACY FOR IDEAS

Sam Rosenwein

Interviewed by Michael S. Balter

Completed under the auspices  
of the  
Oral History Program  
University of California  
Los Angeles

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Photograph courtesy of Sam Rosenwein.

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## BIOGRAPHICAL SUMMARY

### PERSONAL HISTORY:

**Born:** December 3, 1905, New York City.

**Education:** Stuyvesant High School, New York City; New York University, B.S., LL.B.

**Spouse:** Sylvia Schenkman Rosenwein, married 1931; two sons.

### CAREER HISTORY:

Legal clerk, office of Harold Turk, New York City, 1928-31.

Admitted to New York State Bar Association, 1930.

Private legal practice, New York City, 1931-43.

Office of Price Administration (OPA), appellate division, 1943-45.

Private legal practice, New York City, 1945-50.

Legal counsel, Los Angeles, 1950-present.

Admitted to the bar of the United States Supreme Court, 1951.

Witness, Bertrand Russell International War Crimes Tribunal, Stockholm, Sweden, 1967.

Professor of law, Glendale University College of Law, San Fernando Valley College of Law, and Southwestern University, 1970s; founding faculty member, People's College of Law, 1974-84.

### CASE CITATIONS WHERE LISTED AS ATTORNEY OF RECORD:

**PRUSSIAN v. UNITED STATES**, No. 448, Supreme Court of the United States, 282 U.S. 675. February 24, 1931. Decided.

**BOWLES, Price Administrator, OPA, v. SHAWANO NATIONAL BANK ET AL.**, No. 8858, Circuit Court of Appeals, Seventh Circuit, 151 F.2d 749. November 13, 1945.

**MCDONALD v. BOWLES**, Price Administrator, OPA, No. 11034, Circuit Court of Appeals, Ninth Circuit, 152 F.2d 741. December 28, 1945.

**SCHREFFLER ET AL. v. BOWLES**, Price Administrator, OPA, No. 3188, Circuit Court of Appeals, Tenth Circuit, 153 F.2d 1. January 12, 1946. Rehearing Denied February 23, 1946.

**BOWLES**, Price Administrator, OPA v. **MAY HARDWOOD CO.**, No. 10088, Circuit Court of Appeals, Sixth Circuit, 155 F.2d 264. April 15, 1946.

**SHEARER v. PORTER**, Price Administrator, OPA, No. 13178, Circuit Court of Appeals, Eighth Circuit, 155 F.2d 77. April 25, 1946.

**PORTER v. JAMES HENRY PACKING CO.**, No. 11089, Circuit Court of Appeals, Ninth Circuit, 155 F.2d 764. June 5, 1946.

**PORTER**, Price Administrator, OPA v. **VILLARI ET AL.**, No. 9040, Circuit Court of Appeals, Third Circuit, 156 F.2d 690. July 9, 1946. Decided.

**MARTINI ET AL. v. PORTER**, Price Administrator, OPA, No. 11082, Circuit Court of Appeals, Ninth Circuit, 157 F.2d 35, July 18, 1946. Rehearing Denied September 25, 1946.

**PORTER**, Price Administrator, OPA v. **FEDERATED MEAT CORPORATION ET AL.**, No. 190, Docket No. 20084, Circuit Court of Appeals, Second Circuit, 157 F.2d 276. September 12, 1946.

**SANDROFF v. UNITED STATES; THOMAS PAPER STOCK CO. v. SAME**, Nos. 10051, 10052, Circuit Court of Appeals, Sixth Circuit, 158 F.2d 623. December 10, 1946.

**FLEMING**, Administrator, Office of Temporary Controls v. **MUNSINGWEAR, INC.**, No. 13391, Circuit Court of Appeals, Eighth Circuit, 162 F.2d 125. June 19, 1947.

**PORTER**, Price Administrator, OPA v. **MONTGOMERY**, No. 9185, Circuit Court of Appeals, Third Circuit, 163 F.2d 211. July 11, 1947. Decided.

**UNITED STATES ex rel. DOYLE, EISLER, WILLIAMSON, and SMITH (two cases) v. DISTRICT DIRECTOR OF IMMIGRATION AND NATURALIZATION AT PORT OF NEW YORK**, Nos. 209-211,

207, 208, Dockets 20953-20955, 20950, 20951, Circuit Court of Appeals, Second Circuit, 169 F.2d 753. August 3, 1948.

**GARNER ET AL. v. BOARD OF PUBLIC WORKS OF LOS ANGELES ET AL.**, No. 453, 341 U.S. 716. June 4, 1951. Decided.

**STACK ET AL. v. BOYLE, UNITED STATES MARSHAL**, No. 400, 342 U.S. 1. November 5, 1951. Decided.

**JARRICO v. RKO RADIO PICTURES, INC.**, No. 678, 349 U.S. 928. May 16, 1955.

**KOENIGSBERG v. STATE BAR OF CALIFORNIA ET AL.**, No. 244, 351 U.S. 936. May 21, 1956; No. 5, 353 U.S. 252. May 6, 1957. Decided; No. 661, 362 U.S. 910. March 7, 1960; No. 28, 366 U.S. 36. April 24, 1961. Decided.

**SHIBLEY v. UNITED STATES**, No. 243, 352 U.S. 873. October 15, 1956; No. 322, 352 U.S. 873. October 15, 1956.

**WILSON ET AL. v. LOEW'S INCORPORATED ET AL.**, No. 552, 352 U.S. 980, January 21, 1957; No. 33, 355 U.S. 597. March 3, 1958. Decided.

**ROTH v. UNITED STATES**, No. 582, 354 U.S. 476. June 24, 1957. Decided.

**WEISE ET AL. v. UNITED STATES**, No. 903, 357 U.S. 936. June 30, 1958.

**SMITH v. CALIFORNIA**, No. 519, 358 U.S. 926. January 12, 1959; No. 9, 361 U.S. 147. December 14, 1959. Decided; No. 812, 373 U.S. 901. April 29, 1963; No. 72, 375 U.S. 259. December 16, 1963. Decided.

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**MONFRED ET AL. v. MARYLAND**, 368 U.S. 953. January 8, 1962.

**ADAY ET AL. v. U.S. DISTRICT COURT ET AL.** No. 355, 375 U.S. 832. October 14, 1963; No. 500, 379 U.S. 931. December 7, 1964.

**A QUANTITY OF COPIES OF BOOKS ET AL. v. KANSAS**, No. 449, 375 U.S. 919. November 18, 1963; No. 449, 378 U.S. 205. June 22, 1964. Decided.

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WILLIAMSON v. CALIFORNIA, No. 95, 377 U.S. 994. June 22, 1964.

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AUSTIN v. KENTUCKY, No. 453, 384 U.S. 916. April 25, 1966.

REDRUP v. NEW YORK, No. 72, 384 U.S. 916. April 25, 1966; No. 3, 386 U.S. 767. May 8, 1967. Decided together with No. 16, AUSTIN v. KENTUCKY, on certiorari to the Circuit Court of McCracken County, Kentucky, argued on October 10-11, 1966, and No. 50, GENT ET AL. v. ARKANSAS, on appeal from the Supreme Court of Arkansas, argued October 11, 1966.

FELTON ET AL. v. CITY OF PENSACOLA, No. 934, 390 U.S. 340. March 11, 1968. Decided.

BRAY v. CALIFORNIA, No. 880, 390 U.S. 987. March 18, 1968.

REED ENTERPRISES ET AL. v. CLARK, ATTORNEY GENERAL, ET AL., No. 1092, 390 U.S. 457. March 25, 1968. Decided.

RABECK v. NEW YORK, No. 611, 391 U.S. 462. May 27, 1968. Decided.

BUXBOM v. CALIFORNIA, No. 433, 393 U.S. 934. November 12, 1968.

BLOSS v. MICHIGAN, 393 U.S. 973. December 9, 1968.

DALY v. CALIFORNIA, No. 699, 394 U.S. 929. March 24, 1969.

YOUNGER, DISTRICT ATTORNEY OF LOS ANGELES COUNTY v. HARRIS ET AL., No. 163, 394 U.S. 913. March 24, 1969; No. 2, 401 U.S. 37. February 23, 1971. Decided.

BYRNE, DISTRICT ATTORNEY OF SUFFOLK COUNTY, ET AL. v. KARALEXIS ET AL., No. 1149, 397 U.S. 1061. April 27, 1970; No. 83, 401 U.S. 216. February 23, 1971. Decided.



BLOUNT, POSTMASTER GENERAL, ET AL. v. RIZZI, DBA THE MAIL BOX, No. 55, 400 U.S. 410. January 14, 1971. Decided together with No. 58, UNITED STATES ET AL. v. THE BOOK BIN, on appeal from the United States District Court for the Northern District of Georgia.

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UNITED STATES v. REIDEL, No. 534, 402 U.S. 351. May 3, 1971. Decided.

RABE v. WASHINGTON, No. 71-247, 405 U.S. 313. March 20, 1972. Decided.

KAPLAN v. CALIFORNIA, No. 71-1422, Supreme Court of the United States, 413 U.S. 115. June 21, 1973. Decided.

MILLER v. CALIFORNIA, No. 70-73, Supreme Court of the United States, 413 U.S. 14. June 21, 1973. Decided.

JENKINS v. GEORGIA, No. 73-557, Supreme Court of the United States, 418 U.S. 153. June 24, 1974. Decided.

HAMLING ET AL. v. UNITED STATES, No. 73-507, Supreme Court of the United States, 418 U.S. 87. June 24, 1974. Decided.

HICKS, DISTRICT ATTORNEY OF ORANGE COUNTY, ET AL. v. MIRANDA, DBA WALNUT PROPERTIES, ET AL., No. 74-156, Supreme Court of the United States, 422 U.S. 332. June 24, 1975.

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE, v. HYMAN C. SLEPICOFF, DBA GRADUATE ENTERPRISES, DEFENDANT-APPELLANT, No. 75-1404, United States Court of Appeals, Fifth Circuit, 524 F.2d 1244. December 19, 1975.

YOUNG, MAYOR OF DETROIT, ET AL. v. AMERICAN MINI THEATRES, INC., ET AL., No. 75-312, Supreme Court of the United States, 427 U.S. 50. June 24, 1976.

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**REGENTS OF THE UNIVERSITY OF CALIFORNIA v. BAKKE**, Supreme Court of the United States, 438 U.S. 265; 17 EPD P8402; 17 FEP Cases 1000. June 28, 1978.

**EDWARD G. SHEEHY, PLAINTIFF-APPELLANT v. SOUTHERN PACIFIC TRANSPORTATION CO., DEFENDANT-APPELLEE**, No. 78-2814, United States Court of Appeals, Ninth Circuit, 631 F.2d 649. November 3, 1980.

**THERESA L. SUBINGSUBING**, individually and as Administratrix of the Estate of Andrew M. Subingsubing, deceased, **PLAINTIFF-APPELLANT, v. REARDON SMITH LINE, LTD., A CORPORATION, SIR WILLIAM REARDON SMITH & SONS, LTD., A CORPORATION, DEFENDANTS-APPELLEES**, No. 81-5649, United States Court of Appeals, Ninth Circuit, 682 F.2d 779. July 27, 1982.

**HUGHES AIRCRAFT COMPANY, APPELLANT v. UNITED STATES OF AMERICA, APPELLEE**, Appeal No. 426-73, United States Court of Appeals, Federal Circuit, 717 F.2d 1351; 219 U.S.P.Q. 473. September 20, 1983.

**AFFILIATIONS:**

American Civil Liberties Union (ACLU).

Communist Party of the United States of America, 1936-50.

National Lawyers Guild, founding member.

New York State Bar Association.

United States Supreme Court bar.

**AWARDS:**

Award of appreciation, American Civil Liberties Union, Southern California, 1975.

Honorary J.D. degree, People's College of Law, 1980.

Special award, public counsel, public interest law office, Los Angeles and Beverly Hills Bar Associations, 1984.

**BOOK:**

**The New Civil Rights Act: What it Means to You**, with Stanley Fleishman. Los Angeles: Blackstone Book Company, 1964.

## INTERVIEW HISTORY

### INTERVIEWER:

Michael S. Balter, Interviewer, UCLA Oral History Program. B.A., Biology, San Jose State University; M.A., Biology, UCLA.

### TIME AND SETTING OF INTERVIEW:

**Place:** Rosenwein's home in Los Angeles.

**Dates:** October 9, 16, November 14, 22, December 19, 1985.

**Time of day, length of sessions, and total number of hours recorded:** Sessions were held in the afternoon and lasted from sixty to ninety minutes. A total of six hours of conversation was recorded.

**Persons present during interview:** Rosenwein and Balter.

### CONDUCT OF INTERVIEW:

The interview follows a chronological format, beginning with Rosenwein's childhood in New York's Lower East Side and continuing on to his education and legal career. The interview focuses on Rosenwein's political involvements and on the major civil liberties cases in which he participated.

### EDITING:

Virginia Carew, assistant editor, edited the interview. She checked the verbatim transcript of the interview against the original tape recordings, edited for punctuation, paragraphing, and spelling, and verified proper names. Words and phrases inserted by the editor have been bracketed.

The edited transcript was sent to Rosenwein in early summer of 1987. He made some changes and additions and returned it in September of the same year.

Alex Cline, assistant editor, prepared the table of contents, biographical summary, and index. Vimala Jayanti, editor, prepared the interview history.

#### SUPPORTING DOCUMENTS:

The original tape recordings of the interview are in the university archives and are available under the regulations governing the use of permanent noncurrent records of the university. Records relating to the interview are located in the office of the UCLA Oral History Program.

TAPE NUMBER: I, SIDE ONE

OCTOBER 9, 1985

BALTER: Sam, why don't we begin from the beginning. I think it's always appropriate in these oral histories. Tell me when and where you were born, something about your parents and their background, where they were from and so forth, to get us started.

ROSENWEIN: Well, I was born December 3, 1905, in New York City, Third Street near the East River. That, of course, was a very humble area at the time. Today it's quite sumptuous. But we lived right near the East River. I remember some of the boys used to say, "I live near the East River. Drop in sometime."

My parents were Abraham and Miriam. My mother's maiden name was Gutradt, which translated means "good advice." Now, when I grew up, some of the boys used to call me "Sammy Good-Advice." They came from Poland--Warsaw, Poland. My maternal grandparents, Isaac and Rachel, [were] also from Warsaw. I didn't know my paternal grandparents because they were never here and I didn't hear any mention of them. But all came from Warsaw. Now, my earliest recollection is that we lived with my grandparents. And my grandparents were there on East Third Street. We had an apartment there with my Uncle Leo [Gutradt]--that's a brother of my mother--and Aunt Annie

[Boonin], her sister. There was another sister, Blanche, but she had already married a man, Sam Salve. My brother Sol was born four years later, and that's the earliest recollection I have.

All I remember after that is that when I was about eight, my mother left with my brother Sol for Warsaw. I was told that she was going to visit some relatives in Warsaw. I have a feeling that there was some tension between my mother and my father and she was taking this opportunity to just get away for a while. This was about 1913. I went to live with my father in my grandparents' house, who were now residing in the borough [of] Bronx. You know, of course, there are five boroughs in New York that make up the city?

BALTER: Right.

ROSENWEIN: I was living in the Bronx and I went to a public school, P.S. 51. And now that I was with my grandfather, I had to go to Hebrew school and to a synagogue with my grandfather on the Sabbath and on holy days. Neither of my parents were religious.

BALTER: They were both Jewish I assume.

ROSENWEIN: Oh, yes, everybody's Jewish. Neither of them, as far as I can recall, were ever radical. Years later, when I joined the Communist Party, my mother said that she too was going to become a communist. That was the first

time that anything radical got into her area. My parents were divorced by that time. And my father heard indirectly that I was involved in some radical things. He announced that I could not possibly-- He wouldn't believe that his Sammy was a communist. All right. Anyway, we went to live in the Bronx, and my father at the time was a worker. He worked in factories making pocketbooks. He was a pocketbook-maker.

BALTER: Sam, let me stop you at this point. Let me back up and ask you a few other questions now. When did your parents come to the United States from Poland?

ROSENWEIN: Well, as far as I know, they probably came about two or three years before I was born. I was told that they had eloped to England, then came to the United States. I don't know whether that was accurate or not. And by that time my grandparents were here. I tell you, the thing is this: You know [that] we're in the 1905 period?

BALTER: Right.

ROSENWEIN: There was an abortive revolution in Russia. I have a feeling that the turmoil there affected the Jews as well, and they decided to get out. I had never gotten the stories that others had told about pogroms in small villages. Well, my grandparents lived in Warsaw and he had a soap factory. So he couldn't have been too harassed.

Nevertheless, they were all here, and I think about two or three years before I was born.

BALTER: I gather that they didn't tell you a lot of stories about the old country, in that sense.

ROSENWEIN: No, no, they did not. They didn't talk about pogroms and they didn't talk radical. All my radicalism came from my peers.

BALTER: Now, the area Third [Street] and the East River, where you were living at first-- You have to pardon my ignorance of what part of New York exactly is called the Lower East Side. Or was it called something--?

ROSENWEIN: Lower East Side, very much the Lower East Side, and very much all Jewish and pushcarts and things of that kind. All immigrants of one kind or another would come over, settle in [inaudible] similar to a ghetto.

BALTER: Do you have any particular memories of that neighborhood before you moved out, or were you too young at that time?

ROSENWEIN: Frankly, I just don't remember at all, not at all. The only thing I can remember of the whole thing is that somehow or other we seemed to have a piano in the house. And because we were all living together, my Uncle Leo--at that time [he] was a young man, comparatively-- slept on the top of the piano.

BALTER: Did he have anything underneath him?



ROSENWEIN: He had something underneath. That's what struck me.

BALTER: And one last thing before we go on. You said that your mother went to Warsaw. Now, how long did she go for?

ROSENWEIN: Well, that's the point.

BALTER: Yeah?

ROSENWEIN: What happened was that war broke out. The First World War broke out in 1914, and so, in a sense, she was stuck there, couldn't get out. Through the efforts of Ambassador [James W.] Gerard, who was then our ambassador to Germany, apparently she was able to get back to the United States on a boat after four years. Everybody went by boat at that time. And principally because my brother was a native-born American citizen--that was the thing that helped. I was impressed by one story she told me, and that was simply this: That when the war broke out and as the war progressed, the Germans came into Warsaw and the Russians retreated. She said the entire populace was delighted to have the German troops come and the Russians leave because the Russians were the ones who mistreated the Jews at that time. The Germans were considered very tolerant. Matter of fact, many Jews had gone to Germany. Many of them, of course, to become peddlers and things of that kind, but nevertheless, German soldiers were welcomed by the Jewish populace in Warsaw in 1914. So she returned

a little later than she expected, about 1915.

BALTER: Now, Sam, you mentioned that you thought this might be due to some tension between your parents.

ROSENWEIN: Yes.

BALTER: And then later you mentioned that they were divorced. What year did they split up, actually?

ROSENWEIN: I was going to come to that but-- Let me see. Some events take place-- She came back in 1915. Then, soon as she came back--and I remember this now--they immediately began to quarrel. I heard them quarreling even as I slept in bed there [over] this, because my father objected to some publicity. Because my mother got some publicity in the newspapers and he didn't care for it. And they fought about it. But it was obvious that they were going to get divorced. And sometime about 1916 they got divorced. I was eleven and my brother was about seven.

BALTER: What sort of publicity [was] your mother involved in?

ROSENWEIN: Well, all, as far as I remember-- I don't know why he was angry. I thought because of the publicity about Ambassador Gerard having been helpful in getting my mother out.

BALTER: I see.

ROSENWEIN: And because he helped a citizen and therefore, you know, he'd done a good thing, and my mother was happy

to get back. I don't know why they were quarreling about it. But that was that.

My brother and I stayed with my mother. I must say that, to some degree--I assume it happens to most children--it had a deep impact on me, the breaking up. Like a young boy, oh-- I wanted them to get together and all that. I was subjected to questions as to whether I wanted to be with my mother or with my father, which was, of course, another difficult matter. And it's left its impact. I hardly ever got over the fact. I still have some guilty feelings. And now, with respect to the attitude I had to my father, who, you know, seemed alienated from me at the time-- There's always two sides to all these things. What was important is that my mother and my brother and I remained together. My father agreed to pay twelve dollars for our upkeep. Now, you can understand that that--

BALTER: Per month?

ROSENWEIN: No, I think it's per week, yeah.

BALTER: Per week.

ROSENWEIN: But still, it wasn't too much, and my mother began to try to buy and sell things. She wanted to be a little different from working in the factory. And my grandfather had always bought jewelry on consignment and then sold it in that kind of way. So he was able to get up

at eleven o'clock in the morning and come home at about three. And I would see my father occasionally. I visited him. I visited him at different factories that he worked in. But it became obvious that I soon would have to look for jobs even as I was going to school. I started to work after school, and in the summertime, at about the age of thirteen or so. Matter of fact, I went to work in some pocketbook factory, not my father's. My job was to put in buttons and so on. And there was a dispute between the union and the owner because one of the men who had a job as an operator was nonunion. And there was a quarrel. They went out and they picketed. I was on the picket line at the age of thirteen. This was some slight training. I didn't have at that time any real radical outlook or anything. To me it just seemed the boys were right and I was glad to walk along with them. That was it.

BALTER: Do you remember how that dispute was resolved?

ROSENWEIN: Oh, they finally agreed to come back if the man became a union member, and he became a union member. So that took care of that.

Now, I'm eleven, brother's seven, and this is about 1916. My grandparents have now bought a house in Brooklyn on Georgia Avenue, which is what we called a "New Lots" area. It was near Canarsie. It's the most godforsaken area one ever could imagine. They say "New Lots" because

at the end of our block there was nothing but lots which went on, it seemed, to the ocean and of course, again, really a ghetto--Jewish neighborhood. We lived there, and as I say, my father keeps on visiting once in a while. And he remarries. I had a chance to meet his wife [Martha Rosenwein]. Very nice. And so, in fact, I have a half brother, Herbert. And just recently, we were visited by Herbert's son, Dan. He's an awfully nice fellow. But we didn't see much of each other.

I now am in Brooklyn and I go to P.S. 174. I must say, in the Bronx when I was going to school I had a Miss Hatton in 5b, I think. I liked her very much. Used to meet her every day when she got off the streetcar and walk her to the school. I don't know whether that got me all the A's, but it helped, I suppose. But I remember that she was very impressed by the fact that I read a book called the Common Law.

BALTER: Was that The Common Law?

ROSENWEIN: Not, not, no, no, no. It's called Common Law.

BALTER: Oh, Common Law.

ROSENWEIN: It's a novel dealing with a man who's married who's having a relationship with a woman. Just some common-law wife, so to speak.

BALTER: I see.

ROSENWEIN: And she was amazed that I would be reading that

at my age, but impressed. That's just--

BALTER: She wasn't critical?

ROSENWEIN: No, no. She just, she was kind of nice about it. I just remember now that it was kind of interesting, her reaction, now, looking back at it. Then I went to [P.S.] 174, and after a short while I think we were zoned into another school, P.S. 149. And it was from P.S. 149 that I graduated. Now, it was in P.S. 149 that I met two schoolmates who were quite radical and began to talk to me, and we're all young. We were just about, I don't know, twelve, thirteen. And what I remember about-- Both of these two fellows, when they graduated or ultimately afterwards years later, went to work for the **Daily Worker** as writers.

BALTER: You remember their names, by the way, these two people? Or do you want to pass on that?

ROSENWEIN: I'll pass on that. They talked socialism, but if you ask me what is it they said, I at this point don't remember except that we agreed that we were socialists, had a socialist outlook. And Miss Austin, who was my teacher in the eighth grade, where I graduated, our class, she treated us-- She was a very nice person, but she treated us as if we were the sons of immigrants, you know, and needed to be a little more Americanized. And when she heard that we had socialist tendencies, I remember she got us up

before the class, asked us to present our views on socialism--lord knows what we said--and then she talked about Americanism and so on and hoped that we would have a better viewpoint. Naturally, when we left the room, we agreed that we hadn't changed our minds at all. But I graduated from P.S. 149 with a general excellence medal. You have a picture here of the graduating class.

BALTER: Sam, just one detail on that now. When you graduated from P.S. 149, you were graduating from secondary school and going on to--

ROSENWEIN: It's a public school. At that time you went eight years to public school. There's no junior high or anything of that kind. You went eight years to public school and then you went four years to high school.

BALTER: So you're now ready to enter high school.

ROSENWEIN: I'm ready to enter high school. Now, that was the situation. So I graduated from public school when I was about thirteen or fourteen. I'm always caught because I was born in December. I entered Stuyvesant High School. I went to Stuyvesant High School from 1919 to 1923. Now, Stuyvesant High School was in Manhattan, and I was coming from Brooklyn. If you say to me, "Why in the world were you going to Stuyvesant from Brooklyn?"--which meant I had to take the subway every day and all that stuff--I really am not clear. But it seemed to me that one

of the reasons I was going was that Stuyvesant High-- Which, by the way, is now a very prestigious high school. Applications now are in the thousands, and they're constantly rejecting people and everything else. But at that time I think that I was told that it was a good vocational school, that it had wood turning and other things that you worked at. Therefore, you could develop yourself in those areas which would open your employment opportunities of that kind, while the other schools, like Erasmus [High School] and so on in Brooklyn, all seemed to be more academic.

The fact of the matter was that I was a voracious reader from the very beginning, and one would have thought that I would move in that direction. But, I don't know, I was going for all kinds of jobs. In the summertime I worked in a shoe factory; I worked in a doll factory; some silk shirt display shop. I worked in a number of jobs, and finally ended up-- About 1923 I think it was, I applied for a job in the New York City Bar Association in their library, which is-- They had the third largest law library in the country after [the] Library of Congress and Harvard [University]. And [I] worked there during the summer and then--this is about 1923--when I entered law school, I became an assistant night reference librarian and worker from six to twelve midnight because they kept open that



time. I was there until 1940, which was about ten years after I had been admitted to the bar.

BALTER: Sam, let me ask you a few things here. First of all, you've mentioned your introduction to socialist politics through the schoolmates when you were still in public school. What, if any, form did that political thought take in terms of activity?

ROSENWEIN: Well, with those boys I don't recall anything except talk. What does happen is in the years-- This is in the Stuyvesant years--well, in the 1920s, 1920, '21, '22, '23, around that time. You've had the Russian Revolution, the 1917 revolution; you've had the Palmer raids. There is a certain amount of discussion going on that one hears even though you're pretty young and don't understand most of it. Five socialist assemblymen elected to the assembly in New York were ousted because they were socialists, allegedly, or disciples of the Bolshevik revolution. One of them, Morris Hillquit, came from our neighborhood, our area, and the name Morris Hillquit and our support for him was considered [the] best thing to do. I also recall some of the boys taking me to a meeting of the Young People's Socialist League (known as the YPSL), and I recall sitting listening to a lecture by an individual man who was constantly looking at the door as if somebody's going to raid it at any moment. But that kind of atmosphere is what

I'm involved in without actually knowing much more about it than that.

BALTER: The campaign around Morris Hillquit's case, was there a specific organization that was formed to--?

ROSENWEIN: Well, I think the YPSL were the ones primarily who supported. But of course in the Jewish neighborhoods there were organizations-- You would have, for instance, a newspaper like the *Freiheit*, which was obviously pro-communist. But you had other community organizations that had been formed for the benefit of the Jewish people in one form or another, fraternal and so on. And many of them had come from the old country with sort of radical leanings and kinds of grievances which were carrying over against the ruling class, so to speak. So you heard all of this in this kind of atmosphere. But as far as those young guys, we were just kids. The YPSL was about the most that we participated in, and that was to me just perfunctory. I don't recall anything specific except sitting in class and listening to some discussion. It must have been kind of general talk about we have got to go out and support Hillquit and so on.

BALTER: You mentioned that-- You were talking about Stuyvesant High School. Am I safe in assuming that this was in the Bedford-Stuyvesant district, [as] it came to be called?

ROSENWEIN: Stuyvesant High School was around Fourteenth Street in Manhattan and not far from Washington Irving High School. We used to make sort of little tins for baking cakes. Then we'd go over to Washington Irving, which was a girls school, and they would bake the cake in the tins, and then we gathered to eat the cakes.

BALTER: Did your social activities--? You were going to school in Manhattan, now, but living in Brooklyn. Did your social activities during high school tend to evolve more around situations in Manhattan or more around Brooklyn, your home in Brooklyn?

ROSENWEIN: No, more by the home in Brooklyn. A couple of friends developed in New Lots Avenue, and we went out with girls together and that kind of thing while-- No, Stuyvesant was primarily Stuyvesant, just to go there and then come home.

Now, in Stuyvesant there was one man who made an impression on me. There was a professor-- Well, I don't know if I'd call him a professor; at that time he was a teacher. He taught history. Now, at Stuyvesant I met this Mr. Ham. His name was Ham. What impressed me was the way he taught history. Because the one thing that I remember is [that] we had a history book which dealt with the time when, for some reason or other, a man named J. P. Morgan had cornered the market in gold, so that the government had

to come to J. P. Morgan to get gold from him. And they had a picture of J. P. Morgan in the history book. And with a sort of a sneer, this teacher would say, "Isn't he a great hero? He's helping the government with gold." That sneer got me to thinking, and it keeps on coming back to me in my memory. Of course, it also told me-- Later on I begin to think about it. What you get in history books may not always be exact truth.

BALTER: Now also, Sam, you mentioned that you had become a voracious reader by the time you were really getting going in school.

ROSENWEIN: Yes, right.

BALTER: What would you lay that to?

ROSENWEIN: Well, I don't know; some of these things may be intangible. But when my mother was in Europe (and that's pretty early) and I'm living in the Bronx, my grandparents, of course, generally converse in Jewish, and my father is working all day, leaving me, I think, every morning two pennies to use for whatever purpose. If I left him a note and said I wanted to go to the movies, he'd leave a dime. So I'm quite alone, and outside of going to school there's nothing to do but read, and I'm constantly reading. It happened that around my area a fellow named Moss Hart lived. I don't know if you know Moss Hart, but he later became a prolific writer, a playwright. [George S.]

Kaufman and Hart plays were quite--

BALTER: Yes, of course.

ROSENWEIN: Moss was a great storyteller, and so we used to listen to him. We did a lot of reading that way, and I just became immersed in it. It was a way of spending every one of my days. Quite alone, you know, except if you're running around with the Forest Avenue gang or against the Tinton Avenue gang. I remember about that. It's not like the gangs today. You just raced around, then you came racing home. Nothing ever happened. [laughter]

BALTER: Well, what kind of things did you read? Did you have sort of a specialty?

ROSENWEIN: Well, my father was very much impressed with my reading and constant reading. And I remember he brought me home a set of books on science, which bored me to tears, of course, because they weren't novels or anything else like *Common Law*, which I loved. He always wanted me to be a scientific agriculturalist, whatever that meant. So he supplied me with some books, and I went to the public library all the time. Generally, I went through I think what most kids went through. I went through all the [Joseph Alexander] Altshelers, I think they were. And I went through Horatio Alger. Gradually drifted into history, biography--I loved biographies of all the famous men--and then into a novel here and there.

BALTER: Now, you mentioned that your father was impressed with your reading. What was your parents' reaction to your politics?

ROSENWEIN: As I say, my father had left very early. I was only eleven when he went off, so that we never chatted about politics at all. It was only when I began to get some publicity that he found out about it, and then he just denied that I could possibly be what I was alleged to be. And my mother, who of course thought that whatever I did was undoubtedly right and correct, gave me tacit support, but that was not her forte. She was, as a matter of fact, a woman who also, by the way, liked to do a lot of reading--but poetry, things of that kind. So, as far as they were concerned, they never really intervened one way or the other.

BALTER: And finally, before we go on to the chronology, when you-- As I understand it, you did both what we would call now undergraduate work and law work at New York University. Am I correct in that?

ROSENWEIN: Yes.

BALTER: Now, when you started at NYU, had you already decided to become an attorney? And what was behind your decision to do that?

ROSENWEIN: Yeah, right. What happened simply was this: First of all, I won a [New York State] Regents

Scholarship. At that time they had what they called scholarships given to high school graduates who did well on specific exams that they gave called the regents exams. So I got a scholarship, which meant I could go to college and I could go to any college I wanted. And whatever discussion I had with anybody--and usually this would be with grandparents or even with my mother or with some friends of my mother or friends of my grandparents--it was thought I should become a professional man. That's the only way to get ahead. I mean, I really didn't know. I certainly didn't want to become a scientist or anything of that kind. And I really went into the law simply as one of the things that one would do. I'm not going to be a doctor because it's more scientific, and the law seemed something where if you have a big mouth, why that will do it and then that's the end of it. I don't want to put this on any high level, but I just played into it because it would be a chance to make a living without having to work in a factory--I'd done a lot of that--and perhaps be able to get away from that night work that I was [doing] from six to twelve. That was that.

BALTER: Why don't we go on and [you] tell me something about your college career. This was the Washington Square campus, I assume?

ROSENWEIN: Yeah. NYU offered a five-year combined course

which led to a B.S. degree, bachelor of science degree, and an LL.B., bachelor of laws degree. They didn't know anything about J.D.'s at that time. You had to, after you took the five-year course, had to have a one-year clerkship with a lawyer before you could be admitted. So, in effect, you were really going six years. And of course, it usually ended up almost seven, because you're looking for a job and before they have your schedule for admission you end up at about a year and a half or a year and three quarters. So it's close to six or seven years. And so I went to Washington Square College [absorbed by New York University in 1973] and graduated in 1927 and got my B.S. And [in] 1925 I began to go to law school, and [in] 1928 I got my bachelor of laws degree. Was there anything there? Well now, I don't know of anything that was happening there that was significant. I kept my nose to the grindstone. I really wanted to do well. It was no problem. I passed the bar exam on the first crack and all that. Got fairly good grades all the way through. Developed some nice friendships with some of the people in NYU, attended football games, etc. But otherwise it was more or less uneventful. I was on the editorial board of the **New York University Law Review** at that time. I had an interesting teacher in psychology at Washington Square College. Liked him very much. And that's about it.



BALTER: No political activities during that time?

ROSENWEIN: I don't think so. There was nothing. There's just more and more the feeling that life is rough as far as I'm concerned because I've been working all the time. I haven't got my father around. My mother has finally remarried [to] a man [Jacob Folman]--very orthodox individual. And obviously we weren't going to be too happy together, right? He was a very nice guy, I don't mean to say that he in any way mistreated us, but we just-- Well, he really believed that Jonah was swallowed by that whale. He wouldn't even agree with me that this is just symbolic of a person in trouble, getting into the belly of the whale, so to speak, but not-- No, no, the whale swallowed Jonah. It was that kind of thing. So, there was just a general unhappiness more than anything else, I would say, with the way things were working out. Of course, I had to go to school. I was happy to go during the daytime and be able to work at night, but working from six to twelve was quite, quite difficult.

BALTER: Did you live at home the whole time you were in New York University?

ROSENWEIN: Yeah, yeah, yeah.

BALTER: And was that that same place in Brooklyn the entire time?

ROSENWEIN: Yeah. Ah, yes, yes, we're living in

Brooklyn. There are a number of things that are happening. While at law school I meet my wife-to-be. I meet Sylvia [Schenkman Rosenwein]. In the meantime, my mother has taken us away from my grandparents and moved elsewhere. And my Aunt Blanche would marry Sam Salve, and he now had a house in Brooklyn, Fifty-eighth Street in what was known as Borough Park. There was an attic there and we lived in the attic, my mother and my brother. And as a matter of fact, there, through the offices of Sam Salve, she met her second husband, Jacob Folman, who was a diamond setter, and they were married. And then, when they got married, we all went to-- We're still living in Borough Park, but went to live somewhere else in some apartment. All that was happening, and I'm going around with Sylvia at that time. She's going to Cooper Union. That's close by to Washington Square, so occasionally we go out to see a movie instead of going to class. I hope no student is going to listen to all this!

When I got out, I had to have a one-year clerkship. Now, I want to describe the period we're in. This is 1928. We're in the Harding, Coolidge period. This is [a] boom period. And I'm applying, trying to get a job. I remember going into one of the offices--that a man who's interviewing me is busy on the phone, someone had called him. And the discussion was that stock had gone up. "Oh,

it's now up in the 400s. Gee, that's great." All of that booming times and all. In the meantime, as I go-- Well, I didn't get the job there. But as I go around, I'm sitting in an office, I remember, with a whole other group of people, of fellows who want to get a job. The man comes out and he says, "Now, this job pays five dollars a week. Is there anybody here who wants to work for four?" As I exited I said, "Things have got to change." It really was getting on my nerves. But we're moving right into the crash, so to speak.

But I want to talk about my experience with Harold Turk, who was the man who finally hired me in Brooklyn. Mr. Turk was a leader in the district, in his Republican district, and the Republicans, of course, were running the federal court. He represented, for example, those fellows who--bootleggers. I learned a lot about criminal law at that time. I found it very fascinating. The bootlegger, the big shots, would pay him tremendous fees. Then he would come and plead them all guilty--but of course, always with small fines--and got them off, and so it paid for them to do all that.

And I remember listening to some trials, which always fascinated me. There was one-- Those who are lawyers would be interested. I was sitting at a trial watching a very famous lawyer named Max D. Steuer, in the federal court.

And he was defending bank robbers. Oh, some obviously guilty person. But in any event, the jury had retired when Steuer got up and said to the judge, "Your Honor, I think you overlooked instructing the jury that the defendant is presumed to be innocent until he's proven guilty." So, everything was read back by the reporter, and he had forgotten. He had instructed on everything else--you have got to prove him guilty and all--but he hadn't talked on a presumption of innocence. So the jury was called back, and the court said to the jury, "Gentlemen of the jury, I want you to know the defendant is presumed to be innocent until he's proven guilty." They looked at each other, they went out, came back. "Not guilty." You know, that struck me.

And then we had a judge, Judge Campbell, a very good judge, an old fellow who was a good technician. If you asked the right questions, then he would shake his head affirmatively with sort of a smile, as if to indicate that's exactly right. But if you asked the wrong questions, then he would sort of shake his head the other way. Well, the result was that the jury constantly thought he was favoring one and not favoring the other from his looks. So I remember one of the lawyers had to make an actual record, had to say respectfully to the judge after the jury had been excused that he was making these motions and that the jury was getting the wrong impression. They

had to put it in the record. And so I found that interesting.

TAPE NUMBER: I, SIDE TWO

OCTOBER 9, 1985

ROSENWEIN: Now, one other incident comes to mind in Harold Turk's office. One of the cases that he became involved in was a case involving a man named Aaron Prussian [Prussian v. United States]. Aaron Prussian was an attorney, a Harvard graduate, as a matter of fact. He had represented the estate of Mackey in obtaining a tax refund. He was sent a check, I believe it was for ten thousand dollars, and he endorsed that check, which was made out to the estate of Mackey. He endorsed that check: estate of Mackey, attorney Aaron Prussian. The client asked for the check back, wanted the money, all the money. Didn't want him. He told the client that he had deposited the check. He wanted to keep his fee and would give the rest to the client. The client was indignant, went to the United States attorney, and an indictment was returned against Prussian charging him on two counts: one, with forging or counterfeiting a government check, and secondly, with forging an endorsement on a government check. Harold Turk represented Aaron Prussian. At the trial it became farcical, because Prussian took the stand and said that he did this because as an attorney he felt he had a right to. But he was asked why it was that the back of the check had two different handwritings, as if to simulate one or

the other. And he explained that lamely by saying at that time he had held both of his children in his hands as he was endorsing the check. But the jury wasn't impressed with the children argument and they found him guilty. Then an appeal was taken to the [United States] Court of Appeals for the Second Circuit. At that time Judge [Martin T.] Manton, who was the chief judge, wrote the opinion. The conviction was affirmed.

And now it was the summertime, and we were going to petition for a writ of certiorari to the United States Supreme Court. Under the rules of the court, when it's vacation time, you have to get a stay from the court or a justice of the Supreme Court of the judgment of conviction. Otherwise, your man goes to jail pending your application for certiorari. I was sent to get the stay. The papers were prepared and I worked on them. The practice is to call the clerk of the United States Supreme Court and ask him where we can find the particular justice, who at that time was Justice [Harlan F.] Stone, who covered the second circuit. The clerk informed us that Justice Stone was vacationing on one of the Thousand Islands, but which he didn't know. He suggested that the practice was to go to the nearest circuit, the first circuit, and the justice there was Justice [Louis D.] Brandeis. Justice Brandeis, we found, was in Chatham, Massachusetts. That's

very close to Cape Cod. I called and arranged to come up there on a Friday to see the judge. Of course, at that time we went by train. There may have been-- But we always used trains. So I got a ticket for Chatham, and after a fairly long journey arrived at Chatham, New York--only to find that I'm not in Chatham, Massachusetts, at all, but in Chatham, New York!

BALTER: I see.

ROSENWEIN: Now, it was obvious that I'd have to go to Boston to get to Chatham, Massachusetts. I called and the judge said that he would not meet me on Saturday but [would] meet me on Sunday. So back I went to Boston and then came to Chatham on Sunday. And of course he was very, very generous. He had his chauffeur there waiting for me at the station and took me to his home, where I met Mrs. [Alice Goldmark] Brandeis. They had a beautiful home, bright, a beautiful view of the ocean, and all very impressive.

And then we discussed the application for a stay. Now, the general rule is that if there is a conflict among the various circuit courts with respect to the rule, the Court, to resolve the conflict, will usually grant certiorari. There was a conflict among the circuits on whether or not merely signing an endorsement on a government check was a counterfeiting of that check, some



saying that's not a counterfeiting and doesn't come within the counterfeiting statute. Now, he had been convicted under that plus also under forging an endorsement on a check. But most of the emphasis in the court had been on counterfeiting. So, I pointed out the conflict. And yet he hesitated. He hesitated, kept on hesitating. And he noticed that I kept on saying, "You know, there's a conflict, and this court has said again and again that there's a conflict and a stay will be granted." He says, "I know all that, but this man is a Jew." And I thought to myself, and I've been thinking since, that Justice Brandeis, when he was recommended for the Court there was a bitter outcry against him, first, because he had been a sort of anticorporation lawyer, but secondly, because he was Jewish, the anti-Semitism that we knew existed. In fact, on the bench, when he was on the Court, a Justice [James C.] McReynolds, I think that was his name, from the South, he obviously disliked Brandeis from the beginning. When Brandeis finally left-- The Court usually signs a letter by all the members [which] goes into the archives, expressing regret and speaking of a wonderful relationship. McReynolds wouldn't sign. It was this kind of storm around him at the time that, after all the years now that he'd been a judge, a justice of the Court, where he had a lifetime job, he's still concerned about a

reaction that might come from the public just because it happened that he gave a stay to a man who happened to be Jewish. So that's kind of left a lasting impression on me. He did give me a stay, but only until I could see Justice Stone. And of course, when I saw Justice Stone he gave us the stay. Then, ultimately, the case was argued in the United States Supreme Court. Harold Turk argued the case. I was there with him and I worked on the brief. And I was very much impressed with the justices that I faced. Because there was Justice Brandeis; there was Justice [Oliver Wendell] Holmes [Jr.]; Justice Stone was there. And I was fascinated by the-- Brandeis always seemed to be asleep, have his head leaning on his fist. Though seemingly asleep, he was very much alert. And Holmes, arguing with counsel-- If counsel didn't think that that was the law, then he had his clerk bring out the books and read it to the counsel. And he was pretty well advanced [in age] even at that time. So, it was quite an impressive case. And I haven't forgotten that incident with Justice Brandeis.

BALTER: Now, how did the case turn out? For the benefit of our--

ROSENWEIN: Oh, no, no. No, we lost.

BALTER: You lost? The guy went to jail?

ROSENWEIN: Yeah, yeah. What happened really was that the

Court, as a matter of fact--if my recollection serves me--agreed with us that counterfeiting was not covered, but there had been the additional count on which he was convicted of forging an endorsement on it. And our only answer to that argument was that that point had not been emphasized; the court, in instructions to the jury, had not stressed that. So the jury might very well have only decided on the counterfeiting, which they agreed was not properly covered. But as to that, they then pointed to Harold Turk's arguments to the jury, in which he emphasized as much the forging of the endorsement as he did the counterfeiting. So that the jury was pretty well acquainted with both. But that, I think, didn't have much chance really. I don't know whether justice was done or not in a case of that kind. It's very difficult to say.

BALTER: Well, let me ask you this too, along those lines: Other than just the objective pursuit of the law and its majesty, and so on and so forth, did the U.S. attorney have any other motivation or reason for wanting to put this man in jail for this?

ROSENWEIN: I don't think so. First of all, the U.S attorney was really a buddy of Harold Turk. They're both Republicans, and Turk was a Republican leader. They got along very well. And secondly, I think that the only reason that the indictment was returned was that the estate

of Mackey, with the Mackey family, was a rather prominent family and put the pressure on.

BALTER: I see. So, it was a little bit of a big deal?

ROSENWEIN: Yeah, put a pressure on it. That's par for the course in many situations.

BALTER: I think that's a good stopping point for today, Sam.

TAPE NUMBER: II, SIDE ONE

OCTOBER 16, 1985

BALTER: Sam, just to pick up on something that we had mentioned last time as we left, you and Sylvia [Schenkman Rosenwein] had started seeing each other fairly regularly, I gather. I want to just pick up on that. If you could tell me a little bit about your early relationship, the kinds of things that you did, and what, at that point, that relationship meant in terms of your development.

ROSENWEIN: Well, Sylvia and I met about five years before we were married. That would be about 1926. We both were living in Brooklyn at that time. Sylvia's father [Phillip Schenkman] was a butcher, a very orthodox man and who was a cantor in a synagogue on the holidays. She was in a family of eight children. There were, I think, five sisters and three brothers. I was going to NYU [New York University] and Sylvia was going to Cooper Union art school [Cooper Union School of Art and Architecture]. We saw each other regularly. What happened was that my mother [Miriam Gutradt Folman], who had remarried, decided to go with her husband [Jacob Folman], her new husband, to California. Earning a living was difficult for her new husband, and she felt the move would be advantageous. And her husband, who was a diamond setter, also had some connections in California, so that they left and took my brother with

them. Because I hadn't finished college and they wanted me to finish college, I stayed in New York. When they left, the Schenkman family offered me some space in their house and I lived in their house. Sylvia and I had friends, we went to movies, we went to shows, we talked. Sylvia was interested in art and--

And then we were married in 1931. We didn't have any children for about ten years. You know, 1931 was the real Depression year. The crash had come in '29, and in '30 it really had set in and things were rough. I worked in the [New York City] Bar Association [library] at night, six to twelve. I got twenty-five dollars a week. Sylvia went free-lancing and worked as a fashion illustrator in Bloomingdales department store in New York and in Gimbels and for some private person, Esther Shapiro, and free-lanced in between. And she made about twenty-five dollars a week. So at that time, comparatively, we did probably better than a great many other people. We had a little separate apartment. We took a place in Brooklyn, Beckman Place. But it was difficult for us because she worked all day and I worked all night. Then, after my admission to the bar and after the stint with Harold Turk in his office, I went into private practice with two friends, Si [Simon] Rosenzweig, Mack [Maxwell] Tretter, in an office which we shared at 401 Broadway. It was around Canal Street, I

remember.

And again, as far as Sylvia's concerned, what I got out of Sylvia, in a way, besides a loving wife, was a knowledge of art and an interest in art that I hadn't developed before. She taught me to see many things that I looked at. And she had an innovative, creative way of looking at things that was helpful to me even in my law practice. It's the idea of getting new ideas and pushing frontiers. And of course, as far as politics were concerned, since we were both part of the Depression--we both came out of ghettos--we generally had the same viewpoint with respect to life around us, which was that life was pretty harsh and there was need for some kind of change. I suppose I am running ahead of things to talk about the children coming, because they're not getting born until 1941 and 1943.

BALTER: Well, we could get ahead a little bit on that.

ROSENWEIN: Bob, the older one, Robert [E. Rosenwein], was born in 1941 in April and Tom [Thomas D. Rosenwein] in 1943. And they went-- Originally after they were about, I don't know, about four or five, we began to take them into-- I think they went to some private school in New York because Sylvia was working and reluctant to go into that public school system at that time. Then, later, when we came to California with the kids, they went here to public

schools, junior high and high school. And just to complete the picture and bring it up to date in that sense, Bob, the older one, ultimately went to the University of Michigan; his emphasis was on social psychology. For several years he has been teaching at Lehigh University, Bethlehem, Pennsylvania--in that area. And he married Linda Townes [Rosenwein], who's the daughter of the [Charles H.] Townes who got a Nobel Prize for inventing the laser beam. Tom, the younger, went to the University of Chicago and got his master's in social work. Bob got his Ph.D. and has written books, articles on his subject. Tom got his master's in social work and for a time worked in the Bettelheim Institute after he got out, but became unhappy and frustrated because people were sent, when he got through helping them, to court, and he couldn't go to court because he wasn't a lawyer. So he went to law school at night, at De Paul University, and graduated. While he was at De Paul, an instructor there who came, I assume, *pro bono* to teach trial advocacy got interested in Tom and invited him to the office and he's now with that office, about a hundred-member firm [Karon, Morrison, and Savikas]. He's associated there. He's been there about five years and is making far more than his father ever earned in his lifetime. Tom is married to Barbara [H. Rosenwein], who teaches at Loyola [University of] Chicago. Her emphasis is



medieval history. [She] is tenured and she has been published. She has her Ph.D., and they have two children. My grandchildren are twins, a boy and a girl; the twins are, of course, the greatest in the world, as every grandfather would tell you.

BALTER: And their names are?

ROSENWEIN: They're Franklin and Jessica. And my daughters-in-law are Barbara, married to Tom, and Linda, married to Bob. That is the picture. One son went to Chicago and the other to Michigan at the time when they were going to college, and I said, "It's perfectly all right with me, why not?" And they had scholarships. But I expected that they'd come home. Instead they married these women out there in Chicago and Michigan and never did come home. But we do see each other, and they're in pretty good shape.

BALTER: Now, to transport ourselves back to the early thirties.

ROSENWEIN: Yes, back to the early thirties. I have been admitted to the bar and left Turk's office and am now practicing. But life is very difficult because I really don't have any clients to speak of. I recall some man coming in the office and saying that he had looked at the names down in the building and found my name and he just thought he'd come up here and speak to me. He had a

contract, would I look at it. He has three dollars and ready to pay the fee with three dollars if I would look at the contract. I had to examine the contract, tell him whether it was good or bad. I got paid my fee of three dollars! So life was not easy at that moment. It wasn't that we were starving because, again, I worked constantly at night and Sylvia was working. That was not the problem. And I must say that when you're young, somehow or other, the difficulties that the older people are going through are-- You don't sense them in the same way, it seems to me, because you're making some kind of a living. You're young, you're vital, you really don't care. So it's true that you see these people selling apples and then the shirts and ties and everything on corners, and you know that it's not right and you feel bad and the banks are closing. It was a very difficult time, and yet it didn't hit you exactly the way it was hitting the older folks.

Anyway, it was hard for all of us, and finally, with the advent of Roosevelt and his election in about 1935, Si and Mack Tretter went into the housing authority to work for the government. I remained alone. I just continued to practice intermittently. I mean, in the sense that I didn't have much practice and really I relied on the night work while Sylvia was working at Bloomingdales and Gimbels and so on.

In the meantime, we had groups of friends. And there were friends who were members of the Communist Party and who would occasionally talk to me about Marxism and class struggle and things of that kind. I myself was, to some degree, reading, of course, in these areas. They suggested I read Marx's *Capital*, and I read at least volume one, which is par for the course. But there are other books that affected me. There was a book by some Englishman [John Strachey] called *The Coming Struggle for Power* that-- I went to the theater to see [Clifford Odets's] *Waiting for Lefty* and [Marc Blitzstein's] *The Cradle Will Rock*. And then of course I was given things to read like the *Daily Worker* and so forth. In that kind of atmosphere, generally, I finally joined the Communist Party in 1936.

And there's a number of things that, looking back at it now-- One was, I went into what was then known as a street branch. In other words, it wasn't composed just of professional people but just people in the neighborhood who were members of the Communist Party. And it was more or less sort of semipublic. I mean, one couldn't walk off the street and come to the meeting, but on the other hand, it wasn't particularly hidden or anything of that kind. My experience in all those years, all my years in the Communist Party, most of the members, all of the members as far as I know, wanted to do good. They weren't in there to

overthrow any government or anything, but to help black people, to help workers who had problems, all kinds of community problems of one kind or another. That was what we were interested in. Yeah, and of course, always the goal of socialism in some future time when people were ready. The discussion always was on the basis that you could never have really a fundamental change unless the ruling class, the dominant forces in the community, were divided--somewhat weak among themselves, were beginning to disintegrate. And where the majority of the populace was conscious enough to want a fundamental change. If you didn't have those two elements, there was no possibility of any real restructuring [of] the society. So in the meantime, one just worked on what amounted to reforms, but reforms as a step towards that moment when the populace, educated now, want to change and the people on top were unable to get together really and beginning, themselves, to divide. You have something like that today in South Africa; [it] closely approaches that. Anyway, that was the kind of thing.

I don't know whether it was because I was more articulate or what, but I was singled out to go to worker school, and I went to the worker school and enjoyed it a great deal. Learned some economics, of course, and a different view of history. I remember the teacher saying,

"And then that worker retired and lived the life of Riley, if Riley ever lived that kind of life." It was that type of discussion. And in history, reexamination of the whole Reconstruction period and the Civil War from the viewpoint of the struggle between slaveholders and so on.

BALTER: Where was the worker school located? Was it in one location?

ROSENWEIN: The party headquarters where the leaders were was on Thirteenth Street. The worker school was close by, somewhere in that area. Just around the Fourteenth Street area. Now, being in the party, I remember someone was getting out a paper on the situation in the city and the state, back to tax limitations, whether the taxation on real property shouldn't be raised from, I think, 1 percent to 2 percent, something of that kind. And I wrote some articles on that and became a little versed in that. Then occasionally there would be a brief to write, and someone would ask me because I was working in the bar association, [if] I could use their materials, if I would help in writing the brief. I remember I once helped to write a brief that either involved--and these were all the amicus briefs, you know the kind--the Scottsboro boys or the [Angelo] Herndon case, one of those cases. That kind of thing that I got involved in. Otherwise, one attended these meetings, which were generally discussion of things

that one could do in the neighborhood or in the community, and one had some education as to some problem in Marxism. And one paid one's dues, you know, that kind of thing. Then occasionally, social gatherings or one kind or another. So it was kind of just about that way. In 1937, the National Lawyers Guild was formed and I joined that. I was a founding member.

BALTER: Can you tell me something? When we were talking with Ben Margolis for his oral history, we got some insights into the founding, how the guild got started here on the West Coast.

ROSENWEIN: Yeah.

BALTER: But I wonder if you could go into more detail about just how that all got together on the East Coast.

ROSENWEIN: Well, on the East Coast, something like this: I remember [Fiorello] La Guardia was mayor at the time. Again I can't fix the years exactly. But a number of the lawyers who I knew as members of the Communist Party got together and said that we have to-- "There is a WPA [Works Progress Administration] for artists, there's a WPA for others. We have to have a WPA for lawyers." So we went down to La Guardia. We notified lawyers that we would be going down, so that we had a whole group of lawyers coming down to speak to La Guardia, urging him to see to it that we have a WPA. I remember distinctly coming into his

office, a very large office. He's sitting there. And somebody was smoking and he was telling them, "Would you do this in your own house?" And, you know, he was really a great guy. And ultimately we got that WPA and they did some very good work, and out of that some discussion of whether we shouldn't have a lawyers organization.

Now, one of the reasons why it was thought important was-- There was a whole series of New Deal legislation that had been proposed and was pending before the United States Supreme Court as to its constitutionality. In the light of prior Supreme Court decisions, it seemed clear that it was going to be very tough to get this New Deal legislation passed. The ABA, the American Bar Association, and some committee--I forget its name specifically--made up of representatives, of course, of large law firms and large corporations were opposed to all the New Deal legislation and were fighting it tooth and nail in the courts. We thought there ought to be a national lawyers organization that took the opposite view, supported the New Deal legislation, which included social security, farm supports, all of the problems of the Fair Labor Standards Act, all of the things that later became law which we now have. This led to the formation of the guild, and it was at that time it not only got a broad membership, lawyers, all of whom were suffering one way or the other-- Most of them came to

join the guild, and we had-- I remember Karl Llewellyn spoke favoring the organization and so on. This was all in 1936, and then officially we got started in 1937. The New York City chapter of the guild was formed in the same year. I was at one time a secretary to that chapter and was active in it. And we had some very excellent lawyers there. We got out a Lawyers Guild periodical [Lawyers Guild Quarterly], a magazine that had articles that we wrote favoring social security and all other improvements in all the legislation, and began to activate the entire legal profession as much as we could in a progressive way, in a liberal way.

So, that's how the guild got started and-- Well, I remember a lot of other things. For example, in those early days, the guild sent me to Washington as its representative. They were forming a fair employment practices commission. I think Earl Dickerson was going to head it or be a part of it. We met at a very, very broad table. There were union representatives and various people who were interested in fair employment, discrimination, and all that. And there were union representatives from the South and the North. The union representatives from the South--of course they were all leaders--were very conservative, while some of the others, especially the blacks and so on, had a different approach. And what



interested me is when they were talking about what the commission should be and what its duties should be and what its power should be, a question arose as to whether, with respect to discrimination, the commission should be able to subpoena the records of unions. I, speaking for the guild, said, "In an event of discrimination, dealing with that, they should have the power to subpoena the records of all the bodies, including the unions." Well, the Southerners were outraged at that position. But what I do remember is that after the meeting the head of the sleeping car porters--and a prominent black head, more prominent than just the union he represented--came over to congratulate me on the position that I had taken.

BALTER: I would imagine that would have been a very controversial position.

ROSENWEIN: Yes, it was. But I thought it was right, and, as a matter of fact, I still think it's right on that issue of discrimination. Anyway--

BALTER: Sam, you mentioned that the guild put out a magazine at that point.

ROSENWEIN: Yeah.

BALTER: Do you remember what the name of it was?

ROSENWEIN: I think it's the **Lawyers Guild Quarterly**. And I think later perhaps it changed to a different name. There had been formerly an International Labor Defense

(ILD). They used to get out publications, and then the National Lawyers Guild began to get it out. The ILD sort of petered away. But there were various articles on various legal subjects together with reports of activities of the guild chapters that were now forming throughout the country. And occasionally we would have leading articles by some outstanding person, might be a government official or someone of that kind. I remember some of the guild meetings. Originally, before things got into the McCarthy period, we were getting letters when we had our conventions from Justice [Hugo L.] Black and from Justice [William O.] Douglas and others, wishing us well and things of that kind. All of this dropped off, of course, after the McCarthy period, but at that time the guild was doing very good work.

BALTER: Now, during the McCarthy period, obviously, as is well established-- Despite the fact that obviously, as a matter of historical record, not all of the members of the guild were also members of the Communist Party or considered themselves communists--

ROSENWEIN: Oh, no, of course not.

BALTER: But during the McCarthy era, that certainly became a big issue to attack the guild with.

ROSENWEIN: Yeah, well, just to jump ahead-- Then we'll have to come back. But when that happened, you know,

you're into the fifties or just around that time period. What you have is first of all an attorney general who is very much opposed to the guild, a fellow named [Francis] Biddle, I think his name was. At that time they were getting up subversive lists and they wanted to put the Lawyers Guild on the subversive list. The attorney general, once he announced that, then there were departures of some people from the guild. We fought that and were successful in fighting that. But then there were subpoenas from the House Committee [to Investigate Un-American Activities] to the guild members. There was the question of resolutions condemning all totalitarianism including communism, which again led to [an] exodus. That period was a difficult period for the guild. But nevertheless, it continued on and went on.

BALTER: Now, going back to the time of the founding of the guild, which was-- That's the question I wanted to ask. How did the fact that Communist Party members were involved, very heavily obviously, in the founding of the National Lawyers Guild affect the membership of the guild, the broadness of the membership of the guild, and the attitude of other attorneys to the guild? How did that all--?

ROSENWEIN: Well, my only familiarity with that area is simply this: That there were of course members of the

Communist Party who were lawyers and who were members of the guild. But there were others who, by their very statements, one could tell would be a hundred percent away from the Communist Party but were members of the guild and actively worked because they were very interested in the New Deal legislation, very anxious to see it pass. So we had a number of those lawyers who were members of the guild and who were interested and who did a great deal of work generally on resolutions and so on. When you took positions, most of which dealt really with that whole economic period, rather than anything political-- I mean, there weren't divisions at that early period. Those were the things that were concerning everybody. Then there was very little difference in the viewpoints. I can't remember anything that there was a real struggle about division within the group at all.

As usual, we had various people at our meetings. I arranged to have professors come down and talk to us about one aspect of the law or another, or some practicing attorney talk about how to do it, so to speak. And then on other occasions come and talk about the New Deal legislation that was pending and why it was important and so on, housing and social security and things of that kind. So we had no really particular fights, nor did I find any-- No one ever talked about socialism in a Lawyers

Guild-- That was not the topic. I mean, we eventually began to have lawyers branches of the Communist Party, where we no longer went to the street branch, but you just had lawyers together who would then talk about the problems from a legal viewpoint or from a political viewpoint, what can be done in that sense. But other than that, nothing much.

Now, getting back, let me see, I'll let you have some questions.

BALTER: Well, I wanted to ask you one other thing, and that is that my understanding is for the Communist Party and other people who were politically active at that time, that the late thirties was a time of antifascist activity, shall we say.

ROSENWEIN: Yes.

BALTER: I wonder if you could tell me a little about what involvement you might have had in that and what kinds of things were going on in New York at that time.

ROSENWEIN: Well, let me see. There's plenty of discussion, of course. I mean there's a discussion [of] what does fascism mean. It means the open dictatorship of the capitalist class. Now they're open, they show their faces and they're running it. They're no more disguising it with any democratic slogans or anything of that kind. And so we did that, I think, as far as I can remember. Outside of

discussion, outside of attending meetings where everybody was talking against fascism and treatment of the Jews and things of that kind-- I don't recall anything other than that. Perhaps some resolutions once in a while condemning fascism and what it meant. From the viewpoint of the party, naturally, it was of grave concern because the Communist Party had been suppressed. We learned about the fact that the first decree that Hitler issued barred all Jews and communists from the legal profession and from judges and so on. That was the very first decree. So naturally, it was of interest to all of us who were lawyers. And we discussed that, but I don't recall anything. We did our talks about it. We paraded outside. I know that the people sold the **Daily Worker**, which every day had a diatribe against it. And generally other organizations, Jewish organizations and others-- Everybody would join and have meetings and agree and talk and so on. But outside of that I don't recall anything particular.

What I do remember--let me see if I could put it into focus-- About 1938 to '39, I think it was '39, the Russians signed a nonaggression pact with Hitler, Soviet nonaggression pact with Hitler [German-Soviet Nonaggression Pact]. Now, the invasion of Czechoslovakia and so on had brought declarations of war. [Neville] Chamberlain's

period was over and Winston Churchill now was in charge. And a war began in which it seemed to the outside world and to us that everything was stagnant. I mean, the French had a Maginot line or something. It was standing still. And so it began to be described as a phony war, that really what was happening was that the imperialist powers (which would include England and France and so forth) were pushing Hitler to the Soviet Union with the thought that they would destroy each other, and so it was described as a phony war. When the Nazi nonaggression pact was signed, the Communist Party and its members hailed that because Stalin had outfoxed the imperialist powers, had made sure that Germany and Hitler were not going to invade the Soviet Union through Poland or anywhere. Therefore, the war that was going on was an imperialist war. It was just a war between imperialist powers trying to divide the loot among themselves. Ergo, the United States should stay out of it, see? Well, the fact of the matter is, however, that if you, I think, tried to find out the community sentiment in the whole country, certainly the media and all government officials were all in support of England and France and against Hitler. Therefore, those groups that were calling this an imperialist war were much despised, and therefore the communists were in real disfavor.

At that time in New York, the legislative committee

was formed called the Rapp-Coudert [Legislative] Committee [to Investigate the Public Educational System]. Coudert, Frederic [R.] Coudert [Jr.], leading lawyer, Catholic, high in the Catholic circles is the way he was known, and [Herbert A.] Rapp, apparently an assemblyman, formed a legislative committee to investigate communism among the teachers union and the college teachers union [American Federation of Teachers]. And they held hearings. And the college teachers, especially from City College in New York-- I think a couple from Queens-- Teachers were subpoenaed to appear and testify as to whether they were or weren't communist. Two--one a history teacher and one a woman who was a clerk in the office--testified that the teachers union and its leaders and so on were all communists and they had met in communist meetings, etc.

BALTER: Do you remember the names of these witnesses?

ROSENWEIN: Well, I remember [William M.] Canning was the history teacher. I don't remember her name. His name was Canning, a history professor.

At about that time, I was approached by, I think, one or two attorneys and by a woman who I think headed up-- maybe she was a legislative representative--had some position representing the teachers and college teachers union. Her name, I think, was Bella [V.] Dodd. And they asked me if I would represent the teachers union and



college teachers union in the Rapp-Coudert hearings and whatever would eventuate from them. What had happened was that the teachers had testified before the committee that they were not members of the Communist Party. Denied, you know. And the result of that was that a whole series of disciplinary proceedings were instituted in the college directed against these teachers, charging that they were communists and charging, of course, that they had perjured themselves before the legislative committee. And my job then was to represent all of these in these disciplinary hearings, each of which had its own hearing. And that was a very difficult but a very fascinating period, because what happened was that when they had originally appeared before the legislative committee, this was the period when there was an imperialist war going on. But when they came to disciplinary hearings, the Soviet Union had been invaded--after June, 1941--and now it was a just war that we were engaged in or that we were being urged to get into, you see. And they were in the position, therefore, of explaining that curious change, while not being members of the Communist Party.

There were many incidents that developed out of that. The name Morris [U.] Schappes may be of some interest because Morris Schappes was an English teacher, I believe, at City College. He was the one who testified

that he was a member of the Communist Party. But I think he testified that there had been only three other members. One or two had died and one had gone out of the country. And he was the only one who was charged criminally with perjuring himself. At that time Tom [Thomas E.] Dewey was the district attorney in New York and the prosecution on that. It was a kind of a period where all of these teachers were very well-known in their fields, excellent people, young of course. I remember very prominent people coming to testify for Schappes as a good character. And we had-- Well, for instance, when Phil [Philip] Foner-- We had Allan Nevins, a well-known historian of the time, come to testify for him, all kinds of character witnesses that came to testify for these people. But the short of it was that all of them were dismissed. Not precisely on the basis that they were communists, but rather because they had lied about being communists. So it was able to sort of get around that whole political problem and just say, "Well, he lied anyway, and a liar can't be with us." Canning and that woman were the usual two who testified in each one of these disciplinary hearings. I remember Canning testified that he had talked to his priest before testifying as to whether he should name so many names, and the priest advised him to do so. And so he had decided to tell about the fact that

they were members of the Communist Party. No testimony about force or violence or anything of that kind, just that they were members, which at that time was sufficient because of the whole hullabaloo about imperialist wars and the opposition to it. So that was a rather vivid period, a period that took up a lot of my time and, of course, led to my leaving the bar association where I had been working.

TAPE NUMBER: II, SIDE TWO

OCTOBER 16, 1985

BALTER: Sam, just to go back over some things we've been talking about-- First of all, on the question of the so-called Hitler-Stalin pact, the nonaggression pact, this is a sort of standard question I know, but I think an important one: In the section of the party that you were involved in, in the immediate circle of the party that you personally experienced or in the party in New York, was there any dissension, any questioning, any objection on the part of the membership from anywhere concerning that party position in support of that pact? Or any objection that the Soviet Union had done that?

ROSENWEIN: Well, my only answer to that would be that frankly I don't remember, and yet I can't conceive there not being some doubts being raised by some of the people. I have a very strong feeling that there were doubts in [a] number of people.

BALTER: Do you remember your own personal reaction?

ROSENWEIN: My own personal reaction was I thought it was a healthy thing. I thought it was a good thing. But the difficulty is that some people, especially who are Jewish and who have strong traditional backgrounds, must have felt, and I'm sure did feel, that any kind of a pact with Hitler was something that was difficult to understand.

Although it was a kind of late date, I don't think we really were very familiar, even at that time--I don't know why that is--with the real effect of the Holocaust, the extent of it. We didn't seem to know that-- We knew that Jews had been mistreated, that windows had been broken. And we knew that some people had left, people who were prominent writers, Heinrich Mann and so on. But the notion that six million people-- That was not known to any of us at that time. And there's a whole book on the subject, *The Abandonment of the Jews* [by David S. Wyman], that tells you about that period.

BALTER: This is a new book that recently came out?

ROSENWEIN: Yeah. Why, even Roosevelt kept it down, and of course England, and so on, for all that time. And the politicians in Congress, many of whom were anti-Semitic themselves, all kept that down. So that we weren't so informed, and therefore, many of us--or at least I--didn't feel the compunction that some others felt. I felt that the phony war was obvious. They wanted to destroy the Soviet Union. I didn't want the Soviet Union to be destroyed. I must say that I, up to this very day, still have the feeling that I don't want the Soviet Union destroyed, for more than one reason at the present time. But in any event, I'm sure there were some feelings, some disgruntlement.

BALTER: Now later, of course, as the McCarthy era really got rolling, there became more standardized ways, I suppose we could say, of responding to congressional committees, in terms of taking the Fifth or the First [amendments], or what have you. But I have the impression--and correct me if I'm wrong--that in this earlier time that we've been talking about, for example, the investigations of the teachers in New York that you were involved in, that some people had made a decision, as I understand it, to actually perjure themselves. Other people were truthful about their Communist Party membership.

ROSENWEIN: The only one who said that he was a communist, member of the Communist Party, was Morris Schappes. All others denied it.

BALTER: Now, the question that raises to me, was the denial of membership in the Communist Party by people who really were members, before these committees, part of a planned strategy? Was that an individual decision?

ROSENWEIN: As a plan I don't know. As a lawyer, they were coming to me-- The head, or whoever was the head of the union, would say, "I'm taking the position that they're not." And they say, "They're not." And that's all. And I simply would say, "Look. All you have to do is tell the truth. If you're not, then you're not." As a lawyer, I wasn't going to take one position or another. "Now,

whatever position you take, why I think that would be all right. There would be no reason to fire you. I think Canning is not truthful," and so on. But I don't know of any-- I guess there must have been some decision made by various people, because later on, when it got down to the McCarthy period, the claims of the Fifth and so on, then you began to hear, "Well, I hate to claim the Fifth because it stamps me as a communist if I say I'm claiming the Fifth on that question." But at that time, I don't know whether that was even discussed. Moreover, there's always been a question in my mind how many of them were communists. I really don't know. I didn't press them. I didn't ask them.

BALTER: I see.

ROSENWEIN: I never asked them.

BALTER: Do you recall any discussion within the party itself at this point as to what the proper way to respond to these congressional and legislative inquests was?

ROSENWEIN: No. There were, of course, a couple of lawyers that I would talk to about the case who were communist lawyers. But there wasn't any particular discussion on that because everybody seemed to accept [that] if they say they're not communist, then they say they're not communist. That's all. It didn't seem a particularly vital thing because-- First of all, before the Rapp-Coudert

Committee-- I wasn't in that. They had another lawyer there who was just sitting there at the table. You couldn't do much before the legislative committee. And so, it was all done when I got down to the disciplinary proceedings. They had already testified. But as far as I could gather, that was a position that people thought was the proper one to take. Whether they were or were not, apparently all felt, "Why should we tell this guy anything? Just deny it." And that was that. That's about as far as I could judge. I came to it from out of the blue, so to speak. I was asked to represent them, and I was in at the disciplinary hearings, and the thing was sort of done. I was dealing with a sort of fait accompli, and [there was] nothing I could really undo about the thing. If you look back at it now, you say to yourself, "Well, one could have claimed the Fifth." One could have, although I don't know if anybody even thought of it along those lines at that time. One could have claimed the Fifth, one could have claimed the First, one could have raised all kinds of constitutional objections, but that was the way it was at the time and that's the way they saw it. I tried to do my best, but it was obvious that the committees that sat in and judged this thing in groups of three--they were, I think, the regional heads or regents, someone who could govern the colleges--were sitting in as judges, and it was



obvious that they were going to dismiss these people because at that time the turmoil against the communists for their opposition to the war was at its height. So that's the way it went.

BALTER: Now, I understand that Bella Dodd later left the Communist Party under somewhat hostile circumstances. What do you recall about that?

ROSENWEIN: Yes. By the way, I want to say this: That when I was there representing the teachers union and the college teachers union--as the lawyer for them--I of course worked very closely with Bella Dodd. I forget her exact status, whether she was legislative representative or some officer. I found her an excellent person, a good friend, a very able person, and one who spoke out. You were heard on it. And she was very good. We worked very closely, right through the whole disciplinary proceedings. We went to see different officials, hoping to get this thing stopped in one form or another. We worked very closely and she was very good, saw to it that I got paid my fees and all that. But later on, after this whole thing was over, I learned that she had been expelled from the Communist Party. I don't know the exact facts, and I may-- All I heard, and this is just rumor, [is] that somehow she had represented or been on the side of some landlord in some legal case against a tenant, and that the party was

outraged that she should have been on that side, and that she had been expelled. Matter of fact, I think I saw her thereafter and expressed sympathy and said, you know, I personally thought it was unkind and outrageous to just expel somebody for just that one occasion, because there may be an explanation. Sometimes a tenant can be so officious that-- Or just be a person who doesn't want to pay his bills or anything else. And the landlord may be a poor individual, not one of these big landlords. You have that situation. I myself would never represent a landlord, but I told her I felt kind of sorry about it. She later became a very bitter anticommunist and publicly condemned the party and named people as members of the party. Happily, at that time she didn't mention me.

BALTER: Sam, I believe about this time, if I'm not mistaken, you go to work for the government.

ROSENWEIN: Well, when this entire business was over, the Rapp-Coudert had all simmered down, people had been dismissed and so on-- You know that many, many years later, almost in recent times, there were apologies to the ousted teachers and some fees paid and some money given back and all of that. I always have felt it sort of adds insult to injury. At first you kill a person and then you have a monument for him afterwards, apologizing. But in any event, when it was over--and it was about now, about 1943

or '44--I had to go back to practice, and now I had virtually nothing. Then I got an offer to work in Washington in the Office of Price Administration [OPA] in their enforcement section, appellate division. That meant I had to go to Washington, live in Washington, leave Sylvia and the children. We were living on West End Avenue in Manhattan, and there were two boys now. And it meant I had to leave Sylvia--who, by the way, was still working, doing free-lance work--and I had to go and live in Washington. Fortunately, there was some friend who was living in Virginia that I was able to stay with. That's right close to Washington--Arlington.

And so I was in Washington about the end of '43, early '44, and was there till the OPA closed when [Harry S.] Truman closed it up in 1945 after World War II was ended. The New Deal atmosphere was really-- See, this was a New Deal agency, and it had all the young lawyers who were all agog, all ready to go one hundred percent for the New Deal and the changes that had come about. There's not an old-- Like the Interstate Commerce Commission or the Federal Trade Commission, who would look down upon us as we looked with contempt upon them. But we all wanted to work hard and win! And the important thing was for us to see to it that inflation [was] kept down; rising prices and all might lose the war for us. Keeping prices down was important,

and, of course, we had a [Emergency] Price Control Act that had been passed. People and all businesses and everyone else had to stay within the prices that were fixed by the agency. There were two sections, really. One was the price-fixing part of the agency and the other was the enforcement. As I understand it, someone once told me that Richard [M.] Nixon was on the OPA and worked in the OPA in the other area, I think price-fixing, whatever area it was. But I was told that he was one of the most industrious among all the lawyers. Nixon was a real hard worker. Occasionally, we, on a Saturday or Sunday, would go out and relax a bit and so on. But that wasn't true for Mr. Nixon. I understand he worked all the time. I want to put that down on the record now that I've just learned he's going to be an arbitrator in the baseball field. I don't know if you've heard about that.

BALTER: I have. [tape recorder off]

ROSENWEIN: Yes. And so I was working in the appellate section. Now, what this meant was simply this: That there would be prosecutions, mostly civil, and what happened was that the particular business or businessman or corporation had overcharged, had gone beyond the price level. And they were responsible [for] damages. You could get an injunction that they shouldn't do it in the future. But the damages could be treble, and therefore there was a lot

of litigation. And when the result came in [from] what is known as a district court, the lower federal district court, then there were appeals. There would be appeals to the circuit courts of appeal, the federal appellate courts. And at that time there were, I think, ten circuit courts throughout the country. And we would handle the appeals. Generally, the other side had lost and we would be representing the government. I learned a number of things that I thought [were] significant for me afterwards in practice. First of all, when you work for the government as a lawyer, you have the finest record in victories. The government wins 95 percent of the time. That's the first thing you learn. The second thing was when the government wants to get after a particular individual, they will get him, even if he hides himself in a burrow somewhere. They'll get him. We had a case-- [tape recorder off]

BALTER: Sam, when we left off, you were just about to talk about a case that I believe was going to be an example of how the government, once they got after somebody, they found him.

ROSENWEIN: Yeah. What happened was, we were after some very large liquor firm. What they were doing was sending out what was akin to bootleggers. They would send out representatives who would sell the liquor under the cover

so that they were able to get more money for their liquor, go over the price fixed by the OPA. Naturally, I wanted to get the big fellows. In order to do that, we decided to get hold of one of the bootleggers, one of the fellows who was going around peddling that liquor. And the question was how to find him. We just couldn't seem to locate him. Well, I worked at that time with the Treasury Department, who were interested--"T-men" they called them--were interested in that case. They showed me a map of the United States, and they had pins, colored pins, red and white and blue, following this fellow where they had heard he had been. Do you know that outside of Atlanta, Georgia, while he was talking on the phone, using a phone booth or something, they picked him up? I was absolutely amazed. They had made up their mind to get him and followed him all the way, getting all these various clues, and picked him up outside of Atlanta, Georgia. I had great respect for the government the day after that.

And what is interesting about it also is that he was indicted for violation of the OPA. He immediately pleaded guilty. Got sentenced for a number of years. And after letting him stay there a few months, we decided to talk to him and tell him that he might be able to get out earlier if he helped testify against the big fellows. When we got there, he was already out. They had worked out some early

release for him for one reason or another, and we never caught up with him. Never. Never got those fellows. And they stalled us in one form or another until the OPA was dissolved.

The only other interesting experience I had was, on occasion, we would try a criminal case. And I was appointed an assistant United States attorney and went out to Chicago to try a case against a man who had overcharged-- I think for the one year \$8 million in wastepaper. We prosecuted the action, and here's again something I learned. The United States attorney for that district introduced me to the judge who was going to try the case. I don't remember his name. I know he had a Polish name and he had a Polish background. We were there and we are discussing the case that I am going to try. Defendant's counsel is not there, and I am talking to the judge and telling him what we intend to do and he's-- And again, looking back at it, I said, "How come the government's counsel is talking to the court?" Defendant's counsel is not there, and we're getting some of the things straightened out before we start the case. I thought that also was a little peculiar. Then we tried the case, and as a matter of fact, he [the defendant] was represented by a man who I knew to be a member of the guild, who made an excellent speech to the jury on the history of the jury and

how they stand between the government and the individual. They finally came in with a conviction, with a recommendation for mercy, which of course didn't mean anything. And the judge sentenced him, I think, to a year in jail and some fine. What was interesting about it was as he walked past me, after he was sentenced, he said to me, "That's a hell of a way for one Jew to treat another Jew." I thought that was kind of interesting.

And the other thing I want to say is--and this is again interesting from a philosophical viewpoint--since we were fighting a war against Hitler and doing everything to win the war, I felt I was in that war in the sense that I'm in the OPA holding down prices, that [the] end justified all means. I was especially interested in lumber enforcement, glass, and liquor. The people would come with their trucks down to the southeast corner, where there's a lot of lumber, come back with the lumber and bring to them wheat from the middle area, things of that kind. But in that process, the OPA prices were being violated all the time. I arranged for the police to have roadblocks on. Forget about searches and seizures and Fourth Amendment and all that--stop these fellows and check up on them and investigate without warrant or anything else. All this was done in order to win the war. I give you just an example [of] what we do sometimes. Of course, when I got on the



other side, naturally I became very critical of roadblocks and things of that kind. But, in any event, that just again indicates when you're in a battle sometimes the difference between ends and means all become a little twisted.

BALTER: Well, actually it's interesting that you mention that because one of the things I was going to ask you-- I've looked over some of the cases that you were involved in that made it as far as the appeals court, various circuit courts of appeals.

ROSENWEIN: Yes.

BALTER: There was one interesting one exactly along the points that you're raising, *Bowles v. Shawano National Bank et al.* The bank was resisting your agency's subpoenas for bank records of depositors. You were investigating possible violations of the Emergency Price Control Act in sales of cheese of various types. The bank argued that there was no probable cause. The decision, which was by Circuit Judge Evans (I don't have a first name there) found in your agency's favor, which in these cases-- About five out of six of them or so, whatever the numbers are, most of them you win. There's a couple you lost.

ROSENWEIN: Yeah, right, right.

BALTER: And I'm quoting the judge. At the very end of the opinion, the judge says, after giving you your due,

nevertheless says, quote, "The clashes between appellees' representatives and honest, law-abiding citizens have been too numerous and inexcusable. It will not hurt to try a little more tact and diplomacy," unquote. Is this along the lines you're talking about?

ROSENWEIN: Yes, I really-- Characteristic of me. We went at it pretty strong, with a righteousness in our cause that sometimes overlooks some niceties in the law. That's the facts of the case.

BALTER: One last thing on this. As I understand it, you were with the OPA from about 1943 to 19--

ROSENWEIN: Yeah, '45.

BALTER: Till the end?

ROSENWEIN: Yeah.

BALTER: One question. I noticed that when you were-- Around 1945, at least, [with] Chester Bowles as the price administrator, the head of the agency, did you have any occasion to deal with him personally?

ROSENWEIN: No, no, we didn't deal with him at all. We had our own department and we had our own heads. As a matter of fact, as you look at the opinions, you'll have the names like Bowles, you'll have our own heads' names and so on, and then finally Rosenwein. Well, they're just put there on every one. They have really nothing to do with the brief. I'm the one who's written it. Sometimes there was

someone who looked it over, but, aside from memoranda that used to come from them, we just didn't meet them at all. There were occasions when somebody left the agency and there would be a whole party, [and] then Bowles would appear or the other heads. But other than that--

BALTER: And lastly, I noticed that the cases continued to go through the appeal process up to-- Let's see, the last one I have according to the computer printout, the name of which escapes me-- The name of the printout is the--

ROSENWEIN: You mean the Munsingwear? Is that it? Is that the latest one? I may have--

BALTER: The last one-- Well, what I was trying to remember was the name of the-- Lexis, that's what I was trying to get--the Lexis printout.

ROSENWEIN: Oh.

BALTER: The last case I found was *Martini [et al.] v. Porter* 157 F. 2d 35. And that was decided on July 18, 1946. So I gather that the government, even after the war was over, continued to pursue these cases.

ROSENWEIN: Yeah. Well, what happened really was that we had perhaps won some victories in the 1945 period, at the end. The appeals are coming up. And while the appeals are coming up by the other side, the agency has been terminated. Now we're before that court. The agency's terminated, but they had violated the law at the time.

Generally the court held that, first of all, as [for] getting a further injunction, that of course was out of the question because, if you're looking perspectively, there's no more agency. And otherwise, sometimes hold the case to be moot or just make some ruling that they were still responsible as far as damages were concerned. But that's why you have the opinions dated '46. Another thing: sometimes the court may hear an appeal towards the end of '45 and then make no decision until '46. So that may explain the late date. We did have a few of those that sort of wound the thing up. I naturally had a certain feeling about the termination of the whole agency by Mr. Truman. In the sense that, as soon as the war was over, then the meat institute began a very strong campaign saying that now the market should be allowed to operate and of course prices would immediately drop, so they said. And so they abandoned the OPA and prices immediately shot up, naturally. We would have been happy if we kept up price control altogether. But I don't think that Milton Friedman in Chicago would agree with any of that.

BALTER: I'm sure he wouldn't. On that note we'll pick it up next time.

ROSENWEIN: Next time we go on from after OPA.

TAPE NUMBER: III, SIDE ONE

NOVEMBER 14, 1985

BALTER: Sam, before we go on and continue after your days with the OPA [Office of Price Administration], I did want to ask you one thing. During this period of time that you were with the OPA, what type of political work, if any, related to your membership in the Communist Party or your involvement in the political movement at the time, were you engaged in during those years?

ROSENWEIN: I would say virtually none. While I was in Washington I was totally devoted to the work at the OPA. I had some friends at the OPA, but there was no political involvement other than working for the OPA and the legal work. That was about all.

BALTER: Did the party consider your employment by the OPA to be--?

ROSENWEIN: Oh, yes. I mean, it was a New Deal agency. It was fighting Hitlerism in the form of keeping prices down and avoiding inflation, which would have been calamitous for the war effort. So it obviously was consistent with everything the party believed in at that time certainly. Incidentally, in our discussion of whether I'd done anything particular in the struggle against fascism, I had said I didn't recall particularly one thing or another. But I do want to remind myself, as well as anybody else,

that the Spanish civil war in 1937 brought a great deal of struggle on our parts. As you know, Franco was attacking the Loyalist government, and Hitler and Mussolini had intervened on behalf of Franco. We pressured Roosevelt and Congress to get in and see to it that the legitimate government was aided. But for various reasons we stayed out. This was 1937 and it was calamitous. Some of our lawyers fought in the Spanish war. We had a battalion that went there, and some of our boys died there. Some of them came back, and some of them, of course, were members of the Communist Party. So I just wanted to say that we did have some activity-- I thought of something now in particular that we fought. We constantly were fighting against Hitlerism and what was happening there, as much as we knew about it.

BALTER: Do you remember specifically any of the attorneys who actually gave up their practices and went to fight in Spain?

ROSENWEIN: That I don't remember. I really don't remember their names, but they were very familiar to me at the time. But I think there's still someone around-- I don't remember exactly now.

BALTER: Was there an organized effort among attorneys to recruit volunteers?

ROSENWEIN: Oh, yes, yes, yes. Most attorneys wanted to,

but for various reasons-- You had to be young and you had to be strong, healthy; you had to do it surreptitiously, so it wasn't possible for everybody to get over there to Spain to fight. But yes, some of our lawyers went.

BALTER: Well, for example, the [National Lawyers] Guild had just been formed at that time.

ROSENWEIN: Right.

BALTER: Did the guild, as an organization, have an effort or a project to have guild members go?

ROSENWEIN: I don't think so. I think they would have avoided that, because the authorities would not have permitted anybody to go out there just in the open. So I don't think the guild and I don't recall the guild, as a guild, supporting such an effort, although I think it honored those who went and came back. Yeah. But it was very important for us and very significant. I regretted very much that Roosevelt wouldn't do anything. But his claim was that the Congress was not willing to go and he needed funds for other purposes. He wanted to work with Congress so he stayed away from that, which was very unhappy because it gave Hitler and Mussolini the lift that brought on World War II. All right?

BALTER: This brings us then to the end of your career with the OPA. What did you do next?

ROSENWEIN: Now I'm coming back from the OPA and I go back

to private practice for myself. And shortly after, I'm asked by certain people to be general counsel to the Civil Rights Congress. Now, the Civil Rights Congress is really a successor to the International Labor--

BALTER: Defense?

ROSENWEIN: Defense [ILD], I believe that's the word. Principally, the organization was one that was interested in the rights of workers, rights of people who were being discriminated against. It was one of these broad organizations and had groups throughout the country. Now, you have to remember, we're going into the 1945-to-1947 period, and I think you want to have a little setting, background, as to what's happening in this period. You have, first of all, the meeting in Yalta between Roosevelt, almost in his last days, and Churchill and Stalin. Here in America, Earl Browder, head of the Communist Party, announces that the significance of the Yalta agreements is the possibility now that the Soviet Union with its communist outlook and the United States with its capitalist outlook, there is a possibility now of the two nations getting together. That is to say, each will affect each other. And we will become, here in America, somewhat more socialistic, and they will become a little more capitalistic. But there was sort of now a peaceful time, with an outlook of both becoming interrelated with



each other in that form. Therefore, his notion was that even the Communist Party here in America should be dissolved and we should form what is akin to a communist political association. We would become somewhat moved away from the Marxist particular notions that had been in existence up to that time. And this was done and then the party was dissolved in 1940.

Then came a letter from a man named [Jacques] Duclos, from France, who was a communist party leader, very critical of Browder's position. The notion that imperialism and communism could exist together, the notion that perhaps class struggle could abate somehow, all of this was contrary to the facts or to the future that was coming. The result was a turmoil in the party, especially among the leadership, the ouster of Browder and the advent of Eugene Dennis and, of course, old-timer [William Z.] Foster, who had always sort of fought Browder because of Browder's notions of getting together. And then in that period you have the death of FDR, [Harry S.] Truman as successor. Then you have finally Winston Churchill here to make the famous Fulton [Missouri] speech that the iron curtain has fallen on Europe. So it's in that context that the Civil Rights Congress is operating. And events are changing from one of fighting with the Soviet Union as our ally, and now--well, especially with the Churchill speech--

it was clear that they were now the principal enemy for the future. So naturally the party had to change its outlook.

It's in that context that I'm now representing the Civil Rights Congress. In 1947, just at about the time when we're having this kind of switch, there were also, of course, the United Nations meetings and the Soviet Union suddenly opposed to Argentina--who had taken care of the Nazis--coming into the U.N. The United States votes them in, and you could tell that even at the U.N. the split was coming. And the House Un-American Activities Committee, the [Martin] Dies committee, and so on, became active in 1947. Theoretically, the Dies committee had announced that they were being formed to get after the Nazis at the time, but they soon switched to get after the communists. And it is a fact that some of my friends who got into the army, one or two of our comrades who got into the army and the Officers Training Corps, but who were never sent across seas even though they trained men-- They were always shifted around here because they were known to be communists. They told me that in the indoctrination sessions with the men, even as we were fighting the war, there were suggestions that when this war was over the next enemy would be the Soviet Union, so not to get too excited about our relationship.

And so it was then we began to get the subpoenas from the House Un-American Activities Committee. At the same time, the Hollywood Ten--the whole investigation of the film industry--began. It was obvious that they wanted to root out wherever they could the so-called subversive aspects, but actually people who, in one form or another, had either been vigorous union leaders in the film industry (and this was true virtually everywhere) or those who had gotten out films that might have shown some desire to work things out with the Soviet Union or to have some rapport. And generally, with respect to labor and all the others, an effort by the committee to once again keep down any sentiment for really substantial change. That was the important thing, both on the foreign policy areas or right here, social or economic areas. That was the so-called communist attack. And more or less, up to the present day, in one form or another, that has been the aim principally: to see to it that ideas of fundamental restructuring of our society shouldn't take place. Certain reforms are always accepted, provided they don't lead on to a certain kind of consciousness that will lead to more structural reforms. But tinkering sometimes is accepted.

BALTER: Sam, before we go on here, let me ask you a couple of things. The Civil Rights Congress, of course, became a national organization with a branch here in Los Angeles

and, I assume, a number of others.

ROSENWEIN: Yes, right.

BALTER: Was it formed in response to any specific situations that were going on? And who, if you remember, were the founders of it?

ROSENWEIN: I never went into that, really. I think the 1947 era, the era of change, brought the notion that we ought to have some kind of civil rights congress. And the idea of being a successor to the ILD was a natural one because it really covered the same areas. The ILD, of course, had done excellent work, but who the founders were, [it] never occurred to me to ask. Some individuals interviewed me, said they heard about me and were interested, you know, from my work in the Rapp-Coudert Committee, and would I be willing to join. I said I would.

BALTER: As I understand it, and you could maybe confirm this or not, but the party was involved in the organization or in the setting up of the organization.

ROSENWEIN: That I really don't know. I know, of course, I'm sure that party members were part of the Civil Rights Congress. Of that there need to be no doubt. But whether they set it up themselves or whether people wanted it for one reason or another and worked together with the party, I really don't know. I was interviewed by people I had never met before, and I said I would. Lord knows it wasn't much

of a fee, and I'll say that.

BALTER: What type of legal work was involved?

ROSENWEIN: Well, it generally was just advice. They would sometimes have problems where somebody had been arrested or so on, and I would solicit some lawyer to take care of that situation. That kind of thing or generally just advice-- what kind of laws are being passed, how do you deal with a House committee and subpoena, and so on. That was the usual work.

Then came the Hollywood Ten. Now, on the Hollywood Ten, I'm in the eastern counsel to the Civil Rights Congress. I think Marty [Martin] Popper, a friend of mine, had been asked to suggest somebody here in the East because the committee was going to work here, you know. When I say "here," I mean in Washington, but the people subpoenaed were coming from Hollywood. So my name, I think, was suggested. And then I met the other counsel as they came here, and that was Ben Margolis, Robert [W.] Kenny, Bartley [C.] Crum, Charles [J.] Katz. I think that's it. And then I joined them and that was the group. We took on the preparation of-- Nineteen had been subpoenaed, but ten actually were called. Well, there's a whole story on the Hollywood Ten. I don't know how far you want me to go on that.

BALTER: Well, I think what I'd ask you to do is

concentrate on those aspects of it which you experienced personally, which you might be able to add to the record.

ROSENWEIN: Yes, yes. What we did, obviously we met, lawyers and our clients. As I gathered from the lawyers and those who had come from Hollywood, that they had had some understanding with the film moguls, the owners, that they would support them in this struggle against the committee. In the end that didn't occur. The filmmakers, apparently frightened by the committee and all, sort of withdrew their support. Some of them testified. So the result was that they were alone, and they had to face that. Then the second thing was how to prepare to meet that onslaught by the committee. And the notion generally was that they did not want to claim the Fifth Amendment. They wanted to claim the First Amendment and they wanted an opportunity to state their position before the committee, because obviously that was before the whole country that would be watching. Among the lawyers, the persons involved were sort of parceled out. And I got Larry Parks, who was one of them. [Bertolt] Brecht was assigned to me as well. I'll say for Larry Parks, I found [him] to be an awfully nice fellow, vulnerable, unfamiliar with all this politics, unwilling to become an informer--and he didn't at the time, although later on he changed.

Now, with Brecht I had just a great experience. First

of all, I told him, "You know, you're up before a very conservative group, a very conservative group that's going to harass you." And he said, "Look. You don't have to tell me about fascists. I know all about fascists. You don't have to say anything about that." And then when he appeared before the committee they began asking him questions. He, for one, was determined to answer everything. He was an alien he felt, and he didn't want to take positions that were being taken by the others. And he said that he was a communist with a small c, that is, he didn't belong to any party but he had a communist outlook. They asked him whether he recalled a song he had written called "You Must Be Ready to Take Power." He said the translation was wrong, they hadn't gotten it right. He translated it differently. They insisted that his song was really a call for the overthrow or something of that kind. Well, finally, it got so heated that they called for a German expert in the German language from the Library of Congress. And he came over. He's a short little fellow. He took one look at Brecht and began to bow and click his heels to Brecht in every form. And everything that Brecht said, he agreed with one hundred percent. [laughter] So in short, Brecht got away. As a matter of fact, the very next day he left for Europe.

BALTER: Tell me what you know about his decision to leave,

and were you involved in that in any way?

ROSENWEIN: Well, the thought was things were getting so hectic, it was so clear that these people were out to get everybody and break them that even though, at this moment, he had answered all the questions and was free and clear of any contempt proceedings, nevertheless something else might be used against him since he was an alien, and in this climate it would be best for him to go. That was the advice of lawyers; I assume also of friends. And that was the reason he left.

BALTER: Was there any concern that he might be stopped from leaving?

ROSENWEIN: Yes, there was all that, and so he just--

BALTER: Any special measures taken to try to--?

ROSENWEIN: No, not that I know of, but they packed him off quickly. Well, of course, as to the rest of the people, that's almost history. They all tried to make statements, claimed the First and all, and of course it proved ineffective. There were contempt proceedings afterwards and a number of them went to jail. We tried in the Supreme Court to go all the way up, but nothing happened. And then, of course, in that period, what was the most frightening to me was hysteria, the terror, the fears that developed in the populace. There were friends who said to these people, "Look, we've been friends for years, but



don't call me. I have a family, I have a wife," and so on. And this was not only-- I'm not talking just about the Hollywood Ten. I'm talking about the loyalty oaths and all the questions that were being given to all the government employees of one kind or another who wouldn't take the oath. And all those loyalty hearings, which were just really a farce-- If you had a record by the-- Who was the famous black man?

BALTER: Paul Robeson?

ROSENWEIN: Paul Robeson. You know, all of these-- If you had a recording or if you read the *Daily Worker*, that was enough to throw you out of the job. So it was the fear. People were now afraid to even talk--that was the most awful part of that period. That was accompanied also by the destruction of so many careers and lives. And also [it's] very interesting that when the test comes-- You're always against exploitation and racism and everything else, and it's easy to say that. But when the test comes and you have to face up to a committee like this, a bunch of enemies, it was interesting to see many of the people in the party and out of the party who had been so strong at branch meetings weakening and beginning to name names and giving rationales for it, while the people you had to always admonish to get up and put a backbone in them and all turned up so brave before the committee and held their

own and everything else.

BALTER: Why do you think that was?

ROSENWEIN: I think it's partly [one's] political development. You know, a great many people were in the party, for example, who wanted to do good but Marx's *Capital* was a little beyond them, [if] you know what I mean. And a lot of people didn't have too much political development, and that was one thing. And then it's just the character of people. When things fall on you and you have to face it, and you've a wife, you've got children, do you have the right to make them suffer? All these rationales come in, and people began to do things they ordinarily wouldn't. If you've read books like *Naming Names*, which came much later, you know that even today some of them are regretful but most of them still rationalizing, still saying, "Well, I had to do it for my family," and so forth.

BALTER: What effect did it have, again in terms of your own experiences, on the internal life of the party and, say, the branch that you happened to be in at the time, when this phenomenon of people beginning to name names was developing, in terms of increased suspicion or morale? What did that do to the internal life of the organization, that you never knew who was going to be naming a name next?

ROSENWEIN: Yes, well, as far as I can recall, we were at

that time in lawyers branches. So in other words, I no longer was in a neighborhood branch but lawyers branches. And I would say that, by and large, most of the lawyers remained-- You know, they were staunch, they defended those who were subpoenaed and so on. But we had a few defectors, those who named names. For example, just to give you an example--this is jumping the gun a little--but I was out here now, in 1950 and 1952, [when] the House committee came out here to investigate lawyers. And at that time they announced that they would call anyone who had been named by two persons. In my particular case, one person had named me in private, a lawyer. And another lawyer was asked before the committee whether I was and hemmed and hawed, because I had come out here about 1950, and he had sort of suggested to the committee that he had gotten out before 1950 and therefore it was a little difficult for him to answer whether I was or not. He hemmed and said he knew me, couldn't tell whether I met, and so on. So they never called me.

But at the same time, they made it their business to announce publicly that they knew me as a member of the elite core of the legal arm of the Communist Party. I thought that was a kind of dubious honor, but anyway, they named me. And it's interesting because [of] the impact it had on the family--my boys were about ten and eight at that

time. And just about that time, after it had appeared in newspapers, I happened to be going to a Lawyers Guild meeting and I took the ten year old along. And when he came out I said, "Well, you liked that meeting?" and all. He says, "Yeah. Was that a communist meeting?" The effect on a little fellow like that just kind of touched me. In any event--

BALTER: Sam, let me ask you before we go on. I'd be interested in some of your impressions of some of the other attorneys who worked with you on the Hollywood Ten case at that time, people like Ben Margolis, Robert Kenny, Bartley Crum, Charles Katz.

ROSENWEIN: Yeah. Well, first of all, I thought they were all brilliant. Charles is gone now and Bob Kenny is gone. I don't know what became of Bartley Crum. I don't know whether he's alive or not. Bob Kenny had been a former attorney general of California, a judge of the superior court here. He had a whole wonderful background and was just a wonderful man. He was a president of the guild, nationally, for a number of years and a really progressive person all the time and a fine, excellent lawyer, so he was sort of up in front all the time before the committee, he and Bartley Crum. Charles Katz and Ben Margolis and myself backed up, prepared people, etc. I think Charlie and Ben occasionally got in to some

particular witness in their presentation, sat with them. You know, of course, before the committee the lawyers could virtually do nothing, perhaps here and there maybe make an objection, but even that was rare. They wouldn't allow it. And I was backing up with research and preparing various people like Brecht and Parks and so on. Parks, actually, I don't think was called. You see, what happened was the thing lengthened out. So the committee didn't want to wait all that time, so by the time they got through with ten, nine were never called. So I don't recall exactly whether Parks was called or not. I do remember sitting with Larry Parks. And he sat with his agent, and of course the agent was very, very unhappy at the position that Larry was going to take at that time.

Charles Katz was a brilliant, brilliant lawyer, and Ben Margolis, still around today. I look upon him as a wonderful leader of lawyers, and he stood up before the committee not only there but here and really did excellent work. And then in the Smith Act cases he was a prime lawyer. Just an excellent trial and appellate lawyer. So the staff were just wonderful guys, every one of them very able.

BALTER: Do you recall ever having any disagreements over strategy or tactics on the legal team?

ROSENWEIN: I don't, I really don't recall any really

substantial differences of any kind. Like anything else, everything a lawyer did was discussed from the sense of, well, here's what the First Amendment does, here's what the Fifth Amendment does. If you didn't want to, if you wanted to say "I am" or "I am not," you have problems of perjury, whatever the situation. All of that is discussed with the clients, but eventually they made a decision that they wanted to go along with the First Amendment. And that's the way it went. I don't think there were any essential differences. There was a lot of disappointment that people like the heads of the film industry didn't support them. And so I think there were some separate meetings on that that I didn't attend. But otherwise, no, there was no real disagreement and-- In a sense, the result was unhappy because they're held in contempt and then there were trials and then people went to jail for a year, and so on, but at the same time, we did a good job in the light of everything. We did a good job.

We had a lot of support at the outset, which of course dwindled away when they were found in contempt and they had to go to jail. Then everybody-- Because the whole attitude was why didn't they come out and say who they are. And that of course is very easy for the next person who's not involved to say that, but it isn't always that easy for people. I really never heard anybody discuss what their

political affiliations were, whether they were or weren't. I haven't the slightest idea, you know, in that sense, in the technical sense. But obviously, I mean, they had all been involved politically in so many things. Of course, John Howard Lawson, obviously Alvah Bessie, were really active political people. Lester Cole, Dalton Trumbo, Albert Maltz, what was that fellow? Just a wonderful man who had written-- Oh, I can't remember all these names.

BALTER: Ring, Ring Lardner, Jr.?

ROSENWEIN: Ring Lardner, Jr., but there was one who had written some Jewish books, or about the Jews. [Samuel] Ornitz, Sam Ornitz, that's the name. All these wonderful people. Of course, they had so many wonderful ideas about appearing before the committee because they're creative artists in one form or another. One wanted to wear a Ku Klux [Klan] uniform. Another one wanted to wear a Star of David.

BALTER: Do you remember who these people were?

ROSENWEIN: I think Ornitz wanted to wear the Star of David. I forget who wanted to-- But all of that went by the wayside. And they fought before the committee, tried hard to make statements, but they were more or less cut off.

Now, about 1948, we began to have the Smith Act

indictments. Now, you know the Smith Act was a law that made it a crime to advocate the overthrow of the government by force and violence or to be a member of an organization that so advocates. And an indictment was returned against the leaders of the Communist Party in 1948 or the beginning of 1949. They were charged with a conspiracy to violate the act. I was in on the consultations with respect to that. The only interesting thing about-- Well, first of all, the lawyers were excellent lawyers that they got together. They had Abraham [J.] Isserman, they had Harry Sacher representing them. They had [Richard] Gladstein from San Francisco and they had George Crockett, a black lawyer from Michigan, I believe. George Crockett is now a congressman in Washington. The thing that I remember about it that I found interesting, not crucial really, was a discussion [about] what approach should you take to the case. There were two schools of thought. I'm talking about the lawyers, you know. The clients are just listening. One thought, and I was in that school, that the position that should be taken would be as a First Amendment basis. That is to say, persons or people have the right to advocate the forcible overthrow of government on a First Amendment right. By the way, later the Supreme Court held that was so unless it was accompanied by incitement to immediate action, but if it was devoid of that, then the



advocacy of the forcible overthrow of the government is protected under present-day decisions.

BALTER: Would that be the *Brandenburg v. Ohio*?

ROSENWEIN: Yes. The other school of thought was that there is no clear and present danger from the advocacy by the party, and therefore there's no basis for prosecution. Ultimately there's no clear and present danger, which meant, of course--again, this is just discussion--which meant that, to my view, the party was taking the position that we are just a little small, weak group, not to be feared. I rather took the open position that one has the right to advocate the forcible overthrow of the government. And I have, as a matter of fact, during various cases one was in, [I] would argue on a free speech position, that I would want especially to hear somebody who advocates the forcible overthrow of the government because I would want to know what are the grievances that drive a person to want to go to that extreme, to advocate the forcible overthrow. Therefore it's most important to listen to him rather than to one who advocates cleanliness and so on. But anyway, the Smith Act indictments went on. And now, in various parts of the country, leaders of the Communist Party were being indicted, groups being indicted, so that virtually the entire leadership was theoretically being decapitated.

One other act might be of importance at this time, and that was the so-called [Foreign Agents] Registration Act [of 1938]. That required Communist Party and Communist Party fronts to register and to register their members. This proved to be quite a quandary for the party because, naturally, to register and name your members would put everybody in difficulty. And so in about, I don't know whether it was '47, '48, or something around that, the party decided, when they said they're going to enforce the registration measures, they began to dissolve the branches and dissolve also. And at that time--I guess maybe it came a little later--the branches were dissolved and the lawyers branches were dissolved as well. And so it must have been about 1950. Ultimately, I think I was here when that happened. And from that time on I was no longer a member of the Communist Party. And I have not gone back, although I think there are now Communist Party branches. And there may even be lawyers branches, but I have never gone back to it nor been contacted. So I have become a communist with a small c. I have not changed my views in any way and I've never considered myself a dupe. But that was taking place at that time, around that period.

BALTER: You've described your exit from the party in a somewhat passive fashion, but were there disagreements that you had with the organization at that time?

ROSENWEIN: No, no, there were no disagreements. This was something, an edict that went out. They didn't want anybody to get stuck, and so everybody was affected. Everybody got out. I'm sure that most of my peers never got back in again. Then, I think, in recent years a whole new generation has come. But those of my peers who remain are sympathetic. I get the **People's World** all the time. I don't think it's been considered too important as far as the old-timers are concerned.

To get back to this period, it's just about the time when the leaders are being indicted that I am changing my own life a little bit. Because I have decided-- You see, what happened was--yes, this is important--when I got involved with the Hollywood Ten I could no longer handle the Civil Rights Congress because I was in Washington all the time, and so someone else became general counsel. I think it was Abe Isserman who became general counsel. And then I was back in practice, and I no longer wanted to be engaged in private practice [after] the year or two away. I had my entire family here. My mother [Miriam Gutradt Folman] was here with her second husband, my brother [Sol Rosenwein] was here--the only brother I had--my uncles, aunts, grandparents [Isaac and Rachel Gutradt], everybody was here.

BALTER: By here you mean--

ROSENWEIN: In California. And so I said, "Why don't we go out there? I want to teach law rather than practice it. I'm bound to be consulted by a lawyer here and there, do some research work. I'm admitted to the United States Supreme Court separately, and during my OPA days I got admitted to all federal appellate courts, including the [United States Court of Appeals for the] Ninth Circuit here. I could handle some of those cases. So why don't we get out here and put the sleet and snow behind us?" Which we did. And so I came out here just at the beginning of 1950. And I'm in California at that time. While I'm getting myself very happily ensconced here, the House committee comes out here. Naturally, I know Ben by this time, Ben Margolis. I know Charlie Katz, and so on. And I'm busy preparing people to appear before the committee. And we're going through that and the Smith Act indictments against the fourteen here. That included [William] Schneiderman, [Oleta O'Conner] Yates, and so on. So with that, Ben says to me, "Would you help out in the background with all the work that has to be done now?" And so I settled down at that time on the Smith Act cases.

TAPE NUMBER: III, SIDE TWO

NOVEMBER 14, 1985

BALTER: Sam, going back for a second to the discussions among the lawyers over what the strategy in the Smith Act cases in New York should be, among some of the attorneys that you mentioned, do you recall who some of the other people were who took the various sides in that debate--for example, George Crockett, Richard Gladstein?

ROSENWEIN: I'm not sure that they were always there, all of them together at any time. I couldn't recall who took one side or another. And I must say it wasn't really a big debate. It was just people expressing their opinion, and I just recall that one or two were on my side. But I think many of the lawyers were on the clear-and-present-danger side.

BALTER: To what extent did the party leaders who were under indictment or other leaders who were not under indictment determine or influence or participate in that decision?

ROSENWEIN: Well, generally, again my recollection is that they kept quiet, listening. And then later, at some subsequent meeting, they simply said that they would prefer not to take this outright position of the right to advocate the overthrow of the government. They felt politically that would be a little too harsh for the jury to

understand, the judge to understand. It's better to follow the legal line that was developing that [if] there was no clear and present danger then you have a right to say whatever you want to say. And that generally is what they agreed on. I would doubt that many followed my own notions, but I think-- It's easy for me to say and I don't think it's right for me to say that I think, in the long run, I was right. This thing became a calamity. They were all convicted and the lawyers were all held in contempt for the kind of conduct that they had allegedly displayed during the trial and everything else, and they went to jail and everything. I again say it's very simple for me to say I would have done it differently. But that's the way it went, and the blame shouldn't fall on them. The judge, Judge [Harold R.] Medina, was a pretty rough, rough guy. And they had to insist, lawyers had to get up and insist on certain positions, and the judge felt they were going too far, and so on. But all of that is really beside the point because the fact of the matter is the entire litigation was just a trial of books. Nobody proved anything about violence or arms or anything of that kind. There was none of that. And ultimately the case was decided by the political currents of the time, that's all. The judges gave their rationales for it and that was that.

BALTER: Now, you had started talking about your

involvement in the Smith Act cases once you moved to California.

ROSENWEIN: Yeah. When I got here then, the Smith Act cases, Schneiderman and Yates and all the others, Dorothy Healey and-- We were involved in that before Judge [William] Mathes, who burned the midnight oil, determined to get every one of these people, and in a sense he did. But this really brings me to, perhaps, some of the cases that went up to the Supreme Court ultimately. Let me just say this, just to take one case. We come before Mathes, and the grand jury has recommended that bail be set at \$100,000 for each one of the defendants. He sets the bail at \$50,000. Why \$50,000? After all, that's a pretty big hunk for fourteen people. Well, the reason for it is that they're liable to go and flee to Mexico. We then took an appeal to the circuit court of appeals and they affirmed. We then petitioned for certiorari, and it was granted. You have the case *Stack [et al.] v. Boyle*, one of the cases that I was involved in. The Court held that first of all, it isn't up to the grand jury to recommend bail, and secondly, that bail cannot be excessive, that the only test is whether or not they're likely to flee, and there was nothing to indicate they were going to flee. As a matter of fact, they were determined to fight this one hundred percent, right up to the Supreme Court. Therefore, all of

these considerations as to whether they're bad people or good people, all of that was to be decided after trial. They sent it back to Mathes, to the district court, to make a proper determination in the light of the new standards that they had enunciated, whereupon he promptly set it again at \$50,000 for each one. Then we went up to the court of appeals, and this time it was reduced to \$10,000 for everybody, which we could meet. That was the first involvement, getting that bail thing set, and then on to the trial, which lasted for many, many weeks.

Representing the defendants was Ben Margolis; Al [Abraham Lincoln] Wirin of the ACLU [American Civil Liberties Union]; Leo Branton, a black attorney. There was one other--a fellow, I forget his name now--all of them representing the fourteen defendants. And there was the usual, all the Marxist literature, [the] **Communist Manifesto**, and then the one or two people who got on the stand and testified for the government that there had been discussion, they say, in the branches, of overthrowing the government. One woman testified that they discuss, "Now, if the revolution breaks out, the women will be the nurses and they will administer to the men," and so on. It was all a very fantastic kind of testimony. And then I recall that Mrs. Yates testified, and of course she refused to-- On cross-examination, they asked her to name names and she



refused to name names. And the judge held her in contempt for failing to answer each one and sentenced her to three years after the five that he was going to give her when she was convicted. We went through all of that, and of course they were all convicted. Then we went up on appeal on those and ultimately were successful on that.

BALTER: Did you have a specific role?

ROSENWEIN: Yes. I worked principally on the legal research in all this. You know, there are various motions to dismiss of one kind or another. I don't have to tell you, once when we started going up on appeal, then there's a lot of work to do on the briefs. Ben Margolis, of course, handled it principally, but I and others helped right up to [the] United States Supreme Court.

Subsequently, I wrote all the briefs on appeal for the Hawaiian people. There was a whole Hawaiian group, all union leaders who were charged with being members of the Communist Party. And I handled their appeals to the circuit court. So it was a number of busy years at that time. And at the same time other cases were developing, and these are the cases that I wanted to discuss if you're ready for them. Some of them fit in and some of them don't.

BALTER: I think what I'm going to suggest is that we stop for now.

TAPE NUMBER: IV, SIDE ONE

NOVEMBER 22, 1985

BALTER: Sam, we brushed by something very quickly last time when we were talking about the Smith Act cases, and I wanted to go back to it because it's an area in which I believe there's very little in the historical record. And that is the Smith Act cases in Hawaii that you handled. I wonder if you could give us some pretty in-depth background on that.

ROSENWEIN: Well, all I can say is this, as far as Hawaii is concerned. In the first place, I didn't try the case, as such, in Hawaii. The prosecution was against all the leaders of the union in Hawaii.

BALTER: Which union was that?

ROSENWEIN: The union is-- Well, I forget their name. They were the pineapple workers. That's one of Hawaii's principal products, and they were the ones who were engaged mostly in that activity. They were quite militant in demands for workers' wages and working conditions. When the Smith Act prosecutions began, they were singled out for prosecution and charged with advocating the overthrow of the government of [the] United States by force and violence. I had the record before me as I prepared it for the appellate court. The record was completely devoid, of course, of any use of force or violence. There wasn't any

discussion of using guns or anything of that kind. All that the prosecution proved was, one, that they were members of the Communist Party, through certain informers, assumedly, and secondly, that they read the works of Marx, Engels, and Lenin, which were then put into evidence and read before the jury. Now, there's nothing more inflammatory than reading some of the works of Lenin or others in which they talk of destroying the entire imperialist setup, destroying the whole capitalist system. Naturally, any jury would construe that that means using force and violence. Of course, if you have any extensive reading of the subject, it's perfectly clear that that was not what they were advocating. They were simply saying--as a matter of fact it was made very clear in the writings--that you could not possibly have any revolutionary situation unless the ruling class was itself divided, somewhat weak, and unless, further, there was a social consciousness that had developed among a majority of the community that there was need for fundamental change, and that the majority of the people would then ask for that change peacefully. And it was only if the ruling class, under those circumstances, were to use force against the people, of whom now a majority want to change, that the people would be justified in resisting that use of force. When you take words out of context--and you could easily do

that; you know, "Workers of the world unite, you have nothing to lose but your chains"--the result was that generally the jury returned verdicts of guilty, as they did in the Hawaiian case.

The fact of the matter is that there were verdicts of guilty throughout the nation with respect to that, and it was only on appeal that we got reversals, ultimately, in the United States Supreme Court. And the Hawaiian case was reversed in the court of appeals because the Supreme Court had already spoken, and so as a result they followed suit. The Supreme Court, you know, ultimately held, basically, that you could not simply send people to jail because allegedly they advocated force and violence, unless you had the proof that it was in language of incitement to action and to immediately accomplish that actual overthrow, unless you had that kind of evidence. And of course, there never was any in any of the Smith Act cases. But of course, a lot of people suffered. In Hawaii, the union, however, maintained itself. The leadership was very strong and they survived the Smith Act prosecutions. Some in other parts of the country did not, as individuals lost jobs or became blacklisted. But it's interesting.

I won't take up too much time with this, but we tell this story about 1919, when there were the same kind of prosecutions--but different--using the Espionage Act, and

so on. The leaders of the party decided, when the first trials came up, to retain eminent counsel, outside counsel. And the outside counsel did a pretty good job, but they were all convicted and they got five years and a \$10,000 fine. When the next round of cases came up, they decided, "Why don't we use one of the party lawyers?" And so they used one of the party lawyers and he did a good job, but they were all convicted and they [got] five years and \$10,000. So when the third round came, they said, "Why don't we try the cases ourselves?" They did, and one of the fellows acted as lawyer, representing everybody. And he did a very good job and got the same results.

BALTER: Do you remember who that was, by the way?

ROSENWEIN: It was one of the early fellows. They were all convicted and got the usual five years and \$10,000 fine. So we have that kind of story--that no matter how you try to get the proper lawyers to defend yourself, the fact of the matter is, when the climate is so created as it was at that time in the 1950s, then it was very difficult. And we have some evidence of the same kind of hysteria today.

BALTER: Sam, I'll be interested in your opinion as to why the Supreme Court did eventually throw out the Smith Act convictions.

ROSENWEIN: I'll tell you why. My feeling is, again, the Supreme Court reacts to public pressures, and when the

public pressures died down, the Supreme Court now manifests more of a judicial temperament than it did in those other periods. And the result was really that after [Joseph R.] McCarthy got himself in trouble with [Dwight D.] Eisenhower and lost his esteem and everything else and was condemned by Congress, this entire hysteria sort of fell down a little bit in those periods. And by the time it reached the Supreme Court they were able to look at it in a more judicious way. And I think that was really the reason why the atmosphere changed.

BALTER: Sam, in a little bit we're going to go on and talk about your work on a long string of obscenity cases involving First Amendment issues. But before we get to that, there are some cases sort of in between that I wanted to discuss with you.

ROSENWEIN: Oh, all right. I just wanted to say this just so that we don't forget it. We're going into the 1960s now. We're just about leaving the 1950s. You may want to go back to one or two of the cases. And 1960s and 1970s. I want to just make a note so that I don't forget it. Not only the cases that we are involved in at that time, which I think reflect a great deal of the environmental situations that were going on, but I also testified at the Russell [International] War Crimes Tribunal at the invitation of Lord [Bertrand A.] Russell in Stockholm, and

on the question of the United States's intervention in Vietnam and the legality of it. And so I want to discuss that at some future point.

BALTER: Or we could do it now since it's come to mind. Why don't we?

ROSENWEIN: Well, there was Skokie [Illinois] that I want to discuss, the whole question of advocacy of Nazis, and so on. I was also involved in the whole voting rights in Mississippi down [in] the South during the 1960s and problems dealing with draft and conscientious objectors in Vietnam during that Vietnam period, plus all the cases that I was involved in. I just wanted you to know that I was kind of busy in that period in the sixties and seventies. [laughter]

BALTER: Sounds like it.

ROSENWEIN: Which may explain why old age came so fast to me. All right, now where do you want to go?

BALTER: Well, we'll take note of these because we definitely do want to return to some of that.

ROSENWEIN: I'm willing to go on to the obscenity cases if that's what you want.

BALTER: Before we do and before we leave the McCarthy era, I'd like to talk to you about just a few more cases. We've talked already about your involvement in the [Paul] Jarrico and [Michael] Wilson cases and the attempts by the

blacklisted writers and actors and so forth to sue the studios--

ROSENWEIN: Right.

BALTER: --for denying them work, and we've touched on that. There was one case that had a fairly circuitous history that I would like to ask you to elaborate on, and that is *Koenigsberg v. State Bar of California [et al.]*, a case that you did with Ed [Edward] Mosk.

ROSENWEIN: Yes. Right. Shall I go on?

BALTER: Please.

ROSENWEIN: Raphael Koenigsberg took the state bar exam and passed it. Generally that is sufficient to then move on to admission to the bar. That is to say, you then come before the court and the court swears you in and you become a lawyer. But there are instances where the [California] State Bar [Association] committee--that's our own state bar group here in California--may inquire further with respect to your moral character, because after all, you're going to become a lawyer, and if you have some criminal tendencies or criminal convictions they would want to go into it. All right. In the case of Koenigsberg they had, they claimed, some information that he was a member of the Communist Party, and they wanted to discuss that with him. Koenigsberg came before the committee. I suppose--I'm not sure--that Ed Mosk was there at that time. But in any



event, when he [Koenigsberg] came before them and they asked him whether he was a member of the Communist Party, he declined to answer that question on the ground that this was an invasion of his First Amendment rights, and further that he was prepared to show that he had never advocated the overthrow of the government by force or violence and had other evidence of his good character in one form or another. Because of his refusal they refused him admission to the bar of California. When the state bar makes that ruling, it then goes to the California Supreme Court for ultimate decision, and they affirmed that. And so then, you then petition for a certiorari to the United States Supreme Court, permission to appeal, which was granted. In an opinion written I think by [Hugo L.] Black, he stated that there seemed to be nothing in the record to indicate that Koenigsberg was not a person of good moral character, and the refusal to answer the question certainly was not an indication of a bad moral character, [since it was] put on First Amendment grounds. Therefore the majority of the Court was of the opinion that the judgment had to be reversed and sent back to the California Supreme Court for a ruling. Justice [John M.] Harlan dissented. It then came back to the California Supreme Court and [was] referred back to the state bar committee. Again [he] appeared before the state bar committee, and they again

refused him admission. Once again we were before the California Supreme Court, which affirmed. Now a petition for cert[iorari], again granted before the United States Supreme Court. And now Justice Harlan had obtained a majority in his favor, of his viewpoint. And his viewpoint was the California Supreme Court was justified in refusing admission not because he had refused to answer the question but because he had obstructed an inquiry by them, since they were seeking to determine whether or not he was a member, who else was a member, what [were] the principles of the party, and so on. "There was no indication that they wouldn't have admitted him," said Justice Harlan. "It was just that he obstructed the inquiry, and that was the reason that he was being excluded." And that was upheld.

There was another case of a fellow from Illinois. [George] Anastoplo had about almost the same situation. In Illinois he was asked whether or not he had ever advocated the overthrow or whether he was a member-- He refused to answer these questions, First Amendment grounds. It was coming up before the United States Supreme Court and I think he was arguing the case himself. I went to see him in Illinois. He was a teacher at the University of Chicago. And I said to him, "Look, I've read the record in your case. I know that you were never a member of the Communist Party. I can just tell from your answers and

that the position you've taken is just the principle, [a] position that you believe in. Now, in your case, I would think that you would be such a valuable member of the legal profession that it might be worthwhile to say, 'I don't and I never have and I've never been a member of the Communist Party,' because it would be valuable to have you as a lawyer, and there's no real mass fight going on this principle anymore." It sort of dissipated because most people were being admitted, and the issue was no longer a pressing one. He refused to follow my advice and maintained his position and never became a lawyer. He still teaches, I think, at the University of Chicago or-- I know he's written a book on the First Amendment and so on. Some of his ideas I don't agree with, but in any event, it is interesting to talk to somebody who I knew absolutely, it was perfectly clear, that he was not a member of the Communist Party yet was maintaining principles of that position.

BALTER: Similarly, whatever became of Mr. Koenigsberg after all this?

ROSENWEIN: Koenigsberg years later received the apologies-- well, I won't say apologies--was admitted by the state bar committee. Time again had passed, all this excitement had gone. A terrible injury had been done to the man. And I remember sitting in the courtroom when Judge Pacht--

BALTER: Was that Isaac or Jerry?

ROSENWEIN: Jerry Pacht spoke the words of formally admitting him to the bar and, to some degree, expressing great regret at what had been done to Koenigsberg all those years. I don't think that he's ever practiced.

Occasionally we see him once in a while.

BALTER: He's still alive?

ROSENWEIN: Oh, yeah.

BALTER: Now, on the legal issues, basically what--and I want to pursue for the benefit of myself and other lay listeners and readers--but what we've ended up with are two **Koenigsberg v. State Bar of California** decisions. And in looking at the opinion by Justice Black and then later the opinion by Justice Harlan, it seems as though Justice Harlan was trying to at least couch his decision on somewhat different issues. And I'm wondering now, when you take these two **Koenigsberg v. State Bar of California** decisions together, does the later one supersede the earlier one, or have they both been superseded by other cases?

ROSENWEIN: No, I don't think they've been superseded. It's interesting that very often officialdom, unable to get at the person directly because of the bar or the Bill of Rights, will use the kind of indirect method of getting rid of a person they don't want by saying, "Well, we're not

sending them out because he's a communist or anything else, but he lied about it or he obstructed us in our investigations." In that way, the record remains that democratic rights have been maintained and all that has happened is that someone has suffered for some conduct which everybody would condemn, like perjury or obstruction of justice or something of that kind. The principles, on the surface, remain the same. I mean, anyone can become a member of the bar regardless of his thoughts, whether he's a member of the Communist Party or anything else. He can become a member of the bar provided, of course, he doesn't advocate force and violence or incitement to action, and so on. He, on the other hand, cannot become a lawyer if he, in some way, obstructs justice or if he lies about some question that has been asked him--whether he did this or did that. And so all the amenities remain. I mean, everything seems real, but the seeming reality is somewhat different. That's the point. So it's hard to say. I think courts will point to them and use them for whatever they want. They'll use the first Koenigsberg and say freedom doesn't affect your moral character, because you happened to believe in something that the majority doesn't, but on the other hand, of course, if there are cases of obstruction or perjury, naturally we don't want anybody like that in the bar. So they both exist.

BALTER: In the Koenigsberg case, you worked with Ed Mosk, and I noticed that in one or two of the obscenity cases later, he will participate. What do you remember about Ed Mosk back in those days? How did he strike you? What type of person was he? What type of lawyer?

ROSENWEIN: By the way, he's not in the past tense, you know. He's very much alive!

BALTER: Oh, I know. What I'm trying to do is transport us back to the Ed Mosk that he was back then.

ROSENWEIN: Well, Ed is just a very, very able lawyer and a lawyer really sincerely devoted to the defense of civil rights and civil liberties, a member, I'm sure, of the American Civil Liberties Union [ACLU] for many, many years. Wonderful guy, really wonderful fellow and great lawyer and a friend, at least I consider him a friend.

BALTER: Oh, yes, there was one more case that you were involved in that I wanted to just touch on briefly, and that is the case of Shibley v. United States, George Shibley's case. You seem to have had some involvement in that. I wonder if you could sort of review the basic facts of that case.

ROSENWEIN: Well, George Shibley is a lawyer out in Long Beach. I've known him for quite a number of years. George hasn't been feeling too well lately. He got involved with the military. He represented somebody before a court of

military justice, and as you know, the military has its own legal system. They may have court-martials, and then you appeal to a court of military justice, an appellate court, just as any other. And if there's any feeling that you've been deprived of some constitutional right, you still have recourse to the federal courts, but otherwise they go right through their own legal system. But in addition, the soldier accused can have outside counsel. He can be afforded counsel in the army. In one case, Shibley did represent one of them. He got involved with the court, the military court, because he refused to appear at one time and they held him in contempt, but nothing came of that. But in the course of it, a transcript of a proceeding that involved one of the soldiers disappeared from the camp and ultimately landed in Shibley's possession. He was charged with stealing property that belonged to the government, and so on. And for that he was tried and represented by, I think it was Walter [Raleigh] Ely [Jr.], who later became a judge of the United States court of appeals. I think he's still there, as a matter of fact, unless he may be retired. In any event, he was convicted and got a three-year sentence. In jail, I remember, George organized all the prisoners and almost ended up in all kinds of demands for the rights of prisoners and got out in a fairly short time. Nothing came of it. I mean, he continued to

practice. No one went after him for that. And he's just really a very militant and an excellent lawyer. His struggles with the military and trying to get a fair trial and a fair hearing for a soldier were a contribution, because generally those are sort of closed things. The people who are trying it are usually appointed by the commanding general, who's the one who's been offended by what the soldier has done, and so things are not exactly impartial. They may not agree with this, but I think that's usually true. And so when an outside counsel comes in, he sometimes doesn't like that whole pattern, and if he's strong and independent, representing his client, he will make the kind of fight that is annoying to them, including a mysterious disappearance of a transcript. That was the Shibley case.

BALTER: I think we should mention, just for the record also, that Shibley, of course, was the defense attorney in the original Sleepy Lagoon case.

ROSENWEIN: Oh, yes. And he has a fine reputation in defending the oppressed, the exploited.

BALTER: Sam, I'd like to move on to the obscenity cases, which certainly represent a critical part of the battle around the First Amendment in this country. And I'd really like to begin at the beginning and have you tell me how you got involved with Stanley Fleishman and with the cases and



so forth. How did it all come about?

ROSENWEIN: Well, as far as my involvement with Stanley is concerned-- And by the way, Stanley is just an excellent trial and appellate attorney, and our friendship's been a long, long time. We met shortly after I had come here to California. He had been a member of a firm, I think it was Brock, Fleishman, and Rykoff. And I helped out [in] some research I was once asked to do and got to know Stanley. And then the firm broke up, well, for different reasons; the members were going in different directions. Stanley asked me whether he could call on me for help, and I said, "Of course, anytime." The obscenity cases began to pour in, and he called on me more and more, so we became sort of closely associated. I became counsel to Stanley and did a great deal of the briefing and occasionally argued cases with him, because I could always argue cases in the [United States Court of Appeals for the] Ninth Circuit, in the federal circuit, and also the United States Supreme Court and in other courts throughout the country. So I could do some of that, and of course I could help on the briefing. We worked together on many of these cases, as you can see when you read the reports.

But now on obscenity itself, I don't want to give a long lecture on this but--

BALTER: Please do! [laughter]

ROSENWEIN: If you go back to ancient time, so to speak, primitive times, the problem of obscenity never arose. You can go to India, for example, and see some of their remarkable buildings with figures of men and women copulating on the outside of the buildings, and all of this is the worship of the fruitful Mother Nature, and so forth and so on. You can read the **Confessions** of Saint Augustine and you could get some pretty candid descriptions there. Obscenity as such, we don't really meet the issue until we get to England in about the nineteenth century. The questions of sex, the depiction of sex, the representation of sex only is met in the church canonical law when their own courts are examining, and here and there you may find a condemnation because a book has been written in which it's suggested that the nuns or the priest misbehaved sexually or something of that kind. When Queen Victoria is reigning, on the surface England now has a very sedate community, behaving itself. But underneath, the records show, investigations show, there's all kinds of shenanigans going on, all kinds of clubs going on with fetishes of one kind or another, whippings, the sex of various forms taking place, but all submerged. But finally, a parliamentarian fellow named Fox proposes legislation for the first time that would attack the issue of obscenity, and in fact was really going after some particular magazines, but in fact

they passed a law against obscenity generally. That was the first thing. And then it began to be enforced. And in a case called *Regina v. Hicklin*, the court held that if any writing, if any one page of a writing had a tendency to corrupt or deprave the reader, such writing was condemned as obscene.

BALTER: This was the U.S. Supreme Court?

ROSENWEIN: No, no, no, no, I'm talking England.

BALTER: That's what I thought.

ROSENWEIN: I'm talking England. This is *Regina v. Hicklin*, and this the nineteenth century.

BALTER: I see. This is a case in the English [courts].

ROSENWEIN: In English, yeah. *Regina* was a queen. It's the queen against *Hicklin*.

BALTER: I see. Right. You're out of my league there. Or I'm out of your league, I should say.

ROSENWEIN: That *Hicklin* decision was brought over to this country, and it dominated the early rulings in the early nineteenth century. A little later, a man named [Anthony] Comstock had obscenity laws passed in virtually every state in the Union as a result of this *Hicklin*, and the whole notion of obscenity, candid discussions of sex, nudity, etc., were to be banned. This fellow Comstock made this his principal fight and got these statutes passed throughout the country and also got a federal statute

passed applied to material that is sent through interstate commerce through the various states. And we call that, as a matter of fact, the Comstock Act.

As time went on, the lower courts were a little concerned about what was happening. And this was a time when books like *Ulysses*, [James] Joyce's *Ulysses*, and D. H. Lawrence's *Lady Chatterley's Lover* were trying to come into this country and customs wouldn't allow it because they were obscene, allegedly, and so we had these books underground. You couldn't get them in stores, you had to bootleg them, so to speak. But one or two of the judges--Lester Hood Woolsey was one of them and Learned Hand was another--felt that if they had some value, if they had some ideas, they really should be protected. And they began to write that way. That was a very slow development, however. I remember that some woman who wrote a book--I forget her name now, but it was very famous at the time, about sex education of one kind or another--went to jail because it was obscene.

BALTER: Margaret Sanger?

ROSENWEIN: Margaret Sanger went to jail because her book was obscene. At the same time, the Court was developing all the First Amendment principles and beginning to broaden them. You know, we were having a development along that line, more freedom in that area, as we went through the

1919 Palmer raids and so forth, with [Louis D.] Brandeis and [Oliver Wendell] Holmes [Jr.] dissenting. So that in the 1950s (we're reaching about 1957) the first clean-cut cases came before the United States Supreme Court with respect to the validity of obscenity statutes, both federal and state. Stanley and I worked on the state case called **Alberts v. California**, while the Roth [v. **Alberts**] case was a federal case and was coming up from New York. Now without, again, too much elucidation, what the Court did in the Roth-Alberts decision was this: it rejected the **Hicklin** test. It then said that obscenity had never been protected under the First Amendment, but sex is a highly mysterious and motivating force and sex and obscenity are not the same. It followed, therefore, that what was important from a due process viewpoint, from a First Amendment viewpoint, was to specifically define and limit what obscenity means so that all other matters dealing with sex could be protected. I might add, just parenthetically, the Court has never found any difficulty in saying that any communication that talks about violence or advocates or depicts it, all that is protected by the First Amendment. And so, we're only dealing with sex, which concerns apparently the Court and the community, the writing of books about life instead of death. But in any event, the definition of obscenity was to be the following: (1) that

the material must go beyond contemporary community standards; (2) the material taken as a whole must appeal to the prurient interest of the average person, defined as an interest in what they called "morbidity," [that] was one of the words that was involved; and (3) the material had to be utterly without redeeming social value. That became the test for obscenity, and so all obscenity enforcement then had to meet that kind of test. Then come all the subsequent decisions that deal with that, and we can discuss those or not.

BALTER: We'll do both, not the "or not." We will do a lot of things here. In the *Roth v. Albers* case, I take it that Stanley Fleishman did the oral argument?

ROSENWEIN: Argued. Yes.

BALTER: Were you present at the oral argument? Did you go?

ROSENWEIN: No, I didn't go to Washington at that case, no.

BALTER: Let me back up a second. First of all, the *Roth v. Albers* case obviously became a very critical governing case in this issue.

ROSENWEIN: Of course.

BALTER: We know that. Did you and Stanley and the other attorneys involved in the case know or anticipate, as you were preparing for it, what it was going to become? In other words, did it seem to you at the time to be a

landmark case or a precedent-making case? What sense did you have that the Court might break some--?

ROSENWEIN: There was no question in our mind that we were going to have some breakthroughs of a precedent kind because the brief that I wrote was the kind that-- First of all, our position was that it was absolutely protected, that there was no difference. Communications with respect to sex were as much protected as any other area. Therefore, we had to develop not only all the legal arguments and all, discounting *Hicklin* and all of that, but I went into the reports of psychiatrists; I went into the reports of physicians; I went into the reports of philosophers; I went into history. I quoted from them to indicate their feelings about depiction of sex. The brief was a very large brief, one of the kind that you don't generally give to them. *Roth* was coming up at the same time, and they were developing fully, so there was no question that we were going to get the breakthrough. We had the kind of court that we thought would do pretty well, because we had [William O.] Douglas and Black. We had [William J.] Brennan, and although we knew that he had a Catholic background, [we knew] that nevertheless he was liberal and might take a liberal view. As a matter of fact, he wrote the opinion.

BALTER: Did that surprise you that he did?

ROSENWEIN: Yes, it did to some degree. And he has continued to surprise me very favorably ever since.

[laughter] We had Chief Justice [Earl] Warren, who, by the way, was not particularly happy about obscenity, never, but he would go off on other areas to get the same result. For example, he would not just go after books or things of that kind. He would look at the person who was selling it. Was he pandering it? Did he know that it was obscene? And get after him rather than, let us say, a clerk in a store who happened to have books that a police [officer] thinks are obscene. He had that kind of approach.

BALTER: Now, in mapping out your strategy, would I be safe in assuming that you and Stanley worked essentially as a team on this? So it seems to be indicated by your work together.

ROSENWEIN: Yes, yes. Well, we discussed it all the time, sure.

BALTER: I would ask the question, both before and after the *Roth v. Albers* case, was there any kind of change in your strategy? What kind of discussions did you have around strategic issues, such as whether to take an absolutist position on the First Amendment versus try to convince the Court that there was no harm in this stuff?

ROSENWEIN: Yeah. Well, first of all, as we approached *Roth v. Albers*, obviously we took an absolutist



position. Once we had their decisions, of course, tactics had to change. I mean, the idea that we would change their minds a year later was kind of absurd. So now the problem was, does our material go beyond contemporary standards? Does it appeal to prurient interest? Is it utterly without redeeming social value? These were now our problems. Shall we have experts to testify with respect to these particular books? Shall we show contemporary standards? Does the government have to prove it first since these are all criminal cases? All of these are the problems that we confronted.

And interesting, just as a personal recollection, I remember we had a lot of material. I think I have some of the material still in the house here. Once in a while, you look it over just to refresh your recollection. But I remember talking with Stanley about the material, and I said, "Stanley, I really don't like this material." We never handled anything involving children. But you had all these girlie magazines where the women are posed in all kinds of shapes, forms, and manner, and some homosexual magazines where the men are posing in one form or another. Or there's all kinds of twosomes and threesomes and things of that kind. I said, "I really don't like it. And I want to assure you, Stanley, when I become dictator, there's going to be none of this pornographic

stuff." Stanley said to me, "Sam, I think you ought to read it. You might find it healthful. I mean, it's interesting. You're a little straitlaced" and so on. Well, you know, to be absolutely honest, for historical reasons or historical purposes, I did. You had to look at the material, obviously, if you're going to argue. And there is something healthful. It sort of gives you a different outlook. First of all, you don't get excited about it anymore. You look at it once, twice, and it gets boring. I once told my class, "The older I get, the less important the whole thing seems." Of course, they all laughed. But even with respect to hard-core pornography, I sort of began to feel-- Well, you can get some ideas: they are a reflection of the irrationality of people, some of the sex urges that are in people. There's something there, and my feelings about arguing First Amendment with respect to these things, where I'd always argued the rights of communists and so forth, seems so far removed. I began to find more justification for it, especially since you can see with the definition that came out of *Roth v. Albers* how difficult it would be, how it opened up the chances for censorship on the parts of juries and judges and prosecutors to arbitrarily begin to enforce this thing. It goes beyond standards. How do you define these things? This isn't the kind of thing where you have a precise

decision, like you cannot have a depiction of someone engaged in sexual intercourse. Well, one would know then what you can and can't have. But to say you cannot have something that goes beyond standards, that appeals to prurient interest, has no redeeming social value is-- It's difficult to determine, and that's why I think the present furor by women about pornography misses the mark, in my opinion.

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BALTER: Sam, you had just started saying some things about the present feminist movement.

ROSENWEIN: My feeling is that attempted definitions of pornography and obscenity are so difficult that they always run into censorship problems and First Amendment problems. And I've never understood why, even with the cases, the depiction of children engaged in sexual acts of one kind or another, why isn't the law directed against, let us say, the parents who are letting their children do these things for money? You know, contributing to the delinquency of a minor. Why don't they get after them? Or even the particular individual who's getting these pictures taken, his conduct. But the communications themselves we ought to be sure are protected. I once had some legislation that was going after the motion picture people because of the depiction of films where they have these combats and the horses fall over and they're injured, and so on. People were concerned, so the legislature wanted to do away with the depiction of that kind of film. The ACLU asked me to write something on it, and I suggested, again, the depiction of it should be protected, but get after the people who are doing these things to the horses. I mean, that's conduct and the state can take care of it, but when

you're dealing with communication you're dealing with principles that you don't want to be undermined. I'm saying all this because sometime or other we're going to come to the questions of the advocacy of genocide by the Nazis, and I'm going to take a different position. So all of this creates interesting problems for the future.

BALTER: We'll be into that. Now, as we go on with our discussion of the obscenity cases, let me ask you: When you were describing this process of your sort of initial distaste of this material, what were your original reasons or motivations, as you recall, for getting involved in these cases? You were involved in quite a few of them.

ROSENWEIN: Well, Stanley had asked me to help. I was glad to help him. It was a very pleasant association. Learned a lot from him. Very good trial lawyer, very good appellate lawyer. And that was a fascinating area and it was a First Amendment area, it became obvious. Incidentally, the communist furor had died down considerably. There was nothing really going in that area. I had other matters people consulted on, some of them purely civil, and I handled some research and appeals. But I was very happy to work with Stanley. For my time and so on [he] would compensate me, and I was perfectly content.

BALTER: Now, among your political friends and colleagues, how did they feel about, or what attitude did they have

towards your involvement in, these pornography cases? Leftist, Communist Party members, ex-Communist Party members?

ROSENWEIN: I don't recall any feeling at that time because we were so concerned-- We were so off the whole Smith Act prosecutions, the communist prosecutions, Hollywood Ten, and so on, that any struggle to maintain the First Amendment was bound to have approval, tacit or otherwise. And it's, I imagine, only in the later years that party members may feel--because the feminist movement has grown, and now they're protesting against pornography--that they're somewhat concerned as to just what lines [should] be drawn and who should be involved in it and so on. But I still think the feeling is that any undermining of the First Amendment in these areas would be harmful. I'll come to that again when I debate the question of the Nazis, because at that time I did debate with some ACLU people on that question before a big Jewish community center. Some of my friends who were in the audience rose to ask me how I came to take a position that said that the Nazis shouldn't be able to advocate genocide when I had been before the Supreme Court always arguing for the full implementation of the First Amendment. I think it's for that reason that no one ever really raised any question about appearing in the obscenity cases. I don't think it was a problem at any

time.

BALTER: Well, why don't we continue, then, with the development of those cases?

ROSENWEIN: At first the decisions went very well. In a number of cases the works were not obscene. For example, *Lady Chatterley's Lover*, Henry Miller's *Tropic of Cancer*. It's always amazing to me that these books could have been prosecuted as being obscene. Joyce's *Ulysses*, even with its Molly Bloom soliloquy in the last fifty pages, is one of the great works of literature. I remember that Joyce's mother said that that book *Ulysses* isn't fit to read. And when it was reported to Joyce, he said, "If my book isn't fit to read, then life isn't fit to live." And, you know, there's a great deal of truth to it, because in dealing with depictions of sex and representations of it and so on, you're dealing with life itself. Certainly it had ideas. Take *Lady Chatterley's Lover*. There, a young man is injured in some [accident]. He falls off a horse or something and he's now incapacitated for life. He says to his wife, "I understand your needs. There's no reason why you can't have relations with another person." So she has sex relations with the gardener, which is depicted rather candidly. And he's incensed when he finds out because she didn't select a member of their own class! Now, certainly that is a book full of ideas, yet it was condemned for many

years as being obscene. So, with the standards now a little more [lenient], we were able to have some victories along that line. The Court also decided that when you talk of contemporary community standards, we're talking of national standards, not to be governed by Fargo, North Dakota, or something of that kind. So as a result, progress was made.

Then came the denouement, the [Warren E.] Burger court. And when it came before them in *Miller v. California*, they reexamined the situation and came to the conclusion that they were going to have different definitions, different standards: (1) it still would have to go beyond contemporary community standards; (2) it would have to be patently offensive to the average person, provided it depicted specifically defined sexual conduct in the statute; (3) that it lacked any serious literary, artistic, political, scientific, educational-- In other words, "utterly without redeeming social value" was rejected. It had to lack serious literary, artistic-- They also said that it would not be a national standard anymore, but it would be a standard of the particular forum. So now it would be North Dakota, and so forth. Attacks were made on the constitutionality of the federal statute, because the federal statute permits you to be prosecuted-- You, let us say, being the distributor or the publisher of



a book here in Hollywood who's sending it out through the country. It permits you to be prosecuted at the place you sent it, the places it goes through, or the places it arrives, which means the prosecutor can virtually pick out a forum in fifty different states. And usually he did. He picked out Fargo, North Dakota, and Des Moines, Iowa, because he felt the juries there would be a little less receptive to this kind of material. And young lawyers in the office now had to cut their hair and get a little more sedate when they went out to try the cases in those areas. That's just what lawyers have to do sometimes. In any event, all of this now was changed.

In subsequent decisions--Justice [William H.] Rehnquist is now writing--all a prosecutor had to [do] was to put the book into evidence. They didn't have to prove that it goes beyond contemporary standards or all of that. The jury could make up its own mind. The defendant still could put in evidence of contemporary standards, but that was up to the defendant. He had to put in their experts and so on. So all of that, and then they also held that you could seize it coming in at customs as obscene material under certain standards. They held the fact that you distribute books to willing persons who are adults who say, "We want the books," that made no difference. It still could be punished. The only two saving graces were,

one, *Stanley v. Georgia*, which held that your private possession of obscenity was not punishable. There the police had come into this man's home, and they were looking for some bookmaking or other materials, but they found a film, and they ran the film at his home and said that it was obscene. And the Court said that a man's library and a man's private possessions are protected. But the mere fact [that] you went to a theater where only adults were admitted, nevertheless, the Court held [that] that motion picture operator could be held for selling or showing obscene films. All of that developed. And then you had *Young [Mayor of Detroit, et al.] v. [American] Mini Theatres [Inc., et al.]*. They've now begun to have zoning ordinances in which-- This one provided that you couldn't have an adult movie or adult bookstore closer than one thousand feet to any other regulated user like massage parlors or things of that kind, nor within five hundred feet of a residential area. And the Court upheld that. Subsequently, the Court held in another decision that a zoning ordinance that results in the adult bookshop or movie not being able to show in any particular county altogether because of the distances and everything else, that would be invalid as a violation of the First Amendment.

There are one or two other things on pandering. They held that you can't pander material. That is, if you hold

it out and suggest to the people you're selling it to, "This is hot stuff. This is really obscene," then you're going to be bound by what you said yourself. That was *Ginzburg [et al.] v. United States*, who used such places for mailing like Middlesex, Pennsylvania, things of that kind. Then, as far as [the] children material was concerned, aside from certain vague statutes which they knocked out when it was too vague, they did uphold the right to regulate sale of obscene material to children under, I think, eighteen or seventeen, with the definitions that were a little broader than the usual obscenity provisions, just for the protection of children.

And the way we stand now, I just want to say one more thing. Despite all of that, the people in the trials have indicated the developments and the toleration for this kind of material. For instance, in Los Angeles the prosecutor doesn't even bring an obscenity prosecution anymore except when it involves children. And the reason for it is because they weren't convicting. I, myself, at the trials would sit in and listen and then help out and talk to the jurors afterwards. And time and again the women jurors would say to me, "All this business, we know all about this, whether you do it upside down or inside out or anything else. You know, what's the point? There's nothing to that, you know." And so it became very

difficult, and it shows that despite all laws, when you're dealing with questions of morality, there's such a difference of opinion between certain fundamentalists and between a large community dealing with sex that the laws are not enforceable, no matter what you say.

BALTER: Well, here in Los Angeles, who were some of the individuals or prosecutors, or what have you, who were sort of on this campaign? As I understand it, there was a period of time here when there was an attempt, at least in L.A., to really prosecute a lot of obscenity cases.

ROSENWEIN: Oh, yes. We had the Citizens for Decent Literature. A lawyer named [James B.] Clancy, I think, carried on litigation of one kind or another. He wanted to bring nuisance statutes, to enforce it as a nuisance just like you have buildings that sometimes either house prostitution or something, and you can abate those nuisances by closing them up. But generally he was not too successful in these areas simply because the courts held there's such a thing as prior restraint, and you just can't close up a bookshop the same way as you would close up a house of prostitution because at the same time you're saying, "Well, you can't sell any books for a year because you sold an obscene book." Well, there's a lot of books that are not obscene that you're preventing [from] being sold. So that was one thing.

Then there were people who were in the business of getting these books out. It was kind of interesting. President [Lyndon B.] Johnson appointed a commission. It was a new commission now being appointed where the results were almost foregone. But he appointed a commission. Worked for two years and produced a tremendous volume of work, about ten volumes. But the purport of it is-- And it had a commission that had all kinds of lawyers and psychologists and psychiatrists in all various fields. The end result of that was, in effect, that there was no real relation between pornography and the cause of crime. You know, well, what they found was in many cases the so-called offenders couldn't even read. And many cases it was a catharsis rather than anything else. And they found no relation. Made some suggestions with respect to children, but generally thought that obscenity laws were not appropriate at all.

I remember one fellow named [William L.] Hamling. We represented him in Hamling [et al.] v. United States. He took that Johnson report and he illustrated it-- I think I have it here somewhere--he illustrated with virtually most of the photographs that were actually shown to the commission that came out of the various magazines and so on. He illustrated that and then sold the commission's report illustrated with all these photographs, which were

very candid and very explicit in many cases, and he was prosecuted for sending obscene material through the mails. The conviction was affirmed all the way up, and he got a four-year sentence. What happened was that when the Supreme Court finally affirms, you can come back within a certain period and move for reduction of the sentence. And so we brought a great [number] of respected members of the community in many ways, and his sentence was reduced to four months, and that was the end of that. But that was the kind of situation we had here and there.

But most of the prosecutions were not against the principal proprietors or publishers, but clerks who would be picked up, and they would be charged with selling this particular kind of material. Most of the time, of course, they didn't even know. And the Court finally held that you had to prove some kind of knowledge. We had argued that there should be knowledge not only of the contents, but knowledge that it was obscene. But the Court simply held eventually that knowledge of the contents would be sufficient. But in many cases clerks and so on didn't even know the contents of thousands of books on the shelf. But occasionally the police officer would come and show him the book and say, "What do you think of that?" And he'd say, "Well, gee, it looks pretty hot." Then they'd arrest him because then he knew the contents.

BALTER: You might be referring to Eleazer Smith v. California?

ROSENWEIN: Yes, Smith.

BALTER: Not to be confused with Bradley Reed Smith v. California?

ROSENWEIN: No, no. But there were two Smiths. One was a scien<sup>ter</sup>, and I argued that case. And the other Smith was Tropic Of Cancer [by Henry Miller]. What happened was California itself, our supreme court in a case called Zeitlin v. Arnebergh-- [Jacob I.] Zeitlin is still alive and has a bookshop on La Cienega [Boulevard]. It held that Tropic of Cancer was protected. So when we came up on Tropic of Cancer to the United States Supreme Court, they simply sent it back and said, "Take a look at what California did itself." So that was the end of Tropic of Cancer.

BALTER: Now, you mentioned that you argued the first, the Eleazer Smith v. California case, and that was won.

ROSENWEIN: That was a scien<sup>ter</sup>. I think they argued it. Anyway, I know I wrote the brief and all.

BALTER: Well, I was wondering if you remembered either that oral argument or any of the other similar cases.

ROSENWEIN: I do remember some interesting oral arguments.

BALTER: I wonder if you could share some of that with us.

ROSENWEIN: Well, I'll just give you one example, anyway.

On the question of prurient interest, I remember-- You know, the test is that this book or magazine appeals to the prurient interest of the average person. And here is this lawyer, I remember, arguing before the Court and showing these "nine old men" this girlie magazine and saying, "This wouldn't appeal to the prurient interest of the average person." Black looked over and said, "How old is that average person?" I thought that was pretty good. And so we had some of that kind of--

But, you know, when you got to the Burger court, it all became very different. Then the questions became a little more caustic. I remember the chief justice said to me, "Do you mean to say that the prosecution has to show that the man actually read the book?" or something of that kind. And so we had to have an altercation about that. And by and large, about Black and Douglas: Black was saying, "I'm not reading it but I'm telling you it's protected, or everything should be protected." And Douglas would sometimes say, "I read it and I didn't think it was too bad," and so on.

We had a case-- This is interesting. We had it somewhere in the Midwest, case against Aday, who actually was a publisher here. He published a book, among others, called **Sex Life of a Cop**. And the book dealt with two police officers who had the night shift. Running around in



their car they always found it difficult to get to a situation where there was an alarm and an armed burglary taking place because there was some danger [and] they might get hurt. So they always came late. But most of the time they had nothing to do, so they used to fool around with various women of the street and so on. But the upshot of the matter was that it turned out that one of the police officers had an affair with the other police officer's wife, his partner's wife. That was the end of the story. And obviously that was the moral of the story. In any event, this was tried somewhere in the Midwest, and Aday got twenty-five years for publishing that book. We took an appeal, and the appellate court held that that was a little harsh and reduced it to ten years. This is **Sex Life of a Cop**, no illustrations or anything, just a story. Then we petitioned to the United States Supreme Court, and they reversed, without even argument, for the obvious reason that they felt that it was protected under the First Amendment. But you have to remember that initially this fellow got twenty-five years for a book-- Now, if it had been **Sex Life of a Shoemaker** I suppose nobody would have gotten excited, but because it happened to be a police officer you got twenty-five years, which indicates-- I mean, be careful when you're writing as to who you write about!

BALTER: I want to pursue some of these cases a little bit more because there seems to be, to my lay mind-- Some interesting turbulence begins to, shall we say, come into the thinking of the Court. [laughter]

But before we get quite to that, I did want to ask you a little bit more on the **Tropic of Cancer** case involving Jake Zeitlin that you mentioned, which was a case, as a matter of fact, that Matthew Tobriner wrote the decision about. Obviously a very important case here.

ROSENWEIN: It was handled by Al [Abraham Lincoln] Wirin.

BALTER: By Al Wirin and through the ACLU, I assume?

ROSENWEIN: Yeah. We handled the other case.

BALTER: The **Bradley Reed Smith v. California** case? Now, a couple of things on this. The Zeitlin case seems to have represented a case of somebody going on the offensive, because it was, as I understand it, a civil case where Zeitlin was asking for a declaration that this particular book, **Tropic of Cancer**, was not obscene. Did that represent, in the community of attorneys who were handling these kinds of cases, any sort of new strategy or approach? What do you know about how that all came out?

ROSENWEIN: I think that was new strategy, and it was very innovative and creative on the part of Al Wirin. It could work in the state court, with the upper court that would be receptive to this kind of thing. It would not, of course,

work at all in the federal courts because of *Younger v. Harris* [et al.] You couldn't do that. But it did suggest a way of getting a declaration of one kind or another. But you'd have to have the kind of book that you more or less knew deserved that kind of protection, because you're asking the court, as a matter of law, to hold that the book is protected under the obscenity law, which usually is a matter [for] the jury to decide. Except, of course, if you recall-- The Supreme Court--I'm talking of the Burger court--after all the statements about obscenity and changing the standards and all, there came before them the film *Carnal Knowledge*. I don't know if you ever saw that.

BALTER: Yes, I did.

ROSENWEIN: Now, there's no question in my mind that there obviously [Jack] Nicholson was being orally copulated. And there were other [acts]. Nevertheless, the Court held that was constitutionally protected. Why? The jury had said it was obscene. Yet the Court said the jury is not the final word. "We are the final word on whether it's constitutionally protected as a matter of law, and we hold that there was no showing of the genitals," and so on. There was opportunity occasionally when there was something like a film or a book that you felt [to be] constitutionally protected, you could get perhaps declaratory relief of one kind or another. Of course, if the prosecutor decided to prosecute, you had to

go through a jury trial. It's only when he didn't. So it was innovative and creative but, I will say, very seldom used.

BALTER: Well, it raises an interesting question. I want to pursue this just a little bit more because I'm trying to get your insights into the way that the Court was thinking during this period.

ROSENWEIN: For a moment I thought that you were going to go to law school!

BALTER: Well, since you're a lawyer, we could do a legal oral history if we must. And I'm curious because I don't think from the record that the answer to the question is obvious, and so I'm interested in your insight on this. In the *Bradley Reed Smith v. California* case, the U.S. Supreme Court remands the case back down to the appellate department of the L.A. [Los Angeles County] Superior Court in light of the *Zeitlin v. Arnebergh* decision.

ROSENWEIN: Which came after the appellate department's decision, so they didn't know about it.

BALTER: Right. Now, the *Tobriner* decision in that case-- which was a unanimous decision--had given *Zeitlin* relief. He had asked that the book be declared "not obscene," as defined by the penal code. It was a famous penal code number here in California, 311, the obscenity statute in California. And I take it that the case went no further

than that?

ROSENWEIN: You mean now Bradley, or do you mean Zeitlin?

BALTER: Zeitlin. Well, both of them. Well, the Bradley case. What I'm getting at here is that the Supreme Court, unless I'm wrong, could have decided in this case to overrule the definition of obscenity in the penal code and rule for Arnebergh, that in fact this book was obscene according to the Supreme Court's own definition of obscenity. But rather than even take up that issue, the Court just seems to have sent it back down. I'm curious as to why they took that particular tack. Does my question make any sense?

ROSENWEIN: Yeah, yeah. I should explain, first of all, there are a number of reasons why they sent it back. The U.S. Supreme Court has a rule that if a state court makes an independent judgment with respect to its own constitution and says it isn't violated, then the U.S. Supreme Court generally will say, "There's no point in our passing on it because it will only be an advisory opinion, because they have held it and they have a right to make their own decision." So that will be one reason; it's an independent state judgment. In the second place, I think Tobriner's opinion was quite persuasive. And I suppose a number of people read it and said, "Look, *Tropic of Cancer*, it's after all a book that's been acclaimed by some

segments, critics and all. Why don't we send it back to this court, which didn't have the benefit of the highest court of their own state in this opinion. Let's send it back to them to consider it in view of that. If they still say they're not going to follow the highest court of their own state, we can take it up again." Just a matter of judicial administration. So for those reasons, they undoubtedly sent it back. I have a feeling that they agreed with Tobriner on *Tropic of Cancer*.

BALTER: Now, this brings us into the *Redrup* [v. New York] case, because at this point it seems to me that the Court is still making this basic distinction between socially redeeming *Tropic of Cancer*-- Tobriner has found that that book has some socially redeeming value; it isn't just totally appealing to prurient interest, and so on and so forth. And that seems to be the standard that the Court seems to be applying. In the *Redrup* case-- And just in case you've forgotten some of the details, I'll--

ROSENWEIN: *Austin v. Kentucky*? You mean the three cases?

BALTER: There were three cases, yes, and you handled the lead case, *Redrup*.

ROSENWEIN: I had the *Redrup* and *Austin* was handled by Stanley.

BALTER: Now, for example, in your part of this case, if you'll permit me to state the salient facts here, it

appears that the clerk at a New York City newsstand was approached by a plainclothes police officer, who spied two paperback books on the stand, one called **Lust Pool** and the other one called **Shame Agent**, asked for them, gave the clerk \$1.65. In which case Mr. [Robert] Redrup was charged with the violation of New York state law. All three of the cases and all three of these convictions were reversed by the Court. And I noticed that very shortly afterwards this immediately became a new precedent for the Court, because in **Felton [et al.] v. City of Pensacola** the Court reversed again based on that one. On the surface of things, at least to me, it strikes me as a new direction.

ROSENWEIN: Let me explain all that happened in **Redrup**. In **Redrup** we were coming up on the question of scienter. That's what we wanted. And this is interesting from the Supreme-Court-practice viewpoint. When you come up to the United States Supreme Court and you petition for certiorari, you say, "These are the questions presented." And the questions that you present are the only ones, if they grant certiorari, that they'll let you discuss or let you write a brief on. You can't add other questions later, so you're really bound by the questions presented. We presented questions as to what degree of scienter do you have to have. Do you have to have just knowledge of the contents? Do you have to have knowledge of the contents

and knowledge of their obscenity? The Court had not really promulgated a definite rule, and we wanted that. They had said there can't be strict liability. That is to say, you can't get rid of knowledge, some kind of unlawful intent. But just exactly what, they didn't say. We had other questions. The material was constitutionally protected. You always had that as a question, whether it wasn't constitutionally protected. They came down with a ruling on our petition for certiorari. The Court granted certiorari limited to the questions only of intent, scienter. So we came up, and I argued the question of scienter because I had been in that area in the early cases and in the *Smith* case and so on. Stanley argued, "In addition to that, Your Honor, we think that despite your rule limiting the question, this is a case that's so important that you ought to vary from that rule and really discuss whether this material isn't protected, because we think it is." Well, the upshot of the matter was that they went into the validity of the material under the First Amendment and forgot about scienter, and as a matter of fact, the dissenters, [John M.] Harlan of course, again [said], "Look, this case was supposed to be limited to scienter, and you fellows are writing that the thing is protected, the material is protected. And that isn't the way we should be acting." *Redrup* and *Felton* ended up in a



ruling that all the material involved there was constitutionally protected. There were all kinds of books, magazines, but hardly anything to excite even Jerry Falwell. In any event, once that **Redrup** decision came down-- A whole host of other certioraris were pending, involving other material throughout the country, including **Aday**, the fellow who had gotten twenty-five years. And that whole group of cases, [after that] ruling by the Supreme Court, certiorari granted, were reversed. And so you knew that all of the material in all of those cases was now constitutionally protected. And the Court was not going to take these magazines and books that were a little off-color, so to speak, and declare them to be obscene. In other words, they were only interested in what was known as hard-core pornography, really explicit depiction of sexual conduct of one kind or another. That was what we were told, and the courts below began to almost assume that, and many cases were now being thrown out. The judge would look at it: "**Jenkins [v. Georgia]** and **Redrup**. This is protected."

The Court had also, I forgot to mention, **Jacobellis v. Ohio**. We had problems of search and seizure of obscene material. And **Freedman v. Maryland** also was a case that's important in the censorship area, because we are dealing with censorship here and all the problems of censorship.

But in *Jacobellis* what happened was Ohio authorized the seizure of obscene material by the attorney general. He had to file a complaint, and then he gets a warrant just like a search warrant, but a warrant of seizure. And he could take the books and then the court could look at the books and then could destroy them, a whole procedure. Well, they brought before the court seven books. They were all called *Nightstand* books by the publisher. And the judge looked at those seven and said, "They're all obscene, and I now authorize you to seize all *Nightstand* publications." So they then went and seized thirty-one additional ones and then all of them were destroyed. Well, they were intended to be destroyed. We went up to the United States Supreme Court and said, "Look, in the first place, you don't seize any books without some pretrial determination by an impartial judge as to whether the books are obscene. This is not like counterfeiting or something of this kind. We're dealing with material that is ordinarily protected under the First Amendment. Therefore, the seizure even of the seven was wrong, and to take all the others which you didn't even see just because they were *Nightstand* books was obviously arbitrary." And therefore, the whole thing was knocked out. That, of course, led to stopping a lot of the seizures that were going on by the police, who were just dashing in and taking [things] out

and saying, "I think this is obscene." You know, the police officer who-- Well, I'm not going to talk about police officers. In any event, that was one thing.

Then in *Freedman v. Maryland*, that was also followed by a number of cases. You had the censorship of movie films--no, you had censorship boards. We don't have too many of them now in the states. But this Maryland had a censorship board. So you had to produce the film-- I think the film was *I Am Curious (Yellow)*, but I'm not sure. Anyway, they looked at the film, said it was obscene and couldn't be shown. And the Supreme Court held in *Freedman v. Maryland* that there were certain standards that had to be met before you could do that. First of all, the censor himself, the board, must initiate immediately a judicial process, come before a court immediately. Then they had the burden of proving that it is obscene. And secondly, there must be an immediate decision, a very quick decision, and then an opportunity to appeal very quickly. So, in other words, everything has to move along very fast, with the burden on the censor. And there's not to be any censorship, just outright, without any opportunity for judicial review or anything else. That, of course, was very helpful when it came to-- The only exception they ever made--and even with respect to customs, which found it difficult to initiate quickly--gave them fourteen days.

Specifically, after fourteen days they had to get before a court, and the court had to decide within sixty days, finally, as to whether it was or it wasn't obscene. Otherwise, it goes to the publisher. So all of that has been helpful.

TAPE NUMBER: V, SIDE ONE

DECEMBER 19, 1985

BALTER: Sam, the first thing I wanted to ask you today-- just something that has occurred to me before, but I was saving it--was that although you argued so many cases before the U.S. Supreme Court and the federal courts and you had moved to California, you never joined the California bar. And I wonder if you could tell me why that is.

ROSENWEIN: Well, when I came out here, I had a number of things in mind. First of all, I didn't want to get into regular practice. Of course, I didn't know anybody, really, except a few friends. And that was one thing. The second thing was, this is a time when-- I think you still have to take an oath that you don't advocate the overthrow of the government by force and violence and [are] not a member of the Communist Party. I had been involved in all these struggles against these oaths, and I just made up my mind I'm not going to take any. As a matter of fact, I thought in terms of just getting into relations with some business people and just working outside the field entirely. I thought in terms of retirement, but still had to make a living, so to speak. But what happened eventually when I got out here, I was so caught up immediately with the Smith Act prosecutions and all, and I

began to do research and then eventually got in with Stanley [Fleishman], so that the whole thing became unimportant. I was able to argue in the federal courts, up in the appellate courts and in the Supreme Court. And that kept me busy, and I no longer was interested in that aspect of it. That really was what it amounted to. That hasn't been too much of concern to anybody, including myself.

BALTER: Now, this would probably be considered in your profession, as well as mine (oral history), to be a leading question, but your decision not to join the California bar must have made you immune from certain requests to do certain mundane cases. You know what I mean?

ROSENWEIN: Yes. No, no, I think there's something to that. I mean, once you're admitted and you open up an office, it's very difficult. Somebody wants to form a corporation or has a negligence action, which are all perfectly right. It would have concerned me that I got involved in those things. I didn't want to get into that field at all, really.

BALTER: So would it be accurate to say that whether or not that was part of your initial motivation, it might have been a motivation that kept you--

ROSENWEIN: It was certainly in the back of my mind, probably.

BALTER: I suspected as much by what I hear from you.

Now, we discussed at length last time your involvement with Stanley Fleishman and the obscenity cases. You continued to argue those cases for many years into the sixties and I believe even into the early seventies, according to the court record. But I get the impression at least that that is something that began to subside, and I wonder if you could describe the transition.

ROSENWEIN: Well, my relations with Stanley always remained close. And I did a lot of research work for him of one kind or another all through the years, through the sixties, the seventies. And it was only at some point, I think when I reached a certain stage around the seventies--I'm talking about my years--that I told Stanley that I wanted to cut it down a bit. And that's what happened. But in the meantime he had left the obscenity field, gone into rights of handicapped, and I worked with him on those matters. So we stayed-- But I was free enough to get involved in other civil rights issues of one kind or another.

BALTER: Concerning the handicapped rights cases, what would you consider to be some of the highlights of that, of your personal experience with that?

ROSENWEIN: Well, what can I say about that? There was some litigation that was very happy. For example, the rights of deaf people to serve on juries in Los Angeles, the rights of blind people to serve on juries. Naturally,

there had to be some kind of assistance given, some accommodation made, sign interpreters and so on. But it was very satisfactory to have that accomplished. Then there was litigation over access to buildings, the necessity for ramps, the postal service and all that kind of thing. And there was some success along those directions. Various people who owned buildings were ordered to build ramps and do things that would help the handicapped. Then in the employment area we were able to convince the authorities, both public and private, that having handicapped people working was a good thing rather than a bad thing because statistics show the handicapped come into work, they work steadily, they're devoted, highly motivated, and do a good job. So all these things were satisfying, really.

BALTER: Now, on the latter point, you said that you were able to convince certain companies and corporations that hiring the handicapped was a good thing. Do I take it that this was outside of litigation directly or--?

ROSENWEIN: No, sometimes litigation would result in settlements, and in that way we'd accomplish it. And sometimes you do it privately by negotiations. Now, I don't mean that we've been successful one hundred percent, far from that. But to some degree all of those things were helpful. And to me also, [it was] very interesting to see



the attitudes that the handicapped people have, their desire not to be treated in the form of pity and not to be treated with sympathy--like patting the head of a dog, you know, that kind of thing--but to be treated as equals, to be able to get into a bus if there's some accommodation by seat lifts and all of that kind of thing. To be able to get into a bus just like anybody else--instead of being given separate buses--that will help them to get to department stores when they want to make a purchase and so on. That they didn't want. They wanted to be integrated, be considered as part of the human race. That I thought was helpful to me, to see that, learn that kind of outlook, for sometimes you're inclined to walk past a handicapped person and just pity him and nothing else and do nothing more. But it's quite different when you look upon him as just a human being with some handicap but which you can accommodate in one form or another.

BALTER: Now, as we enter the sixties, you began to get involved in a lot of the issues that activists and activist attorneys got involved in--everything from the war in Vietnam to the civil rights movement. And yet this was at a time when you were still active in the obscenity cases.

ROSENWEIN: Yes, yes, that was part of the job, so to speak.

BALTER: This other was more extracurricular?

ROSENWEIN: That's right.

BALTER: I know that you were a witness and also spent some time observing the Bertrand Russell [International] War Crimes Tribunal, so-called. And I wondered if you could tell me how you happened to get involved in that and what some of your experiences were with that.

ROSENWEIN: Well, I was interested in problems of international law and the [National] Lawyers Guild and so forth. Naturally, Vietnam brought that in focus. And the guild-- As a matter of fact, not so much in the guild, I remember, but in the [Oliver] Goldsmith Society, which was just our private little grouping, I remember we agreed to get out an ad in the L.A. Times in opposition to the Vietnam War, in opposition to United States intervention. And we did get out such an ad. All that led to everybody analyzing the United Nations Charter and all the principles of international law. And it broadened my interest. I always had some interest in it, and so I went into it more intensively.

I'm trying to remember the man's name, but I can't recall it clearly. He had some relations with Lord Russell, who had formed the war crimes tribunal, which was going to investigate the whole issue, not only legal, but all the issues with respect to United States intervention in Vietnam, and was to hold hearings with respect to it.

And he arranged for me to get an invitation from Lord Russell, and Lord Russell invited me to come and speak at the tribunal. I didn't speak for any guild or other organization, but naturally my viewpoint would be somewhat like either the guild or any other progressive or liberal. But the State Department had issued a statement justifying intervention legally, with all discussion. So I took that along, and part of my address was not only affirmative but answering the State Department and taking issue with it. Now, some of the people who presided at the war crimes tribunal-- You might be interested in some of the names. The chairman was Jean-Paul Sartre, and with him was Simone de Beauvoir. There were representatives from many countries of the world, from Yugoslavia [Vladimir Dedijer], from Cuba, Americans came (David Dellinger was there), and of course from France [Laurent Schwartz], from the Philippines, from Pakistan, from many of these countries--and outstanding people were on the tribunal.

BALTER: We should probably mention at this point, parenthetically, that an article that you wrote describing what you observed, in the National Lawyers Guild's *Guild Practitioner*, Vol. 26, no. 4, Fall 1967, will be-- I think we'll be adding or attaching that to your oral history.

ROSENWEIN: Yes, yes. The things that stand out in my mind in that-- First of all, the presentation that took about

ten days. And there was testimony from various people who had been in Vietnam and who witnessed what was happening to the Vietnamese people and the struggles that were going on. There were also historians who gave the whole history of Vietnam from the time the French were there and all the other problems that had arisen. When I got there--now, this is interesting--there were some representatives of the Vietnamese who attended. It was supposed to be held in Paris. And in fact, that's where I arrived. But [Charles] De Gaulle would not permit the hearings to take place there. And so the entire project with all the people involved was moved to Stockholm, Sweden, and it was there in a very large hall and with all the kind of translations that you see at the United Nations. But when I got to Paris, a colonel from the Vietnamese army was there and spoke to me and wondered whether I would be willing to come to the Vietnamese consulate just to have a chat.

BALTER: I assume this was the North Vietnamese?

ROSENWEIN: Yes. And he was there. And I sat down. They were very cordial. Tea was served and delicacies. A number of these Vietnamese officials were present. The gist of the conversation, what they tried to get out of me, so to speak, was what would be the nature of my discussion, what I was going to talk about. And I just discussed briefly that the point that obviously I was going to make

[was] that I thought the intervention by the United States was illegal, a violation of various principles of international law. They said to me that one thing that had bothered them is that in the United States there's a constant discussion of a civil war going on between the North and the South Vietnamese. They said that is not true. There is no civil war going on. There is a war by all the people of Vietnam for self-determination. The ruler in South Vietnam is just a toy of the United States, but the people are all one and seeking self-determination. That little lecture was given to me. So I found that interesting. And certainly I had always felt that way anyway, and I feel the same way about El Salvador. I don't believe that there's a civil war going on. I think that there is an effort by the Salvadoran people to have the right of self-determination for themselves, and the "fourteen families" wouldn't be there for a moment if the United States wasn't holding them up. So, I mean, that kind of attitude was not too far removed from what I was thinking myself.

I thought that the tribunal acted very impartially and listened to various outlooks. And I delivered a talk-- God, it must have lasted for about two hours, because I discussed not only the United Nations Charter provisions, but also the provisions of the Organization of American

States and our own laws and our own statutes and everything and principles of international law. You know, most principles of international law are to some degree embodied in treaties and texts, writers and so on, so you have to develop all that. But that was my thesis, taking it all in all that this intervention was illegal and unjustified under principles of international law and even domestic law, and the arguments made by the State Department weren't valid and couldn't hold up.

I was pleased to get, after it was all over, congratulations from Sartre, who, of course, I looked upon with some reverence, having read his works and knowing about him. And he delivered an excellent dissertation on genocide, what it meant, and considered this really an aspect of genocide. He stated at the time when the tribunal was concluding its work that he thought that there ought to be hereafter a people's tribunal along these lines, constantly in action, constantly making decisions. Because there are tribunals like the Nuremberg trial, but that's the victors having a hearing with respect to those who have been vanquished, but he is talking about a people's tribunal, an international tribunal that would be passing on the actions of states without this kind of bias as they had in the Nuremberg trial.

And the only other thing that I remember that was kind

of interesting to me is that, having heard the testimony for ten days, there were some indications that they would hand down a ruling the next day. I urged, along with some others, that they hold it back for a few days because the world would say, "Well, gee, if after listening ten days, you're ready to hand a decision so quickly, that kind of looks as if you had your mind made up from the beginning." But--

BALTER: Do you remember who you had that conversation with? Privately or--?

ROSENWEIN: No. Well, first I got hold of Dellinger, who was on the tribunal, and talked to him about that.

Everybody was free to talk. But Simone de Beauvoir insisted that there had to be an immediate decision, and so I think one of the Italian lawyers-- We had groups of lawyers--this was aside from me. I was talking, but there were lawyers from various countries. The French lawyers were the ones who presented the testimony, and the Italian lawyer was directed to prepare the report and do it overnight. That, he says, he thought was impossible. But since he is a very disciplined person, he will do the impossible and proceed to write it, which he did.

And that was the way it ended up. But it was a very interesting experience, and it would be fascinating to see a people's tribunal like that existing all the time, just

watching, and of course composed of people like Sartre and others, who were there because they were writers and poets and historians. They were just excellent, great people.

BALTER: Now, did you travel to the tribunal with a group or by yourself?

ROSENWEIN: No, no, I went myself. I took my wife Sylvia [Schenkman Rosenwein]. Yeah.

BALTER: And you were there during the entire time, I take it?

ROSENWEIN: There the whole time, yes.

BALTER: What type of activities, either social or political or otherwise, took place in between the sessions, in the evening when the people went to eat?

ROSENWEIN: In between the sessions, people relaxed. There was dancing, eating together, chatting and talking--and generally not too political because there was so much during the hearings--and an opportunity also to talk to those who were assisting. I guess they were students perhaps or young lawyers of one kind or another from various countries. And it was fascinating talking to them. I remember one of them saying to me, "You know, Bertolt Brecht once said that truth is concrete. And that should be engraved in every school when they enter, the kids to see those words: 'The truth is concrete.'" I think there is something to that. I mean, if you're



searching for the truth, really look at the concrete facts if you want to find out what is true or what is not true. It was a very interesting experience, a highlight.

BALTER: One more question. You mentioned that Simone de Beauvoir insisted that the decision, verdict, be handed down the next day. Do you remember what reason she gave?

ROSENWEIN: No, I don't remember. But I would imagine that the reason she felt [that way] was [that] the evidence before us has been so overwhelming that we should not hesitate as if to give the impression that there are perhaps two sides to this and we're chewing it over like a hung jury or something of that kind. I think that's what she really had in mind.

BALTER: You mentioned that the State Department made a presentation at the tribunal. Did they submit evidence?

ROSENWEIN: No, no. I don't remember. I think what happened was this: They were invited to come. There was an official statement that they had been invited to come, but they never showed up as far as I remember. And the statement that I just took along and made a stance on some of the arguments-- It's probably on the files there. But there was no appearance by anybody from the State Department, no, not that I remember.

BALTER: And would the same be true for the government of South Vietnam?

ROSENWEIN: Yeah, the South Vietnamese. No, they didn't, they didn't turn up at all.

BALTER: Now, in some words that were written for the dinner booklet, when you were honored by the People's College of Law a few years ago, there was a mention--and I wonder if you could clarify this or vouch for its accuracy or what have you--that the State Department later responded to your analysis of international law before the tribunal or issued a white paper which was felt to be a response of some sort. There was some intimidation there.

ROSENWEIN: Now, they may have issued more than one white paper. That's probably true. But I had something with me when I went that had emanated from the State Department.

BALTER: I see, which you were actually answering?

ROSENWEIN: Yeah, yeah, I was answering. But they may very well have issued white papers later in answer to my argument and others who spoke.

BALTER: You mentioned the Oliver Goldsmith Society. I wonder if you could tell us what that was and how it came about.

ROSENWEIN: Let me tell you-- Well, it's very simple. A group of lawyers had their offices around Hollywood [Boulevard] and Vine [Street] in the Taft Building or close by the Taft Building. And I was there. Of course, Stanley Fleishman had his offices there, so I would turn up

there. We would be going out to lunch. "Look," I said, "I think we ought to call this the Oliver Goldsmith Society," because we had about, oh, I don't know, maybe about six or seven people or so. "Oliver Goldsmith," I said, "was a man who was not involved in politics or anything, temporized and all. He was just sort of a poet. So now, to hide any conspiracies or any conspiratorial discussion of politics and all, we'll call ourselves the Oliver Goldsmith Society." All of which was, of course, in fun, but the name stuck, and when we would meet, all of it would be [as] the Oliver Goldsmith Society.

BALTER: And this was during what period of time exactly that this went on?

ROSENWEIN: Well, I guess it's the early sixties. And that became known to a few other lawyers, so they began to turn up. So finally, we had about a dozen or so. And it was at that Goldsmith Society that we got this thing out against Vietnam, this ad in the L.A. Times. We collected money for it, because it was kind of expensive, and did some work on it. And I would assign it just as if we were [a] regular organization of one kind or another. But it was, you know, mostly in fun. But then it took on a more sober note, because at one time there was a man in from Mozambique. Mozambique at that time was rebelling against the Portuguese, and this fellow was one of the rebels. We

invited him to talk. So that became a little more interesting. We had someone else in from the other place, Angola. And he spoke. So obviously the Goldsmith Society began to have a sort of a social, political air to it. But these are all friends, all lawyers. And it went on for quite a while. We had fun. We had sometimes, I think, on one or two occasions, some black people who came that had particular problems of discrimination and asked us to solve some of those things. And that was it. And after a time, people's offices moved and Stanley moved out to Beverly Hills. So the thing somewhat disintegrated. There have been attempts to revive it, as a matter of fact, but it's difficult. People are so far apart now. They've gotten older or a little wiser, I suppose. And so it dwindled out. But it had a kind of interesting aspect to it that you could quickly organize and really get some things done that might be helpful to people just by a group of friendly spirits, kindred spirits getting together. I could assure you it was free from any political persuasion. That is to say, no one asked whether you're Republican or Democrat, and I imagine everybody of various political persuasions was there, if I remember the discussions.

BALTER: Now, besides you and Stanley Fleishman, do you recall any of the other regular members?

ROSENWEIN: As a matter of fact, I don't recall Stanley

coming to many of these things. No, they were just, oh, I don't know, just friends. They've all gone now. No, I can hardly remember them. The only thing I remember of the whole thing was-- No, I won't say this here. But we used to--

BALTER: Would you give me a modified version of what you were just about to say?

ROSENWEIN: Well, no. We used to eat at some restaurant that was close by, and the waitress would always be serving, so she got kind of friendly. And since I was sort of like a chairperson, she once asked me what my sign was. I said, "I'm Sagittarius." She said, "Oh, that's wonderful. Sagittarians are very good in bed." [laughter]

BALTER: Do you remember what restaurant you--? Did you eat in the same place all the time?

ROSENWEIN: Yes, we ate in the same place all the time. And it's now a Japanese place. It's no longer in existence. It's right there on Vine Street.

BALTER: Oh, is this perhaps Hatton's? Would that be correct?

ROSENWEIN: Hatton's. Absolutely!

BALTER: Yeah, now I just remembered that I read that in--

ROSENWEIN: Yeah, it was Hatton's. But Hatton's, I think, is gone now and some other--

BALTER: --some of the materials. All right. Such as the

saga of-- Actually, I'm not sure if I'm totally clear on who Oliver Goldsmith was. He was a poet and--

ROSENWEIN: Yeah, and a writer, an Englishman. He's the kind of person that I visualized as innocuous, I mean just a nice, decent guy and that's all. So I thought that's the name we ought to adopt.

BALTER: Now, Sam, I know that you also got involved in some legal work concerning civil rights activities that were going on in the South in the middle sixties. I'm interested in everything that you were involved in, but one thing does come to mind, and that is that I noted in some of your papers just this past October of this year 1985 a reunion of people who had participated in what was referred to as the "Mississippi congressional challenge," which seems to have been related to the struggle over the Mississippi Freedom Democratic Party, I gather. I wonder if you could tell me something about that.

ROSENWEIN: Well, you had a number of situations, all of them kind of important. If you go back a little, of course, there was a time when some of us would be running down to the South just to take care of individual cases, a black person who was in difficulty and had called for help. The Willie McGee case I think I've discussed. It was one of them, and there were others where you'd try to get in and help them in one form or another. Usually these were

criminal cases. But this in the 1960s was, of course, the beginning of the civil rights movement and the push to have the black people registered and vote, not be disenfranchised. And to do that we had to help them by-- [tape recorder off] Well, a great number of volunteers from all parts of the country came to help them register and to meet any legal problems that would arise, the use of these grandfather clauses that they had in the southern statutes and so forth. And lawyers volunteered and we had to review the laws. We had to think in terms of litigation, of going to court, and things of that kind. And so I helped in the preparation and helped in preparing lawyers for going down there and working. So eventually you have the Voting Rights Act of 1965 and you have-- All of this was a great effort and I thought quite successful. And congressional fights were along the same line. I mean, people wanted to run for Congress, and black people found that they were unable to get the votes for one reason or another. They were being disenfranchised. You had to read a part of the Constitution, you know, explain what the due-process clause means or the equal-protection clause and things of that kind, and sometimes even more complicated than that, so that [they were] easily able to get rid of certain people they wanted to get rid of. But we fought all that.

BALTER: You said that the election officials in the

South-- The irony of this is just incredible. Election officials in the South--

ROSENWEIN: Yeah, yeah. In the South, who didn't know a damn thing about--

BALTER: Had white people read the equal-protection clause to prove that they were not--

ROSENWEIN: Yeah, yeah, it was pretty ironic. But that was the kind of struggle we had, and I thought it was quite successful and a great effort by lawyers, especially, who volunteered. And then we have many stories. One could go on forever. A number of the women lawyers, I remember-- Let's see, Rose Rosenberg (she's now gone) and other women lawyers who were down there, they went to Jackson, Mississippi, and what's the first thing they do? First of all, they're arrested for no reason at all, then they're strip-searched and subjected to all those indignities. But by golly, they all held out and they all fought and they did very, very good work. Other lawyers couldn't get any accommodations. You had to sleep in the homes of the black people. There wasn't a single black person who didn't have some kind of a rifle or something for his protection, his or her protection. So, you know, all of these stories became part of the picture.

BALTER: Did you travel to the South yourself?

ROSENWEIN: No, I didn't go down. No, I was, well, too old



for that stuff, they said. But I prepared lawyers as they went down.

BALTER: Now, what were some of the legal strategies or approaches that you were using at that time in all this?

ROSENWEIN: Well, they were really fundamentally legal, constitutional rights, the right to vote, of course, fundamental, basic. If they resorted to this kind of constitutional reading and all that, we held that to be biased and prejudicial deprivation of the rights of these people. Even if they couldn't interpret the due-process clause like the Supreme Court does, nevertheless, they had a right to vote. So we brought on that litigation and tried to get decisions from the courts, and to some degree were successful. We had people at the polls to help them in voting and every form, both legal and just in assistance, in just explaining what was going on so that they understood what it meant to vote and go into a [voting booth] and not be fearful. Those were the kinds of things that we did. So we were in court all the time and many cases were won that way and finally [we] got what we wanted.

BALTER: Sam, were you involved directly in the attempts by the Mississippi Freedom Democratic Party to get seated at the 1964 Democratic convention?

ROSENWEIN: No, I don't recall that. I don't recall

that. I get constant requests either by phone or by letter as to suggestions on how to handle these things legally. And many a time I've done that, so that it's possible I could have answered questions, but I don't think I was directly involved in that aspect of it. But I've many good friends who I've helped and who've worked with me. And there's a fellow now in Congress [from Michigan], George W. Crockett [Jr.]. We've been friends ever since the time he was an attorney for the communist leaders way back in 1949, I guess.

BALTER: Right, you mentioned him.

ROSENWEIN: Yeah, and then he became a judge and now he's in Congress. We correspond once in a while. And he's still a very good fellow. And he's still bringing actions against the administration for their intervention in Central America and so on. So they're good people that I met, Ralph [E.] Powe and others, yeah.

BALTER: I understand that you also were involved in some way in some of the draft counseling, draft resisting--

ROSENWEIN: Now, the draft counseling, there we set up a committee. Bill [William G.] Smith really headed it up, a very fine lawyer. And again this meant a lot of criminal litigation. This meant people who didn't want to go and therefore were indicted. And there I came to explain the various federal rules of criminal procedure, because these

were all federal cases, and discussed with lawyers positions that one would take in court legally and constitutionally and all aspects of litigation, just as if a regular criminal trial but with a great deal of political overtones, so that one had to approach it in two ways: one, legally, but yet bring before the court and jury the political aspects of it, the moral aspects of it. All of that had to be brought before a jury. So I helped in that.

BALTER: I had the impression that generally the attempts to challenge the draft laws and so forth were not particularly successful. Is that the case or were there exceptions to that?

ROSENWEIN: There were exceptions in the sense that here and there a jury acquitted. Those were the exceptions. As far as the actual attempt to have the whole thing declared illegal, we went up to the United States Supreme Court and certiorari was denied. Justice [William O.] Douglas was the only one who wanted to hear the case. But when you got before a jury, you saw occasionally they would come back with a verdict of not guilty. And the way you did that is interesting because you can always go to the jury and emphasize history. Well, that is to say, you're allowed to talk to the jury about the history of the jury system and what its function is and their ability and their right to decide all issues of fact. No one can tell them how to

decide that, not a judge or anybody else. They have to take the law from the judge as applied to the facts, but as far as the facts are concerned, they're the last word. Now, if they begin to realize, "Well, if we're the last word, even if the judge says the law is so-and-so and we come back with a not guilty verdict, nobody can do anything about it." So here and there, properly presented-- I say "properly." Of course, the prosecutor wouldn't agree with that. But properly presented, a jury might be convinced sending this kid to jail because he really can't see, as a matter of conscience, going to Vietnam would be unfair. And here and there, there was an acquittal. Not too many. Most of the juries obviously are easily stampeded, war and support the country and all. But we did get a few acquittals.

BALTER: And do any stand out in particular? One or two cases with the specifics?

ROSENWEIN: Well, there was a friend of mine, she's dead now, Harriet Buhai, who represented a student. And Harriet was a good lawyer and she got an acquittal. I remember that. We all had a great deal of satisfaction from that. Of course, you have to realize also, there were many other legal problems involved. When I said "legal," there were conscientious objectors, and conscientious objection was a ground for deferment. And there was the development of

their outlook. The Supreme Court had held that it doesn't necessarily mean that you had to believe in God, but if you had a conscience that was akin to a belief in a supreme being, that would be enough to justify a conscientious objection and not going. Well, as a result, there were some really sincere people, conscientious objectors, who didn't want to go. And there where the draft board took a different view we would have administrative appeals and we would have actions that sometimes were very successful in getting these people out of the army.

Now, what I found interesting also were some of the young people, politically motivated, who, far from wanting to claim a conscientious objection when they could have, insisted on going into the army, their theory being that then they would be able to talk to the various soldiers and say to them, "We're into something that we shouldn't be in," that kind of thing. I wasn't happy about that, but there were some who actually did that.

BALTER: I believe the Progressive Labor Party and some people in the Students for a Democratic Society [SDS] took that position.

ROSENWEIN: Yeah, that may be.

BALTER: Or do you recall other organizations--?

BALTER: No, I don't, I don't recall organizations. I just recall meeting these individuals, as we chatted and all.

And I would say, "But if you are a conscientious objector, I mean, why would you want to get involved in it?" And they said, "Well, we think we ought to be in there and talking to people."

BALTER: Oh, so these were not people who were members of organized groups, but they're just individuals?

ROSENWEIN: No, no. Yeah, individuals who came and talked about problems of the draft and so on, because there was a whole committee on draft counseling, and they would come and they knew about it. But I respected it even if I didn't quite agree with it. I didn't want them to get killed. That was the short of it.

TAPE NUMBER: V, SIDE TWO

DECEMBER 19, 1985

BALTER: Sam, the draft counseling center that you've been talking about, about how long did that stay in existence, would you say?

ROSENWEIN: Well, I think it stayed in existence about as long as our involvement in Vietnam, until about the time when things began to wind up. It stayed in existence all that time. I haven't been there; I have no idea now how it works. But there still are problems now because of the requirement--I think you have to register, at least eighteen year olds have to register. Then there have been people who don't want to, and there's been litigation about that. So I imagine that there are some people still advising. But I've been out of that; I mean, I haven't been in that recently at all.

BALTER: Other than Bill Smith, do you recall any of the other attorneys who were a part of that?

ROSENWEIN: I really don't. I remember Harriet [Buhai] of course, but, you know, many of these people just come and go, and I just looked at faces when I came down because generally what I was doing there was lecturing on the rules of criminal procedure and the litigation and the problems of picking juries and things of that kind that my experience helped. But just occasionally [I] would talk to

a young person. But other than that I didn't know much of the other people. They all seemed like pretty nice people, as far as I could tell.

BALTER: Now, Sam, you were involved in some way in the *Younger v. Harris* [et al.] case which went up to the Supreme Court.

ROSENWEIN: I'll say I was involved in some way!

BALTER: And because I'm not exactly familiar with the extent of it, I'm going to let you tell me.

ROSENWEIN: Well, I'll tell you. At one time, a man named [Leonard] Deadwyler--a black man--was riding in a automobile and a police officer stopped him. The police officer had a rifle, I think, for some reason. And the story was that he asked Deadwyler questions and then Deadwyler suddenly started his car, and the police officer claimed that he was going to ride over him or something and he shot and killed Deadwyler. There was a tremendous protest against this from the black area, and so a hearing was held with respect to it at city hall somewhere in order to accommodate the large crowds that wanted to come. And the crowds were coming in, and there were young people outside who were handing out leaflets of one kind or another. [John] Harris [Jr.] was one of them. I forget whether the party was the Progressive Party or Socialist--

BALTER: I believe Progressive Labor Party.



ROSENWEIN: Progressive Labor Party. And what happened was that a couple [of the] leaflets that he handed out were shown to a police officer, and the police officer then took him in because it seemed to him it was pretty incendiary. And what the leaflets really claimed was that the blacks should take over their own community and they should run their own community and get rid of all these police, Nazis, and other things. You know the kind of tough language. And there were quotes from that famous Muslim leader who later was assassinated.

BALTER: Malcolm X?

ROSENWEIN: Malcolm X. That kind of thing. Those two leaflets. I mean, looking back at it now one would almost think they were harmless. But in any event, they were made the subject of an indictment. He was charged with the violation of the criminal syndicalism law, and that was a law that was passed during the IWW [International Workers of the World] days many years ago when the International Workers were sitting in and sabotaging. And this is directed against any kind of advocacy, teaching, organizing for sabotage, terrorism, or whatnot--all for the purpose of changing our form of government. Very lengthy kind of statute. And you get fourteen years if there's a conviction. He was charged with two counts, so he faced twenty-eight years for these two leaflets. Each leaflet

was made part of the count. Well, he was represented by a lawyer named Frank Pestana. And he was convicted. Let's see, was he convicted? [pause] Well, I think he was convicted. But then they went into the federal court immediately to attack the statute as vague and ambiguous, in violation of the First Amendment, etc. The federal court at that time was a three-judge court, so-called. They don't have that anymore. It was composed of two district judges and one court of appeals judge. And they held it to be invalid, unconstitutional. And under the law, when you had a three-judge court making such a decision, the government could appeal directly to the United States Supreme Court, which it did.

It was at that time Frank asked me if I would undertake to argue it in the United States Supreme Court. And, of course, all voluntary. It cost me about \$1,000. I had to go to Washington and I had to stay in a hotel, and so on. I could hardly spare the thousand, but I did it. And I argued before the Court. Now, the fundamental basis for our argument was simply with respect to a decision that the Supreme Court itself had rendered some years before, in which they had held that where there is a statute which on its face has the effect of chilling the exercise of speech, or one form of communication or another, and which would cause irreparable injury and result in harassment and all

that, that you could have an injunction against it. And it was that basis that we had gotten the injunction and declaratory relief that it was invalid. When I got up to argue before the United States Supreme Court-- By the way, when we went to the federal court, we joined as plaintiff not only Harris but a teacher who taught socialism or something, political science, in a university--plus two other members of the party.

BALTER: Do you remember any of their names?

ROSENWEIN: God, I've forgotten them. But I think in--

BALTER: They would be in the court records?

ROSENWEIN: Yeah, the records. The Supreme Court simply said, as far as these fellows are concerned, "What? Did anybody threaten them?" And I had to answer, "No, nobody's threatened the teacher, nobody. But he has alleged in his complaint that he's afraid to teach because he teaches political science [and] he has to discuss socialism. And here they're using the criminal syndicalism law because of a leaflet that somebody said, 'We ought to take care of ourselves' or something of that kind." And the party members--I think these were Socialist Workers [Party], labor party, or something--also made the same allegations that the statute chilled them. Well, my friends [Hugo L.] Black and [Thurgood] Marshall-- Marshall I had known from the National Lawyers Guild days. He had been a member of

the National Lawyers Guild. They went after me!

Conservatives were not after me, the liberals were after me! And they're saying, "But nobody threatened, nobody put you in jail." We're talking now of these teachers and-- I said, "But it's just a chilling effect of the statute."

And to them, that was not enough. In any event, the final decision was not a ruling on the validity of the statute at all but a ruling that has become pretty well-- After I had argued that, they did not come down with a decision.

Instead, they set the case down for reargument at the next term. This means always that they're in trouble. I mean, they're fighting each other of one kind or another, because usually they make it a practice of deciding every case that comes before them at one term, and if they set it down for reargument it means that the judges are divided. When it was set down for reargument I told Frank that I couldn't go again, but Al [Abraham Lincoln] Wirin went for the ACLU [American Civil Liberties Union], and he argued and was subjected to about the same thing. Then the ruling came down to the effect that a federal court should not enjoin criminal prosecutions in a state court, where you have the right to raise the question of constitutionality of a statute under the federal constitution, and the federal courts ought to stay out of it. Now, that was a very unique, novel, and precedent-setting ruling, because it had

always been understood that you could always go to the federal court to get relief because there are federal rights as well as state rights. And the whole purpose of the law of 1983 [42USE. Sept. 1983], the statute that allows you to do that-- Anyway, that was the ultimate ruling. And what is interesting about it thereafter, when that ruling came down, we then proceeded, since no decision had been made now on the validity of the state statute, we proceeded to file a petition for the writ of habeas corpus. In the state court it was denied. We then went up to the district court of appeal to--

BALTER: Of California?

ROSENWEIN: Of California. We're in California now. That's what we were told to do. While it's there in the district court of appeal of California, a criminal syndicalism law is up before the United States Supreme Court square cut! There's been a state conviction of some Ku Klux [Klan]ers under the criminal syndicalism law, see? And this time the Court is holding that the statute is unconstitutional. They knocked out the statute in *Brandenburg v. Ohio*. We then came back to the court of appeals, showed them *Brandenburg v. Ohio*, and they declared the state statute unconstitutional. We had fought this thing for seven years, and he never spent a day in jail. So justice delayed is not always justice denied.

[laughter] That's *Younger v. Harris*.

BALTER: And that would of course have been Evelle Younger, who was a district attorney of L.A. County at the time.

ROSENWEIN: Yeah, yeah, right, right.

BALTER: Good. Is it possible that the argument in *Younger v. Harris* had some later effect, perhaps, on *Brandenburg v. Ohio*? Would you see them as related in any way?

ROSENWEIN: Oh, yes. I would think so. I think that what the struggle must have been is [that] some of them must have wanted to say, "Let's pass on the validity of the statute anyway. Let's not get into injunctions against state criminal proceeding. Let's pass on it." And some of them said, "No, let's just send it back and say, 'You can't issue an injunction against criminal proceeding. Go to the state court.'" But I'm sure that some of them were already agreed that that statute was unconstitutional. The criminal syndicalism laws had become outdated, yeah, and not something that you would use today.

BALTER: Now, as we enter the seventies--following a decade-by-decade motif here--you begin to finish up with some of the obscenity cases and so forth, and the war in Vietnam is winding down eventually. What are some of the things that you then got involved in? What became your priorities?

ROSENWEIN: Let's see, where are we? We're in the

seventies. I don't recall specifically. I was involved in litigation, did litigation. I did guild work. I delivered a course on legal research for lawyers, and again there I was more interested in the outlook of lawyers. You know, most lawyers are supposed to think as lawyers. I wanted them to think period, which meant bringing into the law philosophy, morals, psychology. Bring into it all the interdisciplinary-- So you really understand why decisions come down and how to deal with clients and how to deal with judges and how to deal with institutions. Many times you're suing the insurance company or you're suing a big corporation. But how does a corporation work? How does it govern itself inside? How does it deal with the outside world? General Motors [Corporation] is a little country in itself. It has thousands of employees all over the world, you know. It has a treasury that's larger than ours, that kind of thing. Do you understand that as you sue General Motors? That was the kind of thing I tried to develop in lawyers. Then I've always tried to develop among the lawyers in the guild, sometimes when I talked, to have certain attitudes, certain values [when] you approach your cases. You just can't stand aside. You've got to be opposed to oppression and exploitation and so on. You've got to favor life over death. That's the kind of thing. And that's why today I'm very busy trying to get the judges

of the [California] Supreme Court retained, including Chief Justice [Rose E.] Bird.

BALTER: Are you active in that campaign?

ROSENWEIN: I'm quite active in that. And now I'm making a study of all their decisions. The time that she ascended the bench was about 1978. Others are analyzing criminal cases that the court was involved in and so on. But I am going through all the decisions on the civil side which have been helpful to workers, which have been helpful to women, which have been helpful to Latinos and to blacks, to point out to all these groups to get out and vote because this is a court that really wants to help, that has decided things in your favor. And the boys that are coming on, the [Governor George] Deukmejian bunch, are going to take it all away. That's the [Warren E.] Burger court again. I hope this doesn't sound all too treasonable, but I mean-- That's exactly the kind of thing that I'm doing.

BALTER: Now, are you working with a particular organization on this?

ROSENWEIN: No. I hope very soon to get out a report and submit it to the guild, maybe send it up to the committee for use by speakers and so on. Now, of course, you know [it] depends on the organization you go to. And you'll never avoid questions of capital punishment. Obviously that's on everybody's mind. That's the way these writers



have manipulated the mind of the people. But my point is [that] having shown good things that they've done, you can handle the capital punishment. There's no doubt in my mind if I go to a black organization I'm going to say, "Do you know who [are] the large percentage of people who are executed?" When I go to a Jewish organization I remind them about Stalin, who felt that the Jewish doctors are going to kill them, so you had them all executed. Years later the Soviet Union apologized to the families. I said, "What good is the apology? If they'd put these fellows in jail they would then have all been freed." So capital punishment very often results in killing the innocent. In addition, if it's going to be revenge, if it's just revenge, what revenge is it to snuff out a person's life in one minute? He's at peace. What have you accomplished? If you put him in jail for thirty or forty years, well, he would suffer through that period. You know, he would grow and he'd have to develop, he'd have to think about those things. That's suffering. If you want revenge, if that's what you're after--because it certainly is not a deterrence--then you're getting it. Well, then I'm told, "Well, we're not going to pay taxes for thirty or forty years in prison." "Well," I said, "he can be useful. You have medical experiments sometimes; prisoners are used and they can be very helpful. They can work and pay off." So

I try to get all this together. The trouble is I can't get people to work on all this. I want them to get out and talk. Unhappily, she [Bird] has-- Well, I don't know her reasons. She herself, the chief justice, has been reluctant to get into the political fight so much, and she's made one or two speeches but--

BALTER: Do you think she has a chance of retaining her position?

ROSENWEIN: We're all very pessimistic. But on the other hand, proper working-- Although we're up against millions of lies. They can be put on TV, as you know. They're preparing a whole film. They're going to say, "She's not a good administrator, she's not a good judge, she doesn't know what she's doing, and she's just coddling the criminals." We're going to have to fight against all that, and it's very difficult. But with it all I have a feeling that if we had enough volunteer speakers--the lawyers should be doing this because, after all, they're supposed to be familiar with this area--going out to the various organizations, Latino organizations, black organizations-- "Get out and vote, and vote yes on these people." I go now to social gatherings where people are just having a Christmas celebration, and I agitate everybody, "Vote for Rose Bird." Some of them get disgusted with my coming around talking politics on Christmas, [at] Christmas

parties! But if we do all that, I think we could still beat the rap, but it's hard.

BALTER: Now, just a few more things I want to talk about. One is, you were involved in the founding of the People's College of Law here in Los Angeles.

ROSENWEIN: That's true.

BALTER: I wonder if you could-- A law school which has now been in existence for a number of years--

ROSENWEIN: Yeah, I think it's about a little over ten years now. I think it was 1975. Well, there were three organizations. There was a Latino organization [La Raza National Law Students Association], a black organization [National Conference of Black Lawyers], and a gay organization, young people who got together, collected \$50,000, and were able to start a law school.

BALTER: Which organizations were these?

ROSENWEIN: I wish I could remember all these names. One had the name Raza in it. That's the Latino one. Then there was a black group of one kind or another. I really don't remember the names.

BALTER: Okay.

ROSENWEIN: And with the payment of \$50,000, they were enabled to get the license or permission-- I think it's a license to operate a law school. Of course, you start off being unaccredited, which means that you have not yet

achieved the kind of law library, the kind of faculty, the kind of standing, attendance records and quality of the students coming in, their so-called aptitude test. So until you're able to accomplish all that, you're unaccredited. But you operate just as any other law school. We have three phases really here. We have unaccredited law schools; we have accredited law schools from California, they're California accredited; and then we have what is known as the American Bar Association-accredited law schools. Those are considered the highest standing. Of course the standards are the highest required, something like UCLA, Southwestern Law School, USC [University of Southern California]. Those are-- While there's certain colleges, certain law schools like Glendale [University College of Law], and San Fernando [Valley College of Law] are California accredited. While People's law school and some other law schools still remain unaccredited.

I volunteered a time--people came to talk to me about it--to speak, to teach. And I taught at the beginning legal research, the judicial process entirely. And there were other volunteers, lawyers. It's always been volunteers and mostly *pro bono*. Later on they began to pay some minimum amount, all of which I always turned back.

But the school was composed generally of Latinos and blacks and Asians, and some gays I assume. And it did very

well. Of course, it's run entirely by the students. I've been out of there now for about two years, but the whole time I was there it was run entirely by the students. And they took care of the building, they cleaned and all. The fees were, of course, less than the ordinary law school. Virtually everybody who came was working and also had some political outlook, you know, liberal. They had some kind of admissions committee that made sure that they didn't get any Republicans in or something of that kind. But the students are highly motivated and very bright, but most of them couldn't communicate, couldn't write. The Caucasians who came, the whites, usually had had the benefit of a better education. The others had suffered from discrimination.

There were other things. I noticed also that the Asians did very well, worked hard and so on. That wasn't true of Latinos so much or the blacks as much, who seemed to suffer more from these inadequacies from the past. And then everybody's working and most of them have families. And it's kind of difficult to study, and they don't know how to study. So you take all those things combined, it was almost a miracle that we got, I think, maybe a hundred by this time, or more, who graduated, became lawyers, took the bar and passed.

In recent years things have slowed down. They seemed

to have gotten into trouble financially and all those problems. And they always had a mortgage on their building. And as different groups took charge--students left and new students took charge--apparently a little more radical, they kept out some of the Caucasians who used to help, and the result has been that they've gone down in passing and so on. They have to take a "baby bar," they call it. After the first year, if you're unaccredited, you have to take a bar exam. The first year covers contract, torts, and criminal law. And you cannot go on unless you pass that. Sometimes, they're there for two or three years just at the first stage. But many of them have gone on, and they keep on taking the bar exam again and again until they pass.

And I see many of them and see them in the law library and [have] kept in touch with them. Only a few weeks ago I had for Thanksgiving Shu Wong, who's a Chinese woman, very able and passed the bar the first time. She is practicing now. And the whole point of the whole thing is that when you have the Latinas kissing you all the time and hugging you, that's great to be teaching at the People's law school. No, they are a very, very good group, but it's difficult, difficult for them. And you see there the pain of not having them get the education that they really should be getting, should have gotten.

BALTER: Now, Sam, while we're on the subject of teaching, I'll just say in passing, as I understand it, you have taught over the past several years at a number of different law schools.

ROSENWEIN: I've taught at San Fernando and I've taught at Glendale and I've taught at Southwestern. I guess that's about it.

BALTER: Just for the record, I noticed that in 1980 Stanley Fleishman, yourself, and Herb Krimmel were voted top professors by the student poll. So that's quite an honor, I'm sure.

ROSENWEIN: Right. I say to myself all the time, "Is that because we were easy on the final exams?" [laughter]

BALTER: Well, you made some sort of an impression, let's put it that way. [tape recorder off]

Sam, one thing that I wanted to ask you about--because I think it's interesting from the point of view of your thinking, both politically and as an attorney, which may seem like, at least on the surface of things, a contradiction to many people--would be your reputation for First Amendment cases: obscenity, the right of people to say and--

ROSENWEIN: Right of communists to advocate anything they want? Including forcible overthrow of the government?

BALTER: Exactly. Then we come with the situation several

years ago in Skokie, Illinois, where the Nazis and the Ku Klux Klan want to march and the city of Skokie isn't going to give them a permit to do this. And the ACLU takes their case. There's a big controversy within the ACLU, with you a part of that discussion. And I will let you describe your position on that and your reasons for taking it.

ROSENWEIN: Well, let me give just a slight background on that.

BALTER: All right.

ROSENWEIN: Many years ago, around the 1940s, there was a Father [Frank] Terminiello who was a bitter antiblack, anti-Semite--somewhat, not exactly, like Father [Charles E.] Coughlin. I don't know if you remember him, but he also was the one who was blaring out over the radio. In any event, there was a litigation. Terminiello had spoken at some affair. There was picketing outside, and there was a ruckus inside. People were arrested. And eventually, some people were charged with violations, disturbing the peace and what not. And they went up to the United States Supreme Court. The case is called *Terminiello v. Chicago*, so I imagine that he was the one who really got involved in it. Now, the upshot of it was that Terminiello's right to advocate was upheld. What he did advocate-- He said something about blacks should be treated like vermin and they should be stepped on, things of that kind. It was



held, nevertheless, to be protected speech, so long [as] it didn't call for immediate action.

At that time I wrote for the National Lawyers Guild quarterly--I think it was a quarterly at that time--an article on the Terminiello case. And I argued, of course, first of all that the Supreme Court should not have rendered that kind of decision. He hadn't raised it that way. He had raised some other technicality, and it was not necessary for them to decide. But however, since they had, I proposed to go into it. And it was my opinion, it was my feeling that advocacy of anti-Semitism, advocacy of racism were not ideas that were protected by the First Amendment. That was the kind of development I had. I want to say that all of this appeared in the Lawyers Guild [publication]. Not one single lawyer in the guild ever agreed with that. And I was a lonely advocate of that position until the last few years, when I've gotten a few more converts. Of course, those converts have come because in between the forties and so on came news of the Holocaust and all that, so it made a big difference. But the thesis that I developed is something along these lines: That if you really study the First Amendment and what it meant, it was the advocacy of ideas. Any kind of an idea, no matter how distasteful, if it was an idea, it was protected under the First Amendment. But you still had to define "idea."

What is an idea? I mean, as I move my lips now, am I protected merely because I'm just moving my lips? Is every utterance that comes out absolutely protected? That is simply the question. We know now, of course, that certain things are not. We know that obscenity, properly defined, is not protected. And we know that certain incitements to action are not, even though it be just language. So there's no absolutism about the First Amendment. There are lines.

But what is an idea? My notion is that the Holocaust and the condemnation by the whole decent world of genocide, of killing people merely because of their religion or their color or their faith, or whatever, is simply so outside the realm of ideas, it's just dirt. The notion that I advocate the killing of six million Catholics-- Yes, I'm standing here at the corner and [saying] they should be put into concentration camps and then into gas chambers and killed. And that the First Amendment allows me to say that-- To say that mankind accepts this as an idea seemed to me was wrong. I used to pose to people, I said, "Supposing you were asked to come down to some Jewish community center, some large community center, and told there's a debate going on. One man takes the view that all Jews should be killed. Now, we would need somebody to oppose that. Would you go down to debate that?" Because

if you say you would go down, there's nothing for us to discuss, because in my opinion, you would say, "That's not an issue that's debatable. I mean, I'm not going to discuss that. That's dirt." And that fundamentally has been my thesis.

Now, people have said, "Well, but I mean it's not a clear and present danger, or if it is a clear and present danger--" But clear and present danger is in the area of freedom of speech. That is simply one aspect of ideas [that] can be expressed unless it's a clear and present danger. But I don't want to take the view that it was or wasn't a clear and present danger at Skokie. I take the view that these people are saying in so many words as they march, "Kill them all." And by golly, that's something that I am opposed to. I will say, of course, also that that goes for advocacy of anti-Semitism or racism, and I'm getting around to warmongering. But of course, it is true that some of my friends say, "Sam, if you're going to take this kind of position, then the boys on top are going to say, 'Well, communists can't talk. Socialists can't talk.'" And my answer to that is, that's precisely where you should struggle. Because communism, [although] it may be hateful to many people, is nevertheless an idea. Marxism is ideas. And you have to fight to say, "You don't like it? Okay. But it's still protected." That's true of

socialism as well. But to say that advocacy of genocide, killing people merely because of their faith or something-- That is not something that mankind accepts, and we shouldn't accept, as an idea. All right. That's enough propaganda for that.

BALTER: Well, just to play devil's advocate--

ROSENWEIN: Oh, I was worried about that.

BALTER: I'm sure that for the purpose of exploring what you're thinking of, for just a little bit further for another few minutes-- It strikes me that even for someone who might agree with you that the First Amendment is not intended to be or should not be absolute, people who do not consider themselves absolutist on the First Amendment, that nevertheless, people, when there's the question-- And you can appreciate this as an attorney in trying to establish a principle from which then decisions and behavior and so forth--court decisions as well as decisions politically-- then flow from. That you get into what are so-called gray areas. Who's going to draw the line, for example, on the question of what is an idea and what is not? If John Harris in *Younger v. Harris* passes out a leaflet saying black people should organize to take control of their--

ROSENWEIN: Own lives.

BALTER: --own lives and their communities, he may be advocating some fairly specific actions. He may even be

advocating, who knows, rent strikes against slumlords and things like that that certainly are outside of the realm of ideas and into the realm of actions. And so, in other words, the devil would say to you, "How can you make that distinction a possible distinction to make?"

ROSENWEIN: Well, first of all, I've tried to touch on it, but in most of the things we do we do line drawing. We're always drawing lines. There are no real absolutes in the Constitution. Search and seizure has to be reasonable. What is or isn't reasonable will depend. I mean, you draw lines all the time. But my answer to that constantly is, if you're talking about advocacy by Harris or advocacy of things that people may not like, I am prepared to show that everything that was in that leaflet--which I did of course--everything that is in that leaflet embodied ideas of one kind or another. Rent strikes. I mean he didn't say, "Go and do the strike immediately." You know, it wasn't a case of incitement to action in that sense. You know, that's what they're talking about when you say clear and present danger. He was saying, "I think there should be rent strikes." That is an idea. You may not like it. Of course, as a landlord you wouldn't. But the point is, it still is an idea. And I am prepared to struggle on that. I am not, as I told the ACLU, prepared for you to say, "Well look, Sam, we have to advocate genocide. We have to

advocate anti-Semitism and racism in order for the communists to be able to advocate." Because the answer to that is we are going to commit suicide, because in the long run, the Hitler regime tells us what happens when we have this kind of "everybody now go ahead." Advocate genocide and advocate cleanliness. Everything is all the same. And I have the view that it's a denial of struggle. It's getting away.

I want to say I didn't resign from the ACLU. Many people did. The ACLU is a wonderful organization and does great work, but in that aspect I was not in agreement. But again, I think it's a case of fighting in the right area. That I think is the point. But you guys don't want to fight. I mean, you just like to say, "Well, let everybody talk and that will be the end of it." Well, that's not enough for me. And I am not prepared in the light of what happened, not only genocide as far as the Jews are concerned, but genocide all over the world, the blacks and the Asians and everything else. For me to accept [that] the advocacy of that kind of genocide is justified--"Let's kill them all," you know--is beyond me.

BALTER: Sam, we're just about ready to complete, but before we do, why don't tell me very briefly what your sons are doing nowadays and where they live.

ROSENWEIN: All right. My older son, Bob [Robert E.

Rosenwein], is a teacher, a professor at Lehigh University, and he teaches social psychology. Bob graduated from the University of Michigan after getting his B.A. from [University of California] Berkeley. He has a Ph.D. He has tenure, of course, and has written a number of books on aspects of psychology. And he's married to Linda Townes [Rosenwein], who's the daughter of Charles Townes, who got the Nobel Prize for the invention of the laser beam. Linda is a clinical psychologist.

BALTER: And your son Tom?

ROSENWEIN: Bob and Linda have no children. My son Tom [Thomas D. Rosenwein] went to the University of Chicago, got a master's in social work, worked at the Bettelheim Institute, went to law school, De Paul law school [De Paul University College of Law] at night, became a lawyer, was invited by one of the professors there to come into the law firm. The law firm is Karon, Morrison, and Savikas. It's a firm with about a hundred lawyers in it. And he's now an associate, or whatever rank there is there in the hierarchy, and is making a hell of a lot more money than I ever made. And his wife Barbara [H. Rosenwein] is at Loyola [University of Chicago], teaches medieval history. She has her Ph.D. and tenure there. She's written extensively on medieval history and lectured and spoken. And they have twins about seven years old, [my]

grandchildren. You know, of course, that the grandchildren are the most beautiful and the smartest there are. And that's it.

BALTER: Well, Sam, that brings us to the end of our odyssey through your life.

ROSENWEIN: Well, let me say I've enjoyed it. I just want to say one thing if I have time. Have I?

BALTER: Thirty seconds left on this tape.

ROSENWEIN: Thirty seconds? All right.

BALTER: We could always go to another tape.

ROSENWEIN: All right.



TAPE NUMBER: VI, SIDE ONE

DECEMBER 19, 1985

BALTER: Sam, you had some concluding remarks you wanted to make.

ROSENWEIN: Well, I found these inquiries and discussions that we've had very interesting. You know, when a playwright writes a play, he has to collapse his thoughts within a period of, say, two or three hours. That's as long as the audience is going to be there. When a district attorney is prosecuting somebody, he collapses the evidence against this man to show him that he's absolutely wicked. There's nothing about that at home he sometimes gets headaches or he kisses his wife. That's all left out. And the defendant collapses all that to show he's all good. There's a constant collapsing. And I find it here also interesting that the exigencies of time require that we collapse my life into this period, whether it's five tapes or six tapes or whatnot. The days when one had the pain that came from not making a living; the days when you wondered, "How am I going to take care of my wife and children?"; the days where you wondered whether the FBI [Federal Bureau of Investigation] would be knocking at the door, all of these; the heartbeats when you're getting up before a court like the Supreme Court--all of this has to be omitted. So that you get a picture of my life that's

kind of collapsed. And I have a feeling that I still have to write my autobiography, that this will not be quite enough to cover everything that I really want to say, because there was an environment that was in both in the Depression days and thereafter that played so much a part in my activities. You can't divorce them. And [the] development of my own thinking, all is something that I want to someday put down. But this will be very helpful. It will enable me to get the autobiography out that I want to get [out], with the title **I Was Not a Dupe**. [laughter]

BALTER: There's something very provocative in what you say. Perhaps you could do me and other oral historians a favor by saying, in this oral interview technique, where you feel perhaps you would be able to include things that you were not able to include here, or perhaps expand or whatever? What type of information, experiences, thoughts, feelings, and so forth have you found in the course of this oral history to have been more difficult or impossible to relay in a taped interview format?

ROSENWEIN: I assume a great deal differs, depending on the people that you're talking to. But if you're talking to radical lawyers, the one thing the radical lawyer is worried about all the time is "I don't want to name people." He's concerned about that because he's gone through too many bitter lessons. And you can give him all

the assurances to the world that this won't be known for two hundred years, and yet he has the feeling that the FBI will be looking at it the day after. So you have that problem of trying to avoid what, narrowly, one would be reluctant to avoid, to talk more openly about the radical movement and the things that were involved. And I suppose it's a challenge how to get that out. As a lawyer I had a number of conversations with [William Z.] Foster and with Gene [Eugene] Dennis and all the others, but again, you know, you're always reluctant to get too immersed and to open up doors. So I think that that's one problem.

And secondly, I think, as I say, there has to be more exploration of not only what was the atmosphere at the time, what was the situation in 1930 or '40 or '50, what was going on politically, economically, socially outside yourself, but in addition, how are you relating to all of these things? I mean, how are you and your friends moving around socially and everywhere else? How are you talking, and what were you doing to induce other people and recruiting people and things of that kind. And just how did you make a living? I mean, how did you do it? I was getting fees of three dollars, and the bank would be calling me [to] say, "You haven't got anything in the bank." And you're [overdrawn], and there's a constant worry and concern. At the same time, you had to work at

the law and had to represent clients. And then there was the whole feeling that here you are individually representing people, and sometimes you're opposed to big shots from big law firms. What's going on in the legal world? I mean, how are various lawyers getting along economically? Why did we combine and why did we move this way? And what was our involvement in WPA [Works Progress Administration] and things of that kind. But I would say that to do that--and I'm sure that that's probably not possible financially and otherwise--you would have to keep on talking to me, for example, for months, just absolutely for months. And I, of course, would have to do a lot of soul-searching to get it all out, but it would be entirely different. But I say I understand that you have to just collapse it. I mean there's no other way. You can't help it.

BALTER: What we have to hope is that we have captured the most important aspects. And as far as your oral history goes, as soon as you finish your autobiography, we will get it up on the shelf next to it.

ROSENWEIN: All right. Good idea!

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