

This interview is being conducted on behalf of the Oral History Project of the District of Columbia Circuit. The interviewee is David Ginsburg. The interviewer is Jeffrey F. Liss. This session took place on the 15th day of July 1998 at 10:40 a.m.

Mr. Liss: David, where we left off last time was in the Nazi war camps and I thought what we might turn to today is your return to the U.S. and your entry into private practice. So if you could bring us up to that point I would appreciate it.

Mr. Ginsburg: The latter part of 1945, I was still in Berlin, I had attended the Potsdam Conference, comprised of the four powers, England, France, the Russians and ourselves. The basic problem was how to govern Germany after the war. There were other problems. I worked with General Clay and the others in the group through the rest of that year. In the spring, I went to Paris, for the Paris Peace Conference on behalf of General Clay as an observer, and reported back to him. By that time I had been so-called civilianized, and began to make plans to leave the Army. The war with Japan was still going on and the military was moving east, but I had been in the army now for nearly four years and it was time to go home.

In mid-1946 I returned to the United States. My father had died; I took my mother for a vacation and then came back to Washington. I visited her in Huntington, preparing for our vacation in Virginia Beach, and we spent two or three weeks at the beach. I took her back to Huntington and returned to Washington.

What was I to do? I had no records, no books, no lists of contacts. I knew very few people here in the city, I had been in government since 1935. So I concluded that I should find out where I wanted to live for the rest of my life. I had some money saved up during the wartime years. I visited New York and talked with some of the firms there, but I didn't want to practice in New York. I went to Philadelphia and was interviewed by some firms there; I liked

Philadelphia. I went on to Chicago, to Denver, visited L.A. and then San Francisco. I liked San Francisco very much but I felt that a stranger, particularly a Jewish stranger, coming to San Francisco would have a very tough time. I returned to Washington a bit depressed. While walking along Connecticut Avenue, just a few blocks from where we are sitting, I came by 1147 Connecticut Avenue: a real estate man was standing outside, whom I knew; he was smoking. I stopped to talk and he asked what I was doing. I said, "Trying to decide what to do." He said, "I have some offices for rent. Why don't you go up and look at them. Five offices, \$90.00 a month." They were attractive, but five offices? I decided to take a shot at opening alone, and that's what I did. I bought a desk, a U.S. Code and a dictionary. I had a phone installed and then concentrated on mailing an announcement. In those days, a law office announcement consisted of one's name, the fact that you are opening an office, its address and telephone number. That was it. I had no prepared lists and simply tried to recall names. I didn't know where anyone whom I had known before the war would be. So I mailed perhaps thirty or forty notices, mostly to relatives. Meanwhile I decided to write a law review article or two to test my research capabilities and to record the conclusions of our wartime economic stabilization effort.

Mr. Liss: Was the notion that you would write these as a way of drawing attention to yourself and the practice and getting started?

Mr. Ginsburg: Yes. The first article I wrote was about the Office of Price Administration and the work that we had done. In fact, although not as a consequence of any article, my very first client was McGregor Sportswear. The company was being prosecuted for violating some price regulations; I took the case. After the Office of Price Administration had closed its doors, leftover cases were sent to the Justice Department. We negotiated with the

Justice Department and resolved the lawsuit. One client led to another and I represented them myself for awhile, with no problem. Mostly I was dealing with areas of the law that were almost foreign to me--the enforcement aspects of price regulations. Often they threatened to be costly for the client, but it proved possible to work things out. I tried to do so on a fair basis, console the client if he had to pay, and congratulate him if he didn't.

Mr. Liss: Was there an established administrative law structure for these hearings the way we have today?

Mr. Ginsburg: Lawsuits were pending everywhere. McGregor's was in New Jersey; others were around the country. I remember two in Oklahoma. I had had regional and district offices throughout the country. They had, of course, turned over all of their pending matters to the Justice Department, and they were all there. These were troublesome, but not greatly complex or at least didn't seem to be at the time. Some cases we had to try.

Mr. Liss: This would have been before federal judges?

Mr. Ginsburg: Yes, and that gave me some useful trial experience. When you are doing that alone, it's not easy.

Mr. Liss: I bet.

Mr. Ginsburg: That continued for a while. About eight or ten months later, perhaps somewhat longer, I remember going across the street to Fan and Bill's restaurant for lunch where Duke Zeibert was the maitre'd'. I was having lunch alone until a close friend came by with whom, and others, I had shared a house before the war. It was Harold Leventhal, still in uniform; he had just left the Coast Guard and had yet to settle down. He asked what I was doing. I told him, and pointed to the office across the street. Harold asked, "Do you have any room?" I

said "Sure, come over." We joined forces immediately as partners.

Mr. Liss: Was there a partnership agreement? I bet not.

Mr. Ginsburg: Nothing in writing. We simply agreed on income shares and draws. Harold and I never had any other agreements. That was the beginning of our firm. When Harold joined it was already toward or nearly the end of '46. In '47, I had a call from the State Department, that General Clay wanted to meet with me. He was joining Secretary of State George Marshall for a trip to Moscow to consider what was to be done and how, with Germany, and how to deal with the problem of German assets in Austria. Germany had, of course, merged Austria into the greater Reich and had built plants and facilities of all sorts throughout Austria, to safeguard them and in anticipation of war with Russia. They had belonged to Germany. Who was to get them? The Russians? The United States? To be divided? We didn't even know what they comprised. Would I go to Moscow? I spoke with another friend, Ben Cohen, who was also in the State Department and going to Moscow.

Mr. Liss: This would be as an unpaid advisor on the trip?

Mr. Ginsburg: It was theoretically paid but I have no recollection of what the compensation was, if any. It may not have been paid, I don't recall. But, it would take me away from the office for awhile. I needed Harold's consent which he gave immediately. I went off in January for a few days in Moscow; not much of anything could be decided about Germany. By that time Stalin must have had his own plans well in mind. But, they agreed on convening within Vienna a committee of experts to identify the assets and to work out what was to be done with them. I was asked to serve as the U.S. head of the Committee of Experts and as the deputy to the former head of the Finance Division in Berlin, Joseph Dodge, who would serve as U.S.

Chairman of the Austrian Treaty Commission (to establish Austria as a separate state). Mr. Dodge was head of the Detroit Bank in Detroit, Michigan and had headed the Finance Division in Berlin. Moscow was followed by meetings in Washington at the State Department and elsewhere to obtain the background for the work ahead. In early spring I left the office, went to Vienna, and established myself there in the Bristol Hotel. We had offices at the Embassy and I spent most of the year negotiating with the Russians, the French, and the British about German assets in Austria.

Mr. Liss: Was post-war Vienna rather grim?

Mr. Ginsburg: The city closely resembled *The Third Man* moving picture: cold, wet weather, hunger, poverty, misery, blackness, very little heat, very little power available, much destruction. But we had work to do and we did it day after day, sometimes working through nights and all of that. We came to know Foreign Minister Gruber of Austria; we worked closely with him, and obtained a good deal of help from him and his associates. We negotiated until late summer and, in the fall, in London, there was what turned out to be the last meeting of the Council of Foreign Ministers. It was attended by Secretary Marshall, Ernest Bevin for Britain, Bidault for France, and Molotov for Russia. We had meetings each morning with the Secretary before the four-party meetings began. I learned a little more about foreign affairs. This was a time when France was threatened, de Gaulle was the President of France, and there was fear that communists might take over the country. The Secretary sent George Kennan, John Foster Dulles and others to France. Dulles and I shared an office. I had known his sister, Eleanor, in Vienna where she was stationed at our Embassy. There was fear that the Russians would move forward. At one point, our forces were alerted. The alert was essentially designed

to notify the Russians that a forward move would be rash. Nothing untoward happened, although tension and difficulty continued between the allies and the Soviet Union. When I attended the Paris Peace Conference in early '46, I remember a speech by Molotov that frightened me. We are talking now about the beginnings of the Cold War, menacing, direct, hostile.

Mr. Liss: What was the gist of it?

Mr. Ginsburg: At that time the Allies were dealing with the re-establishment of the states of Eastern Europe, restoring Poland, Hungary and Czechoslovakia to the international community. We were also dealing with lost assets, impoverishment and destruction. We were seeking to restore the independence of the Eastern European nations. The Soviets were, of course, seeking to maintain their control, occupation and hegemony. I remember leaving Paris and later reporting that this was not an ordinary speech dealing with a common problem. This was a verbal attack, and should be viewed as such. Other better qualified people were dealing with all these matters; I was merely an onlooker. At the end of '47, after nearly a year abroad, beginning in Moscow, Vienna, and then London, around Thanksgiving, I returned home by the *Queen Mary*. We traveled by boat then, for the most part, and I returned finally to the office.

Mr. Liss: I am curious when you spoke about travel, just going back for a second, when you visited firms in Philadelphia, New York, Denver, San Francisco how did you travel on those trips?

Mr. Ginsburg: Railroad.

Mr. Liss: Railroad all the way?

Mr. Ginsburg: All the way. I used only the railroad and had researched the major firms; in each city I would call two or three of the firms for appointments. All were

courteous and friendly but, ultimately, I set up alone.

Mr. Liss: I interrupted you, I'm sorry.

Mr. Ginsburg: So, in Washington, I returned to practice again with Harold Leventhal.

Mr. Liss: Had the firm maintained its existence in the interim?

Mr. Ginsburg: Yes. Harold was doing fine. It's not that we had any great practice by a long shot. But we could both live on what we were earning. Harold married. We added people. Harold also taught at Yale. I concentrated on work at the office. And a diverse practice grew.

There was no specialization of any kind. We handled everything that came in the office, from divorces to small corporate mergers, litigation, accident cases, wills and estates and appellate work. We represented an early entry into what became the field of electronics, a company called Melpar in Virginia. I began to learn something of the work of these companies with our own military in Dayton, and occasionally visited there. Melpar produced materials for the military: Navy, Army, Air Force. Melpar taught me the importance of what ultimately came to Northern Virginia. The firm grew; Harold and I had agreed that we would not grow larger than ten lawyers, and we didn't. At one point there may have been eleven or twelve, but the idea was to remain small so that an experienced lawyer would deal with a client, counsel with the client, negotiate if necessary on the client's behalf; file suit if unavoidable and try the case. If appealed, he took it to appeal; if warranted he'd try to go to the Supreme Court. If I had a problem and wanted to talk about it, I would talk with Leventhal and, similarly, he with me. One time I had to file a brief within a period of a day or two and needed help. Harold dropped what he was doing and worked

with me. He lay on a couch similar to the one in front of us; I was writing, he was talking; I would intervene, he would respond and, between us, we had a draft brief by morning. It was that kind of practice, extremely close. We took no one as an associate unless we were in close agreement. Our first two associates were women: Harriet Margolies, wife of a former colleague, Dan Margolies, and Nancy Wechsler, wife of a journalist, James Wechsler. Nancy was the daughter of a prominent New York lawyer. There weren't many women in law school, even then. In the early '30's, there were none at the Harvard Law School.

Mr. Liss: We are now talking the early fifties?

Mr. Ginsburg: The late '40s, '49, '50, '51. Both women were able and both extraordinarily helpful to us. The firm grew and we were soon eight or ten lawyers, and we all practiced the same way. Both Harold and I became somewhat involved with politics: Harold with the Democratic National Committee, and I largely with Hubert Humphrey. In '48, I was in Philadelphia when Hubert first came to notice. When the Southern Democrats walked out, he made a great speech on civil liberties. It's on my mind because I saw a film about this episode last night on public television. It was a happy period. I saw a great deal of the Rauhs; Joe and his wife, Olie, were friends from law school. Life was pleasant. I enjoyed the work. We were not on an assembly line dealing with a portion of a product. We were, in fact, dealing with the whole—dealing with an entire case, not simply an aspect.

Mr. Liss: What was the basis for your fees in those days? Was it time based or flat fee?

Mr. Ginsburg: Time. I don't recall what we were charging then, but it was \$50 or \$75 an hour or something of that sort. If a client wanted to negotiate or couldn't pay, we made

other arrangements.

Mr. Liss: With all the pressure today that so many lawyers feel for producing billable hours, how were you able to avoid that pressure in those days?

Mr. Ginsburg: I don't recall that we ever discussed billable hours. We were simply concerned with whether there was enough money in the bank to pay the bills and to keep us going. Harold and I both followed what was happening on the books. We had a bookkeeper, who told us what we had and what we needed and that's what we tried to get. It was a much simpler way of life; we didn't have big rents or big salaries to pay. Of course we knew something about the larger firms, but we didn't seek to emulate them. Ignorance was bliss then. We didn't know about many things that perhaps we should have known. We didn't try to prepare for the future or to insure that each associate would produce 2,000 billable hours or whatever it was. These were not our concerns. The hard question in hiring was whether he or she was a good lawyer, whether we could trust them with our clients. The complexities of today--the sums that are needed, the time limitations that exist, the general counsels of the corporations with whom we have to deal, their problems in relation to their CEOs, whether their budgets have been increased or decreased....these were matters that didn't affect us. Many lawyers in Washington and elsewhere had to deal with these; we didn't. It was the nature of our practice. We represented corporations and others but always on particular problems. We organized corporations and help set them up and we had to learn as we practiced; these are not matters that are taught in law school; they are learned from books, guidance and experience after law school. That was a quite wonderful period. We were just beginning, the practice was growing; we were acquiring a small staff; there was difficulty finding secretarial help. We did our own typing

whenever necessary. We used none of the equipment we have today, computers, copying machines, or whatever. We used carbon paper for copies. We had telephones but no fax machines. I look back with nostalgia but I am sure there were miseries, too. Time lessens pain and exaggerates pleasure, but I deeply regret the change that we've had in the practice of the law. It isn't so much the burden of setting up an office or obtaining clients, it's the nature of the practice. We don't have lawyer generalists anymore; we have specialists. Lawyers become specialists in communications or in civil aviation, healthcare or whatever, and that's what they deal with. If I ask my older son to deal with a problem other than immigration, he'll tell me that he works only on immigration. I regret that. I think it's less rewarding and lessens the utility of a lawyer to the client. I know that today general counsels and others within larger corporations seek specialists, someone who has lived his life dealing with 501(c)(3), or 604.2 but we didn't practice in that way then, at least not in our office. Every lawyer had to move out and deal with whatever problems came into the office, and then do the research necessary to enable him to cope with the problem.

Politics was almost an avocation. However, I don't mean it in the sense of lobbying for legislation. On the Hill, I came to know Johnson very early. Before that, I had come to know Humphrey and visited him when he was Mayor of Minneapolis. I believed very early that he would become a candidate for the presidency, and I thought that ultimately he would achieve the presidency. He was a brilliant politician. Years later, in 1960, he was running against Kennedy in West Virginia. There are 60 counties in that state, my state. I took time from the office, and visited each of those 60 county seats; when I returned, I reassured him that, knowing my state and its prejudices, there was no possibility that a Catholic could be nominated. Humphrey could

win the state, I said, and I urged him to run in West Virginia. Others gave him the same advice, but I felt that I really knew. I was totally wrong. Money made a difference, Kennedy got the nomination and support of West Virginia. Years later, this time in '68, I represented Humphrey on the Platform Committee, concentrating on the Vietnam plank. '68 in Chicago was difficult. Leadership elements of the youth of the country had gravitated there, in the parks, sleeping everywhere; it was a profanation of the city. On behalf of Humphrey, I negotiated with representatives of Senator McCarthy, President Johnson and others a week before the convention to get agreement on a plank. And finally we developed a draft. I was having dinner with Henry Brandon on the Sunday night just before the convention that began the next day. Henry was then a representative, I think, of *The Sunday Times* (London). A messenger brought word that the chairman of the platform committee wanted to talk to me. He was later killed in a plane accident in Alaska.

Mr. Liss: Boggs?

Mr. Ginsburg: Boggs, Hale Boggs.

Mr. Liss: Right.

Mr. Ginsburg: I immediately left to see Hale Boggs who opened by saying that he was not going to remain in the position of being against either his President or his nominee, and he wanted to clarify the situation before the convention considered the platform the following day. If this couldn't be done, he would resign. He telephoned President Johnson who was in Texas; a young man answered but one could hear the President's voice in the background. By this time, you remember he had, on January 31st, announced that he wouldn't run. We reviewed, word by word, the draft that I had so laboriously worked out with others and all but a few

changes were accepted, although grudgingly. LBJ made clear that if agreement couldn't be achieved, no one should be surprised if he came to the convention. I then went to Hubert's suite in the hotel, explained the situation in detail and recommended that he call Secretary of State Rusk, discuss it with him and see what could be done. I had already talked with Mac Bundy and Bill Bundy and many others involved with the issue. We had together worked out what I had brought to the President, but it wasn't to be. Humphrey's suite on the top floor of the hotel was partying and noisy; Hubert himself was alone in the bedroom; it was solitary and painful.

Mr. Liss: Had the personal relationship between Johnson and Humphrey deteriorated badly by this point?

Mr. Ginsburg: I don't think there was much of a personal working relationship at all then. It was simply a question whether or not Humphrey would capitulate. He neither capitulated nor did he agree. So, it came down to a debate at the convention between the forces of HHH and those of Sen. McCarthy. A half dozen were to speak briefly on each side; we had to write six speeches for Humphrey's views and others prepared six speeches on Gene McCarthy's side. Humphrey was nominated. But the party was disemboweled. As a consequence, Nixon was elected with all the problems he brought with him. The practice of the law with which we are concerned here became for that period a secondary effort. Work went on; Harold was fully involved with the Democratic National Committee; by '68 he was on the bench.

Mr. Liss: When did he, as far as you know, first express an inclination to try to go on the bench?

Mr. Ginsburg: Harold was a lawyer who, with a tort case, would first resort to Corpus Juris and begin research with the origin of torts. He was an historian of every problem

that he dealt with. It was wonderful. A lawyer with his depth and skills in the office was a major asset. But on the other hand, he had trouble finishing a case. I always thought—I never discussed it with him before he raised it—he'd make a marvelous judge: careful, precise, exact, studious, rational, hard-working, and responsible. At the time of the '64 convention in Atlantic City, I remember first talking with him about the bench. There was an opening on the Court of Appeals for the District; he thought that he would like to try for the opportunity. I agreed and offered to help. He was by that time General Counsel of the Democratic National Committee and he had to cope with all sorts of problems in the '64 convention. A southern rebellion forced the Convention to decide which of two groups shall be seated from Mississippi. Harold had to reconcile or find means to decide this and other difficult matters. He did a marvelous job that was widely recognized. A number of others and I spoke openly with the President about Harold; the nomination was supported and cleared by the Attorney General. There was some questioning at the congressional hearing, but Harold was prepared and responsive.

Mr. Liss: Knowing Judge Leventhal as I did later on, and knowing what a wonderful judge he was, it is hard to imagine what anyone would have questioned?

Mr. Ginsburg: I think he was charged, indirectly, with being "too liberal." I don't recall the specific questions, but I remember talking with Harold about how to deal with this particular issue if it came up; and it did come up. He handled it all well, and ultimately was confirmed without problems. He went on the bench in '65 and that's when Mike Feldman joined the firm. Mike had been with Kennedy as a lawyer in the White House, and, ultimately, served the President as counsel for a period after Ted Sorensen left. Feldman was the number two lawyer and ultimately became number one. Later he was uncomfortable in the Johnson

Administration as Johnson was uncomfortable with most, if not all, of the Kennedy people.

Bundy went to the Ford Foundation, Mike came here, and stepped into Harold's shoes.

Mike was a different kind of lawyer, able and wonderful in terms of the contacts that he had. Harold stepped out, and Mike came in; later we differed about growth since he felt it would be unwise to try to hold the firm to a small, elite group. I recognized that with the clients he might be able to reach, we would need more than a few, so I agreed that we would grow as necessary and let it be at that. But I wanted to grow slowly, and he a little faster; we ultimately grew to something like a hundred lawyers. Meanwhile, I argued a number of cases before the Supreme Court, that was fun.

Mr. Liss: In what type of cases?

Mr. Ginsburg: One was given to me by the Supreme Court itself. There was a problem in a West Virginia case; Frankfurter was on the Court and I'm quite sure arranged it. The state had taken certain actions that were clearly, I thought, in violation of the law. The question was how to remedy it. A lawsuit had been brought against the state, that had reached the Supreme Court. The acting Attorney General of the State was a personal friend. After I got into the case, and concluded the Supreme Court would reverse, I explained it to the W.Va. Attorney General, and he decided to confess error. That case ended without argument. Frankfurter was much amused and I enjoyed the effort.

In another case, I represented Henry Kissinger who had given his papers to the Library of Congress. He's an historian who kept copies of almost everything, including transcripts of telephone conversations. The Reporters Committee for Freedom of the Press wanted access to all of his papers, including the transcripts. When you say it so boldly to me it seems grotesque.

Who would be ready, via the transcripts, simply to open up his life to the media? The originals of all state papers in Kissinger's collection are with the State Department; he gave only copies to the Library of Congress. The Reporters Committee filed a lawsuit; we defended in the District Court.

I had advised that we would probably lose in the District and in the Court of Appeals, but that we'd probably win in the Supreme Court. We lost in the District Court, and in the Court of Appeals, and prevailed in the Supreme Court; access to the collection was denied. I had concluded that 6 or 7 judges would regard this as an unlawful invasion of privacy. These are mostly papers that the State Department will eventually revise and may publish as part of the series of Foreign Affairs volumes of the United States. The State Department has the original records (although not the transcripts of telephone conversations). The Department historians produce and publish the foreign affairs history of the country. Happily, the Court came down with a favorable decision.

Mr. Liss: Was doing Supreme Court cases something you set out to do, or did they just come your way?

Mr. Ginsburg: Just came my way. This was the reward for practicing law. I had a good many cases in the District Court and several in Courts of Appeal throughout the country. I had a few cases in the Supreme Court. Not as many as I would have liked or enjoyed having, but enough for a satisfying taste. These were the cases that gave one the most satisfaction to work on. When you're up before the Court, a prepared speech has little use. One has to deal with the concerns of any of the nine judges, and respond to their questions in the course of a half an hour. In that same half hour you must also try to reach what you yourself think are the critical

aspects of the case. Often that isn't easy. The Court, at times, is a barrier to oral presentation. A lawyer's skill is demonstrated by his ability to weave into his replies what's critical to the case so that all critical elements get before the nine justices.

Mr. Liss: Focusing for a minute on the judges in this Circuit, on the Circuit Court, in the District Court, are there any who come to mind as judges who, over the years, particularly impressed you either positively, or not so positively?

Mr. Ginsburg: Chief Justice Burger. When Burger was on the Court of Appeals, Harold was there. So, occasionally, I would lunch with Harold and Judge Burger would sometimes join us. As a human being, I enjoyed him although I thought later that his interests were primarily focused on the administration of the courts, not the judicial function. Nor did I think he was able to hold the Court together as Chief Justice of the U.S. Supreme Court. Douglas would occasionally say something about what was going on but not very much. Douglas was never free—at least with me—with details about Court matters. The Court was sharply divided at that time; now there's considerably less attention given to the reasons why a case is taken for review. Some of the Nine Old Men did better in this regard than some of our younger justices do today. To be a good, not a great, but even a good, Justice on the Supreme Court, takes much work. It takes a willingness not only to write, but to rewrite, and rewrite and rewrite, and an obligation to explain why a case is being rejected that is at least as clear as why a case is being accepted. This is to insure acceptance within the judicial community as well as the public, represented by the media. There is an art to writing an opinion; it encompasses aspects of drama as well as judicial tradition. Specificity is important as well as beauty in the choice of language. All this can only emerge from a personality dedicated to the Court. When you're

there, it must be viewed as a retreat. You're focused on what comes before you. Yes, I know the argument that one must be part of the world in order to deal with problems that come from the world. But, in my view, significant public life, for a Justice, cannot be outside the Court. I doubt that many there accept that view today. It's not so much the need for reverence as awareness of the importance and continuing significance of the decision and its acceptance by the parties and the public. I read with sadness the books that tell us that law clerks are now drafting many opinions. They should be free to speak for themselves; the Justices should speak for themselves and do so cogently, eloquently and persuasively.

Mr. Liss: Would you apply these same values to the Circuit Court, the Courts of Appeal?

Mr. Ginsburg: I don't follow the Courts of Appeal with the same care that I follow the Supreme Court. But there are some judges on the Courts of Appeal, not only in this circuit, but throughout the country, who strike me as having great quality, originality and independence. Reading their opinions one knows that a mind is truly at work on the problems they identify. One may disagree with outcomes, but appreciate that someone has honestly wrestled with the issues, thought through them, has digested and laid out the facts and with an open mind has collated and presented the relevant law.

Mr. Liss: Who impresses you that way here?

Mr. Ginsburg: I'd rather not talk about that. I don't think it's a secret; those who read, know. I doubt that a judicial appointment these days is as meaningful as it ought to be or, indeed, as meaningful as it was some years back.

Mr. Liss: Do you mean to criticize the Senate in that observation?

Mr. Ginsburg: I had some experience there. I served for a brief period, either in '49 or '50 as the administrative assistant of Senator Matthew M. Neely of West Virginia. He called one day and said that he would like to see me; he had an opening on his staff for an administrative assistant; the United Mine Workers were aware about it and unless he filled the post quickly, he would be under pressure to fill it with a UMW nominee. He didn't want that outcome. Would I take the job? I explained that I was in private practice and had to continue work. He replied, "We'll just make it so many hours a week and we'll try to accommodate your needs." I took it for a year or so and each morning I would work with him and his problems, in his office. That didn't last, as I say, very long, but I came to know something of what goes on in the Senate. I saw how a responsible senator worked and how he operated. The New Deal was predicated on the assumption, I think a correct assumption, that many of the state legislatures, were essentially corrupt. Members had been bought by corporations, institutions, individuals, unions, others. Senator Neely faced that problem in the State of West Virginia. The UMW was then an immensely powerful union headed by John L. Lewis. Neely wanted some independence from their claims. He was seriously concerned with their problems but he needed breathing room. The Federal Government of the New Deal effectively superseded the states in many respects for problems that the states could not contend with because of the Depression, because of corruption or for other reasons. Now we are returning to the states powers that for years have been exercised by the federal government. In some matters that seems to me wise and correct; in other matters, absurd. So, we're still involved with the problems of federalism. The federal/state relationship is an extraordinarily important one in our society and in our culture.

To politicize the issue is, I think, a mistake; it isn't either/or. There are some things that

only the federal government can get done. Poverty in this country and the misery of the inner city cannot be overcome solely with local resources. Health, education, social welfare—local resources are insufficient to deal with them. There are many other issues that the states and the municipalities can deal with more effectively than the federal government. The need for racial equality requires support from both; some progress has been made, thanks mostly to LBJ; more is needed.

When Johnson, as President, was in the White House, he called one day—this was about mid-'65, maybe a little earlier. I had known him earlier but came to know him better when I was in OPA as General Counsel, in '41, '42. Anyway, in '65 he described a problem that existed with the price of copper in Chile, what was to be done? The Chileans were going to increase the price of copper and that could aggravate inflationary forces here—we were in the early stages of the Vietnam war, taxes hadn't been increased, and there was at least a threat of inflation. If the price of Chilean copper was increased, the price of ours would follow. My feeling was that we should send someone to the Chileans with resources in hand, explain our problem and seek to make it advantageous for them to help us. He sent Harriman and it worked out well.

In the Fall of '67, my children, my wife and I were on the West Coast. We were going down the Salmon River. I got a call from the White House that there had been riots; this was at the end of August. The President wanted to see me. One of the senators from Oregon and I came back together. In Washington, I went to the White House immediately. By that time I had read the papers. Black riots had broken out. There had been riots earlier in Watts in Los Angeles. There had been recent riots in DC and elsewhere. Riots had broken out, too, in France, but the problems of France were different.

In many small and some large communities in the U.S., where there had been black rioting, police were uninstructed, uninformed and basically incapable of riot control. The danger was that the police would freely use guns.

This was the Civil Rights period. Martin Luther King was leading and making sense. The Black community was responding but the response was unguided, lacking local leadership. When I first came into the Oval Office, the President described what the problems were, what he wanted done. He was going to set up a commission. He wanted me to serve as the Executive Director of the commission. At one point, he slammed his hand on the desk and said, “You can’t tell me that somebody didn’t press a button and have all these cities, these communities erupt. How could they all happen at about the same time?” The fear, of course, was that there was communist involvement of some sort. That didn’t seem right to me then, and we later concluded that it wasn’t true. Television and radio simply communicated facts across an area, and so in New Jersey and in Michigan, Chicago and elsewhere, the black community listened and moved into the streets. It was August, hot and humid, virtually no air conditioning in inner city areas. Almost every riot began with a controversy between the police and a member of the community. We investigated and brought in the CIA, the FBI and everybody else, to try to determine what had happened. The conclusion? A spontaneous eruption as a consequence of the weather, bad police/community relations and a lot of other things—certainly including the misery of living in poverty. So I took another year off, in '67, '68. I left the office to serve as a dollar a year person for work on the report and with the commission.

Mr. Liss: Literally, that’s the dollar a year program as in World War II?

Mr. Ginsburg: That’s right.

Mr. Liss: I didn't realize it was still around in the '60s.

Mr. Ginsburg: Well, that was the arrangement I made for that year and left practice. There was one outburst at the end of August, early September of '67. And then when Robert Kennedy and Dr. Martin Luther King were killed in the spring, riots broke out again. These were more serious. We were in the middle of the investigation at that time, and we could see the trouble coming. I traveled Washington, at times with the Mayor and others, going from place to place. We would try to find someone within the local community to tell us what was happening, identify who could provide guidance and access to the rioters. In some areas governors declared martial law. There were soldiers on the streets of Washington, and elsewhere, with guns. It was difficult, and to some extent dangerous, but we avoided trouble.

Mr. Liss: Was the commission of one mind in the end product?

Mr. Ginsburg: In the end product, the answer is yes. There were marginal differences among the members, but basically they agreed on the report. At one point there was a threat that they might not agree, that there would be written statements of disagreement. This was avoided. The critical observation in the report was that we were moving toward two societies, one Black, one White, separate and unequal. Separately, everyone could accept, but unequal? What do we mean by "equality?" Equality of opportunity?

Mr. Liss: I'm curious. How was the commission report actually written? Were you, as the executive director the principal draftsman?

Mr. Ginsburg: The report was drafted by many people. We had groups dealing with particular subjects, one group dealing with the facts, what happened. The President had asked in his Executive Order, what happened? Why did it happen? How can we prevent it from

happening again? These were our three big issues. What happened? Why did it happen? And how can we prevent it from happening again? The report was published at the end of March of '68, just weeks before the President had said he would not run again. In the report, I had insisted, and the Commission agreed, that we would tell the full story. It took about a million words.

We built up to about 200 people, and many worked on the report. I had an absolutely first rate deputy, Victor Palmieri. The names of all the others are in the report.

The conclusions of the report, I believe, remain essentially valid. The notion that you can deal with inner-city poverty and decay by developing local resources and nurturing energetic leaders, I believe, is absurd. Conditions in the inner city have worsened. From the inner-city we've lost many able Blacks who have moved to the suburbs. The inner-city now is more miserable, and more dangerous than it was in 1968. This is apart from the fact that the inner-city has been infiltrated, I don't mean that in any invidious sense, by poor Hispanics—Latinos—who have immigrated to the U.S. in massive numbers. Plus large numbers of illegals. Plus a substantial number of Asians. For many Blacks midway up the ladder, the situation today is better than it was in '68. For others, it is worse. So that, much in the report about the training of police and about the nature of police community relationships, remains relevant and important.

During preparation of the report, we arranged to have the FBI invite chiefs of police, mayors and others to attend conferences for training, for exposure to problems that they might have to face and attitudes that they would have to inculcate in their organizations in order to deal with possible disorders.

I remember a meeting in Cincinnati with local Black leaders. The mayor of New York was with us and two or three other members of the Commission. We were to meet in the

basement of a church. The church had a passageway leading to the basement from the outside that descended by a grade to a basement door. At the church, men were standing, lined up on either side of the passageway through which we walked into the church. As we passed, they spit on us. It was frightening, but we were not harmed. Ultimately the meeting was peaceful, and I think we did some good.

We gave the facts in the report, all that we could turn up. We checked data in ways well beyond the efforts of lawyers checking for due diligence. We felt that if we understated or overstated, victims and communities would know.

I sent the manuscript of the report to a private publisher on a Thursday. It was available for sale in ten cities on Monday. It was later published, of course, by the government and others. It was used as a basis for teaching in many universities throughout the country and is still being used.

Before this I had had no contact with the Black/White problem. I knew, of course, that we had serious problems. I had been a founding member of Americans for Democratic Action, a liberal group established essentially to separate those who supported the Soviets and the communist viewpoint from liberals within our own country. We carefully limited membership to noncommunists. And, of course, the communist group as well as ADA clearly supported the Black position—ADA because of equity and decency, the others I suppose largely because it might broaden their base of political support.

LBJ and the Johnson Administration, I think, will ultimately be remembered, by historians, less for what happened in Vietnam and more for the civil rights revolution and the concern for ordinary people that characterized the Administration. Today, acid, political acid,

has eaten into the political system to the point where people are less interested in what's right, and far more in obtaining or retaining power. Money has become the mother's milk of politics. That's bad; for a country of our size, 260-270 million people, it's not a rational way to govern, not a way that governance can be accomplished and public interests served.

I think that's enough for today.

This concludes the interview held on July 15, 1998.